



City of Denton

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

Meeting Agenda Public Utilities Board

Monday, September 11, 2023

9:00 AM

Council Work Session Room

REGISTRATION GUIDELINES FOR ADDRESSING THE PUBLIC UTILITIES BOARD

Citizens will be able to participate in the following way:

- 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, September 11, 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 – E). 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. [PUB23-159](#) Consider recommending adoption of an ordinance of the City of Denton, a Texas

home-rule municipal corporation, authorizing the approval of a first amendment to a Professional Services Agreement between the City of Denton and Kimley-Horn and Associates, Inc., amending the contract approved by the City Council on May 17, 2022, in the not-to-exceed amount of \$751,100.00; said first amendment for an extended scope, an additional full plan set, and services for a new lift station for the I-35 Split to Milam Phase II project for the Capital Projects and Water Utilities Departments; providing for the expenditure of funds therefor; and providing an effective date (RFQ 7574-010 - providing for an additional first amendment expenditure amount not-to-exceed \$224,300.00, with the total contract amount not-to-exceed \$975,400.00).

Attachments: [Exhibit 1 - Agenda Information Sheet](#)
 [Exhibit 2 - Original Ordinance and Contract](#)
 [Exhibit 3 - Ordinance and Amendment 1](#)

- B. [PUB23-160](#) 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 Mountain Cascade of Texas, LLC, for the construction of the Barrow Gravity Sanitary Sewer Line and Lift Station Abandonment for the Capital Projects Department; providing for the expenditure of funds therefor; and providing an effective date (CSP 8205 - awarded to Mountain Cascade of Texas, LLC, in the not-to-exceed amount of \$1,453,083.45).

Attachments: [Exhibit 1 - Agenda Information Sheet - PUB](#)
 [Exhibit 2 - Pricing Evaluation](#)
 [Exhibit 3 - LLC Members](#)
 [Exhibit 4 - Ordinance and Contract](#)

- C. [PUB23-161](#) 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 HACH Company, for the purchase of HACH brand products, including instrumentations and chemistry for the Water and Wastewater Departments, which is the sole provider of this software, 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 8263 - awarded to HACH Company, for three (3) years, with the option for two (2) additional one (1) year extensions, in the total five (5) year not-to-exceed amount of \$770,000.00).

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

- D. [PUB23-162](#) Consider recommending adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, rejecting any and all competitive proposals under RFP 8272 for the Modular Building Removal at 804 Texas Street for the Solid Waste & Recycling Department (SW&R) and 1527 Mayhill Road for the Water Department; and providing an effective date (RFP 8272).

Attachments: [Exhibit 1 - Agenda Information Sheet](#)

[Exhibit 2 - Ordinance](#)

- E. [PUB23-164](#) 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 Signature Automation, LLC, for the selection and design of a standardized Human Machine Interface (HMI) software system for the Water Production and Water Reclamation Departments as set forth in the contract; providing for the expenditure of funds therefor; and providing an effective date (RFQ 7574-022 - Professional Services Agreement for design services awarded to Signature Automation, LLC, in the not-to-exceed amount of \$1,913,152.00).

Attachments: [Exhibit 1 - Agenda Information Sheet](#)

[Exhibit 2 - LLC Members](#)

[Exhibit 3 - Ordinance and Contract](#)

3. ITEMS FOR INDIVIDUAL CONSIDERATION

- A. [PUB23-163](#) Consider approval for the August 28, 2023 minutes.

Attachments: [8.28.23 PUB Minutes](#)

- B. [PUB23-165](#) Management Reports
1. Gibbon's Creek Memo Update
 2. Large Rooftop Solar PPA Memo
 3. Management of telecoms use of right-of-way and pole attachments within the city rights-of-way
 4. Future Agenda Items
 5. New Business Action Items

Attachments: [1. Gibbons Creek Power Station Update Memo](#)

[2. Large Rooftop Solar PPA Memo](#)

[3. Management of telecoms use of right-of-way and pole attachments within the](#)

[4. Future Agenda Items](#)

[5. 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.

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 September 7, 2023, in advance of the 72-hour posting deadline, as applicable, and in accordance with Chapter 551 of the Texas Government Code.

OFFICE OF THE 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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Legislation Text

File #: PUB23-159, **Version:** 1

AGENDA CAPTION

Consider recommending adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the approval of a first amendment to a Professional Services Agreement between the City of Denton and Kimley-Horn and Associates, Inc., amending the contract approved by the City Council on May 17, 2022, in the not-to-exceed amount of \$751,100.00; said first amendment for an extended scope, an additional full plan set, and services for a new lift station for the I-35 Split to Milam Phase II project for the Capital Projects and Water Utilities Departments; providing for the expenditure of funds therefor; and providing an effective date (RFQ 7574-010 - providing for an additional first amendment expenditure amount not-to-exceed \$224,300.00, with the total contract amount not-to-exceed \$975,400.00).



AGENDA INFORMATION SHEET

DEPARTMENT: Procurement
ACM: Cassey Ogden
DATE: September 11, 2023

SUBJECT

Consider recommending adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the approval of a first amendment to a Professional Services Agreement between the City of Denton and Kimley-Horn and Associates, Inc., amending the contract approved by the City Council on May 17, 2022, in the not-to-exceed amount of \$751,100.00; said first amendment for an extended scope, an additional full plan set, and services for a new lift station for the I-35 Split to Milam Phase II project for the Capital Projects and Water Utilities Departments; providing for the expenditure of funds therefor; and providing an effective date (RFQ 7574-010 – providing for an additional first amendment expenditure amount not-to-exceed \$224,300.00, with the total contract amount not-to-exceed \$975,400.00).

STRATEGIC ALIGNMENT

This action supports Key Focus Area: Enhance Infrastructure and Mobility.

INFORMATION/BACKGROUND

The Texas Department of Transportation (TxDOT) is widening the Interstate 35 (I-35) corridor in numerous areas throughout the City of Denton. The widening of I-35 presents conflicts with existing water and wastewater infrastructures entailing their relocations. Through a holistic approach, the Water Utilities Division took the opportunity to evaluate the current and future demands in the region as a direct impact on the widening of I-35. Kimley Horn and Associates was hired to assist with the design of the relocations as well as to identify the future demands as a result of expected growth.

The original contract with Kimley-Horn was awarded by the City Council on May 17, 2022, to assist with the engineering services for the design and construction phase services for the I-35 Split to Milam Phase II. However, during the design process, the design and proposed easement for the original corridor were no longer feasible, thus there was a need for additional survey and design phase services for the gravity and force main sewers.

This First Amendment includes additional preliminary/final plan and profile drawings preparation for the addition of approximately 500 linear feet of water main, 330 linear feet of 12-inch sanitary sewer force main, and 400 feet of 18-inch through 33-inch gravity sanitary sewer line. The revised designs will require additional easements, an Environmentally Sensitive Area (ESA) study and mitigation plan, and a lift station. To cover the cost of the added scope in the contract, we are recommending the approval of this Amendment.

PRIOR ACTION/REVIEW (COUNCIL, BOARDS, COMMISSIONS)

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

On May 17, 2022, the City Council approved a contract with Kimley-Horn and Associates, Inc., in the not-to-exceed amount of \$751,100 (Ordinance 22-898).

RECOMMENDATION

Award Amendment No. 1 with Kimley-Horn and Associates, Inc., for an extended scope, an additional full plan set, and services for a new lift station for the I-35 Split to Milam Phase II project for the Capital Projects and Water Utilities Departments, in a not-to-exceed amount of \$224,300, for a total amended contract amount of \$975,400.

PRINCIPAL PLACE OF BUSINESS

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

ESTIMATED SCHEDULE OF PROJECT

This project will be started upon approval with a completion date by end-2024.

FISCAL INFORMATION

These services will be funded from Wastewater Utilities account 640468545.1365.21100. Purchase Order #200157 will be revised to include the first amendment amount of \$224,300. The total amended amount of this contract is \$975,400.

EXHIBITS

Exhibit 1: Agenda Information Sheet
Exhibit 2: Original Ordinance and Contract
Exhibit 3: Ordinance and Amendment 1

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

For information concerning this acquisition, contact: Cole Tankersley, 940-349-8169.

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

ORDINANCE NO. 22-898

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., FOR REGULATORY PERMITTING/APPROVAL SUPPORT, PROCESS EVALUATION, DESIGN SERVICES, BIDDING ASSISTANCE, CONSTRUCTION PHASE SERVICES, AND EASEMENT ACQUISITION FOR THE I-35 TO MILAM CREEK PHASE II PROJECT FOR THE WATER UTILITIES DEPARTMENT; PROVIDING FOR THE EXPENDITURE OF FUNDS THEREFOR; AND PROVIDING AN EFFECTIVE DATE (RFQ 7574-010 – PROFESSIONAL SERVICES AGREEMENT FOR DESIGN AND CONSTRUCTION PHASE SERVICES AWARDED TO KIMLEY-HORN AND ASSOCIATES, INC., IN THE NOT-TO-EXCEED AMOUNT OF \$751,100.00).

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, 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 professional design and construction phase services for the City of Denton, 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 Alison Maguire and seconded by Brian Beck. This ordinance was passed and approved by the following vote [7 - 0]:

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


PASSED AND APPROVED this the 17th day of May, 2022.


GERARD HUDSPETH, MAYOR

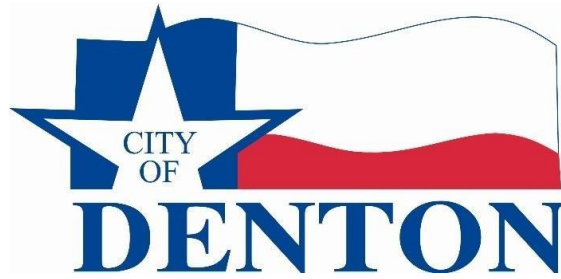
ATTEST:
ROSA RIOS, CITY SECRETARY

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@cityofdenton.com, c=US
Date: 2022.05.10 10:51:44 -05'00'





DocuSign City Council Transmittal Coversheet

PSA	7574-010
File Name	I35 SPLIT TO MILAM PHASE II
Purchasing Contact	Crystal westbrook
City Council Target Date	MAY 17, 2022
Piggy Back Option	Not Applicable
Contract Expiration	N/A
Ordinance	22-898

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: I35 Split to Milam Phase II (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 \$751,100 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

Amendments to Section 4, if any, are included in Attachment B.

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

Amendments to Section 5, if any, are included in Attachment B.

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**

Amendments to Section 6, if any, are included in Attachment B.

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 2270 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

Section 2252 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 Chapter 2252, 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. Certificate of Interested Parties Electronic Filing

In 2015, the Texas Legislature adopted House Bill 1295, which added section 2252.908 of the Government Code. The law states that the City may not enter into this contract unless the Contractor submits a disclosure of interested parties (Form 1295) to the City

at the time the Engineer submits the signed contract. The Texas Ethics Commission has adopted rules requiring the business entity to file Form 1295 electronically with the Commission.

Engineer will be required to furnish a Certificate of Interest Parties before the contract is awarded, in accordance with Government Code 2252.908.

The contractor shall:

1. Log onto the State Ethics Commission Website at :
https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm
2. Register utilizing the tutorial provided by the State
3. Print a copy of the completed Form 1295
4. Enter the Certificate Number on page 2 of this contract.
5. Complete and sign the Form 1295
6. Email the form to purchasing@cityofdenton.com with the contract number in the subject line. (EX: Contract 1234 – Form 1295)

The City must acknowledge the receipt of the filed Form 1295 not later than the 30th day after Council award. Once a Form 1295 is acknowledged, it will be posted to the Texas Ethics Commission's website within seven business days.

O. 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 Engineer shall complete and submit the City's Conflict of Interest Questionnaire.

P. 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
Attachment B - Amendments to Standard Agreement for Engineering Services

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.

Duly executed by each party's designated representative to be effective on the date subscribed by the City Manager.

ENGINEER

KIMLEY-HORN AND ASSOCIATES, INC

DocuSigned by:
BY: John Atkins
25D7303EA77E421...

AUTHORIZED SIGNATURE

John Atkins
Printed Name: _____

Vice President
Title: _____

817-339-2272

PHONE NUMBER

john.atkins@kimley-horn.com

EMAIL ADDRESS

2022-873387

TEXAS ETHICS COMMISSION
1295 CERTIFICATE NUMBER

CITY OF DENTON, TEXAS

SARA HENSLEY, CITY MANAGER

DocuSigned by:
BY: Sara Hensley
5236DB296270423...

ATTEST:
ROSA RIOS, CITY SECRETARY

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

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

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

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

DocuSigned by:
Stephen D. Gay Stephen D. Gay
FEB48BB9726E4A9...

SIGNATURE PRINTED NAME

Director

TITLE

water utilities

DEPARTMENT

ATTACHEMENT A**PROFESSIONAL SERVICES AGREEMENT**

Professional Services Agreement:
I-35 – SPLIT TO MILAM PHASE 2
Scope of Services

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 I-35 – SPLIT TO MILAM PHASE 2 project under the Professional Service Agreement (7574-010).

Project Understanding

Under the first phase of the I-35 utility Relocation contract, The CITY requested that the ENGINEER perform additional services to analyze the sewer basin projected flows for potential development in the Milam Creek to Loop 288 area to evaluate and determine the appropriate size of sewer infrastructure needed to meet peak flows for the proposed developments. This analysis indicated that the existing sewer infrastructure is undersized and would need to be upsized and rerouted to allow for several current proposed developments.

Scope of Services

The CITY has requested that the ENGINEER perform additional services to provide a design for an approximately Three-Million Gallon per Day (3.27-MGD) regional sanitary sewer lift station, force main, and gravity sewer mains in order to promote the future development planned for the I-35 north west corridor and clear the conflicts identified with the I-35 TxDOT project. This lift station will be designed to allow for the abandonment of the Border-Cowboy and TA lift stations and be phased to allow for initial flows of 1,200 gallons per minute (gpm) up to 2,300 gpm.

The task descriptions listed below are in addition to the previously authorized items.

Task 1 Design Management

ENGINEER will provide the following additional services in accordance with the Original Contract:

A. Project Management

1. Attend up to one additional meeting with City.
2. Prepare and execute up to two (2) additional subconsultant amendments.

Task 2 – ALIGNMENT STUDY**A. Preliminary Investigation**

1. Site Investigation
 - a. Walk general alignment.

- b. Document alignment corridor with photographs.
 - c. Note visible potential alignment, conflicts and issues.
- 2. Data Review with City
 - a. Meet with City to review accuracy of record information.
 - b. Interview City staff concerning historical, existing and future City plans along the alignment.

B. Prepare Alignment Technical Memorandum.

- 1. Analysis of alignments indicating merits and challenges for each, and including the following considerations:
 - a. Easement acquisition schedule and cost impacts.
 - b. Existing development impacts.
 - c. Existing potential horizontal and vertical conflicts.
 - d. Accessibility for maintenance.
 - e. Revise roll plot maps to include full project limits
 - f. Prepare opinions of probable construction cost for each alignment. The ENGINEER has no control over the cost of labor, materials, equipment, or over the Contractor's methods of determining prices or over competitive bidding or market conditions. Opinions of probable costs provided herein are based on the information known to ENGINEER at this time and represent only the ENGINEER's judgment as a design professional familiar with the construction industry. The ENGINEER cannot and does not guarantee that proposals, bids, or actual construction costs will not vary from its opinions of probable costs.

C. Deliverables

- 1. Digital .PDF copy of draft and final technical memorandum.

D. Meetings

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

Task 3 – PRELIMINARY DESIGN

A. Geotechnical Engineering

- 1. Perform a geotechnical analysis of the alignment 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 six (6) sample bores varying 10 to 40 feet depending upon location.
 - 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 pipe installation, including bedding and backfill
 - iv. Recommendations for tunneling operations
 - v. Recommendations for vault and wet well foundation type and allowable loading
 - vi. Recommendations for lateral pressures for structural design
- 2. The previously provide geotechnical report will be amended and furnished by the geotechnical engineer to present the results of the field and laboratory data as well as analyses and recommendations. Three (3) copies of the report will be provided by the geotechnical engineer, with one (1) copy going to the City. The data contained in the geotechnical report will be made available to contractors during the bidding process for informational purposes.

B. Subsurface Utility Engineering (SUE)

- 1. Level A investigation of existing water line connection point, and potential crossing utilities. The Level A investigation shall consist of performing up to two (2) level A testholes or “locates” of existing utilities. The Level A investigation will be conducted in accordance with ASCE publication CI/ASCE 38-02 and include the location of said utility in three dimensions obtained through non-destructive geophysical methods.
- 2. This task assumes that SUE data will be available from TxDOT and may be relied upon for design.

C. Preliminary Waterline and Sanitary Sewer Line Design

- 1. Visit the site to perform field verification of the survey.
- 2. Additional Preliminary plan and profile drawings preparation for approximately 1,800 linear feet of 20-inch through 6-inch water main 330 linear feet of 12-inch sanitary sewer force main, and 13,500 feet of 18-inch through 36-inch gravity sanitary sewer line.
 - a. Prepare (22”x34”) plan and profile drawings at 1”=40’ horizontal and 1”=4’ vertical scale.
 - b. Plan view of the base map shall have all above ground features shown and clearly labeled along with existing utilities based on field ties and record information.
 - c. Plan view shall include design notes for stationing, size, slope, pipe material, embedment, length and construction method.
 - d. Profile view shall include design notes for stationing, size, slope, flow-line of pipe, pipe material, embedment, length and construction method.

- e. Design tunnels/bores including casing/tunnel liner plate minimum thickness and inside diameter, shafts, allowable methods, control of ground water, and appropriate tolerances with the chosen method.
 - f. Perform one (1) site visit to verify preliminary design.
- 3. Preliminary Traffic Control and Detour Plan Preparation.
 - a. City and TxDOT typical traffic control details will be included as required.
- 4. Franchise Utility Coordination
 - a. Provide one set of drawings to each franchise utility encountered for their review. Request each franchise to mark up the drawings to show the size, type, and location of their utilities.
 - b. Coordinate with franchise utilities if any relocations are required. Notify City if any relocations will be required.
- 5. Prepare preliminary general notes and details, including City Standard Details where applicable.
- 6. Prepare preliminary technical specifications utilizing City Standard Specifications, and any special specifications.
- 7. Compile and prepare an updated opinion of probable construction cost for the entire project using recent average unit bid prices which are representative of similar types of construction in the local area.
 - a. The ENGINEER has no control over the cost of labor, materials, equipment, or over the Contractor's methods of determining prices or over competitive bidding or market conditions. Opinions of probable costs provided herein are based on the information known to ENGINEER at this time and represent only the ENGINEER's judgment as a design professional familiar with the construction industry. The ENGINEER cannot and does not guarantee that proposals, bids, or actual construction costs will not vary from its opinions of probable costs.

D. U.S. Army Corp of Engineer's Nationwide Permit 12 Memo (USACE NWP 12)

- ENGINEER will incorporate findings from additional field investigations into the previously authorized memorandum.

E. Deliverables

- 1. Preliminary design submittal (60%)
 - a. Submit four (4) copies to City for review and comment.
 - b. Submittal shall include the following:
 - i. Preliminary design plans (22"x34")
 - ii. Preliminary technical specifications (table of contents)
 - iii. Geotech report (additional bores will be included in one report)
 - iv. NWP 12 Memo (additional findings included in memo)

v. Opinion of probable construction cost

F. Meetings

1. Attend one (1) meeting with City to kick-off preliminary design.
2. Attend one (1) meeting with City on-site prior to submittal of preliminary plans, if required.
3. Attend one (1) meeting with City to present and review the preliminary design submittal

Task 4 – FINAL DESIGN

A. Final Waterline and Sanitary Sewer Design

1. Incorporate the preliminary design submittal review comments (one (1) round of comments is anticipated in proposed effort).
2. Prepare updated opinion of probable construction cost.
 - a. The ENGINEER has no control over the cost of labor, materials, equipment, or over the Contractor's methods of determining prices or over competitive bidding or market conditions. Opinions of probable costs provided herein are based on the information known to ENGINEER at this time and represent only the ENGINEER's judgment as a design professional familiar with the construction industry. The ENGINEER cannot and does not guarantee that proposals, bids, or actual construction costs will not vary from its opinions of probable costs.
3. Incorporate franchise utility investigation information
4. Incorporate details and technical specifications.
5. Prepare surface repair sheets and details as necessary.
6. Prepare final abandonment layout sheet and letter for TxDOT submittal.
7. Prepare Project Manual using City Standard Construction Contract Documents.

B. Deliverables:

1. Final Design Submittal (95%)
 - a. Submit four (4) copies to the City for review and comment.
 - b. Submittal shall include the following:
 - i. Final design drawings
 - ii. Final design project manual
 - iii. Opinion of probable construction cost

C. Meetings

1. One (1) meeting with City to review Final Design Submittal.

Task 5 – CONSTRUCTION CONTRACT DOCUMENTS

A. Bidding Construction Contract Documents

1. Additional assistance to the previously authorized scope items.

Task 6 – BID PHASE SERVICES

A. Bid Phase Services

1. Additional assistance to the previously authorized scope items.

Task 7 – CONSTRUCTION PHASE SERVICES

A. Construction Phase Services

1. Additional assistance to the previously authorized scope items.

Task 8 – RECORD DRAWINGS

A. Record Drawings

1. Additional assistance to the previously authorized scope items.

Task 9 – PERMITTING

A. Permitting

1. Additional assistance to the previously authorized scope items.
2. Submit lift station plans to appropriate regulatory agencies: City, DME, TCEQ, and TDLR for review.
3. The City will be responsible for administration of Platting, Zoning and Obtaining building permits for the City of Denton. The ENGINEER will prepare exhibits as directed by City, including preliminary and final plat exhibits.

Task 10 – SURVEY AND EASEMENTS

A. 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.
 - b. Coordinate with Engineer Real Estate Agent on Right of Entries for up to seven (7) parcels.
2. Design Survey

- a. The limits of the survey shall be a 100-foot wide alignment generally along IH-35, and along various crossings as shown on the Project Location Map. The topographic survey will be approximately 13,700 linear feet.
- b. Establish up to five (5) horizontal control points based on the City of Denton Coordinate System using ½-inch rebar with identifiable plastic cap, specific for this project.
- c. Establish a vertical control benchmark circuit tied to the City of Denton benchmark system, specific for this project, as well as tie into the TxDOT control.
- d. Perform a field survey to identify and locate all existing topographic elements within the alignment corridor including, but not limited to, the following:
 - i. Property pins
 - ii. Existing pavement, curbs, sidewalks, barrier free ramps, etc.
 - iii. Lane Striping (where applicable)
 - iv. Driveways
 - v. Existing storm sewer inlets, manholes, junction boxes, outfalls, and erosion control
 - vi. Culverts and bridges
 - vii. Guardrail
 - viii. Utility manholes, vaults, water valves, water meters, sprinkler heads, telephone poles, power poles, utility markers, other public utilities, and franchise utilities
 - ix. Traffic signal poles, cabinets, and other signal equipment
 - x. Signs (excluding temporary signs)
 - xi. Trees, 6-inch caliper and up (center of trunk as well as dripline)
 - xii. Buildings
 - xiii. Retaining walls
 - xiv. Fence limits and material types
 - xv. Other applicable physical features that could impact design:
 - a) Field ties to the existing edge of pavement on Interstate Hwy 35.
 - b) Field sketches of utility manholes and structures.
 - c) Prepare a final topographic drawings in a digital format (including one-foot contours and breaklines) showing the features located in the field as well as right-of-way strip map information, an ASCII coordinate file of the points located in the field, and a hard copy of the coordinates and feature descriptions.

B. Easement Preparation

1. Upon receiving approval of 60% design drawings, ENGINEER will prepare up to seven (7) permanent water line easements and up to seven (7) temporary construction easements.
2. Easement instruments will consist of metes and bounds descriptions and exhibits.

Task 11 – EASEMENT ACQUISITION SERVICES**A. Easement Acquisition Services**

ENGINEER will coordinate with the Real Estate Agent to aid in property acquisition services for up to two (2) hours per parcel.

ENGINEER will perform the following services for this task:

1. ENGINEER's Real Estate Agent shall provide appraisals for proposed easements on up to six (6) parcels for the proposed lines. Appraisals will be approved by the City prior to beginning negotiations with property owners. The appraisals will be prepared by State Certified Appraisers in accordance with the Uniform Standards of Professional Appraisal Practice Act (USPAP). The appraisals will be suitable for use in condemnation proceedings, if necessary.
2. ENGINEER's Real Estate Agent shall engage an independent Appraisal Reviewer to submit an Appraisal Review to accompany any appraisal completed for up to six (6) parcels.
3. Provide property negotiation services for up to six (6) parcels for the proposed line as follows:
 - a. The offer to purchase the properties will be based on the appraisals as indicated above. The City will establish the value to be used in negotiation and the range of negotiating authority to be given to the right-of-way agent. ENGINEER's Real Estate Agent will provide the services of qualified right-of-way agents to secure the required right-of-way for the project. The right-of-way agents will provide each property owner a copy of The Texas Landowner Bill of Rights, but will NOT be required to provide negotiation services under the Uniform Relocation and Acquisition Act (Uniform Act).
 - b. ENGINEER's Real Estate Agent will negotiate on behalf of the City and utilize conveyance documents and other necessary forms as prescribed by the City. ENGINEER's Real Estate Agent will provide a good faith effort to acquire the rights-of-way through a negotiation process, which will generally consist of three (3) contacts with the property owner, or his authorized representative. A maximum of five (5) total contacts will be provided to reach an agreement with the property owner, or to determine that further negotiations will be non-productive and that eminent domain actions will be necessary to acquire the property. If absentee owners are involved, the negotiations may be conducted via telephone, fax, or by mail. If the schedule for acquisition of the right-of-way or other factors arise, which make it expedient, travel outside the project area to meet with the absentee owners may be desirable. If such events arise, the travel must be specifically authorized by the City. If such travel is

authorized, the expenses involved, including the agent's services, will be considered additional services.

- c. The initial offer made to the property owner will be based on the value authorized by the City. All counter-offers by the property owner, along with ENGINEER's Real Estate Agent recommendations will be presented to the City for consideration. The City must establish and recommend such counter offers before ENGINEER's Real Estate Agent will be authorized to agree to the requested changes. All monetary offers made to the property owners will be within the limits authorized by the City in the various stages of the negotiation.
 - d. After reaching an agreement with the landowner on the consideration and all other terms of the transaction, ENGINEER's Real Estate Agent will forward to the City a Memorandum of Agreement (M/A) executed by the property owner to be ratified by the City. This M/A sets forth the compensation and any other terms and conditions agreed upon. The City will be responsible for obtaining the City's ratification and for returning the ratified M/A to ENGINEER's Real Estate Agent. ENGINEER's Real Estate Agent will then inform the Title Company that the parcel is ready for closing.
4. ENGINEER's Real Estate Agent will coordinate contacts with the CITY to deliver any payments to the Title Company prior to closing.
 5. This Scope of Services assumes that costs for Title Commitments, Title Policies and recording fees will be purchased by the City through the assistance of the Real Estate Agent. The amount paid for the Title Policies will not exceed premium amounts set by the Texas Department of Insurance and agreed upon in advance between the City and the Title Company. Any additional Title Company services such as recording fees shall be agreed upon in advance between the City and the Title Company. ENGINEER's Real Estate Agent will review liens or other exceptions reported in the Title Commitment. ENGINEER will coordinate the location and the effect of any utility easements. ENGINEER will report the results of the Title Commitment to the City, recommending the disposition of the exceptions. The decision whether the reported exceptions are acceptable or must be eliminated will be the responsibility of the City. Any action required to clear title is not included in the Scope of Work for this project, and if required, will be considered Additional Services.
 6. ENGINEER's Real Estate Agent will coordinate and attend all closings at the Title Company.
 7. ENGINEER's Real Estate Agent will confirm that the Title Company records all documents at the Denton County Courthouse after closing.
 8. ENGINEER's Real Estate Agent will confirm that the Title Company forwards copies of all recorded documents to the City.

Task 13 – LIFT STATION PRELIMINARY ENGINEERING REPORT

A. Prepare Preliminary Engineering Report (PER) for Lift Station Relocations

1. This task assumes that both the Border-Cowboy Lift Station on Barthold Road and the Love's Lift Station on Milam Road will be abandoned and replaced with a new Ganzer lift station. The following tasks will be performed:

2. Prepare and Submit a Preliminary Engineering Report per the City's specifications for review including:
 - a. Lift Station Capacity
 - Prepare and Submit a conceptual site plan for the proposed lift station replacement
 - b. System and Pump Curves
 - c. Wet Well Sizing
 1. Sized to accommodate existing flows and interim flows from Denton Commerce site, approximately 1,200 gpm. Will be designed to be expandable up to 2,300 gpm peak flow.
 - e. Site Access and Security per TCEQ
 - f. Flood Protection
 - h. Emergency Power (portable). Considerations will be made to add permanent backup generation if desired by City.
3. Prepare and Submit a conceptual site plan for the proposed lift station.

B. Deliverables

- a. Digital .PDF copy of draft and final technical memorandum.

C. Meetings

- a. Conduct one (1) review meeting with City.
- b. Revise PER based on City comments.

Task 14 – LIFT STATION PRELIMINARY AND FINAL DESIGN

A. Preliminary Lift Station Design

1. Prepare a preliminary site layout, including drainage, paving, yard piping sizing for initial as well as future capacity. and station configuration.
2. Prepare electrical site layout
3. Coordination with primary electric provider for design
4. The following items may be considered for inclusion into the design:
 - a. Flow metering.
 - b. Control Narrative – operational narrative of the pumps for normal, low flow and peak operations.
 - c. SCADA System.
 - d. City architectural requirements and City design preferences.
 - e. Geotechnical and structural requirements.
 - f. Site lighting requirements.

- g. Junction Structure/Manhole design for up to 4 structures for future phasing
 - h. On-site generator considerations.
 - i. Noise Control requirements.
 - j. City landscaping requirements.
 - k. City fencing requirements.
 - l. City storm drainage detention requirements.
- 5. Prepare a preliminary lift station design including:
 - a. Average and peak flow confirmation
 - b. Hydraulic analysis
 - c. Internal piping and valve layout
 - d. Lift station cross-sections
 - 6. Submit preliminary design to the City for review and comment.

B. Final Lift Station Design

- 1. Prepare engineering plan sheets and specifications in accordance with the preliminary design and for permitting and processing.
- 2. The plans will include:
 - i. Civil sheets: general notes, site plan, grading plan, piping plan, security fence details, lift station mechanical plans and details
 - ii. Electrical sheets: general notes, site plan, grounding layout, section and elevations, one-line diagram, pump control schematic, SCADA layout, portable generator connection, and electrical details.
 - iii. Structural sheets: general notes, structural details for wet well, valve vault, meter vault (if required), junction structures and slab-on-grade and specifications.
- 3. Specifications shall include technical specifications for materials and installation of the proposed facilities.

C. Deliverables

- 1. Preliminary design submittal (60%)
 - a. Submit four (4) copies to City for review and comment.
 - b. Submittal shall include the following:
 - vi. Preliminary design plans (22"x34")
 - vii. Preliminary technical specifications (table of contents)
 - viii. Opinion of probable construction cost.
- 2. Final design submittal (90%)
 - c. Submit four (4) copies to City for review and comment.

- d. Submittal shall include the following:
 - ix. Preliminary design plans (22"x34")
 - x. Preliminary technical specifications (table of contents)
 - xi. Opinion of probable construction cost

D. Meetings

- 1. Attend one (1) meeting with City to kick-off preliminary design.
- 2. Attend one (1) meeting with City on-site prior to submittal of preliminary plans, if required.
- 3. Attend one (1) meeting with City to present and review the preliminary design submittal

Task 15 – LIFT STATION BID PHASE SERVICES

This task assumes the lift stations to be bid as one bid package with the utility relocations. The services shown below will be performed concurrently with Task 6.

A. Bid Phase Services

- 1. Provide additional bidding assistance as previously authorized to aid in bidding the larger, combined lift station.

Task 16 – LIFT STATION CONSTRUCTION PHASE SERVICES

This task assumes the lift station to be constructed concurrently with the utility relocations. The services shown below are similar to Task 7.

A. Construction Phase Services

- 1. Provide additional construction phase services as previously authorized to aid in the larger, combined lift station.

Compensation

Total compensation for the ENGINEER contemplated under the terms of this agreement **shall be a total not-to-exceed \$751,100** for all services including reimbursable expenses. The CITY shall compensate the ENGINEER as follows:

For Tasks 1-16 the total compensation shall be on a reimbursable (hourly) basis and not to exceed **\$751,100**.

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	Task Amount
Task 1 – Design Management	\$5,500
Task 2 – Alignment Study	\$19,700
Task 3 – Preliminary Design	\$142,000
Task 4 – Final Design	\$98,600
Task 5 – Construction Contract Documents	\$4,600
Task 6 – Bid Phase Services	\$3,800
Task 7 – Construction Phase Services	\$6,600
Task 8 – Record Drawings Preparation	\$5,000
Task 9 – Permitting	\$50,200
Task 10 – Survey and Easements	\$80,100
Task 11 – Easement Acquisition Services	\$80,800
Task 12 – Conflict Analysis	N/A
Task 13 – Lift Station Preliminary Engineering Report (PER)	\$26,000
Task 14 – Lift Station Prelim/Final Design	\$184,300
Task 15 – Lift Station Bid Phase Services	\$6,300
Task 16 – Lift Station Const. Phase Services	\$37,600
Totals:	\$751,100

ENGINEER will not exceed the total maximum labor 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.

Labor fee will be billed on an hourly basis according to our then-current rates. As to these tasks, direct reimbursable expenses such as express delivery services, fees, air travel, and other direct expenses will be billed at 1.10 times cost. A percentage of labor fee will be added to each invoice to cover certain other expenses as to these tasks such as telecommunications, in-house reproduction, postage, supplies, project related computer time, and local mileage. Administrative

time related to the project may be billed hourly. All permitting, application, and similar project fees will be paid directly by the CITY.

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

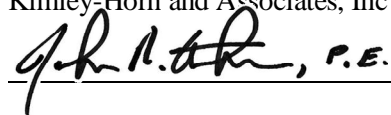
Duly executed by each party's designated representative to be effective on the date subscribed by the CITY.

BY:
CITY OF DENTON, TEXAS

Title: _____

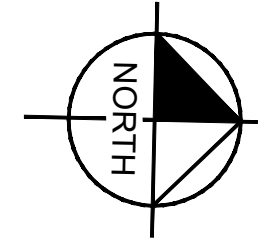
Date: _____

BY:
ENGINEER
Kimley-Horn and Associates, Inc

_____

Title: John Atkins, Vice President

Date: 2/17/2022_____







GRAPHIC SCALE IN FEET

0 200 400 800

FOR 11"X17" 1"=800'

LEGEND:

-  PROPOSED GRAVITY SEWER
 PROPOSED SANITARY SEWER L.S.
 EXISTING SANITARY SEWER L.S.
 EXISTING FORCE MAIN
 EXISTING SANITARY SEWER
 PROPOSED FORCE MAIN
 PROPOSED SEWER ABANDON
 PROPOSED GRAVITY SEWER BY OTHER
 FEMA 100 YEAR FLOOD PLAIN

Kimley»Horn
 TBPE Firm No. 928 P: 817-335-6511
 801 Cherry St., Suite 1300 Ft. Worth, TX 76102

THIS DOCUMENT IS INCOMPLETE
AND IS RELEASED TEMPORARILY
FOR INTERIM REVIEW ONLY. IT IS
NOT INTENDED FOR CONSTRUCTION,
BIDDING, OR PERMIT PURPOSES.

CHRIS IGO P.E.
SERIAL NO. 120045
DATE: MARCH 2022



CITY OF DENTON
IH-35 UTILITY RELOCATIONS
(FROM I-35E/W SPLIT TO MILAM)

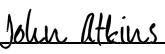
GRAVITY SEWER ROUTING LOCATION MAP (SOUTH OF GANZER)

DATE:	MARCH 2022
DESIGN:	CPI
DRAWN:	JIN
CHECKED:	CTD
KHA NO.:	061024043

SHEET

A2

Exhibit CIQ

	CONFLICT OF INTEREST QUESTIONNAIRE -		FORM CIQ
	For vendor or other person doing business with local governmental entity		
	This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.		
	<p>This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a).</p> <p>By law this questionnaire must be filed with the records administrator of the local government entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. See Section 176.006(a-1), Local Government Code.</p> <p>A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.</p>		
1	Name of vendor who has a business relationship with local governmental entity. KIMLEY-HORN AND ASSOCIATES, INC.		
2	<input type="checkbox"/> Check this box if you are filing an update to a previously filed questionnaire. (The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7 th business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)		
3	Name of local government officer about whom the information in this section is being disclosed. <div style="text-align: center; border-bottom: 1px solid black; width: 30%; margin: 0 auto;"> Name of Officer </div> <p>This section, (item 3 including subparts A, B, C & D), must be completed for each officer with whom the vendor has an employment or other business relationship as defined by Section 176.001(1-a), Local Government Code. Attach additional pages to this Form CIQ as necessary.</p> <p>A. Is the local government officer named in this section receiving or likely to receive taxable income, other than investment income, from the vendor?</p> <div style="display: flex; justify-content: space-around; width: 100%;"> <input type="checkbox"/> Yes <input type="checkbox"/> No </div> <p>B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer named in this section AND the taxable income is not received from the local governmental entity?</p> <div style="display: flex; justify-content: space-around; width: 100%;"> <input type="checkbox"/> Yes <input type="checkbox"/> No </div> <p>C. Is the filer of this questionnaire employed by a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership of one percent or more?</p> <div style="display: flex; justify-content: space-around; width: 100%;"> <input type="checkbox"/> Yes <input type="checkbox"/> No </div> <p>D. Describe each employment or business and family relationship with the local government officer named in this section.</p>		
4	<input checked="" type="checkbox"/> I have no Conflict of Interest to disclose.		
5	<div style="display: flex; justify-content: space-between;"> <div> DocuSigned by:  Signature of Vendor doing business with the governmental entity </div> <div style="text-align: right;"> 4/13/2022 Date </div> </div>		

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF DENTON, A TEXAS HOME-RULE MUNICIPAL CORPORATION, AUTHORIZING THE APPROVAL OF A FIRST AMENDMENT TO A PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY OF DENTON AND KIMLEY-HORN AND ASSOCIATES, INC., AMENDING THE CONTRACT APPROVED BY THE CITY COUNCIL ON MAY 17, 2022, IN THE NOT-TO-EXCEED AMOUNT OF \$751,100.00; SAID FIRST AMENDMENT FOR AN EXTENDED SCOPE, AN ADDITIONAL FULL PLAN SET, AND SERVICES FOR A NEW LIFT STATION FOR THE I-35 SPLIT TO MILAM PHASE II PROJECT FOR THE CAPITAL PROJECTS AND WATER UTILITIES DEPARTMENTS; PROVIDING FOR THE EXPENDITURE OF FUNDS THEREFOR; AND PROVIDING AN EFFECTIVE DATE (RFQ 7574-010 – PROVIDING FOR AN ADDITIONAL FIRST AMENDMENT EXPENDITURE AMOUNT NOT-TO-EXCEED \$224,300.00, WITH THE TOTAL CONTRACT AMOUNT NOT-TO-EXCEED \$975,400.00).

WHEREAS, on May 17, 2022, City Council awarded a contract to Kimley-Horn and Associates, Inc. in the amount of \$751,100.00, for regulatory permitting/approval support, process evaluation, design services, bidding assistance, construction phase services, and easement acquisition for the I-35 to Milam Creek Phase II Project for the Water Utilities Department; and

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

WHEREAS, the additional fees under the proposed First Amendment are fair and reasonable and are consistent with, and not higher than, the recommended practices and fees 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 First Amendment, increasing the amount of the contract between the City and Kimley-Horn and Associates, Inc., which is on file in the office of the Purchasing Agent, in the amount of Two Hundred Twenty-Four Thousand Three Hundred and 0/100 (\$224,300.00) Dollars, is hereby approved, and the expenditure of funds therefor is hereby authorized in accordance with said amendment which shall be effective upon the execution of the amendment attached hereto. The total contract amount increases to \$975,400.00.

SECTION 2. 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:	_____	_____	_____	_____
Paul Meltzer, District 3:	_____	_____	_____	_____
Joe Holland, District 4:	_____	_____	_____	_____
Brandon Chase McGee, At Large Place 5:	_____	_____	_____	_____
Chris Watts, At Large Place 6:	_____	_____	_____	_____

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

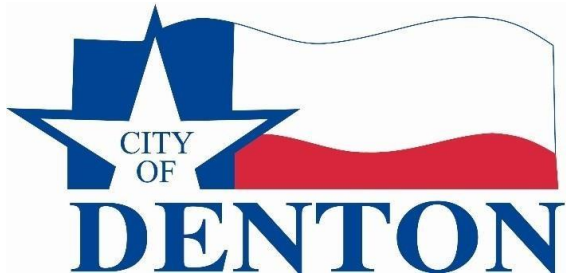
GERARD HUDSPETH, MAYOR

ATTEST:
JESUS SALAZAR, CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

BY: Marcella Lunn
Digitally signed by Marcella Lunn
DN: cn=Marcella Lunn, o, ou=City
of Denton,
email=marcella.lunn@cityofdenton.com, c=US
Date: 2023.08.25 13:23:47 -05'00'



Docusign City Council Transmittal Coversheet

PSA	7574-010
File Name	I-35 Split to Milam Phase 2 - Amendment #1
Purchasing Contact	Cori Power
City Council Target Date	
Piggy Back Option	Not Applicable
Contract Expiration	
Ordinance	

**FIRST AMENDMENT TO CONTRACT
BY AND BETWEEN THE CITY OF DENTON, TEXAS
AND KIMLEY-HORN AND ASSOCIATES, INC.
PSA 7574-010**

THE STATE OF TEXAS §

COUNTY OF DENTON §

THIS FIRST AMENDMENT TO CONTRACT 7574-010 (“Amendment”) by and between the City of Denton, Texas (“City”) and Kimley-Horn and Associates, Inc. (“Engineer”); to that certain contract executed on May 17, 2022, in the original not-to-exceed amount of \$751,100 (the “Agreement”); for professional services related to the I-35 Split to Milam Phase II project.

WHEREAS, the City deems it necessary to further expand the services provided by Engineer to the City pursuant to the terms of the Agreement, and to provide an additional not-to-exceed amount \$224,300 with this Amendment for an aggregate not-to-exceed amount of \$975,400; and

FURTHERMORE, the City deems it necessary to further expand the goods/services provided by Engineer to the City;

NOW THEREFORE, the City and Engineer (hereafter collectively referred to as the “Parties”), in consideration of their mutual promises and covenants, as well as for other good and valuable considerations, do hereby AGREE to the following Amendment, which amends the following terms and conditions of the said Agreement, to wit:

1. The additional services described in Exhibit “A” of this Amendment, attached hereto and incorporated herein for all purposes, for professional services related to the design of I-35 Split to Milam Phase II Project, are hereby authorized to be performed by Engineer. For and in consideration of the additional services to be performed by Engineer, the City agrees to pay, based on the cost estimate detail attached, a total fee, including reimbursement for non-labor expenses an amount not to exceed \$224,300.
2. This Amendment modifies the Agreement amount to provide an additional \$224,300 for the additional services with a revised aggregate not to exceed total of \$975,400.

The Parties hereto agree, that except as specifically provided for by this Amendment, that all of the terms, covenants, conditions, agreements, rights, responsibilities, and obligations of the Parties, set forth in the Agreement remain in full force and effect.

IN WITNESS WHEREOF, the City and the Engineer, have each executed this Amendment electronically, by and through their respective duly authorized representatives and officers on this date _____.

“City”

“Engineer”

CITY OF DENTON, TEXAS
A Texas Municipal Corporation

KIMLEY-HORN AND ASSOCIATES,
INC.

By:

By: 
2597303FA77F421c
AUTHORIZED SIGNOR, TITLE

SARA HENSLEY
CITY MANAGER


ATTEST:
JESUS SALAZAR, CITY SECRETARY

BY: _____

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

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY


7B46FEAB11B64F2...
SIGNATURE Trevor Crain, PMP
PRINTED NAME


4B070831B4AA438...
BY: _____

rector of Capital Projects
TITLE

Capital Projects
DEPARTMENT

Exhibit A AMENDMENT NO. 1 TO PROFESSIONAL SERVICES AGREEMENT ADDITIONAL SERVICES

Professional Services Agreement: I-35 - SPLIT TO MILAM PHASE 2 GANZER LIFT STAITON AND GRAVITY SEWER/FORCE MAIN Amendment Scope of Services

This is Amendment Number 01 to the Professional Service Agreement (7574-010) between Kimley-Horn and Associates, Inc. (ENGINEER) and the City of Denton (City) executed on May 17, 2022.

Scope of Services

This project was originally intended to be bid and constructed as a single construction set, along with the I-35 Utility Relocations. There are now two (2) separate I-35 utility relocation projects, as well as two (2) projects to be bid and constructed under this contract. Due to recent developments, the original corridor for design and proposed easement were no longer were feasible, thus there was a need for additional survey and design phase services for the gravity and force main sewers. The CITY has requested that the ENGINEER perform the following additional services:

Task 4 – FINAL DESIGN

A. Final Waterline and Sanitary Sewer Design

1. Provide additional Preliminary/Final plan and profile drawings preparation for an addition of approximately 500 linear feet water main, 330 linear feet of 12-inch sanitary sewer force main, and 400 feet of 18-inch through 33-inch gravity sanitary sewer line.

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

Amendment No. 1

I-35 - SPLIT TO MILAM PHASE 2

GANZER LIFT STAITON AND GRAVITY SEWER/FORCE MAIN

July 28, 2023

- 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. Pre-Construction Conference
 - a. Prepare for and attend a pre-construction conference prior to commencement of Work at the Site
2. Site Visits
 - a. Visit the construction site up to twelve (12) times during construction to perform construction observation. 12 months construction time is assumed.
 - 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.
 - d. Hold monthly meetings with the contractor, either on site or off site for up to twelve (12) meetings.
3. 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.
4. 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.
5. 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.
- 6. 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 thirty (30) shop drawings.
- 7. 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
- 8. 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 go through a non-witnessed factory test. Attending testing will be considered additional services.
- 9. 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.
- 10. 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 10 – SURVEY AND EASEMENTS

A. Design Survey

1. Provide an additional 7,000 linear feet of topographic survey due to a change in alignment. Survey will be provided per the previously authorized scope items.

Task 15 – LIFT STATION 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.
 - ii. Provide up to four (4) sets to City for execution.

Task 16 – LIFT STATION CONSTRUCTION PHASE SERVICES

A. Construction Phase Services

1. Pre-Construction Conference
 - a. Prepare for and attend a pre-construction conference prior to commencement of Work at the Site

2. Site Visits

- a. Visit the construction site up to twelve (12) times during construction to perform construction observation. 12 months construction time is assumed.
- 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.
- d. Hold monthly meetings with the contractor, either on site or off site for up to twelve (12) meetings.

3. 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.

4. 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.

5. 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.

6. 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 fifty (50) shop drawings.

- b. Substitutes and “or-equal”
- c. 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.
- d. Provide recommendations to City

7. 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 go through a non-witnessed factory test. Attending testing will be considered additional services.
- b. Disagreements between City and Contractor
- c. 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.

8. 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.
- b. 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.
- c. Compile punch list from information gathered during final walkthrough with City and Contractor.

SCHEDULE

At a mutually agreed upon date.

Compensation

The additional services described above will be accommodated by increasing the contract amount by \$224,300. The following table summarizes the revised contract amount:

Task	Original Contract	Amendment No. 1	Revised Contract
Task 1 – Design Management	\$5,500	-	\$5,500
Task 2 – Alignment Study	\$19,700	-	\$19,700
Task 3 – Preliminary Design	\$142,000	-	\$142,000
Task 4 – Final Design	\$98,600	\$22,700	\$121,300
Task 5 – Construction Contract Documents	\$4,600	-	
Task 6 – Bid Phase Services	\$3,800	\$12,200	\$16,000
Task 7 – Construction Phase Services	\$6,600	\$61,100	\$67,700
Task 8 – Record Drawings Preparation	\$5,000	-	
Task 9 – Permitting	\$50,200	-	\$50,200
Task 10 – Survey and Easements	\$80,100	\$25,300	\$105,400
Task 11 – Easement Acquisition Services	\$80,800	-	\$80,800
Task 12 – Conflict Analysis	N/A	-	-
Task 13 – Lift Station Preliminary Engineering Report (PER)	\$26,000	-	\$26,000
Task 14 – Lift Station Prelim/Final Design	\$184,300	-	\$184,300
Task 15 – Lift Station Bid Phase Services	\$6,300	\$28,900	\$35,200
Task 16 – Lift Station Const. Phase Services	\$37,600	\$74,100	\$111,700
Totals:	\$751,100	\$224,300	\$975,400

Duly executed by each party's designated representative to be effective on the date subscribed by the CITY.

BY:
CITY OF DENTON, TEXAS

BY:
ENGINEER
Kimley-Horn and Associates, Inc

Title: _____

Title: John Atkins, Vice President .

Date: _____

Date: 07/28/2023

Certificate Of Completion

Envelope Id: 16EE7E28AD0E43B79728C84141D8A9B7

Status: Sent

Subject: Please DocuSign: City Council Contract 7574-010 I35 Split to Milam Phase II Amendment #1

Source Envelope:

Document Pages: 11

Signatures: 3

Envelope Originator:

Certificate Pages: 6

Initials: 1

Cori Power

AutoNav: Enabled

901B Texas Street

Envelope Stamping: Enabled

Denton, TX 76209

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

cori.power@cityofdenton.com

IP Address: 198.49.140.104

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Status: Original

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cori.power@cityofdenton.com

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

Cori Power

Completed

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cori.power@cityofdenton.com

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Purchasing Supervisor

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City of Denton

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Lori Hewell



Sent: 8/21/2023 7:21:07 PM

lori.hewell@cityofdenton.com

Viewed: 8/22/2023 7:44:59 AM

Purchasing Manager

Signed: 8/22/2023 7:45:38 AM

City of Denton

Signature Adoption: Pre-selected Style

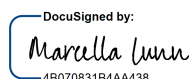
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Marcella Lunn



Sent: 8/22/2023 7:45:41 AM

marcella.lunn@cityofdenton.com

Viewed: 8/23/2023 10:08:28 AM

Mack Reinwand City Attorney

Signed: 8/23/2023 10:15:23 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:

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John Atkins



Sent: 8/23/2023 10:15:24 AM

john.atkins@kimley-horn.com

Viewed: 8/23/2023 9:21:07 PM

Vice President

Signed: 8/23/2023 9:21:36 PM

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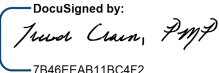
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Electronic Record and Signature Disclosure:

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ID: cdcbea80-0f86-4a03-9e91-3bdda39cdec2

Signer Events	Signature	Timestamp
<p>Trevor Crain, PMP</p> <p>Trevor.Crain@cityofdenton.com</p> <p>Director of Capital Projects</p> <p>City of Denton</p> <p>Security Level: Email, Account Authentication (None)</p>	<p>DocuSigned by:</p>  <p>7B46EEAB11BC4F2...</p> <p>Signature Adoption: Pre-selected Style</p> <p>Using IP Address: 198.49.140.10</p>	<p>Sent: 8/23/2023 9:21:38 PM</p> <p>Viewed: 8/24/2023 8:16:28 AM</p> <p>Signed: 8/24/2023 8:16:58 AM</p>

Electronic Record and Signature Disclosure:

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Cheyenne Defee

cheyenne.defee@cityofdenton.com

Procurement Administration Supervisor

City of Denton

Security Level: Email, Account Authentication (None)

Sent: 8/24/2023 8:17:03 AM

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

Jesus Salazar

jesus.salazar@cityofdenton.com

Security Level: Email, Account Authentication (None)

Electronic Record and Signature Disclosure:

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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)

Electronic Record and Signature Disclosure:

Not Offered via DocuSign

COPIED

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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 Cole Tankersley Cole.Tankersley@cityofdenton.com Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Accepted: 8/15/2023 5:05:42 PM ID: f9d1e4a7-3a46-4c3a-9b5a-ead6bc29093a	<div>COPIED</div>	Sent: 8/24/2023 8:17:01 AM Viewed: 8/25/2023 9:21:28 AM
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Notary Events	Signature	Timestamp
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Payment Events	Status	Timestamps
Electronic Record and Signature Disclosure		

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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 #: PUB23-160, **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 Mountain Cascade of Texas, LLC, for the construction of the Barrow Gravity Sanitary Sewer Line and Lift Station Abandonment for the Capital Projects Department; providing for the expenditure of funds therefor; and providing an effective date (CSP 8205 - awarded to Mountain Cascade of Texas, LLC, in the not-to-exceed amount of \$1,453,083.45).



City of Denton

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

AGENDA INFORMATION SHEET

DEPARTMENT: Procurement
ACM: Cassey Ogden
DATE: September 11, 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 Mountain Cascade of Texas, LLC, for the construction of the Barrow Gravity Sanitary Sewer Line and Lift Station Abandonment for the Capital Projects Department; providing for the expenditure of funds therefor; and providing an effective date (CSP 8205 – awarded to Mountain Cascade of Texas, LLC, in the not-to-exceed amount of \$1,453,083.45).

STRATEGIC ALIGNMENT

This action supports Key Focus Area: Enhance Infrastructure and Mobility.

INFORMATION/BACKGROUND

The Barrow Gravity Sewer and Lift Station Abandonment Project will provide an upgraded 15” sewer line for future developments. The project will start south of Loop 288 and will cross Westgate Drive heading south connecting to an existing 15” line south of Denton High School. In addition, the new sewer line will make the current lift station obsolete. The obsolete Lift Station will be abandoned in accordance with City standards. The project will consist of 4,500 linear feet of sanitary sewer line.

The Barrow Gravity Sewer and Lift Station Abandonment Project has a total estimated cost of \$1,453,083.45. This estimate includes a \$1,383,889 total base proposal amount and a five (5%) contingency of \$69,194.45. The contingency allowance is for the sole use of the City and will be subject to written authorization by the City’s Project Manager and Program Manager.

Competitive Sealed Proposals were sent to 969 prospective suppliers, including 69 Denton firms, for this item. In addition, specifications were placed on the Procurement website for prospective suppliers to download and advertised in the local newspaper. Six (6) proposals were received, with four (4) meeting specifications. References were checked, and proposals were evaluated based on published criteria including personnel, quality, ability to complete projects, schedule, safety, and price. Best and Final Offers (BAFO) were requested from the top firm. Based upon this evaluation, Mountain Cascade of Texas, LLC was ranked the highest and determined to be the best value for the City.

NIGP Code Used for Solicitation:	911, 912, 913, and 914
Notifications sent for Solicitation sent in IonWave:	969
Number of Suppliers that viewed Solicitation in IonWave:	21
HUB-Historically Underutilized Business Invitations sent out:	96

SBE-Small Business Enterprise Invitations sent out:	340
Responses from Solicitation:	6
Responses Meeting Specifications:	4

RECOMMENDATION

Award a contract with Mountain Cascade of Texas, LLC, for the construction of the Barrow Gravity Sewer and Lift Station Abandonment Project for the Capital Projects Department, in a not-to-exceed amount of \$1,453,083.45.

PRINCIPAL PLACE OF BUSINESS

Mountain Cascade of Texas, LLC
Alvarado, TX

ESTIMATED SCHEDULE OF PROJECT

This project will be started upon approval with a completion date within 180 days after receipt of order to proceed.

FISCAL INFORMATION

These services will be funded from Wastewater Department project account 640346545.1365.40100. Requisition #160933 has been entered into the Purchasing software system in the amount of \$1,383,889. The budgeted amount for this item is \$1,453,083.45.

EXHIBITS

Exhibit 1: Agenda Information Sheet
Exhibit 2: Pricing Evaluation
Exhibit 3: LLC Members
Exhibit 4: Ordinance and Contract

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

For information concerning this acquisition, contact: Cole Tankersley, 940-349-8169.

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

Exhibit 2**CSP 8205 - Pricing Evaluation for the Barrow Sanitary Sewer and Lift Station Abandonment**

Respondent's Business Name:		Mountain Cascade of Texas	Pittard Construction Company	Flow-Line Construction, Inc.	Acadia Services, LLC
Principal Place of Business (City and State):		Alvarado, TX	Allen, TX	Dallas, TX	Southlake, TX
Line #	Description				
1	Base Proposal Amount	\$1,383,889.00	\$1,048,551.50	\$1,449,501.00	\$1,632,210.00

5% Contingency:	\$69,194.45
Total Contract NTE Amount:	\$1,453,083.45

Evaluation					
Item #	Evaluation Criteria	Mountain Cascade of Texas	Pittard Construction Company	Flow-Line Construction, Inc.	Acadia Services, LLC
1	Offeror's Key Personnel - 10%	7.33	4.67	7.33	3.33
2	Quality, Reputation, and Ability to Complete Similar Projects on Schedule and Within Budget - 20%	16.00	9.33	12.00	9.33
3	Detailed Schedule and Written Plan - 25%	16.67	10.00	13.33	6.67
4	Offeror's Safety Record - 5%	1.50	2.50	4.00	4.00
5	Price, Total Cost of Ownership - 40%	30.31	40.00	28.94	25.70
Total Score:		71.81	66.50	65.61	49.03



Texas Secretary of State

Ruth R. Hughes

[UCC](#) [Business Organizations](#) [Trademarks](#) [Notary](#) [Account](#) [Help/Fees](#) [Briefcase](#) [Logout](#)

BUSINESS ORGANIZATIONS INQUIRY - VIEW ENTITY

Filing Number: 801590327
Original Date of Filing: May 1, 2012
Formation Date: N/A
Tax ID: 32047829604
Duration: Perpetual
Entity Type: Domestic Limited Liability Company (LLC)
Entity Status: In existence
FEIN:
Name: Mountain Cascade of Texas, LLC
Address: 11729 E FM 917
ALVARADO, TX 76009 USA

REGISTERED AGENT		FILING HISTORY	NAMES	MANAGEMENT
Last Update May 17, 2019		Name DUKE FULLER	Title CHIEF EXECUTIVE OFFICER	

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF DENTON, A TEXAS HOME-RULE MUNICIPAL CORPORATION, AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT WITH MOUNTAIN CASCADE OF TEXAS, LLC, FOR THE CONSTRUCTION OF THE BARROW GRAVITY SANITARY SEWER LINE AND LIFT STATION ABANDONMENT FOR THE CAPITAL PROJECTS DEPARTMENT; PROVIDING FOR THE EXPENDITURE OF FUNDS THEREFOR; AND PROVIDING AN EFFECTIVE DATE (CSP 8205 – AWARDED TO MOUNTAIN CASCADE OF TEXAS, LLC, IN THE NOT-TO-EXCEED AMOUNT OF \$1,453,083.45).

WHEREAS, the City has solicited, received, and evaluated competitive proposals for the construction of the Barrow Gravity Sanitary Sewer Line and Lift Station Abandonment for the Capital Projects Department; and

WHEREAS, the City Manager, or a designated employee, has received, reviewed, and recommended that the herein described proposals are the most advantageous to the City considering the relative importance of price and the other evaluation factors included in the competitive sealed proposals; and

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

WHEREAS, the City Council has provided in the City Budget for the appropriation of funds to be used for the purchase of the materials, equipment, supplies, or services approved and accepted herein; NOW, THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The items in the following numbered competitive sealed proposal for materials, equipment, supplies, or services shown in the “Competitive Sealed Proposals” on file in the office of the Purchasing Agent, are hereby accepted and approved as being the most advantageous to the City considering the relative importance of price and the other evaluation factors included in the competitive sealed proposal.

<u>CSP NUMBER</u>	<u>CONTRACTOR</u>	<u>AMOUNT</u>
8205	Mountain Cascade of Texas, LLC	\$1,453,083.45

SECTION 2. That by the acceptance and approval of the above numbered items of the submitted proposals, the City accepts the offer of the persons submitting the proposals for such items and agrees to purchase the materials, equipment, supplies, or services in accordance with the terms, specifications, standards, quantities, and for the specified sums contained in the Proposal Invitations, Proposals, and related documents.

SECTION 3. That should the City and person submitting approved and accepted items wish to enter into a formal written agreement as a result of the acceptance, approval, and awarding of the proposals, the City Manager, or their designated representative, is hereby authorized to execute the written contract which shall be attached hereto; provided that the written contract is in accordance with the terms, conditions, specifications, standards, quantities, and specified sums contained in the Proposal and related documents herein approved and accepted.

SECTION 4. 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 5. By the acceptance and approval of the above enumerated bids, the City Council hereby authorizes the expenditure of funds therefor in the amount and in accordance with the approved bids.

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:	_____	_____	_____	_____
Paul Meltzer, District 3:	_____	_____	_____	_____
Joe Holland, 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:
JESUS SALAZAR, CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

BY:  _____
Digitally signed by Marcella Lunn
DN: cn=Marcella Lunn, o=City
of Denton,
email=marcella.lunn@cityofdent
on.com, c=US
Date: 2023.08.23 16:41:32 -05'00'



Docusign City Council Transmittal Coversheet

RFP	8205
File Name	Barrow Sanitary Sewer and Lift Station Abandonment
Purchasing Contact	Cori Power
City Council Target Date	
Piggy Back Option	Not Applicable
Contract Expiration	
Ordinance	

SECTION 00 52 44**AGREEMENT - CSP**

THIS AGREEMENT, authorized on _____ is made by and between the City of Denton, a Texas home rule municipal corporation, acting by and through its duly authorized City Manager, ("City"), and Mountain Cascade of Texas, LLC, authorized to do business in Texas, acting by and through its duly authorized representative, ("Contractor").

City and Contractor, in consideration of the mutual covenants hereinafter set forth, agree as follows:

Article 1. WORK

Contractor shall complete all Work as specified or indicated in the Contract Documents for the Project identified herein.

Article 2. PROJECT

The project for which the Work under the Contract Documents may be the whole or only a part is generally described as follows:

Barrow Sanitary Sewer and Lift Station Abandonment

CSP 8205

Article 3. CONTRACT PRICE

City agrees to pay Contractor for performance of the Work in accordance with the Contract Documents an amount, in current funds, of One Million Three Hundred Eighty-Three Thousand Eight Hundred Eighty-Nine Dollars and 00/100 Cents (\$1,383,889.00). At the sole option of the City, five (5) percent contingency in the amount of Sixty-Nine Thousand One Hundred Ninety-Four Dollars and 45/100 Cents (\$69,194.45) may be used for a total not-to-exceed amount of One Million Four Hundred Fifty-Three Thousand Eighty-Three Dollars and 45/100 Cents (\$1,453,083.45).

Article 4. CONTRACT TIME**4.1 Time is of the essence.**

All time limits for Milestones, if any, Substantial Completion and Final Acceptance as stated in the Contract Documents are of the essence to this Contract.

4.2 Substantial Completion.

The Work will be Substantially Complete, as defined in the Supplementary Conditions, within {180} Days after the date when the Contract Time commences to run, which is the day indicated in the Notice to Proceed, plus any extension thereof allowed in accordance with Article 11 of the General Conditions.

4.3 Final Acceptance.

The Work will be complete for Final Acceptance within {225} Days after the date when the Contract Time commences to run, which is the day indicated in the Notice to Proceed, plus any extension thereof allowed in accordance with Article 11 of the General Conditions.

4.4 Liquidated Damages:

A. Contractor recognizes that *time is of the essence* to achieve Milestones, Substantial Completion, and Final Acceptance of the Work, and City will suffer financial and other losses if the Work is not completed within the times specified in the Contract Documents. The Contractor also recognizes the delays, expense and difficulties involved in proving, in a legal or arbitration proceeding, the actual loss suffered by the City if the Work related to the Milestones, Substantial Completion, or Final Acceptance is not completed on time. Accordingly, instead of requiring any such proof, Contractor agrees that liquidated damages for delay (but not as a penalty):

1. *Substantial Completion*: If the Contractor neglects, refuses, or fails to achieve Substantial Completion, as defined in the Supplementary Conditions, within the time (as duly adjusted pursuant to the Contract) specified in Paragraph 4.2, Contractor shall pay City One Thousand Dollars (\$1,000.00) for each day that expires after such time, until Substantial Completion is achieved.
2. *Final Acceptance*: If Contractor neglects, refuse, or fails to complete the Work within the time (as duly adjusted pursuant to the Contract) specified in Paragraph 4.3, for completion and readiness for Final Payment, Contractor shall pay City One Thousand Dollars (\$1,000.00) for each day that expires after such time, until the date determined by City as stated in the City-issued Letter of Final Acceptance.

Article 5. CONTRACT DOCUMENTS

5.1 CONTENTS:

A. The Contract comprises the entire agreement between City and Contractor concerning the Work and consists of this Agreement and the items set forth below. The Contract Documents consist of all items below other than this Agreement:

1. Attachments to this Agreement:
 - a. Proposal Form
 - 1) Proposal Form
 - 2) Unit Price Proposal Form
 - 3) Vendor Compliance to State Law Non-Resident Offeror
 - 4) State and Federal documents (*project specific*)
 - b. Current Prevailing Wage Rate Table
 - c. Worker's Compensation Affidavit
 - d. General Conditions.
 - e. Supplementary Conditions.
2. The following located in File 8205 at:

<https://lfpweb.cityofdenton.com/MaterialsManagement/Browse.aspx?id=19&dbid=0&repo=MaterialsManagement&cr=1>

 - a. Specifications described in the Table of Contents (Section 00 00 00) of the Project's Contract Documents.
 - b. Drawings.
 - c. Addenda.
 - d. Documentation submitted by Contractor prior to Notice of Award.
3. The following which shall be issued after the Effective Date of this Agreement and delivered to the City within ten (10) days of the Effective Date and before beginning Work:

- a. Payment Bond
 - b. Performance Bond
 - c. Maintenance Bond
 - d. Power of Attorney for the Bonds
 - e. Form 1295 – Certificate of Interested Parties (email to City's Materials Management department)
 - f. Insurance Certificate
4. Specifications specifically made a part of the Contract Documents by attachment or, if not attached, as incorporated by reference and described in the Table of Contents of the Project's Contract Documents.
 5. The following which may be delivered or issued after the Effective Date of the Agreement and, if issued, become an incorporated part of the Contract Documents:
 - a. Notice to Proceed.
 - b. Field Orders.
 - c. Change Orders.
 - d. Letter of Final Acceptance.

Article 6. INDEMNIFICATION

6.1 Contractor covenants and agrees to indemnify, hold harmless and defend, at its own EXPENSE, THE CITY, ITS OFFICERS, ELECTED AND APPOINTED OFFICIALS, AND EMPLOYEES, FROM AND AGAINST ANY AND ALL CLAIMS FOR PERSONAL INJURY OR DEATH, ARISING OUT OF, OR ALLEGED TO ARISE OUT OF, RELATED TO OR IN CONNECTION WITH THE WORK AND SERVICES TO BE PERFORMED BY THE CONTRACTOR, ITS OFFICERS, AGENTS, EMPLOYEES, SUBCONTRACTORS, LICENSEES OR INVITEES UNDER THIS CONTRACT. THIS INDEMNIFICATION PROVISION IS SPECIFICALLY INTENDED TO OPERATE AND BE EFFECTIVE EVEN IF IT IS ALLEGED OR PROVEN THAT ALL OR SOME OF THE DAMAGES BEING SOUGHT WERE CAUSED, IN WHOLE OR IN PART, BY ANY ACT, OMISSION OR NEGLIGENCE OF THE CITY. THIS INDEMNITY PROVISION IS INTENDED TO INCLUDE, WITHOUT LIMITATION, INDEMNITY FOR ANY AND ALL COSTS, EXPENSES AND LEGAL FEES INCURRED BY THE CITY IN DEFENDING AGAINST SUCH CLAIMS AND CAUSES OF ACTIONS.

1 **6.2 CONTRACTOR COVENANTS AND AGREES TO INDEMNIFY, HOLD**
2 **HARMLESS AND DEFEND, AT ITS OWN EXPENSE, THE CITY, ITS OFFICERS,**
3 **SERVANTS AND EMPLOYEES, FROM AND AGAINST ANY AND ALL CLAIMS**
4 **FOR, LOSS OF, DAMAGE TO, OR DESTRUCTION OF, PROPERTY OF THE CITY**
5 **OR OF A THIRD PARTY, ARISING OUT OF, OR ALLEGED TO ARISE OUT OF,**
6 **RELATED TO OR IN CONNECTION WITH THE WORK AND SERVICES TO BE**
7 **PERFORMED BY THE CONTRACTOR, ITS OFFICERS, AGENTS, EMPLOYEES,**
8 **SUBCONTRACTORS, LICENSEES OR INVITEES UNDER THIS CONTRACT.**
9 **THIS INDEMNIFICATION PROVISION IS SPECIFICALLY INTENDED TO**
10 **OPERATE AND BE EFFECTIVE EVEN IF IT IS ALLEGED OR PROVEN THAT**
11 **ALL OR SOME OF THE DAMAGES BEING SOUGHT WERE CAUSED, IN**
12 **WHOLE OR IN PART, BY ANY ACT, OMISSION OR NEGLIGENCE OF THE**
13 **CITY. THIS INDEMNITY PROVISION IS INTENDED TO INCLUDE, WITHOUT**
14 **LIMITATION, INDEMNITY FOR ANY AND ALL COSTS, EXPENSES AND**
15 **LEGAL FEES INCURRED BY THE CITY IN DEFENDING AGAINST SUCH**
16 **CLAIMS AND CAUSES OF ACTIONS.**

17
18 **Article 7. MISCELLANEOUS**

19 **7.1 Capitalized Terms.**

20 Unless otherwise stated herein, capitalized terms used in this Agreement which are defined
21 in Article 1 of the General Conditions will have the meanings indicated in the General
22 Conditions.

23 **7.2 Assignment of Contract.**

24 This Agreement, including all of the Contract Documents may not be assigned by the
25 Contractor without the advance express written consent of the City.

26 **7.3 Successors and Assigns.**

27 City and Contractor each binds itself, its partners, successors, assigns and legal
28 representatives to the other party hereto, in respect to all covenants, agreements and
29 obligations contained in the Contract Documents.

30 **7.4 Severability.**

31 Any provision or part of the Contract Documents held to be unconstitutional, void or
32 unenforceable by a court of competent jurisdiction shall be deemed stricken, and all
33 remaining provisions shall continue to be valid and binding upon City and Contractor.

34 **7.5 Venue and Waiver of Sovereign Immunity.**

35 This Agreement, including all of the Contract Documents is performable in the State of
36 Texas. Venue shall be in the state district courts of Denton County, Texas. The City's
37 sovereign immunity is waived only to the extent set forth and in accordance with the
38 provisions of Subchapter I, Chapter 271 of the Texas Local Government Code or as otherwise
39 specifically waived by law. The City does not waive its sovereign immunity to suit in federal
40 court.

41 **7.6 Authority to Sign.**

42 Contractor hereby certifies that the person signing the Agreement on its behalf is the duly
43 authorized signatory of the Contractor.

7.7 Prohibition on Contracts with Companies Boycotting Israel.

Contractor acknowledges that in accordance with Chapter 2270 of the Texas Government Code, the 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 contract, 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 contract.

7.8 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 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.

7.9 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.

7.10 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.

7.11 Prohibition on Contracts with Companies Boycotting Certain Energy 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.

7.12 Immigration Nationality Act.

Contractor 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, Contractor shall provide City with copies of all I-9 forms and supporting eligibility documentation for each employee who performs work under this Agreement. Contractor 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 Contractor employee who is not legally eligible to perform such services. **CONTRACTOR SHALL INDEMNIFY CITY AND HOLD CITY HARMLESS FROM ANY PENALTIES, LIABILITIES, OR LOSSES DUE TO VIOLATIONS OF THIS PARAGRAPH BY CONTRACTOR, CONTRACTOR'S EMPLOYEES, SUBCONTRACTORS, AGENTS, OR LICENSEES.** City, upon written notice to Contractor, shall have the right to immediately terminate this Agreement for violations of this provision by Contractor.

7.13 No Third-Party Beneficiaries.

This Agreement gives no rights or benefits to anyone other than the City and the Contractor and there are no third-party beneficiaries.

7.14 No Cause of Action Against Engineer.

Contractor, its 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. 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 to Contractor or any other entity for those duties that belong to the City, and do not relieve Contractor or any other entity of its obligations, duties, and responsibilities, including, but not limited to, all construction methods, means, techniques, sequences, and procedures necessary for performing, coordinating and completing all portions of the Work in accordance with the Contract Documents and any health or safety precautions required by such 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.

SIGNATURE PAGE TO FOLLOW

IN WITNESS WHEREOF, City and Contractor have each executed this Agreement to be effective as of the date subscribed by the City's City Manager or his designee ("Effective Date").

CITY OF DENTON

BY: _____

NAME: _____

TITLE: _____

CONTRACTOR

MOUNTAIN CASCADE OF TEXAS, LLC

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

DocuSigned by:
BY: Andrew McCulloch
0AB80166B0... AUTHORIZED AGENT

Andrew McCulloch

NAME

Vice-President

TITLE

925-525-2920

PHONE NUMBER

AMcCulloch@mountaincascade.com

EMAIL ADDRESS

ATTEST:
JESUS SALAZAR, CITY SECRETARY

2023-1058430

TEXAS ETHICS COMMISSION
1295 CERTIFICATE NUMBER

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

DocuSigned by:
Marcella Lunn
4B070831B4AA438...

SECTION 00 41 01
PROPOSAL FORM - CSP

TO: *Cori Power*
c/o: Purchasing Division
901-B Texas Street
Denton, Texas 76209

FOR: *CSP 8205 - Barrow Sanitary Sewer and Lift Station Abandonment*

1 Enter into Agreement

The undersigned Offeror proposes and agrees, if this Proposal is accepted, to enter into an Agreement with City in the form included in the Proposal Documents to perform and furnish all Work as specified or indicated in the Contract Documents for the Unit Price Proposal and within the Contract Time indicated in this Proposal and in accordance with the other terms and conditions of the Contract Documents.

2 OFFEROR Acknowledgements and Certification

2.1 In submitting this Proposal, Offeror accepts all of the terms and conditions of the INVITATION TO OFFERORS and INSTRUCTIONS TO OFFERORS, including without limitation those dealing with the disposition of Offeror's Bond.

2.2 Offeror is aware of all costs to provide the required insurance, will do so pending contract award, and will provide a valid insurance certificate meeting all requirements within 14 days of notification of award.

2.3 Offeror certifies that this Proposal is genuine and not made in the interest of or on behalf of any undisclosed individual or entity and is not submitted in conformity with any collusive agreement or rules of any group, association, organization, or corporation.

2.4 Offeror has not directly or indirectly induced or solicited any other Offeror to submit a false or sham Proposal.

2.5 Offeror has not solicited or induced any individual or entity to refrain from proposing.

2.6 Offeror has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for the Contract. For the purposes of this Paragraph:

a. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the proposal process.

b. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the proposal process to the detriment of City (b) to establish proposal prices at artificial non-competitive levels, or (c) to deprive City of the benefits of free and open competition.

c. "collusive practice" means a scheme or arrangement between two or more Offerors, with or without the knowledge of City, a purpose of which is to establish proposal prices at artificial, non-competitive levels.

d. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the proposal process or affect the execution of the Contract.

2.7 The Offeror acknowledges and agrees to comply with the requirements of City Ethics Ordinance No. 18-757.

3 Time of Completion

3.1 The Work will be Substantially Complete as defined in the Supplementary Conditions within 180 Days after the date when the Contract Time commences to run, which is the day indicated in the Notice to Proceed, plus any extension thereof allowed in accordance with Article 11 of the General Conditions.

3.2 The Work will be complete for Final Acceptance within 225 Days after the date when the Contract Time commences to run, which is the day indicated in the Notice to Proceed, plus any extension thereof allowed in accordance with Article 11 of the General Conditions.

3.3 Offeror accepts the provisions of the Agreement as to Liquidated Damages in the event of failure to obtain Milestones (if applicable), Substantial Completion, and Final Acceptance within the times specified in the Agreement.

4 Attached to this Proposal

4.1 The following documents are attached to and made a part of this Proposal:

- a. Section 00 35 14 – Conflict of Interest Affidavit – CSP
- b. Section 00 41 01 – This Proposal Form – CSP
- c. **Section 00 42 44 – Unit Price Proposal Form – CSP – Excel Electronic Copy (either included in the hard copy Proposal, or submitted via Ionwave)**
- d. Section 00 43 14 – Required Offeror's Bond – CSP, issued by a surety meeting the requirements of Paragraph 6.01 of the General Conditions.
- e. Section 00 43 38 – Proposed Subcontractors Form – CSP
- f. Section 00 43 39 – Vendor Compliance to State Law Non-Resident Offeror – CSP
- g. Section 00 45 14 – Safety Record Questionnaire – CSP
- h. Section 00 45 27 – Contractor Compliance with Workers Compensation Law – CSP
- i. Section 00 45 44 – Corporate Resolution of Authorized Signatories – CSP
- j. Any additional documents required by Paragraph 12 of Section 00 21 16 – Instructions to Offerors

5 Total Proposal Amount

5.1 Offeror will complete the Work in accordance with the Contract Documents for the following proposal amount. In the space provided below, please enter the total proposed amount for this project. This figure will be read publicly by the City at the proposal opening.

5.2 It is understood and agreed by the Offeror in signing this proposal that the total proposed amount entered below is subject to verification and/or modification by multiplying the unit prices for each pay item by the respective estimated quantities shown in this proposal and then totaling all of the extended amounts.

Total Proposal Amount: \$ 1,411,243.⁰⁰

6 Proposal Submittal

6.1 It is understood by Offeror that submission of the total proposal amount is only one of the factors for the City's evaluation process, and that any award of contract will be based on the complete evaluation of the Proposal and Offeror by City under the terms provided in the Instructions to Offerors or any validly issued amendments or addenda.

6.2 This Proposal is submitted on June 28, 2023 by the entity named below.

Respectfully submitted,

By: 

(Signature)

Andrew L. McCulloch

(Printed Name)

Title: Vice President



Company: Mountain Cascade of Texas, LLC

Address: 5340 E. US Highway 67
Alvarado, TX 76009

State of Incorporation: Texas

Email: amcculloch@mountaincascade.com

Phone: 817-783-3094

Receipt is acknowledged of the following Addenda:	Initial
Addenda No. 1:	
Addenda No. 2:	
Addenda No. 3:	
Addenda No. 4:	
Addenda No. 5:	

END OF SECTION

BAFO PROPOSAL FORM ATTACHMENT

To: Cori Power
c/o: Purchasing Division
901-B Texas Street
Denton, Texas 76209

FOR: *CSP 8205 – Barrow Sanitary Sewer and Lift Station Abandonment*

The undersigned Offeror hereby submits this Proposal Form Revision and Best and Final Offer (this “BAFO”) for CSP 8205 - Barrow Sanitary Sewer and Lift Station Abandonment and confirms that this BAFO Proposal is based on the project requirements per the CSP documents and any subsequent addenda.

1 Total BAFO Proposal Amount

1.1 Offeror will complete the Work in accordance with the Contract Documents for the following BAFO proposal amount. In the space provided below, please enter the total proposed BAFO amount for this project.

1.2 It is understood and agreed by the Offeror in signing this proposal that the total proposed BAFO amount entered below is subject to verification and/or modification by multiplying the unit prices for each pay item by the respective estimated quantities shown in this proposal and then totaling all of the extended amounts.

Total BAFO Proposal Amount: \$ 1,383,889.00

2 BAFO Proposal Submittal

2.1 It is understood by Offeror that submission of the total BAFO proposal amount is only one of the factors for the City’s evaluation process, and that any award of contract will be based on the complete evaluation of the Proposal and Offeror by City under the terms provided in the Instructions to Offerors or any validly issued amendments or addenda.

2.2 This BAFO Proposal is submitted on July 21, 20 23 by the entity named below.

Respectfully submitted,

By: 

(Signature)

Andrew L. McCulloch

(Printed Name)

Title: Vice President

Company: Mountain Cascade of Texas, LLC

52 Address: 5340 East US Highway 67

53 Alvarado, TX 76009

54 State of Incorporation: Texas

55 Email: amcculloch@mountaincascade.com

56 Phone: 817-783-3094

57

58 **END OF SECTION**



SECTION 00 42 44 - UNIT PRICE PROPOSAL FORM

City of Denton - Capital Projects

901-B Texas Street

Denton, TX 76209

Cori Power/Purchasing Dept.

From: Mountain Cascade of Texas, LLC

5340 East US Highway 67

Alvarado, TX 76009

Andrew L. McCulloch

817-783-3094

amcculloch@mountaincascade.comPROJ.: **Barrow Sanitary Sewer and Lift Station Abandonment**

CSP: 8205

ENG: 220019-1

PMO:

BIDDERS APPLICATION - UNIT PRICE BID

Item No.	Spec. Section No.	Description	UOM	BID QTY	BAFO Unit Price	BAFO Extended Price
1	01 70 00	Mobilization	LS	1	\$ 70,000.00	\$ 70,000.00
2	01 57 13	SWPPP ≥ 1 acre	LS	1	\$ 5,000.00	\$ 5,000.00
3	01 58 13	Project Signs	EA	2	\$ 600.00	\$ 1,200.00
4	02 41 13	Lift Station Demolition and Abandonment	LS	1	\$ 35,000.00	\$ 35,000.00
5	02 41 14	Abandon Utility Manhole	EA	8	\$ 2,000.00	\$ 16,000.00
6	02 41 14	Remove Utility Manhole	EA	1	\$ 2,200.00	\$ 2,200.00
7	02 41 14	Plug Abandoned Sanitary Sewer Lines	LS	1	\$ 10,000.00	\$ 10,000.00
8	03 80 00	Core into Manhole	EA	1	\$ 2,500.00	\$ 2,500.00
9	31 10 00	Site Clearing	LS	1	\$ 30,000.00	\$ 30,000.00
10	31 25 14	SWPPP Device Installation	LS	1	\$ 20,000.00	\$ 20,000.00
11	31 25 14	SWPPP Device Removal	LS	1	\$ 5,000.00	\$ 5,000.00
12	32 01 17	Flexible Paving Repair	SY	15	\$ 250.00	\$ 3,750.00
13	32 93 00	Seeding Turf Grass	SY	24,000	\$ 3.00	\$ 72,000.00
14	32 93 00	Block Sod	SY	1,330	\$ 8.00	\$ 10,640.00
15	33 01 30	CCTV Inspection	LF	4,629	\$ 4.00	\$ 18,516.00
16	33 05 05	Excavation Protection	LF	4,579	\$ 1.00	\$ 4,579.00
17	33 05 07	Steel Casing (24") by Open Cut	LF	10	\$ 500.00	\$ 5,000.00
18	33 05 07	Steel Casing (24") by Bore	LF	50	\$ 1,200.00	\$ 60,000.00
19	33 05 15	Sanitary Sewer Gravity Main (15") in Casing/Tunnel	LF	60	\$ 230.00	\$ 13,800.00
20	33 05 61; 33 05 62	Concrete Manhole (5' ID)	EA	10	\$ 15,000.00	\$ 150,000.00
21	33 05 61; 33 05 62	Extra Depth Manhole - Concrete	VF	28	\$ 400.00	\$ 11,200.00
22	33 05 98	Location of Existing Utilities	LS	1	\$ 35,000.00	\$ 35,000.00
23	33 14 11	PVC Sleeve Pipe (20")	LF	18	\$ 350.00	\$ 6,300.00
24	33 14 16	Sanitary Sewer Service Connection (4")	EA	12	\$ 5,000.00	\$ 60,000.00
25	33 31 14	Sanitary Sewer Gravity Main (8")	LF	10	\$ 150.00	\$ 1,500.00
26	33 31 14	Sanitary Sewer Gravity Main (15")	LF	4,559	\$ 156.00	\$ 711,204.00
27	33 32 11	Bypass Pumping	LS	1	\$ 15,000.00	\$ 15,000.00
28	33 32 11	Traffic Control Plan	EA	1	\$ 500.00	\$ 500.00
29	33 32 11	Traffic Control Devices	MO	0.25	\$ 32,000.00	\$ 8,000.00
BAFO BASE PROPOSAL						\$1,383,889.00

Barrow Sanitary Sewer and Lift Station Abandonment TOTAL PROPOSAL: \$1,383,889.00

SECTION 00 43 39**VENDOR COMPLIANCE TO STATE LAW NON-RESIDENT OFFEROR - CSP**

Texas Government Code Chapter 2252 was adopted for the award of contracts to nonresident offerors. This law provides that, in order to be awarded a best value contract where the offeror also offered the lowest proposal price, nonresident offerors (out-of-state contractors whose corporate offices or principal place of business are outside the State of Texas) propose on projects for construction, improvements, supplies or services in Texas at an amount lower than the lowest Texas resident offeror by the same amount that a Texas resident offeror would be required to underbid a nonresident offeror in order to obtain a comparable contract in the State which the nonresident's principal place of business is located.

The appropriate blanks in Section A must be filled out by all nonresident offerors in order for your proposal to meet specifications. The failure of nonresident offerors to do so will automatically disqualify that offeror. Resident offerors must check the box in Section B.

A. Nonresident offerors in the State of _____, our principal place of business, are required to be _____ percent lower than resident offerors by State Law. A copy of the statute is attached.

Nonresident offerors in the State of _____, our principal place of business, are not required to underbid resident Offerors.

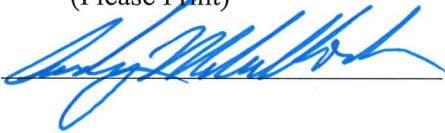
B. The principal place of business of our company or our parent company or majority owner is in the State of Texas. ☒

OFFEROR:

Mountain Cascade of Texas, LLC
Company

By: Andrew L. McCulloch
(Please Print)

5340 East US Highway 67
Address

Signature: 

Alvarado, TX 76009
City/State/Zip

Title: Vice President
(Please Print)

Date: 6/28/2023

END OF SECTION

"General Decision Number: TX20230025 01/06/2023

Superseded General Decision Number: TX20220025

State: Texas

Construction Type: Highway

Counties: Archer, Callahan, Clay, Collin, Dallas, Delta, Denton, Ellis, Grayson, Hunt, Johnson, Jones, Kaufman, Parker, Rockwall, Tarrant and Wise Counties in Texas.

HIGHWAY CONSTRUCTION PROJECTS (excluding tunnels, building structures in rest area projects & railroad construction; bascule, suspension & spandrel arch bridges designed for commercial navigation, bridges involving marine construction; and other major bridges).

Note: Contracts subject to the Davis-Bacon Act are generally required to pay at least the applicable minimum wage rate required under Executive Order 14026 or Executive Order 13658. Please note that these Executive Orders apply to covered contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but do not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2)-(60).

If the contract is entered into on or after January 30, 2022, or the contract is renewed or extended (e.g., an option is exercised) on or after January 30, 2022:	<ul style="list-style-type: none"> . Executive Order 14026 generally applies to the contract. . The contractor must pay all covered workers at least \$16.20 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in 2023.
If the contract was awarded on or between January 1, 2015 and January 29, 2022, and the contract is not renewed or extended on or after January 30, 2022:	<ul style="list-style-type: none"> . Executive Order 13658 generally applies to the contract. . The contractor must pay all covered workers at least \$12.15 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on that contract in 2023.

The applicable Executive Order minimum wage rate will be adjusted annually. If this contract is covered by one of the Executive Orders and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must still submit a conformance request.

Additional information on contractor requirements and worker protections under the Executive Orders is available at

<http://www.dol.gov/whd/govcontracts>.

Modification Number Publication Date
0 01/06/2023

SUTX2011-007 08/03/2011

Rates Fringes

CONCRETE FINISHER (Paving and
Structures).....\$ 14.12 **

ELECTRICIAN.....\$ 19.80

FORM BUILDER/FORM SETTER

Paving & Curb.....\$ 13.16 **

Structures.....\$ 13.84 **

LABORER

Asphalt Raker.....\$ 12.69 **

Flagger.....\$ 10.06 **

Laborer, Common.....\$ 10.72 **

Laborer, Utility.....\$ 12.32 **

Pipelayer.....\$ 13.24 **

Work Zone Barricade

Servicer.....\$ 11.68 **

POWER EQUIPMENT OPERATOR:

Asphalt Distributor.....\$ 15.32 **

Asphalt Paving Machine.....\$ 13.99 **

Broom or Sweeper.....\$ 11.74 **

Concrete Pavement

Finishing Machine.....\$ 16.05 **

Concrete Saw.....\$ 14.48 **

Crane Operator, Lattice

Boom 80 Tons or Less.....\$ 17.27

Crane Operator, Lattice

Boom over 80 Tons.....\$ 20.52

Crane, Hydraulic 80 Tons

or Less.....\$ 18.12

Crawler Tractor.....\$ 14.07 **

Excavator, 50,000 pounds

or less.....\$ 17.19

Excavator, over 50,000

pounds.....\$ 16.99

Foundation Drill , Truck

Mounted.....\$ 21.07

Foundation Drill, Crawler

Mounted.....\$ 17.99

Front End Loader 3 CY or

Less.....\$ 13.69 **

Front End Loader, over 3 CY.\$ 14.72 **

Loader/Backhoe.....\$ 15.18 **

Mechanic.....\$ 17.68

Milling Machine.....\$ 14.32 **

Motor Grader, Fine Grade....\$ 17.19

Motor Grader, Rough.....\$ 16.02 **

Pavement Marking Machine....\$ 13.63 **

Reclaimer/Pulverizer.....\$ 11.01 **

Roller, Asphalt.....\$ 13.08 **

Roller, Other.....\$ 11.51 **

Scraper.....\$ 12.96 **

Small Slipform Machine.....\$ 15.96 **

Spreader Box.....\$ 14.73 **

Servicer.....\$ 14.58 **

Steel Worker (Reinforcing).....\$ 16.18 **

TRUCK DRIVER

Lowboy-Float.....\$ 16.24

Off Road Hauler.....\$ 12.25 **

Single Axle.....\$ 12.31 **

Single or Tandem Axle Dump

Truck.....\$ 12.62 **

Tandem Axle Tractor with

Semi Trailer.....\$ 12.86 **

Transit-Mix.....\$ 14.14 **

WELDER.....\$ 14.84 **

WELDERS - Receive rate prescribed for craft performing
operation to which welding is incidental.

=====

** Workers in this classification may be entitled to a higher
minimum wage under Executive Order 14026 (\$16.20) or 13658
(\$12.15). Please see the Note at the top of the wage
determination for more information.

Note: Executive Order (EO) 13706, Establishing Paid Sick Leave
for Federal Contractors applies to all contracts subject to the
Davis-Bacon Act for which the contract is awarded (and any
solicitation was issued) on or after January 1, 2017. If this
contract is covered by the EO, the contractor must provide
employees with 1 hour of paid sick leave for every 30 hours
they work, up to 56 hours of paid sick leave each year.
Employees must be permitted to use paid sick leave for their
own illness, injury or other health-related needs, including
preventive care; to assist a family member (or person who is
like family to the employee) who is ill, injured, or has other
health-related needs, including preventive care; or for reasons
resulting from, or to assist a family member (or person who is
like family to the employee) who is a victim of, domestic
violence, sexual assault, or stalking. Additional information
on contractor requirements and worker protections under the EO
is available at
<https://www.dol.gov/agencies/whd/government-contracts>.

Unlisted classifications needed for work not included within
the scope of the classifications listed may be added after
award only as provided in the labor standards contract clauses
(29CFR 5.5 (a) (1) (ii)).

The body of each wage determination lists the classification
and wage rates that have been found to be prevailing for the
cited type(s) of construction in the area covered by the wage
determination. The classifications are listed in alphabetical
order of "identifiers" that indicate whether the particular
rate is a union rate (current union negotiated rate for local),
a survey rate (weighted average rate) or a union average rate
(weighted union average rate).

Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than ""SU"" or ""UAVG"" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

Survey Rate Identifiers

Classifications listed under the ""SU"" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- * an existing published wage determination
- * a survey underlying a wage determination
- * a Wage and Hour Division letter setting forth a position on a wage determination matter
- * a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour National Office because National Office has responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

=====

END OF GENERAL DECISIO"

"General Decision Number: TX20230018 04/14/2023

Superseded General Decision Number: TX20220018

State: Texas

Construction Type: Heavy

Counties: Collin, Dallas, Denton, Ellis, Kaufman and Rockwall
Counties in Texas.

Water and Sewer Lines/Utilities (Including Related Tunneling
Where the Tunnel is 48" or Less in Diameter)

Note: Contracts subject to the Davis-Bacon Act are generally required to pay at least the applicable minimum wage rate required under Executive Order 14026 or Executive Order 13658. Please note that these Executive Orders apply to covered contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but do not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2)-(60).

If the contract is entered into on or after January 30, 2022, or the contract is renewed or extended (e.g., an option is exercised) on or after January 30, 2022:	<ul style="list-style-type: none"> . Executive Order 14026 generally applies to the contract. . The contractor must pay all covered workers at least \$16.20 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in 2023.
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The applicable Executive Order minimum wage rate will be adjusted annually. If this contract is covered by one of the Executive Orders and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must still submit a conformance request.

Additional information on contractor requirements and worker protections under the Executive Orders is available at <http://www.dol.gov/whd/govcontracts>.

Modification Number Publication Date

0 01/06/2023
1 04/14/2023

* PLUM0100-002 11/01/2022

	Rates	Fringes
Plumbers and Pipefitters.....	\$ 35.73	13.07

* SUTX1991-004 09/23/1991

	Rates	Fringes
Laborers:		
Common.....	\$ 7.25 **	
Utility.....	\$ 7.467 **	
Pipelayer.....	\$ 7.828 **	
Power equipment operators:		
Backhoe.....	\$ 10.804 **	
Crane.....	\$ 10.942 **	
Front End Loader.....	\$ 9.163 **	
Tunneling Machine (48" or less).....	\$ 9.163 **	
TRUCK DRIVER.....	\$ 8.528 **	

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

=====
** Workers in this classification may be entitled to a higher minimum wage under Executive Order 14026 (\$16.20) or 13658 (\$12.15). Please see the Note at the top of the wage determination for more information.

Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at <https://www.dol.gov/agencies/whd/government-contracts>.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of ""identifiers"" that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

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A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current

negotiated/CBA rate of the union locals from which the rate is based.

WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- * an existing published wage determination
- * a survey underlying a wage determination
- * a Wage and Hour Division letter setting forth a position on a wage determination matter
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With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

=====
END OF GENERAL DECISIO"

SECTION 00 45 27

CONTRACTOR COMPLIANCE WITH WORKER'S COMPENSATION LAW - CSP

Pursuant to Texas Labor Code Section 406.096(a), as amended, Contractor certifies that it provides worker's compensation insurance coverage for all of its employees employed on *Barrow Sanitary Sewer and Lift Station Abandonment*. Contractor further certifies that, pursuant to Texas Labor Code, Section 406.096(b), as amended, it will provide to City its subcontractor's certificates of compliance with worker's compensation coverage.

CONTRACTOR:

Mountain Cascade of Texas, LLC

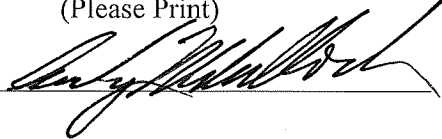
Company

By: Andrew L. McCulloch

(Please Print)

5340 E. US Highway 67

Address

Signature: 

Alvarado, TX 76009

City/State/Zip

Title: Vice President

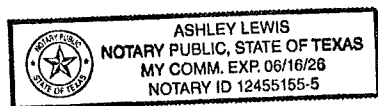
(Please Print)


THE STATE OF TEXAS §

COUNTY OF DENTON §

BEFORE ME, the undersigned authority, on this day personally appeared Andrew L. McCulloch, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he/she executed the same as the act and deed of Vice President for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 27th day of June, 2023.




Notary Public in and for the State of Texas

END OF SECTION

STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

TABLE OF CONTENTS

	Page
ARTICLE 1 – DEFINITIONS AND TERMINOLOGY	1
1.01 Defined Terms	1
1.02 Terminology	6
ARTICLE 2 – PRELIMINARY MATTERS.....	7
2.01 Delivery of Performance and Payment Bonds; Evidence of Insurance.....	7
2.02 Copies of Documents	7
2.03 Before Starting Construction	7
2.04 Preconstruction Conference Meeting	8
2.05 Public Meeting.....	8
2.06 Initial Acceptance of Schedules.....	8
2.07 Electronic Submittals and Transmittals.....	8
ARTICLE 3 – CONTRACT DOCUMENTS: INTENT, REQUIREMENTS, REUSE	8
3.01 Intent	8
3.02 Reference Standards.....	9
3.03 Reporting and Resolving Discrepancies.....	9
3.04 Requirements of the Contract Documents.....	10
3.05 Reuse of Documents	10
ARTICLE 4 – COMMENCEMENT AND PROGRESS OF THE WORK.....	11
4.01 Commencement of Contract Time; Notice to Proceed.....	11
4.02 Starting the Work.....	11
4.03 Delays in Contractor’s Progress.....	11
ARTICLE 5 – SITE; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS	12
5.01 Availability of Lands.....	12
5.02 Use of Site and Other Areas	13
5.03 Subsurface and Physical Conditions	14
5.04 Differing Subsurface or Physical Conditions	15
5.05 Underground Facilities	16
5.06 Hazardous Environmental Conditions at Site.....	17

ARTICLE 6 – BONDS AND INSURANCE.....	18
6.01 Licensed Sureties and Insurers.....	18
6.02 Performance, Payment, and Maintenance Bonds.....	18
6.03 Certificates of Insurance.....	19
6.04 Contractor’s Insurance	21
6.05 Acceptance of Bonds and Insurance; Option to Replace.....	22
ARTICLE 7 – CONTRACTOR’S RESPONSIBILITIES	22
7.01 Contractor’s Means and Methods of Construction	22
7.02 Supervision and Superintendence	22
7.03 Labor; Working Hours	23
7.04 Services, Materials, and Equipment.....	23
7.05 Project Schedule.....	24
7.06 “Or Equals”.....	24
7.07 Substitutions	25
7.08 Concerning Subcontractors and Suppliers.....	27
7.09 Wage Rates	28
7.10 Patent Fees and Royalties.....	29
7.11 Permits and Utilities.....	29
7.12 Taxes	30
7.13 Laws and Regulations	30
7.14 Record Documents.....	31
7.15 Safety and Protection	31
7.16 Hazard Communication Programs	32
7.17 Emergencies and/or Rectification	32
7.18 Submittals.....	33
7.19 Continuing the Work.....	34
7.20 Contractor’s General Warranty and Guarantee.....	34
7.21 Indemnification.....	35
7.22 Delegation of Professional Design Services	36
7.23 Right to Audit	36
7.24 Nondiscrimination.....	37
ARTICLE 8 – OTHER WORK AT THE SITE.....	37
8.01 Other Work.....	37
8.02 Coordination	38

8.03	Legal Relationships.....	38
ARTICLE 9 – CITY’S RESPONSIBILITIES		39
9.01	Communications to Contractor	39
9.02	Furnish Data	39
9.03	Pay When Due	39
9.04	Lands and Easements; Reports, Tests, and Drawings	39
9.05	Change Orders	39
9.06	Inspections, Tests, and Approvals.....	39
9.07	Limitations on City’s Responsibilities	39
9.08	Undisclosed Hazardous Environmental Condition	39
9.09	Compliance with Safety Program	39
ARTICLE 10 – CITY’S OBSERVATION DURING CONSTRUCTION		40
10.01	City’s Project Manager or Duly Authorized Representative	40
10.02	Visits to Site.....	40
10.03	Determinations for Work Performed.....	40
10.04	Decisions on Requirements of Contract Documents and Acceptability of Work	40
ARTICLE 11 – CHANGES IN THE WORK; CLAIMS; EXTRA WORK		41
11.01	Amending and Supplementing the Contract	41
11.02	Execution of Change Orders	41
11.03	Field Orders	41
11.04	Authorized Changes in the Work – Extra Work	41
11.05	Unauthorized Changes in the Work	41
11.06	Dispute of Extra Work.....	42
11.07	Contract Claims Process	42
11.08	Change of Contract Price.....	43
11.09	Change of Contract Time.....	44
11.10	Notification to Surety	44
ARTICLE 12 – COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK; PLANS QUANTITY MEASUREMENT		45
12.01	Cost of the Work	45
12.02	Allowances	48
12.03	Unit Price Work	48
12.04	Plans Quantity Measurement for Unclassified Excavation or Embankment	49

ARTICLE 13 – TESTS AND INSPECTIONS; CORRECTION, REMOVAL, OR ACCEPTANCE OF DEFECTIVE WORK	50
13.01 Access to Work	50
13.02 Tests, Inspections	50
13.03 Defective Work	51
13.04 Rejecting Defective Work	51
13.05 Acceptance of Defective Work	52
13.06 Uncovering Work	52
13.07 City May Stop the Work	52
13.08 City May Correct Defective Work	53
ARTICLE 14 – PAYMENTS TO CONTRACTOR; COMPLETION; CORRECTION PERIOD	53
14.01 Progress Payments	53
14.02 Contractor’s Warranty of Title	56
14.03 Partial Utilization	56
14.04 Final Inspection	57
14.05 Final Acceptance	57
14.06 Final Payment	57
14.07 Final Completion Delayed and Partial Retainage Release	58
14.08 Waiver of Claims	58
14.09 Correction Period	58
ARTICLE 15 – SUSPENSION OF WORK AND TERMINATION	59
15.01 City May Suspend Work	59
15.02 City May Terminate for Cause	60
15.03 City May Terminate for Convenience	61
ARTICLE 16 – FINAL RESOLUTION OF DISPUTES	63
16.01 Methods and Procedures	63
ARTICLE 17 – MISCELLANEOUS	64
17.01 Giving Notice	64
17.02 Computation of Times	64
17.03 Cumulative Remedies	64
17.04 Limitation of Damages	64
17.05 No Waiver	65
17.06 Survival of Obligations	65
17.07 Assignment of Contract	65

17.08 Successors and Assigns 65

17.09 Headings 65

ARTICLE 1 – DEFINITIONS AND TERMINOLOGY**1.01 *Defined Terms***

- A. Wherever used in the Contract or in other Contract Documents, the terms listed below have the meanings indicated which are applicable to both the singular and plural thereof, and words denoting gender shall include the masculine, feminine and neuter. When used in a context consistent with the definition of a listed-defined term, the term shall have a meaning as defined below whether capitalized or italicized or otherwise. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.
1. *Addenda*—Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Requirements or the proposed Contract Documents.
 2. *Agreement*—The written instrument titled “Agreement”, “Agreement – CSP”, or “Agreement – Unit Price Bid” executed by the City and Contractor for the Work, setting forth the name of the Project, Contract Price, Contract Time and the items included in the Contract.
 3. *Application for Payment*—The form acceptable to City which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract.
 4. *Asbestos*—Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.
 5. *Award*—Authorization by the City Council for the City to enter into an Agreement.
 6. *Bid*—The offer or proposal of a Bidder submitted on the prescribed form setting forth the prices for the Work to be performed. The term “Bid” shall be defined to include the term “Proposal” in those instances where the City utilizes a Request for Proposal rather than an Invitation for Bid.
 7. *Bidder*—The individual or entity that submits a Bid directly to City. The term “Bidder” shall be defined to include the terms “Proposer” or “Offeror” in those instances where the City utilizes a Request for Proposal rather than an Invitation for Bid.
 8. *Bidding Documents*—The Bidding Requirements and the proposed Contract Documents (including all Addenda). The term “Bidding Documents” shall be defined to include the terms “Proposal Documents” in those instances where the City utilizes a Request for Proposal rather than an Invitation for Bid.
 9. *Bidding Requirements*—The Advertisement or Invitation to Bid, Instructions to Bidders, Bid Bond or other Bid security, if any, the Bid Form, and the Bid with any attachments. The term “Bidding Requirements” shall be defined to include the terms “Proposal Requirements” in those instances where the City utilizes a Request for Proposal rather than an Invitation for Bid and will include the Request for Proposal or Invitation to Offerors, Instructions to Offerors, Offerors Bond or other Proposal security, if any, the Proposal Form, and the Proposal with any attachments.

10. *Business Day*—A day that the City conducts normal business, generally Monday through Friday, except for federal or state holidays observed by the City.
11. *Calendar Day*—A day consisting of 24 hours measured from midnight to the next midnight.
12. *Change Order*—A document which is prepared by the Contractor or City, approved by the City, and signed by Contractor and City, authorizing an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Time, issued on or after the Effective Date of the Agreement.
13. *City*—The City of Denton is, a Texas home-rule municipal corporation acting by its City Council through its City Manager or his or her designee.
14. *City Attorney*—The officially appointed City Attorney of the City of Denton or his or her designee.
15. *City Council*—The duly elected and qualified governing body of the City of Denton.
16. *City Manager*—The officially appointed authorized City Manager of the City of Denton.
17. *Contract*—The entire and integrated set of written instruments between the City and Contractor concerning the Work comprised of the Agreement and all Contract Documents, which written instruments supersede all prior negotiations, representations, or agreements, whether written or oral, concerning the Work.
18. *Contract Claim*—A demand or assertion by City or Contractor seeking an adjustment of Contract Price or Contract Time, or both, or other relief with respect to the terms of the Contract. A demand for money or services by a third party is not a Contract Claim.
19. *Contract Documents*—Those items so designated as “Contract Documents.” in the Agreement at Paragraph 5.1.A. Approved Submittals, other Contractor submittals, and the reports and drawings of subsurface and physical conditions are not Contract Documents.
20. *Contract Price*—The moneys payable by City to Contractor for completion of the Work in accordance with the Contract Documents as stated in the Agreement (subject to the provisions of Paragraph 12.03 in the case of Unit Price Work). The Contract Price does not include any “Incentive”, if applicable.
21. *Contract Time*—The number of days or the dates stated in the Agreement to: (a) achieve Milestones, if any and (bb) complete the Work so that it is ready for Final Acceptance.
22. *Contractor*—The individual or entity with whom City has entered into the Agreement.
23. *Cost of the Work*—See Paragraph 12.01 of these General Conditions for definition.
24. *Damage Claims*—A demand for money or services arising from the Project or Site from a third party, City or Contractor exclusive of a Contract Claim.
25. *Day or day*—A day, unless otherwise defined, shall mean a Calendar Day.
26. *Drawings*—The part of the Contract Documents prepared or approved by an Engineer that graphically shows the scope, extent, and character of the Work to be performed by Contractor. Submittals, as defined, are not considered Drawings as so defined here.

27. *Effective Date of the Agreement*—The date, indicated in the Agreement, on which it becomes effective,, but if no such date is indicated, it means the date on which the Agreement is signed and delivered by the City.
28. *Electronic Document*—Any Project-related correspondence, attachments to correspondence, text, data, documents, drawings, information, or graphics, including but not limited to Shop Drawings and other Submittals, that are in an electronic or digital format.
29. *Electronic Means*—Electronic mail (email), upload/download from a secure Project website, or other communications methods that allow: (a) the transmission or communication of Electronic Documents; (b) the documentation of transmissions, including sending and receipt; (c) printing of the transmitted Electronic Document by the recipient; (d) the storage and archiving of the Electronic Document by sender and recipient; and (e) the use by recipient of the Electronic Document for purposes permitted by the Contract. Electronic Means does not include the use of text messaging, or of Facebook, Twitter, Instagram, or similar social media services for transmission of Electronic Documents.
30. *Engineer*—The licensed professional engineer or engineering firm registered in the State of Texas performing professional services for the City.
31. *Extra Work*—Additional work made necessary by City-approved changes or alterations to the Contract Documents. Extra Work shall be part of the Work.
32. *Field Order*—A written directive issued by City that requires changes in the Work but does not involve a change to the Contract Price, Contract Time, or Drawings, Plan, or Shop Drawings.
33. *Final Acceptance*—The written notice given by the City to the Contractor that the Work specified in the Contract Documents has been completed to the satisfaction of the City.
34. *Final Inspection*—The inspection performed by the City to determine whether the Contractor has completed each and every part or appurtenance of the Work fully, entirely, and in conformance with the Contract Documents.
35. *General Requirements*—Sections of The information set forth in “Division 101 – General Requirements” of the Standard Construction Specification Documents.
36. *Hazardous Environmental Condition*—The presence at the Site of Asbestos, P C B s , Petroleum, Hazardous Waste, Radioactive Material, or any other substance, product, waste or materials, in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto.
37. *Hazardous Waste*—Any solid waste listed as hazardous or which possesses one or more hazardous characteristics as defined in applicable Laws and Regulations.
38. *Incidental or incidental*—Work items that the Contractor is not paid for directly, but costs for which are included under the various bid items of the Project.
39. *Laws and Regulations*—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and binding decrees, resolutions, and orders of any and all

governmental bodies, agencies, authorities, and courts having jurisdiction over the Site or any portion or part of the Work to be performed.

40. *Liens*—Charges, security interests, or encumbrances upon Project funds, real property, or personal property.
41. *Major Item*—An item of work included in the Contract Documents that has a total cost equal to or greater than 5% of the original Contract Price.
42. *Milestone*—A principal event specified in the Contract Documents relating to the performance of an identified portion of the Work by an intermediate Contract Time prior to Final Acceptance of the Work.
43. *Notice of Award*—The written notice by City to the Successful Bidder stating that upon timely compliance by the Successful Bidder with the conditions precedent listed in such notice, City will sign and deliver the Agreement.
44. *Notice to Proceed*—A written notice given by City to Contractor fixing the date on which the Contract Time will commence to run and on which Contractor shall start to perform the Work specified in Contract Documents.
45. *PCBs*—Polychlorinated biphenyls.
46. *Petroleum*—Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), and including but not limited to oil, fuel oil, oil sludge, oil refuse, gasoline, diesel fuel, kerosene, and oil mixed with other non-Hazardous Waste and crude oils.
47. *Plans*—This term will have the same definition of as “Drawings”.
48. *Project* —The Work to be performed under the Contract.
49. *Project Manager*—The authorized representative of the City who will be assigned to the Project.
50. *Project Manual*—The documentary information prepared for bidding or proposing and furnishing the Work.
51. *Project Schedule*—A schedule, prepared and maintained by Contractor, in accordance with the General Requirements, describing the sequence and duration of the activities comprising Contractor’s plan to achieve each Milestone and accomplish the Work within the Contract Time.
52. *Public Meeting*—An announced meeting conducted by the City to facilitate public participation and to assist the public in gaining an informed view of the Project.
53. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and that establish the standards by which such portion of the Work will be judged.
54. *Schedule of Submittals*—A schedule, prepared and maintained by Contractor, of required submittals and the time requirements to support scheduled performance of related construction activities.

55. *Schedule of Values*—A schedule, prepared and maintained by Contractor, allocating portions of the Contract Price to various portions of the Work and used as the basis for reviewing Contractor's Applications for Payment.
56. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Contract Documents.
57. *Site*—Lands or areas indicated in the Contract Documents as being furnished by City upon which the Work is to be performed, including rights-of-way, permits, and easements for access thereto, and such other lands furnished by City which are designated for the use of Contractor.
58. *Specifications or Technical Specifications* —The part of the Contract that consists of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work. Specifications may be specifically made a part of the Contract Documents by attachment or, if not attached, may be incorporated by reference as indicated in the Table of Contents (Section 00 00 00) of the Project.
59. *Subcontractor*—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work at the Site.
60. *Submittal*—All drawings, diagrams, illustrations, schedules and other data or information which are specifically prepared or assembled by or for Contractor and submitted by Contractor to the City to illustrate some portion of the Work.
61. *Subsidiary or subsidiary*—*These terms will have the same* definition as "Incidental. or incidental".
62. *Successful Bidder*—The Bidder to whom City issues a Notice of Award. The term "Bidder" shall be defined to include the terms "Proposer" or "Offeror" in those instances where the City utilizes a Request for Proposal rather than an Invitation for Bid and is the Proposer or Offeror submitting the proposal or offer that provides the best value to the City and to whom the City issues a Notice of Award.
63. *Superintendent*—The representative of the Contractor who is available at all times and able to receive instructions from the City and to act for the Contractor.
64. *Supplementary Conditions*—The part of the Contract set forth at Division 00 73 00 that amends or supplements these General Conditions.
65. *Supplier*—A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or a Subcontractor.
66. *Underground Facilities*—All underground lines, pipelines, conduits, ducts, encasements, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or systems at the Site, including but not limited to those facilities or systems that produce, transmit, distribute, or convey telephone or other communications, cable television, fiber optic transmissions, power, electricity, light, heat, gases, oil, crude oil products, liquid

petroleum products, water, steam, waste, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.

67. *Unit Price Work*—Work for which the Contract Price is determined by multiplying the unit price for the item by the estimated quantity of the item.
68. *Weekend Working Hours*—Those hours between 8:00 a.m. and 8:30 p.m. on Saturday, and between 1:00 p.m. and 8:30 p.m. on Sunday or on a federal or state holiday observed by the City, as approved in advance by the City for performing Work.
69. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction including any Change Order or Field Order, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.
70. *Working Day*—Defined as a Business Day but excluding any days that weather or other conditions beyond the reasonable control of the Contractor prevents the performance of the principal unit of work underway for a continuous period of not less than 7 hours between 7:00 a.m. and 8:00 p.m.

1.02 *Terminology*

- A. The words and terms discussed in Paragraphs 1.02.B, C, D, and E are not defined terms that require initial capital letters, but, when used in the Bidding Requirements or Contract, have the indicated meaning.
- B. *Intent of Certain Terms or Adjectives*: The Contract includes the terms “as allowed,” “as approved,” “as ordered,” “as directed” or terms of like effect or import to authorize an exercise of judgment by CityCity. In addition, the adjectives “reasonable,” “suitable,” “acceptable,” “proper,” “satisfactory,” or adjectives of like effect or import are used to describe an action or determination of City as to the Work. It is intended that such exercise of judgment, action, or determination will be to evaluate, in general, the Work for compliance with the information in the Contract Documents and with the design concept of the Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise).
- C. *Defective*: The word “defective,” when modifying the word “Work,” refers to Work that is unsatisfactory, faulty, or deficient in that it:
 1. does not conform to the Contract Documents; or
 2. does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents; or
 3. has been damaged prior to City’s written notice of Final Acceptance.
- D. *Furnish, Install, Perform, Provide*
 1. The word “furnish,” when used in connection with services, materials, or equipment, means to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.

2. The word “install,” when used in connection with services, materials, or equipment, means to put into use or place in final position said services, materials, or equipment complete and ready for intended use.
 3. The words “perform” or “provide,” when used in connection with services, materials, or equipment, means to execute, carry out, furnish and install said services, materials, or equipment complete and ready for intended use.
 4. If the Contract Documents establish an obligation of Contractor with respect to specific services, materials, or equipment, but do not expressly use any of the four words “furnish,” “install,” “perform,” or “provide,” then Contractor shall furnish and install said services, materials, or equipment complete and ready for intended use.
- E. Unless stated otherwise in the Contract, words or phrases that have a well-known technical or construction industry or trade meaning are used in the Contract in accordance with such recognized meaning.

ARTICLE 2 – PRELIMINARY MATTERS

2.01 *Delivery of Performance and Payment Bonds; Evidence of Insurance*

- A. Performance and Payment Bonds: When Contractor delivers the signed counterparts of the Agreement to City, Contractor shall also deliver to City the performance bond, payment bond and maintenance bond that comply with the provisions of Chapter 2253 of the Texas Government Code. Work will not be allowed to begin until the performance and payment bonds have been provided by the Contractor to the City.
- B. Evidence of Contractor’s Insurance: When Contractor delivers the signed counterparts of the Agreement to City, Contractor shall also deliver to City, with copies to each additional insured (as identified in the Contract), the certificates, endorsements, and other evidence of insurance required to be provided by Contractor in accordance with Article 6. Work will not be allowed to begin until the evidence of insurance has been provided by the Contractor to the City.

2.02 *Copies of Documents*

- A. City shall furnish to Contractor one (1) original executed copy and one (1) electronic copy of the Contract, and three (3) additional copies of the Drawings. Additional printed copies will be furnished upon request at the cost of reproduction.

2.03 *Before Starting Construction*

Baseline starting Work, Contractor shall submit for review by City the following in accordance with the Contract Documents:

- A. Baseline Schedules in accordance with General Requirements, Section 01 32 16.
- B. Preliminary Schedule of Submittals.
- C. Preliminary Schedule of Values: For lump sum contracts, a Schedule of Values for all of the Work that includes quantities and prices of items that when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

2.04 *Preconstruction Meeting*

- A. Before any Work at the Site is started, the Contractor shall attend a Preconstruction Meeting as specified in Section 01 31 19.

2.05 *Public Meeting*

- A. Contractor may not mobilize any equipment, materials, or resources to the Site prior to Contractor attending the Public Meeting as scheduled by the City.

2.06 *Initial Acceptance of Schedules*

- A. No progress payment shall be made to Contractor until acceptable Project Schedules are submitted to City in accordance with the Contract Documents.

2.07 *Electronic Submittals and Transmittals*

- A. Except as otherwise stated elsewhere in the Contract, the City and Contractor may send, and shall accept, Electronic Documents transmitted by Electronic Means.
- B. If the Contract does not establish protocols for Electronic Means, then City and Contractor shall jointly develop such protocols.
- C. Subject to any governing protocols for Electronic Means, when transmitting Electronic Documents by Electronic Means, the transmitting party makes no representations as to long-term compatibility, usability, or readability of the Electronic Documents resulting from the recipient's use of software application packages, operating systems, or computer hardware differing from those used in the drafting or transmittal of the Electronic Documents.

ARTICLE 3 – CONTRACT DOCUMENTS: INTENT, REQUIREMENTS, REUSE

3.01 *Intent*

- A. The Contract Documents are complementary; what is required by one Contract Document is as binding as if required by all.
- B. It is the intent of the Contract to describe a functionally complete Project to be constructed in accordance with the Contract Documents. Any labor, documentation, services, materials, or equipment that reasonably may be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the indicated result will be provided whether or not specifically called for, at no additional cost to City.
- C. City will issue clarifications and interpretations of the Contract Documents as provided herein.
- D. The Specifications may vary in form, forma and style. Some Specification sections may be written in varying degrees of streamlined or declarative style, and some sections may be relatively narrative by comparison. Omission of such words and phrases as “the Contractor shall,” “in conformity with,” “as shown,” or “as specified” are intentional in streamlined sections. Omitted words and phrases shall be supplied by inference. Similar types of provisions may appear in various parts of a section or articles within a part depending on the format of the section. The Contractor shall not take advantage of any variation of form, format or style in making Contract Claims or Damage Claims.

- E. The cross-referencing of Specification sections under the subparagraph heading “Related Sections include but are not necessarily limited to:” and elsewhere within each Specification section is provided as an aid and convenience to the Contractor. The Contractor shall not rely on the cross-referencing provided and shall be responsible to coordinate the entire Work under the Contract Documents and provide a complete Project whether or not cross-referencing is provided in each section or whether the cross-referencing is complete or accurate.

3.02 *Reference Standards*

A. Standards Specifications, Codes, Laws and Regulations

1. Reference in the Contract Documents to standard specifications, manuals, reference standards, or codes of any technical society, organization, or association, or to Laws or Regulations, whether such reference be specific or by implication, means the standard specification, manual, reference standard, code, or Laws or Regulations in effect at the time of opening of Bids (or on the Effective Date of the Agreement if there were no Bids), except as may be otherwise specifically stated in the Contract Documents.
2. No provision of any such standard specification, manual, reference standard, or code, and no instruction of a Supplier, will be effective to change the duties or responsibilities of City, Contractor, or any of their subcontractors, consultants, agents, or employees from those set forth in the Contract Documents. No such provision or instruction shall be effective to assign to City or any of its officers, elected or appointed officials, directors, members, partners, employees, agents, consultants, or subcontractors, any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents.

3.03 *Reporting and Resolving Discrepancies*

A. Reporting Discrepancies

1. *Contractor’s Verification of Figures and Field Measurements:* Before undertaking each part of the Work, Contractor shall carefully study the Contract Documents, and check and verify pertinent figures and dimensions therein, particularly with respect to applicable field measurements, and conditions. Contractor shall promptly report in writing to City any conflict, error, ambiguity, or discrepancy that Contractor discovers, or has actual knowledge of, and shall obtain a written interpretation or clarification from City before proceeding with any Work affected thereby.
2. *Contractor’s Review of Contract Documents:* If, before or during the performance of the Work, Contractor discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents, or between the Contract Documents and (a) any applicable Law or Regulation, (b) actual field conditions, (c) any standard specification, manual, reference standard, or code, or (d) any instruction of any Supplier, then Contractor shall promptly report it to City in writing. Contractor shall not proceed with the Work affected thereby (except in an emergency as required by Paragraph 7.1717) until the conflict, error, ambiguity, or discrepancy is resolved, by a clarification or interpretation by City, or by an amendment or supplement to the Contract issued pursuant to Paragraph 11.01.
3. Contractor shall not be liable to City for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless Contractor had actual knowledge thereof.

B. Resolving Discrepancies

1. Except as may be otherwise specifically stated in the Contract Documents, the provisions of the Contract Documents take precedence in resolving any conflict, error, ambiguity, or discrepancy between such provisions of the Contract Documents and:
 - a. the provisions of any standard specification, manual, reference standard, or code, or the instruction of any Supplier; or
 - b. the provisions of any Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).
2. In case of discrepancies, figured dimensions shall govern over scaled dimensions, Drawings shall govern over Specifications, and Supplementary Conditions shall govern over General Conditions and Specifications.

3.04 Requirements of the Contract Documents

- A. During the performance of the Work and until final payment, Contractor shall submit to the City in writing all matters in question concerning the requirements of the Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Contract Documents, as soon as possible after such matters arise. City will be the interpreter of the requirements of the Contract Documents, and judge of the acceptability of the Work.
- B. City will, with reasonable promptness, render a written clarification, interpretation, or decision on the issue submitted, or initiate an amendment or supplement to the Contract Documents. City's written clarification, interpretation, or decision will be final and binding on Contractor, unless Contractor appeals by filing a Contract Claim.

3.05 Reuse of Documents

- A. Contractor and its Subcontractors and Suppliers shall not:
 1. have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of Engineer or its consultants, including electronic media versions, or reuse any such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of CityCity and specific written verification or adaptation by Engineer; or
 2. have or acquire any title or ownership rights in any other Contract Documents, reuse any such Contract Documents for any purpose without City's express written consent, or violate any copyrights pertaining to such Contract Documents.
- B. The prohibitions of this Paragraph 3.05 05 will survive final payment, or termination of the Contract. Nothing herein precludes Contractor from retaining copies of the Contract Documents for record purposes.

ARTICLE 4 – COMMENCEMENT AND PROGRESS OF THE WORK**4.01** *Commencement of Contract Time; Notice to Proceed*

- A. The Contract Time will commence to run on the day indicated in the Notice to Proceed. A Notice to Proceed may be given at any time within 30 days after the Effective Date of the Contract.

4.02 *Starting the Work*

- A. Contractor shall start to perform the Work on the date when the Contract Time commences to run. No Work may be done at the Site prior to the date on which the Contract Time commences to run.

4.03 *Delays in Contractor's Progress*

- A. If Contractor is delayed, City shall not be liable to Contractor for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Contractor on or in connection with any other project or anticipated project. The City shall be liable only to the extent allowed by the provisions of the Contract and as allowed by Subchapter I, Chapter 271 of the Texas Local Government Code.
- B. Contractor shall not be entitled to an adjustment in Contract Price or Contract Time for delay, disruption, or interference caused by or within the control of Contractor. Delay, disruption, and interference attributable to and within the control of a Subcontractor or Supplier shall be deemed to be within the control of Contractor.
- C. The Contractor shall receive no compensation for delays or hindrances to the Work, except when direct and unavoidable extra cost to the Contractor is caused by the failure of the City to provide information or material, if any, that the Contract specifies is to be furnished by the City.
- D. If Contractor's performance or progress is delayed, disrupted, or interfered with by unanticipated causes not the fault of and beyond the control of City, Contractor, and those for whom they are responsible, then Contractor shall be entitled to an equitable adjustment in Contract Time. Such an adjustment will be Contractor's sole and exclusive remedy for the delays, disruption, and interference described in this Paragraph 4.03. D. The Contractor is responsible for the prompt submission of a request for an adjustment to the Contract Time under this Paragraph to the City. Causes of delay, disruption, or interference that may give rise to an adjustment in Contract Time under this Paragraph include but are not limited to the following:
 - 1. Severe and unavoidable natural catastrophes such as fires, floods, epidemics, and earthquakes;
 - 2. Abnormal weather conditions;
 - 3. Acts or failures to act of third-party utility owners or other third-party entities (other than those third-party utility owners or other third-party entities performing other work at or adjacent to the Site as arranged by or under contract with City, as contemplated in Article 8); and

4. Acts of war or terrorism.
- E. Contractor's entitlement to an adjustment of Contract Time or Contract Price is limited as follows:
 1. Contractor's entitlement to an adjustment of the Contract Time is conditioned on the delay, disruption, or interference adversely affecting an activity on the critical path to completion of the Work, as of the time of the delay, disruption, or interference.
 2. Contractor shall not be entitled to an adjustment in Contract Price for any delay, disruption, or interference if such delay is concurrent with a delay, disruption, or interference caused by or within the control of Contractor. Such a concurrent delay by Contractor shall not preclude an adjustment of Contract Time to which Contractor is otherwise entitled.
 3. Adjustments of Contract Time or Contract Price are subject to the provisions of Article 11.
- F. Each Contractor request or Change Order seeking an increase in Contract Time or Contract Price must be supplemented by supporting data that sets forth in detail the following:
 1. The circumstances that form the basis for the requested adjustment;
 2. The date upon which each cause of delay, disruption, or interference began to affect the progress of the Work;
 3. The date upon which each cause of delay, disruption, or interference ceased to affect the progress of the Work;
 4. The number of days' increase in Contract Time claimed as a consequence of each such cause of delay, disruption, or interference; and
 5. The impact on Contract Price, in accordance with the provisions of Paragraph 11.08.
 6. Contractor shall also furnish such additional supporting documentation as City may require including, where appropriate, a revised Project Schedule indicating all the activities affected by the delay, disruption, or interference, and an explanation of the effect of the delay, disruption, or interference on the critical path to completion of the Work.
- G. Delays, disruption, and interference to the performance or progress of the Work resulting from the existence of a differing subsurface or physical condition, an Underground Facility that was not shown or indicated by the Contract Documents, or not shown or indicated with reasonable accuracy, and those resulting from undisclosed Hazardous Environmental Conditions, are governed by Article 5, together with the provisions of Paragraphs 4.03.F and 4.03.G.

ARTICLE 5 – SITE; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS

5.01 *Availability of Lands*

- A. City shall furnish the Site. City shall notify Contractor in writing of any encumbrances or restrictions not of general application but specifically related to use of the Site with which

Contractor must comply in performing the Work. City will be responsible for obtaining any necessary easements for permanent structures or permanent changes in existing facilities.

1. The City has obtained or anticipates acquisition of and/or access to right-of-way, and/or easements. Any outstanding right-of-way and/or easements are anticipated to be acquired in accordance with the schedule set forth in the Supplementary Conditions. The Project Schedule submitted by the Contractor in accordance with the Contract Documents must consider any outstanding right-of-way, and/or easements.
 2. Unless otherwise specified in the Contract Documents, the City has or anticipates moving and/or relocating utilities, and obstructions to the Site. Any outstanding movement or relocation of utilities or obstructions is anticipated in accordance with the schedule set forth in the Supplementary Conditions. The Project Schedule submitted by the Contractor in accordance with the Contract Documents must consider any outstanding utilities or obstructions to be moved and/or relocated by others.
- B. Upon reasonable written request of Contractor, City shall furnish Contractor with a current statement of record legal title and legal description of the lands upon which the Work is to be performed.
- C. Contractor shall provide for any additional lands and access thereto not included in the Site that may be required for construction facilities or storage of materials and equipment. The cost of such shall be part of the Contract Price.

5.02 *Use of Site and Other Areas*

A. Limitation on Use of Site and Other Areas

1. Contractor shall confine construction equipment, temporary construction facilities, the storage of materials and equipment, worker car parking and the operations of workers to the Site, to adjacent areas that Contractor has arranged to use through construction easements or otherwise, and to other adjacent areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and such other adjacent areas with worker car parking, construction equipment or other materials or equipment. Contractor shall assume full responsibility for (a) damage to the Site; (b) damage to any such other adjacent areas used for Contractor's operations; (c) damage to any other adjacent land or areas, or to improvements, structures, utilities, or similar facilities located at such adjacent lands or areas; and (d) for injuries, including death, and damage to or losses of property sustained by the owners or occupants of any such land or areas; provided that such damage, losses, injuries or deaths arose out of or result from the performance of the Work or arose out of or resulted from any other actions or conduct of the Contractor or those for whom Contractor is responsible.
2. At any time when, in the judgment of the City, the Contractor has obstructed, closed, or is carrying on operations in a portion of a street, right-of-way, or easement greater than is necessary for proper execution of the Work, the City may require the Contractor to reduce the area impacted to only that necessary for proper execution of the Work and/or to finish the section on which operations are in progress before work is commenced on any additional area of the Site.

3. Construction equipment, spoil materials, supplies, forms, buildings, labs, or equipment and supply storage buildings, or any other item that may be transported by flood flows, shall not be stored within existing federal floodways during the course of the Work.
 4. Should any Damage Claim be made by any such owner or occupant adversely impacted because of the performance of the Work, Contractor shall promptly attempt to resolve the Damage Claim.
 5. ***PURSUANT TO PARAGRAPH 7.21, CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS CITY AND ITS OFFICERS, ELECTED AND APPOINTED OFFICIALS, AND EMPLOYEES, FROM AND AGAINST ALL CLAIMS, COSTS, LOSSES, AND DAMAGES ARISING OUT OF OR RELATING TO ANY CLAIM OR ACTION, LEGAL OR EQUITABLE, BROUGHT BY ANY SUCH ADVERSELY IMPACTED OWNER OR OCCUPANT AGAINST CITY.***
- B. *Removal of Debris During Performance of the Work:* During the progress of the Work the Contractor shall keep the Site and other adjacent areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris will conform to applicable Laws and Regulations.
- C. *Site Maintenance Cleaning:* If 24 hours after written notice is given to the Contractor that the clean-up at the Site is insufficient or occurring in a manner unsatisfactory to the City, the Contractor fails to correct the unsatisfactory condition and/or procedures, the City may take such direct action as the City deems appropriate to correct the clean-up deficiencies cited to the Contractor in the written notice, and the costs of such direct corrective action, plus 25 % of such costs, shall be deducted from the monies due or to become due to the Contractor under the Contract.
- D. *Final Site Cleaning:* Prior to Final Acceptance of the Work, Contractor shall clean the Site and the Work and make it ready for utilization by City and any adjacent property owners, if applicable. At the completion of the Work, Contractor shall remove from the Site and adjacent areas all tools, appliances, construction equipment and machinery, surplus materials, waste materials, rubbish and other debris and shall restore to original condition or better all areas impacted or disturbed by the Work.
- E. *Loading of Structures:* Contractor shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Contractor subject any part of the Work or adjacent structures or land to stresses or pressures that will endanger them.
- 5.03 *Subsurface and Physical Conditions*
- A. *Reports and Drawings:* The Supplementary Conditions identify:
1. Those reports known to City of explorations and tests of subsurface conditions at or contiguous to the Site; and
 2. Those drawings known to City of existing physical conditions at or contiguous to the Site, including those drawings known to City depicting existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities.).
- B. *Underground Facilities:* Underground Facilities are shown or indicated on the Drawings, pursuant to Paragraph 5.05, and not in the drawings referred to in Paragraph 5.03.A.

Information and data regarding the presence or location of Underground Facilities are not intended to be categorized, identified, or defined as technical data.

- C. *Reliance by Contractor on Technical Data:* Contractor is provided certain technical data identified in the Supplementary Conditions with respect to such reports and drawings for its use, but the City does not warrant or guarantee the accuracy of the information, and such information including reports and drawings are not Contract Documents. Contractor may not make any Contract Claim against City, or any of their officers, elected or appointed officials, directors, members, partners, employees, agents, consultants, or subcontractors with respect to:
1. the completeness or accuracy of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto; or
 2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or
 3. the contents of other Site-related documents made available to Contractor, such as record drawings from other projects at or adjacent to the Site, or City's archival documents concerning the Site; or
 4. any Contractor interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions, or information.

5.04 *Differing Subsurface or Physical Conditions*

- A. *Notice by Contractor:* If Contractor believes that any subsurface or physical condition that is uncovered or revealed at the Site either:
1. is of such a nature as to establish that any "technical data" is materially inaccurate; or
 2. is of such a nature as to require a change in the Contract Documents; or
 3. differs materially from that shown or indicated in the Contract Documents; or
 4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents;

then Contractor shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency as required by Paragraph 7.17), notify City in writing about such condition.

- B. *Possible Price and Time Adjustments*
1. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Time if:
 - a. Contractor knew of the existence of such condition at the time Contractor made a final commitment to City with respect to Contract Price and Contract Time by the submission of a Bid or becoming bound under the Contract; or

- b. The existence of such condition reasonably could have been discovered or revealed as a result of the examination of the Contract Documents or the Site; or
 - c. Contractor failed to give the written notice required by Paragraph 5.04.A.
- C. *Underground Facilities; Hazardous Environmental Conditions:* Paragraph 5.05 governs rights and responsibilities regarding the presence or location of Underground Facilities. Paragraph 5.06 governs rights and responsibilities regarding Hazardous Environmental Conditions. The provisions of Paragraphs 5.03 and 5.04 are not applicable to the presence or location of Underground Facilities, or to Hazardous Environmental Conditions.

5.05 *Underground Facilities*

- A. *Shown or Indicated:* The information and data shown or indicated in the Contract Documents with respect to Underground Facilities at or contiguous to the Site is based on information and data furnished to City or Engineer by the owners of such Underground Facilities, including City, or by others, unless it is otherwise expressly provided in the Supplementary Conditions::
- 1. City and Engineer shall not be responsible for the accuracy or completeness of any such information or data provided by others; and
 - 2. the cost of all of the following are included in the Contract Price, and Contractor shall have full responsibility for:
 - a. reviewing and checking all information and data;
 - b. verifying the actual location of those Underground Facilities shown or indicated in the Contract Documents as being within the area affected by the Work, by exposing such Underground Facilities during the course of construction;
 - c. coordination and adjustment of the Work with the owners (including City) of such Underground Facilities, during construction; and
 - d. the safety and protection of all existing Underground Facilities at the Site, and repairing any damage thereto resulting from the Work.
- B. *Not Shown or Indicated:*
- 1. If an Underground Facility that is uncovered or revealed at the Site was not shown or indicated on the Drawings or otherwise indicated in the Contract Documents, or was not shown or indicated on the Drawings or in the Contract Documents with reasonable accuracy, then Contractor shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by Paragraph 7.17), identify the owner of such Underground Facility and give notice to that owner and to City. Contractor shall be responsible for the safety and protection of such discovered Underground Facility.
 - 2. If City concludes that a change in the Contract Documents is required, a Change Order may be issued to reflect and document such consequences, subject to the provisions of Article 11.
 - 3. Verification of existing utilities, structures, and service lines shall include notification of all utility companies a minimum of 48 hours in advance of construction including exploratory excavation if necessary.

5.06 *Hazardous Environmental Conditions at Site*

- A. *Reports and Drawings*: The Supplementary Conditions identify:
1. those reports known to City relating to Hazardous Environmental Conditions that have been identified at the Site; or
 2. drawings known to City relating to Hazardous Environmental Conditions that have been identified at the Site.
- B. *Reliance by Contractor on Technical Data*: Contractor is provided certain technical data identified in the Supplementary Conditions with respect to such reports and drawings for its use, but the City does not warrant or guarantee the accuracy of the information, and such information including reports and drawings are not Contract Documents. Contractor may not make any Contract Claim against City, or any of its officers, elected or appointed officials, directors, members, partners, employees, agents, consultants, or subcontractors with respect to:
1. the completeness or accuracy of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto; or
 2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or
 3. the contents of other Site-related documents made available to Contractor, such as record drawings from other projects at or adjacent to the Site, or City's archival documents concerning the Site; or
 4. any Contractor interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions, or information.
- C. Contractor shall not be responsible for a Hazardous Environmental Condition uncovered or revealed at the Site if such Hazardous Environmental Condition was not shown or indicated in Drawings or Specifications or identified if the removal or remediation of such Hazardous Environmental Condition was not identified in the Contract Documents to be within the scope of the Work. Contractor shall be responsible for a Hazardous Environmental Condition created by the actions of or with any materials brought to the Site by Contractor, Subcontractors, Suppliers or anyone else for whom Contractor is responsible and the costs associated with the same.
- D. If Contractor encounters, uncovers, or reveals a Hazardous Environmental Condition whose removal or remediation is not expressly identified in the Contract Documents as being within the scope of the Work, or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, then Contractor shall immediately: (1) secure or otherwise isolate such condition; (2) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 7.17); and (3) notify City (and promptly thereafter confirm such notice in writing). City may consider the necessity to retain a qualified expert to evaluate such condition or take corrective action, if any.

- E. Contractor shall not be required to resume Work in connection with a Hazardous Environmental Condition identified pursuant to Paragraph 5.06.D or in any affected area until after City has obtained any required permits related thereto, and delivered written notice to Contractor either (1) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work, or (2) specifying any special conditions under which such Work may be resumed.
- F. If, after receipt of such written notice, Contractor does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then City may order the portion of the Work that is in the area affected by such condition to be deleted from the Work and the Contract Price. City may have such deleted portion of the Work performed by City's own forces or others.
- G. ***TO THE FULLEST EXTENT PERMITTED BY LAWS AND REGULATIONS, CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS CITY, AND ITS OFFICERS, ELECTED AND APPOINTED OFFICIALS, DIRECTORS, MEMBERS, PARTNERS, EMPLOYEES, AGENTS, CONSULTANTS, AND SUBCONTRACTORS OF EACH AND ANY OF THEM, FROM AND AGAINST ALL CLAIMS, COSTS, LOSSES, AND DAMAGES (INCLUDING BUT NOT LIMITED TO ALL FEES AND CHARGES OF ENGINEERS, ARCHITECTS, ATTORNEYS, AND OTHER PROFESSIONALS AND ALL COURT ARBITRATION OR OTHER DISPUTE RESOLUTION COSTS) FOR PERSONAL INJURY, DEATH OR PROPERTY DAMAGE ARISING OUT OF OR RELATING TO A HAZARDOUS ENVIRONMENTAL CONDITION CREATED BY CONTRACTOR OR BY ANYONE FOR WHOM CONTRACTOR IS RESPONSIBLE. NOTHING IN THIS PARAGRAPH 5.06.CityG OBLIGATES CONTRACTOR TO INDEMNIFY ANY INDIVIDUAL OR ENTITY FROM AND AGAINST THE CONSEQUENCES OF THAT INDIVIDUAL'S OR ENTITY'S OWN NEGLIGENCE.***
- H. The provisions of Paragraphs 5.03, 5.04, and 5.05 do not apply to the presence of a Hazardous Environmental Condition uncovered or revealed at the Site.

ARTICLE 6 – BONDS AND INSURANCE

6.01 *Licensed Sureties and Insurers*

- A. All bonds and insurance required by the Contract Documents to be purchased and maintained by Contractor shall be obtained from surety or insurance companies that are duly licensed or authorized in the State of Texas to issue bonds or insurance policies for the limits and coverages required. Such surety and insurance companies shall also meet such additional requirements and qualifications as may be provided in the Supplementary Conditions.

6.02 *Performance, Payment, and Maintenance Bonds*

- A. Contractor shall furnish a performance bond and a payment bond, in accordance with the provisions of the Texas Government Code Chapter 2253 or successor statute and as required by the City, each in an amount at least equal to the Contract Price, as security for the faithful performance and payment of all of Contractor's obligations under the Contract. The performance and payment bonds must be provided by the Contractor to the City prior to the Contractor beginning any Work.

- B. Contractor shall furnish maintenance bonds in an amount equal to the Contract Price as security to protect the City against any defects in any portion of the Work described in the Contract Documents. Maintenance bonds shall remain in effect for two (2) years after the date of Final Acceptance by the City. The maintenance bond(s) shall be provided as directed by the City as part of the close-out of the Contract and shall be provided prior to the final payment being made.
- C. All bonds shall be in the form prescribed by the Contract Documents, except as provided otherwise by Laws and Regulations, and must be issued and signed by a surety named in “Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies” as published in Department Circular 570 (as amended and supplemented) by the Bureau of the Fiscal Service, U.S. Department of the Treasury. A bond signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual’s authority to bind the surety. The evidence of authority must show that it is effective on the date the agent or attorney-in-fact signed the accompanying bond.
- D. If the surety on a bond furnished by Contractor is declared bankrupt or becomes insolvent, or the surety ceases to meet the requirements above, or its right to do business is terminated in the State of Texas, then Contractor shall promptly notify City in writing and shall, within 30 days after the event giving rise to such notification, provide another bond and surety, both of which must comply with the bond and surety requirements above.
- E. If Contractor has failed to obtain a required bond, City may refuse to allow the Contractor to begin Work, exclude the Contractor from the Site and exercise City’s termination rights under Article 15.
- F. Upon request to Contractor from any Subcontractor, Supplier, or other person or entity claiming to have furnished labor, services, materials, or equipment used in the performance of the Work, Contractor shall provide a copy of the payment bond to such person or entity.

6.03 *Certificates of Insurance*

- A. Contractor shall deliver to City, with copies to each additional insured and loss payee identified in the Supplementary Conditions, certificates of insurance and endorsements (and other evidence of insurance requested by City or any other additional insured) establishing that Contractor has obtained and is maintaining the policies and coverages required by these General Conditions and the Supplementary Conditions prior to beginning any Work.
 - 1. The certificate of insurance shall document the City, and all identified entities named in the Supplementary Conditions as “additional insureds” on all liability policies.
 - 2. The Contractor’s general liability insurance shall include a “per project” or “per location” endorsement, that shall be identified in the certificate of insurance provided to the City.
 - 3. The certificate shall be signed by an agent authorized to bind coverage on behalf of the insured, be complete in its entirety, and show complete insurance carrier names as listed in the current A.M. Best Property & Casualty Guide.
 - 4. The insurers for all policies must be licensed and/or approved to do business in the State of Texas. Except for workers’ compensation, all insurers must have a minimum rating of A-: VII in the current A. M. Best Key Rating Guide or have reasonably equivalent

financial strength and solvency to the satisfaction City. If the rating is below that required, written approval of City is required.

5. All applicable policies shall include a Waiver of Subrogation (Rights of Recovery) in favor of the City. In addition, the Contractor agrees to waive all rights of subrogation against the Engineer (if applicable), and each additional insured identified in the Supplementary Conditions
6. Failure of the City to demand such certificates or other evidence of full compliance with the insurance requirements or failure of the City to identify a deficiency from evidence that is provided shall not be construed as a waiver of Contractor's obligation to maintain such lines of insurance coverage or to provide such certificates or other evidence of full compliance with the insurance requirements.
7. If insurance policies are not written for specified coverage limits, an Umbrella or Excess Liability insurance for any differences is required. Excess Liability shall follow form of the primary coverage.
8. Unless otherwise stated, all required insurance shall be written on the "occurrence basis". If If City agrees in writing that coverage is underwritten may be written on a claims-made basis, the retroactive date shall be coincident with or prior to the date of the effective date of the Agreement and the certificate of insurance shall state that the coverage is claims-made and the retroactive date. The insurance coverage shall be maintained for the duration of the Contract and for three (3) years following Final Acceptance or for the warranty period provided for under the Contract Documents or for the warranty period, whichever is longer. An annual certificate of insurance submitted to the City shall evidence such insurance coverage.
9. Policies shall have no exclusions by endorsements that either nullify or amend the required lines of coverage, nor or decrease the limits of said coverage unless such endorsements are approved in writing by the City. In the event a Notice of an Award has been issued or the Agreement executed, and the policy exclusions are determined to be unacceptable or the City desires that the Contractor obtain additional insurance coverage the contract price shall be adjusted by the cost of the premium for such additional coverage plus 10%.
10. For any proposed self-insured retention (SIR,) in excess of \$25,000.00, affecting insurance coverage, Contractor must obtain the written approval of the City in regard to asset value and stockholders' equity. In lieu of traditional insurance, proposed alternative coverage maintained through insurance pools or, risk retention groups, or self-funding will also require the written approval of the City.
11. Any deductible in excess of \$5,000.00, for any policy that does not provide coverage on a first-dollar basis must be acceptable to and approved in writing by the City.
12. City, at its sole discretion, reserves the right to review the insurance requirements and to make reasonable adjustments to insurance coverages and limits when deemed necessary and prudent by the City based upon the scope of the Work, changes in statutory law, court decision or the claims history of the industry as well as of the contracting party to the City. The City will provide prior notice of 90 days and the insurance adjustments shall be incorporated into the Work by Change Order.

13. City shall be entitled, upon written request to Contractor and without expense to City, to receive copies of policies and endorsements thereto and. City may make any reasonable requests for deletion or revision or modifications of particular policy terms, conditions, limitations, or exclusions necessary to conform the policy and endorsements to the requirements of the Contract. Deletions, revisions, or modifications shall not be required where policy provisions are established by law or regulations binding upon either party or the underwriter on any such policies.
14. City shall not be responsible for the direct payment of insurance premium costs for Contractor's insurance.

6.04 *Contractor's Insurance*

- A. *Workers Compensation and Employers' Liability:* Contractor shall purchase and maintain such insurance coverage with limits consistent with statutory benefits outlined in the Texas Workers' Compensation Act (Texas Labor Code, Ch. 406, as amended), and minimum limits for Employers' Liability as is appropriate for the Work being performed and as will provide protection from claims set forth below which may arise out of or result from Contractor's performance of the Work and Contractor's other obligations under the Contract Documents, whether it is to be performed by Contractor, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable:
 1. claims under workers' compensation, disability benefits, and other similar employee benefit acts;
 2. claims for damages because of bodily injury, occupational sickness or disease, or death of employees.
- B. *Commercial General Liability.* Coverage shall include but not be limited to covering liability (bodily injury, including death, or property damage) arising from: premises/operations, independent contractors, products/completed operations, personal injury including death, liability under an insured contract, and explosion/collapse/underground (where those exposures exist). Insurance shall be provided on an occurrence basis, and as comprehensive as the current Insurance Services Office (ISO) policy. 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 policy shall have no exclusions by endorsements that would alter or nullify premises/operations, products/completed operations, contractual, personal injury, or advertising injury, that are normally contained with the policy, unless the City approves such exclusions in writing.

For construction projects that present a substantial completed operation exposure, the City may require the Contractor to maintain completed operations coverage for a minimum of no less than three (3) years following the completion of the project (if identified in the Supplementary Conditions)).
- C. *Automobile Liability.* A commercial business auto policy shall provide coverage on "any auto", defined as autos owned, hired and non-owned and provide indemnity for claims for damages because of bodily injury or death of any person and/or property damage arising out of or related to the work, maintenance or use of any motor vehicle by the Contractor, any

Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable.

- D. *Railroad Protective Liability.* If any of the Work or any warranty work is within the limits of railroad right-of-way, the Contractor shall comply with the requirements identified in the Supplementary Conditions.
- E. *Notification of Policy Cancellation:* Contractor shall immediately notify City upon cancellation or other loss of insurance coverage. Contractor shall stop Work until replacement insurance has been procured. There shall be no time credit for delays or days not worked pursuant to this section.

6.05 *Acceptance of Bonds and Insurance; Option to Replace*

- A. If City has any objection to the coverage afforded by or other provisions of the bonds or insurance required to be purchased and maintained by the Contractor in accordance with Article 6 or the Supplementary Conditions on the basis of non-conformance with the Contract Documents, the City shall so notify the Contractor in writing within 10 Business Days after receipt of the certificates (or other evidence requested). Contractor shall provide to the City such additional information in respect of insurance provided as the City may reasonably request. If Contractor does not purchase or maintain all of the bonds and insurance required by the Contract Documents, the City shall notify the Contractor in writing of such failure prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage. Such failure to provide bonds or insurance as required by the Contract Documents is a breach of the terms of the Contract and the City may terminate the Contractor in accordance with the provisions of the Contract Documents.

ARTICLE 7 – CONTRACTOR’S RESPONSIBILITIES

7.01 *Contractor’s Means and Methods of Construction*

- A. Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction.
- B. If the Contract Documents note, or Contractor determines, that professional engineering or other design services are needed to carry out Contractor’s responsibilities for construction means, methods, techniques, sequences, and procedures, or for Site safety, then Contractor shall cause such services to be provided by a properly licensed design professional, at Contractor’s expense. Such services are not City-delegated professional design services under this Contract, and neither City nor Engineer has any responsibility with respect to (1) Contractor’s determination of the need for such services, (2) the qualifications or licensing of the design professionals retained or employed by Contractor, (3) the performance of such services, or (4) any errors, omissions, or defects in such services.

7.02 *Supervision and Superintendence*

- A. Contractor shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents.
- B. At all times during the progress of the Work, Contractor shall identify and assign a competent superintendent, who is proficient in English, and who shall not be replaced without written

notice to City of the name of the replacement superintendent. If at any time the superintendent is not satisfactory to the City, Contractor shall, if requested by City, replace the superintendent with another satisfactory to City.

- C. Contractor shall notify the City 24 hours prior to moving areas during the sequence of construction.

7.03 *Labor; Working Hours*

- A. Contractor shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. Contractor shall at all times maintain good discipline and order at the Site.
- B. Contractor shall be fully responsible to City for all acts and omissions of Contractor's employees; of Suppliers and Subcontractors, and their employees; and of any other individuals or entities performing or furnishing any of the Work, just as Contractor is responsible for Contractor's own acts and omissions.
- C. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site shall be performed during regular working hours on Business Days. Contractor will not permit the performance of Work outside of regular working hours on Business Days without City's prior written consent (which will not be unreasonably withheld)). Contractor's written request (by letter or electronic communication) for City's written consent must be made as follows:
 - 1. for Work beyond regular working hours on Business Days, request must be made by noon at least two (2) Business Days prior;
 - 2. for Work during Weekend Working Hours, request must be made by noon of the preceding Wednesday; and
 - 3. for Work on state or federal holidays observed by the City, request must be made sufficiently in advance of the holiday, to satisfy requirements for City Council approval.

7.04 *Services, Materials, and Equipment*

- A. Unless otherwise specified in the Contract Documents, Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, Contractor required testing, start up, and completion of the Work, whether or not such items are specifically called for in the Contract Documents.
- B. All materials and equipment incorporated into the Work shall be as specified or, if not specified, shall be of sufficient quality to complete the Work, and must be new and of good quality, except as otherwise provided in the Contract Documents. All special warranties and guarantees required by the Specifications shall expressly run to the benefit of City. If required by City, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment.
- C. All materials and equipment to be incorporated into the Work shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with

instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents.

- D. All items of standard equipment to be incorporated into the Work shall be the latest model at the time of bid, unless otherwise specified.

7.05 *Project Schedule*

- A. Contractor shall adhere to the Project Schedule established in accordance with Paragraph 2.06 and the General Requirements as it may be adjusted from time to time as provided below.
1. Contractor shall submit to the City for acceptance (to the extent indicated in Paragraph 2.06 and the General Requirements) proposed adjustments in the Project Schedule that will not result in changing the Contract Time. Such adjustments must comply with any provisions of the General Requirements applicable thereto.
 2. Contractor shall submit to City a monthly Project Schedule with a monthly progress payment request for the duration of the Contract in accordance with the Construction Progress Schedule, General Requirements 01 32 16.
 3. Proposed adjustments in the Project Schedule that will change the Contract Time shall be submitted in accordance with the requirements of Article 11. Adjustments in Contract Time may only be made by a Change Order.

7.06 *“Or Equals”*

- A. *Contractor’s Request; Governing Criteria:* Whenever an item of equipment or material is specified or described in the Contract Documents by using the names of one or more proprietary items or specific Suppliers, the Contract Price has been based upon Contractor furnishing such item as specified. The specification or description of such an item is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or “or equal” item is permitted, Contractor may request that City permit the use of other items of equipment or material, or items from other proposed Suppliers, under the circumstances described below.
1. If City in its sole discretion determines that an item of equipment or material proposed by Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will be required, it may be considered by City as an “or equal” item. For the purposes of this Paragraph, a proposed item of equipment or material will be considered functionally equal to an item so named if:
 - a. the City determines that:
 - 1) it is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;
 - 2) it will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole;
 - 3) it has a proven record of performance and availability of responsive service; and
 - 4) it is not objectionable to City.

- b. Contractor certifies that, if the proposed item is approved and incorporated into the Work:
 - 1) there will be no increase in cost to the City or increase in Contract Time; and
 - 2) the item will conform substantially to the detailed requirements of the item named in the Contract Documents.
- B. *Contractor's Expense*: Contractor shall provide all data in support of any proposed "or equal" item at Contractor's expense.
- C. *City's Evaluation and Determination*: City will be allowed a reasonable time to evaluate each "or-equal" request. City may require Contractor to furnish additional data about the proposed "or-equal" item. City will be the sole judge of acceptability. No "or-equal" item will be ordered, furnished, installed, or utilized until City's review is complete and City determines that the proposed item is an "or-equal." City." City will advise Contractor in writing of its determination.
- D. *Effect of City's Determination*: Neither approval nor denial of an "or-equal" request will result in any change in Contract Price. The City's denial of an "or-equal" request will be final and binding, and may not be reversed through an appeal under any provision of the Contract.
- E. *Treatment as a Substitution Request*: If City determines that an item of equipment or material proposed by Contractor does not qualify as an "or-equal" item, Contractor may request that City consider the item a proposed substitution pursuant to Paragraph 7.07.

7.07 Substitutions

- A. *Contractor's Request; Governing Criteria*: Unless the specification or description of an item of equipment or material required to be furnished under the Contract Documents contains or is followed by words reading that no substitution is permitted, Contractor may request that City permit the use of other items of equipment or material under the circumstances described below. To the extent possible such requests must be made before commencement of related Work at the Site.
 - 1. Contractor shall submit sufficient information as provided below to allow City to determine if the item of material or equipment proposed is functionally equivalent to that named and an acceptable substitution therefor. City will not accept requests for review of proposed substitute items of equipment or material from anyone other than Contractor.
 - 2. The requirements for review by City will be as set forth in Paragraph 7.07.B, as supplemented by the Specifications, and as City may decide is appropriate under the circumstances.
 - 3. Contractor shall make written application to City for review of a proposed substitute item of equipment or material that Contractor seeks to furnish or use. The application shall comply with Section 01 25 00 and:
 - a. will certify that the proposed substitute item will:
 - 1) perform adequately the functions and achieve the results called for by the general design;
 - 2) be substantially similar in substance to the item specified; and

- 3) be well-suited to the same use as the item specified.
 - b. will state:
 - 1) the extent, if any, to which the use of the proposed substitute item will adversely impact Contractor's achievement of Final Acceptance on or before the Contract Time;
 - 2) whether use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with City for other work on the Project) to adapt the design to the proposed substitute item; and
 - 3) whether incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty.
 - c. will identify:
 - 1) all variations of the proposed substitute item from the item specified; and
 - 2) available engineering, sales, maintenance, repair, and replacement services.
 - d. will contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including but not limited to changes in Contract Price, shared savings, costs of redesign, and Damage Claims of other contractors affected by any resulting change.
- B. *City's Evaluation and Determination:* City will be allowed a reasonable time to evaluate each substitution request. City may require Contractor to furnish additional data about the proposed substitute item. City will be the sole judge of acceptability. No substitute will be ordered, furnished, installed, or utilized until City's review is complete and City determines that the proposed item is an acceptable substitution. City's approval determination will be evidenced by a Change Order accounting for the substitution itself and all related impacts, including changes in Contract Price or Contract Time. City will advise Contractor in writing of any denial determination.
- C. *Special Guarantee:* City may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitution. ***Contractor shall indemnify and hold harmless City and its officers, elected and appointed officials, employees, agents, consultants and subcontractors and anyone directly or indirectly employed by them from and against any and all claims, damages, losses and expenses (including attorney's fees) arising out of or relateds to the use of substituted materials or equipment.***
- D. *Reimbursement of City's Cost:* City will record City's costs in evaluating a substitution proposed or submitted by Contractor. Whether or not City approves a substitute so proposed or submitted by Contractor, Contractor shall reimburse City for evaluating each such proposed substitute. Contractor shall also reimburse City for the charges for making changes in the Contract Documents (or in the provisions of any other direct contract with City) resulting from the acceptance of each proposed substitute.
- E. *Contractor's Expense:* Contractor shall provide all data in support of any proposed substitute at Contractor's expense.

- F. *City Substitution Reimbursement:* Cost savings attributable to acceptance of a substitution shall be paid to City by Contractor by an appropriate Change Order decreasing the Contract Price.
- G. *Effect of City's Determination:* If City approves the substitution request, Contractor shall execute the proposed Change Order and proceed with the substitution. The City's denial of a substitution request will be final and binding, and may not be reversed through an appeal under any provision of the Contract. Contractor may challenge the scope of reimbursement costs imposed under Paragraph 7.07.D, by timely submittal of a Change Order.

7.08 *Concerning Subcontractors and Suppliers*

- A. Contractor shall perform with its own organization, and with the assistance of workmen under its immediate superintendence, work of a value not less than 51% of the Contract Price, unless otherwise approved by the City.
- B. Contractor may retain Subcontractors and Suppliers for the performance of parts of the Work. Contractor shall not employ any Subcontractor, Supplier, or other individual or entity, whether initially or as a replacement, against whom City may have reasonable objection. Contractor shall not be required to employ any Subcontractor, Supplier, or other individual or entity to furnish or perform any of the Work against whom Contractor has reasonable objection, except as provided in Paragraph 7.08.C. The Contractor's retention of a Subcontractor or Supplier for the performance of parts of the Work will not relieve Contractor's obligation to City to perform and complete the Work in accordance with the Contract.
- C. The City may require the use of specific Subcontractors, Suppliers, or other individuals or entities for the performance of designated parts of the Work , and will provide such requirements in the Supplementary Conditions.
- D. Contractor shall provide to City as part of the Bid, the identity of all proposed Subcontractors and Suppliers. Such proposed Subcontractor or Supplier shall be deemed acceptable to City unless City raises a substantive, reasonable objection prior to execution of the Agreement.
- E. Contractor shall be fully responsible to City for all acts and omissions of the Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work under a direct or indirect contract with Contractor just as Contractor is responsible for Contractor's own acts and omissions. Nothing in the Contract:
 - 1. shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship between City and any such Subcontractor, Supplier or other individual or entity; nor
 - 2. shall create any obligation on the part of City to pay or to see to the payment of any moneys due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws and Regulations.
- F. No acceptance by City of any such Subcontractor or Supplier, whether initially or as a replacement, will constitute a waiver of the right of City to the completion of the Work in accordance with the Contract Documents, Contract Price and Contract Time.
- G. Contractor shall be solely responsible for scheduling and coordinating the tasks of Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work under a direct or indirect contract with Contractor.

- H. All Work performed for Contractor by a Subcontractor or Supplier must be pursuant to an appropriate contractual agreement that specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract for the benefit of City. Contractor must comply with all applicable federal, state, and local laws, statutes, ordinances or regulations, including but not limited to immigration laws, workers compensation laws and wage laws, in the hiring of any Subcontractor or Supplier and shall ensure that each Subcontractor or Supplier has the same obligations.
- I. Contractor shall restrict all Subcontractors and Suppliers from communicating with City, except through Contractor or in case of an emergency, or as otherwise expressly allowed in this Contract.

7.09 *Wage Rates*

- A. *Duty to pay Prevailing Wage Rates:* The Contractor shall comply with all requirements of Chapter 2258, Texas Government Code (as amended), including the payment of not less than the rates determined by the City Council of the City of Denton to be the prevailing wage rates in accordance with Chapter 2258. The then current prevailing wage rates at the time of execution of the Agreement are included in these Contract Documents.
- B. *Penalty for Violation:* A Contractor or any Subcontractor who does not pay the prevailing wage shall, upon demand made by the City, pay to the City \$60 for each worker employed for each calendar day or part of the day that the worker is paid less than the prevailing wage rates stipulated in these contract documents. This penalty shall be retained by the City to offset its administrative costs, pursuant to Texas Government Code Section 2258.023.
- C. *Complaints of Violations and City Determination of Good Cause:* On receipt of information, including a complaint by a worker, concerning an alleged violation of Section 2258.023, Texas Government Code, by a Contractor or Subcontractor, the City shall make an initial determination, before the 31st day after the date the City receives the information, as to whether good cause exists to believe that the violation occurred. The City shall notify in writing the Contractor or Subcontractor and any affected worker of its initial determination. Upon the City's determination that there is good cause to believe the Contractor or Subcontractor has violated Chapter 2258, the City shall retain the full amounts claimed by the claimant or claimants as the difference between wages paid and wages due under the prevailing wage rates, such amounts being retained from successive progress payments pending a final determination of the violation.
- D. *Arbitration Required if Violation Not Resolved:* An issue relating to an alleged violation of Section 2258.023, Texas Government Code, including a penalty owed to the City or an affected worker, shall be submitted to binding arbitration in accordance with the Texas General Arbitration Act (Article 224 et seq., Revised Statutes) if the Contractor or Subcontractor and any affected worker does not resolve the issue by agreement before the 15th day after the date the City makes its initial determination pursuant to Paragraph 7.09.C. If the persons required to arbitrate under this section do not agree on an arbitrator before the 11th day after the date that arbitration is required, a district court shall appoint an arbitrator on the petition of any of the persons. The City is not a party in the arbitration. The decision and award of the arbitrator is final and binding on all parties and may be enforced in any court of competent jurisdiction.

- E. *Records to be Maintained:* The Contractor and each Subcontractor shall, for a period of three (3) years following the date of Final Acceptance, maintain records that show (i) the name and occupation of each worker employed by the Contractor in the construction of the Work provided for in this Contract; and (ii) the actual per diem wages paid to each worker. The records shall be available in Denton County, Texas at all reasonable hours for inspection by the City. The provisions of Paragraph 7.23, Right to Audit, shall pertain to this inspection.
- F. *Progress Payments:* With each progress payment request or payroll period, whichever is less, the Contractor shall submit an affidavit stating that the Contractor has complied with the requirements of Chapter 2258, Texas Government Code.
- G. *Posting of Wage Rates:* The Contractor shall post prevailing wage rates in a conspicuous place at the Site at all times.
- H. *Subcontractor Compliance:* The Contractor shall include in its subcontracts and/or shall otherwise require all of its Subcontractors to comply with Paragraphs 7.09.A through 7.09.G.

7.10 *Patent Fees and Royalties*

- A. Contractor shall pay all patent or license fees and royalties and pay all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. If an invention, design, process, product, or device is specified in the Contract Documents for use in the performance of the Work and if, to the actual knowledge of City, its use is subject to patent rights or copyrights calling for the payment of any patent or license fee or royalty to others, the existence of such rights will be disclosed in the Contract Documents. Failure of the City to disclose such information does not relieve the Contractor from its obligations to pay said fees or, royalties or costs to others.
- B. ***TO THE FULLEST EXTENT PERMITTED BY LAWS AND REGULATIONS, CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS CITY, AND ITS OFFICERS, ELECTED AND APPOINTED OFFICIALS, DIRECTORS, MEMBERS, PARTNERS, EMPLOYEES, AGENTS, CONSULTANTS AND SUBCONTRACTORS OF EACH AND ANY OF THEM, FROM AND AGAINST ALL CLAIMS, COSTS, LOSSES, AND DAMAGES (INCLUDING BUT NOT LIMITED TO ALL FEES AND CHARGES OF ENGINEERS, ARCHITECTS, ATTORNEYS, AND OTHER PROFESSIONALS AND ALL COURT OR ARBITRATION OR OTHER DISPUTE RESOLUTION COSTS) ARISING OUT OF OR RELATING TO ANY INFRINGEMENT OF PATENT RIGHTS OR COPYRIGHTS INCIDENT TO THE USE IN THE PERFORMANCE OF THE WORK OR RESULTING FROM THE INCORPORATION IN THE WORK OF ANY INVENTION, DESIGN, PROCESS, PRODUCT, OR DEVICE.***

7.11 *Permits and Utilities*

- A. *Contractor obtained permits and licenses.* Unless otherwise expressly provided in the Contract Documents, Contractor shall obtain and pay for all construction permits and licenses. City shall provide reasonable assistance to Contractor, if necessary, in obtaining such permits and licenses. Contractor shall pay all governmental charges and inspection fees necessary for the prosecution of the Work applicable at the time the Notice of Award is issued, except for permits provided by the City as specified in Paragraph 7.11.B. City shall pay the charges of utility service providers for connections for providing permanent service to the Work.

- B. *City obtained permits and licenses.* City will obtain and pay for those permits and licenses identified as City's responsibility in the Supplementary Conditions or Contract Documents. It will be the Contractor's responsibility to comply with and carry out the provisions of the permit. If the Contractor initiates changes to the Contract and the City approves the changes, the Contractor is responsible for obtaining clearances and coordinating with the appropriate regulatory agency, relating to the changes. The City will not reimburse the Contractor for any cost associated with the requirements of any City acquired permit. The following are permits the City will obtain if required:
1. Texas Department of Transportation Permits
 2. U.S. Army Corps of Engineers Permits
 3. Texas Commission on Environmental Quality Permits
 4. Railroad Company Permits
 5. Texas Department of Licensing and Regulation (TDLR) Permits
- C. *Outstanding permits and licenses.* Any outstanding permits and licenses are anticipated to be acquired in accordance with the schedule set forth in the Supplementary Conditions. The Project Schedule submitted by the Contractor in accordance with the Contract Documents must consider any outstanding permits and licenses.

7.12 *Taxes*

- A. On issuance of a Notice of Award by the City, an organization which qualifying for exemption pursuant to Texas Tax Code, Subchapter H (as amended), the Contractor may purchase, rent or lease all materials, supplies and equipment used or consumed in the performance of this contract by issuing to hisits Supplier an exemption certificate in lieu of the tax, said exemption certificate to comply with State Comptroller's Rulings applicable to Texas Tax Code, Subchapter H. Any such exemption certificate issued to the Contractor in lieu of the tax shall be subject to and shall comply with all applicable rulings pertaining to the Texas Tax Code, Subchapter H.
- B. Texas tax permits and information may be obtained from:
1. Comptroller of Public Accounts
Sales Tax Division
Capitol Station
Austin, TX 78711; or
 2. <http://www.window.state.tx.us/taxinfo/taxforms/93-forms.html>

7.13 *Laws and Regulations*

- A. Contractor shall give all notices required by and shall comply with all Laws and Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, City shall not be responsible for monitoring Contractor's compliance with any Laws and Regulations.
- B. If Contractor performs any Work or takes any other action knowing or having reason to know that it is contrary to Laws and Regulations, Contractor shall be liable for all resulting claims, costs losses, and damages, and shall indemnify and hold harmless City, and its officers, elected

and appointed officials, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work or other action.

- C. Changes in Laws and Regulations not known at the time of the City's issuance of a Notice of Award having an effect on the cost or time of performance of the Work may be the subject of an adjustment in Contract Price or Contract Time.

7.14 *Record Documents*

- A. Contractor shall maintain in a safe place at the Site one printed record copy of all Drawings, Specifications, Addenda, Change Orders, Field Orders, written interpretations and clarifications, and approved Shop Drawings. Contractor shall keep such record documents in good order and annotate them to show changes made during construction. Contractor shall include accurate locations for buried and imbedded items. These record documents, together with all approved Samples, will be available to City for reference. Upon completion of the Work, Contractor shall deliver these record documents to City prior to Final Inspection.

7.15 *Safety and Protection*

- A. As between City and Contractor, Contractor shall be responsible for the safety of persons and property in the performance of the Work, for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work and for compliance with applicable safety Laws and Regulations.
- B. Contractor shall designate a qualified and experienced safety representative whose duties and responsibilities are the prevention of Work-related accidents and the maintenance and supervision of safety precautions and programs. Contractor shall inform the City in writing of Contractor's designated safety representative at the Site.
- C. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury, or loss to:
 - 1. all persons on the Site or who may be affected by the Work;
 - 2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
 - 3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, other work in progress, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.
- D. All damage, injury, or loss to any property referred to in Paragraph 7.1515.C.2 or 7.1515.C.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be the responsibility of and remedied by Contractor at its expense.
- E. Contractor shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss;

and shall implement, erect and maintain all necessary safeguards for such safety and protection.

- F. Contractor shall notify City; the owners of adjacent property; the owners of Underground Facilities and other utilities (if the identity of such owners is known to Contractor); and other contractors and utility owners performing work at or adjacent to the Site, in writing, when Contractor knows that prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property or work in progress.
- G. Contractor shall comply with the applicable requirements of City's safety programs, if any.
- H. Contractor shall inform City in advance in writing of the specific requirements of Contractor's safety program with which City's and Engineer's employees and representatives must comply while at the Site.
- I. Contractor's duties and responsibilities for safety and protection will continue until all the Work is completed and City has issued a Letter of Final Acceptance.
- J. Contractor's duties and responsibilities for safety and protection will resume whenever Contractor or any Subcontractor or Supplier returns to the Site to fulfill warranty or correction obligations, or to conduct other tasks arising from the Contract Documents.

7.16 *Hazard Communication Programs*

- A. Contractor shall be responsible for coordinating any exchange of safety data sheets (formerly known as material safety data sheets) or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with Laws and Regulations.

7.17 *Emergencies and/or Rectification*

- A. In the event of threatened or actual emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, Contractor is obligated to immediately act to prevent damage, injury, or loss. Contractor shall give City prompt written notice if Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused by an emergency or are required as a result of Contractor's response to an emergency. If City determines that a change in the Contract Documents is required because of an emergency or Contractor's response, a Change Order may be issued.
- B. Should the Contractor fail to respond to a request from the City to rectify any discrepancies, omissions, or correction necessary to conform with the requirements of the Contract Documents, the City shall give the Contractor written notice that such work or changes are to be performed. The written notice shall direct attention to the discrepant condition and request the Contractor to take remedial action to correct the condition. In the event the Contractor does not take proper action within 24 hours to fulfill this written request or fails to show just cause for not taking the proper action, within 24 hours, the City may take such remedial action with City resources or by contract. The City shall deduct an amount equal to the entire cost for such remedial action, plus 25% from any funds due or to become due the Contractor on the Project.

7.18 Submittals

- A. *Submittal Procedures for Shop Drawings and Samples:* Contractor shall submit required Submittals to City for review and acceptance in accordance with the accepted Schedule of Submittals (as required by Paragraph 2.03).
1. Contractor shall submit the Submittals in accordance with Section 01 33 00 of the General Requirements.
 2. Data shown on the Submittals must be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to demonstrate to City the services, materials, and equipment Contractor proposes to provide, and to enable City to review the information for the limited purposes required by Paragraph 7.18.C.
 3. Submittals reviewed and accepted by City for conformance with the design concept shall be executed in conformity with the Contract Documents unless otherwise required by City.
 4. When Submittals are submitted for the purpose of showing the installation in greater detail, their review shall not excuse Contractor from requirements shown on the Drawings and Specifications.
 5. For-Information-Only submittals upon which the City is not expected to conduct a review or take responsive action may be so identified in the Contract Documents.
 6. Contractor shall submit the required number of Samples specified in the Specifications.
 7. Contractor shall clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which it is intended and other data as City may require to enable City to review the Submittal for the limited purposes set forth in Paragraph 7.18.C.
- B. Where a Submittal is required by the Contract Documents or the Schedule of Submittals, any related Work performed prior to City's review and acceptance of the pertinent submittal will be at the sole risk, expense and responsibility of Contractor.
- C. City's Review
1. City will provide timely review of Submittals in accordance with the accepted Schedule of Submittals. City's review and acceptance will be to determine if the items covered by the Submittals will, after installation or incorporation in the Work, comply with the requirements of the Contract Documents, and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.
 2. City's review and acceptance will not extend to means, methods, techniques, sequences, or procedures of construction (except where a particular means, method, technique, sequence or procedure of construction is specifically and expressly called for by the Contract Documents), or to safety precautions or programs incident thereto.
 3. City's review and acceptance of a separate item as such will not indicate approval of the assembly in which the item functions.
 4. City's review and acceptance of a Submittal will not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has complied with the requirements of Section 01 33 00 of the General

Requirements, and City has given written acceptance of each such variation by specific written notation thereof incorporated in or accompanying the Submittal.

5. City's review and acceptance of a Submittal will not relieve Contractor from responsibility for complying with the requirements of the Contract Documents.
6. City's review and acceptance of a Submittal, or of a variation from the requirements of the Contract Documents, will not, under any circumstances, change the Contract Time or Contract Price, unless such changes are included in a Change Order.
7. Neither City's receipt, review, or acceptance of a Submittal will result in such item becoming a Contract Document.
8. Contractor shall perform the Work in compliance with the requirements and commitments set forth in accepted Submittals, subject to the provisions of Section 01 33 00 of the General Requirements.

7.19 *Continuing the Work*

- A. Except as otherwise provided, Contractor shall carry on the Work and adhere to the Project Schedule during all disputes or disagreements with City. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as City and Contractor may otherwise agree in writing.

7.20 *Contractor's General Warranty and Guarantee*

- A. Contractor warrants and guarantees to City that all Work will be in accordance with the Contract Documents and will not be defective. City and its officers, elected and appointed officials, directors, members, partners, employees, agents, consultants, and subcontractors shall be entitled to rely on Contractor's warranty and guarantee.
- B. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:
 1. abuse, or improper modification, maintenance, or operation, by persons other than Contractor, Subcontractors, Suppliers, or any other individual or entity for whom Contractor is responsible; or
 2. normal wear and tear under normal usage.
- C. Contractor's obligation to perform and complete the Work in accordance with the Contract Documents is absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents, a release of Contractor's obligation to perform the Work in accordance with the Contract Documents, or a release of Contractor's warranty and guarantee under this Paragraph 7.20:
 1. Observations by Engineer or City;
 2. Recommendation by Engineer or payment by City of any progress or final payment;
 3. The issuance of a letter or certificate of Final Acceptance by City or any payment related thereto by City;
 4. Use or occupancy of the Work or any part thereof by City;
 5. Any review and acceptance of a Submittal by City;

6. Any inspection, test, or acceptance by others; or
 7. Any correction of defective Work by City.
- D. The Contractor shall remedy any defects or damages in the Work and pay for any damage to other work or property resulting therefrom which shall appear within a period of two (2) years from the date of Final Acceptance of the Work unless a longer period is specified. Contractor shall furnish a good and sufficient maintenance bond, complying with the requirements of Paragraph 6.02.B. The City will give notice of observed defects with reasonable promptness.

7.21 *Indemnification*

- A. **CONTRACTOR COVENANTS AND AGREES TO INDEMNIFY, HOLD HARMLESS, AND DEFEND, AT ITS OWN EXPENSE, THE CITY, ITS OFFICERS, ELECTED AND APPOINTED OFFICIALS, EMPLOYEES, AGENTS, CONSULTANTS AND SUBCONTRACTORS AND ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM , FROM AND AGAINST ANY AND ALL CLAIMS FOR PERSONAL OR BODILY INJURY OR DEATH, ARISING OUT OF OR RELATED TO, OR ALLEGED TO ARISE OUT OF OR BE RELATED TO, THE WORK AND SERVICES TO BE PERFORMED BY THE CONTRACTOR, ITS OFFICERS, AGENTS, EMPLOYEES, SUBCONTRACTORS, LICENSEES OR INVITEES UNDER THESE CONTRACT DOCUMENTS. THIS INDEMNIFICATION PROVISION IS SPECIFICALLY INTENDED TO OPERATE AND BE EFFECTIVE EVEN IF IT IS ALLEGED OR PROVEN THAT ALL OR SOME OF THE DAMAGES BEING SOUGHT WERE CAUSED, IN WHOLE OR IN PART, BY ANY ACT, OMISSION OR NEGLIGENCE OF THE CITY, OR ITS OFFICERS, ELECTED OR APPOINTED OFFICIALS, EMPLOYEES, AGENTS, CONSULTANTS OR SUBCONTRACTORS OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM. THIS INDEMNITY PROVISION IS INTENDED TO INCLUDE, WITHOUT LIMITATION, INDEMNITY FOR COSTS, EXPENSES AND LEGAL FEES INCURRED IN DEFENDING AGAINST SUCH CLAIMS AND CAUSES OF ACTIONS.**
- B. **CONTRACTOR COVENANTS AND AGREES TO INDEMNIFY AND HOLD HARMLESS, AT ITS OWN EXPENSE, THE CITY, ITS OFFICERS, ELECTED AND APPOINTED OFFICIALS, EMPLOYEES, AGENTS, CONSULTANTS AND SUBCONTRACTORS AND ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM FROM AND AGAINST ANY AND ALL LOSS, DAMAGE OR DESTRUCTION OF PROPERTY OF THE CITY, ARISING OUT OF OR RELATED TO, OR ALLEGED TO ARISE OUT OF OR BE RELATED TO, THE WORK AND SERVICES TO BE PERFORMED BY THE CONTRACTOR, ITS OFFICERS, AGENTS, EMPLOYEES, SUBCONTRACTORS, LICENSEES OR INVITEES UNDER THIS CONTRACT. THIS INDEMNIFICATION PROVISION IS SPECIFICALLY INTENDED TO OPERATE AND BE EFFECTIVE EVEN IF IT IS ALLEGED OR PROVEN THAT ALL OR SOME OF THE DAMAGES BEING SOUGHT WERE CAUSED, IN WHOLE OR IN PART, BY ANY ACT, OMISSION OR NEGLIGENCE OF THE CITY OR ITS OFFICERS, ELECTED OR APPOINTED OFFICIALS, EMPLOYEES, AGENTS, CONSULTANTS OR SUBCONTRACTORS OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM.**

7.22 *Delegation of Professional Design Services*

- A. Contractor will not be required to provide professional design services unless such services are specifically required by the Contract Documents for a portion of the Work or unless such services are required to carry out Contractor's responsibilities for construction means, methods, techniques, sequences and procedures.
- B. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of Contractor by the Contract Documents, City will specify all performance and design criteria that such services must satisfy. Contractor shall cause such services or certifications to be provided pursuant to the professional standard of care by a properly licensed design professional, whose signature and seal must appear on all drawings, calculations, specifications, certifications, and Submittals prepared by such design professional. Such design professional must issue all certifications of design required by Laws and Regulations.
- C. If a Submittal related to the requirements indicated in Paragraph 7.22.B is prepared by Contractor, a Subcontractor, or others for submittal to City, then such Submittal must bear the written approval of Contractor's design professional when submitted by Contractor to City.
- D. City shall be entitled to rely upon the adequacy, accuracy, and completeness of the services, certifications, and approvals performed or provided by the design professionals retained or employed by Contractor under the conditions indicated in Paragraph 7.22.B, subject to the professional standard of care and the performance and design criteria stated in the Contract Documents.
- E. Pursuant to this Paragraph 7.22, City's review, acceptance, and other determinations regarding design drawings, calculations, specifications, certifications, and other Submittals furnished by Contractor pursuant to the conditions indicated in Paragraph 7.22.B, will be only for the following limited purposes:
 - 1. Checking for conformance with the requirements of this Paragraph 7.22;
 - 2. Confirming that Contractor (through its design professionals) has used the performance and design criteria specified in the Contract Documents; and
 - 3. Establishing that the design furnished by Contractor is consistent with the design concept expressed in the Contract Documents.

7.23 *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 during the term of the Contract and for 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 made available, in Denton County, Texas within ten (10) Business Days of City's 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 Denton County, Texas. Except as otherwise provided herein, the cost of the audit will be borne by the City

unless the audit reveals an overpayment of 1% or greater. If the City is undertaking an audit or inspection pursuant to Paragraph 7.09 or if an overpayment of 1% or greater occurs, the City's reasonable cost of the audit, including any travel costs, must be paid by the Contractor within five (5) Business Days of receipt of City's invoice for such costs.

- 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.

7.24 *Nondiscrimination*

- A. The City is responsible for operating Public Transportation Programs and implementing transit-related projects, funded in part with Federal financial assistance awarded by the U.S. Department of Transportation and the Federal Transit Administration (FTA), without discriminating against any person in the United States on the basis of race, color, or national origin.
- B. Contractor shall comply with the requirements of *Title VI, Civil Rights Act of 1964 as amended* and the regulations promulgated thereunder, as may be further defined in the Supplementary Conditions, for any project receiving Federal assistance.

ARTICLE 8 – OTHER WORK AT THE SITE

8.01 *Other Work*

- A. In addition to and apart from the Work under the Contract Documents, the City may perform other work at or adjacent to the Site. Such other work may be performed by City's employees, or through contracts between the City and third parties. City may also arrange to have third-party utility owners perform work on their utilities and facilities at or adjacent to the Site.
- B. If City performs other work at or adjacent to the Site with City's employees, or through contracts for such other work, then City shall give Contractor written notice thereof prior to starting any such other work, if such other work is not noted in the Contract Documents.
- C. Contractor shall afford proper and safe access to the Site to each contractor that performs such other work, each utility owner performing other work, and City, if City is performing other work with City's employees, and provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work.
- D. Contractor shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering such work; provided, however, that Contractor may cut or alter others' work with the written consent of City and the others whose work will be affected.
- E. If the proper execution or results of any part of Contractor's Work depends upon work performed by others, Contractor shall inspect such other work and promptly report to City in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of Contractor's Work. Contractor's failure to so report will constitute an acceptance of such other work as fit and proper for integration with

Contractor's Work except for latent defects and deficiencies in such other work that could not have been discovered through a proper inspection.

- F. The provisions of this Article 8 are not applicable to work that is performed by third-party utilities or other third-party entities without a contract with City, or that is performed without having been arranged by City. If such work occurs, then any related delay, disruption, or interference incurred by Contractor is governed by the provisions of Paragraph 4.03.D.3.

8.02 *Coordination*

- A. If City intends to contract with others for the performance of other work at or adjacent to the Site, to perform other work at or adjacent to the Site with City's employees, or to arrange to have utility owners perform work at or adjacent to the Site, the following will be set forth in the Supplementary Conditions or provided to Contractor prior to the start of any such other work:
 - 1. The identity of the individual or entity that will have authority and responsibility for coordination of the activities among the various contractors;
 - 2. An itemization of the specific matters to be covered by such authority and responsibility; and
 - 3. The extent of such authority and responsibilities.
- B. Unless otherwise provided in the Supplementary Conditions, City shall have authority for such coordination.

8.03 *Legal Relationships*

- A. Contractor shall take reasonable and customary measures to avoid damaging, delaying, disrupting, or interfering with the work of City, any other contractor, or any utility owner performing other work at or adjacent to the Site.
 - 1. When City is performing other work at or adjacent to the Site with City's employees, Contractor shall be liable to City for damage to such other work, and for the reasonable direct delay, disruption, and interference costs incurred by City as a result of Contractor's failure to take reasonable and customary measures with respect to City's other work.
- B. If Contractor damages, delays, disrupts, or interferes with the work of any other contractor, or any utility owner performing other work at or adjacent to the Site, through Contractor's failure to take reasonable and customary measures to avoid such impacts, or if any Damage Claim arising out of Contractor's actions, inactions, or negligence in performance of the Work at or adjacent to the Site is made by any such other contractor or utility owner against Contractor, City, or Engineer, then Contractor shall (1) promptly attempt to settle the claim as to all parties through negotiations with such other contractor or utility owner, or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law, and (2) indemnify, defend and hold harmless City and Engineer, and the officers, elected and appointed officials, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against any such claims, and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such damage, delay, disruption, or interference.

ARTICLE 9 – CITY’S RESPONSIBILITIES**9.01 *Communications to Contractor***

- A. Except as otherwise provided in the Supplementary Conditions, City shall issue all communications to Contractor.

9.02 *Furnish Data*

- A. City shall promptly furnish the data required of City under the Contract Documents.

9.03 *Pay When Due*

- A. City shall make payments to Contractor when they are due in accordance with and subject to the provisions of Article 14.

9.04 *Lands and Easements; Reports, Tests, and Drawings*

- A. City’s duties with respect to providing lands and easements are set forth in Paragraph 5.01.
- B. Article 5 refers to City’s identifying and making available to Contractor copies of reports of explorations and tests of subsurface conditions at the Site, and drawings of physical conditions relating to existing surface or subsurface structures at or contiguous to the Site that have been utilized by City in preparing the Contract Documents.

9.05 *Change Orders*

- A. City’s responsibilities with respect to Change Orders are set forth in Article 11.

9.06 *Inspections, Tests, and Approvals*

- A. City’s responsibility with respect to certain inspections, tests, and approvals is set forth in Paragraph 13.02.DD.

9.07 *Limitations on City’s Responsibilities*

- A. The City shall not supervise, direct, or have control or authority over, nor be responsible for, Contractor’s means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. City will not be responsible for Contractor’s failure to perform the Work in accordance with the Contract Documents.

9.08 *Undisclosed Hazardous Environmental Condition*

- A. City’s responsibility in respect to an undisclosed Hazardous Environmental Condition is set forth in Paragraph 5.06.

9.09 *Compliance with Safety Program*

- A. While at the Site, City’s employees and representatives shall comply with the specific applicable requirements of Contractor’s safety programs of which City has been informed in advance in writing pursuant to Paragraph 7.15.

ARTICLE 10 – CITY’S OBSERVATION DURING CONSTRUCTION**10.01** *City’s Project Manager or Duly Authorized Representative*

- A. City will provide a Project Manager or duly authorized representative during the construction period. The duties and responsibilities and the limitations of authority of City’s Project Manager or duly appointed representative during construction are set forth in the Contract Documents.
- B. City’s Project Manager for these Contract Documents is as set forth in the Supplementary Conditions. City will establish a duly authorized representative at the Preconstruction Meeting in accordance with Section 01 31 19 of the General Requirements.

10.02 *Visits to Site*

- A. City will make visits to the Site at intervals appropriate to the various stages of construction as City deems necessary in order to observe the progress that has been made and the quality of the various aspects of Contractor’s executed Work. Based on information obtained during such visits and observations, City will determine, in general, if the Work is proceeding in accordance with the Contract Documents. City will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. City’s efforts will be directed toward providing City a greater degree of confidence that the completed Work will conform generally to the Contract Documents.
- B. City’s visits and observations are subject to all the limitations on City’s responsibility set forth in Paragraph 9.07. Particularly, but without limitation, during or as a result of City’s visits or observations of Contractor’s Work, City will not supervise, direct, control, or have authority over or be responsible for Contractor’s means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work.

10.03 *Determinations for Work Performed*

- A. As applicable, Contractor will determine the actual quantities and classifications of Work performed.. City’s Project Manager or duly authorized representative will review with Contractor the preliminary determinations on such matters before rendering a written recommendation. City’s written decision will be final (except as modified to reflect changed factual conditions or more accurate data).

10.04 *Decisions on Requirements of Contract Documents and Acceptability of Work*

- A. City will be the interpreter of the requirements of the Contract Documents and judge the acceptability of the Work thereunder.
- B. City will render a written decision on any issue referred.
- C. City’s written decision on the issue referred will be final and binding on the Contractor, subject to the provisions of Paragraph 11.07.

ARTICLE 11 – CHANGES IN THE WORK; CLAIMS; EXTRA WORK**11.01 *Amending and Supplementing the Contract***

- A. The Contract may be amended to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof, including in the Contract Price or Contract Time, but such amendment will be made by Change Order only.
- B. The requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work not involving a change in Contract Price or Contract Time, may be authorized, by one of the following ways:
 - 1. A Field Order; or
 - 2. City's review of a Submittal (subject to the provisions of Paragraph 7.18.C); or
 - 3. City's written interpretation or clarification.

11.02 *Execution of Change Orders*

- A. City and Contractor shall execute appropriate Change Orders covering:
 - 1. Changes in the Contract Price or Contract Time which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed..
 - 2. Changes in the Work which are: (a) ordered by City pursuant to Paragraph 11.04, (b) required because of City's acceptance of defective Work under Paragraph 13.05 or City's correction of defective Work under Paragraph 13.08, or (c) as otherwise agreed to by the parties.

11.03 *Field Orders*

- A. City may authorize minor variations and deviations in changes in the Work if the changes do not involve an adjustment in the Contract Price or the Contract Time and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Such changes will be accomplished by a Field Order and will be binding on both the City and Contractor, which shall perform the Work involved promptly.

11.04 *Authorized Changes in the Work – Extra Work*

- A. Without invalidating the Contract and without notice to any surety, City may, at any time or from time to time, order Extra Work. Upon notice of such Extra Work, Contractor shall proceed with the Work involved only upon receiving written notice from City. Extra Work will be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided). Extra Work shall be memorialized by a Change Order which may or may not precede an order of Extra Work.
- B. For minor changes of Work not requiring changes to Contract Time or Contract Price, a Field Order may be issued by City.

11.05 *Unauthorized Changes in the Work*

- A. Contractor shall not be entitled to an increase in the Contract Price or an extension of the Contract Time with respect to any work performed that is not required by the Contract

Documents, as amended, modified, or supplemented as allowed herein, except in certain cases of an emergency as provided in Paragraph 7.17.A.

11.06 *Dispute of Extra Work*

- A. Should a difference arise as to what does or does not constitute Extra Work, or as to the payment for such Extra Work, and the City requires its performance, the Contractor shall proceed with the Extra Work after making written request for a Change Order and shall keep accurate account of the actual reasonable cost thereof. Contract Claims regarding Extra Work shall be made pursuant to Paragraph 11.07.
- B. The Contractor shall furnish the City such records of all deviations from the original Contract Documents as may be necessary to enable the City to prepare for permanent record a corrected set of plans showing the actual work performed.
- C. The compensation agreed upon for Extra Work whether or not initiated by a Change Order shall be the full, complete and final payment for all charges, fees and costs Contractor incurs as a result of or relating to the Extra Work, whether said charges, fees or costs are known, unknown, foreseen or unforeseen at that time, including without limitation, any charges, fees or costs for delay, extended overhead, ripple or impact cost, or any other effect on changed or unchanged work as a result of the Extra Work.

11.07 *Contract Claims Process*

- A. *City's Decision Required:* All Contract Claims, except those waived pursuant to Paragraph 14.08, shall be referred to the City for decision. A decision by City shall be required as a condition precedent to any exercise by Contractor of any rights or remedies he may otherwise have under the Contract Documents or by Laws and Regulations in respect of such Contract Claims.
- B. *Notice:*
 - 1. Written notice stating the general nature of each Contract Claim shall be delivered by the Contractor to City no later than 15 days after the start of the event giving rise thereto. The responsibility to substantiate a Contract Claim shall rest with the party making the Contract Claim.
 - 2. Notice of the amount or extent of the Contract Claim, with supporting data shall be delivered to the City no later than 45 days after the start of the event giving rise thereto (unless the City notifies Contractor in writing that City will allow additional time for Contractor to submit additional or more accurate data in support of such Contract Claim).
 - 3. A Contract Claim for an adjustment in Contract Price shall be prepared in accordance with the provisions of Paragraph 11.08.
 - 4. A Contract Claim for an adjustment in Contract Time shall be prepared in accordance with the provisions of Paragraph 11.09.
 - 5. Each Contract Claim shall be accompanied by Contractor's written statement that the adjustment claimed is the entire adjustment to which the Contractor believes it is entitled as a result of said event.

6. The City shall submit any response to the Contractor within 30 days after receipt of the Contractor's last submittal (unless in connection with the Contract Claim (unless Contractor allows the City additional time to submit a response).
- C. *City's Action:* City will review each Contract Claim and, within 30 days after receipt of the last submittal of the Contractor unless action by City's Council is required, take one of the following actions in writing:
 1. deny the Contract Claim in whole or in part;
 2. approve the Contract Claim; or
 3. notify the Contractor that the City is unable to resolve the Contract Claim if, in the City's sole discretion, it would be inappropriate for the City to do so. For purposes of further resolution of the Contract Claim, such notice shall be deemed a denial.
- D. City's written action under this Paragraph 11.07 will be final and binding, unless City or Contractor invoke the dispute resolution procedure set forth in Article 16 within 30 days of such action or denial.
- E. No Contract Claim for an adjustment in Contract Price or Contract Time will be valid if not submitted in accordance with this Paragraph 11.07.
- F. If the City fails to take any action pursuant to this Paragraph 11.07, the Contract Claim is considered to have been denied by the City.

11.08 *Change of Contract Price*

- A. The Contract Price may only be changed by a Change Order.
- B. TheThe value of any Work covered by a Change Order will be determined as follows:
 1. Where the Work involved is covered by unit prices contained in the Contract Documents, then by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 12.03);
 2. Where the Work involved is not covered by unit prices contained in the Contract Documents, then by a mutually agreed lump sum or unit price (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 11.08.C.2), and shall include the cost of any secondary impacts that are foreseeable at the time of pricing the cost of Extra Work; or
 3. Where the Work involved is not covered by unit prices contained in the Contract Documents and the parties do not reach mutual agreement to a lump sum or unit price, then on the basis of the Cost of the Work (determined as provided in Paragraph 12.01) plus a Contractor's fee for overhead and profit (determined as provided in Paragraph 11.08.C).
- C. *Contractor's Fee:* The Contractor's fee for overhead and profit will be determined as follows:
 1. A mutually acceptable fixed fee; or
 2. If a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:

- a. For costs incurred under Paragraphs 12.01.B.1, 12.01.B.2, and 12.01.B.3, the Contractor's fee will be 15 percent except for:
 - 1) rental fees for Contractor's own equipment; and
 - 2) bonds and insurance;
- b. For costs incurred under Paragraph 12.01.B.4, the Contractor's fee will be 5 percent;
 - 1) Where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of Paragraphs 11.08.C.2.a and 11.08.C.2.b is that the Contractor's fee will be based on: (1) a fee of 15 percent of the costs incurred under Paragraphs 12.01.B.1, 12.01.B.2, and 12.01.B.3 by the Subcontractor that actually performs the Work, at whatever tier, and (2) with respect to Contractor itself and to any Subcontractors of a tier higher than that of the Subcontractor that actually performs the Work, a fee of 5 percent of the amount (fee plus underlying costs incurred) attributable to the next lower tier Subcontractor; provided, however, in no case shall the cumulative total of fees paid be in excess of 25% of the Cost of the Work;
- c. No fee will be payable on the basis of costs itemized under Paragraphs 12.01.B.5, 12.01.B.6, and 12.01.C;
- d. The amount of credit to be allowed by Contractor to City for any change which results in a net decrease in Cost of the Work will be the amount of the actual net decrease in Cost of the Work and a deduction of an additional amount equal to 5 percent of such actual net decrease in Cost of the Work; and

11.09 *Change of Contract Time*

- A. The Contract Time may only be changed by a Change Order.
- B. No extension of the Contract Time will be allowed under a Change Order for Extra Work or for claimed delay unless the Extra Work contemplated or claimed delay is shown to be on the critical path of the Project Schedule or Contractor can show by critical path method analysis how the Extra Work or claimed delay adversely affects the critical path.
- C. Delay, disruption, and interference in the Work, and any related changes in Contract Time, are addressed in and governed by Paragraph 4.03.

11.10 *Notification to Surety*

- A. If the provisions of any bond require notice to be given to a surety of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Time), the giving of any such notice will be Contractor's responsibility. The amount of each applicable bond will be adjusted by the Contractor to reflect the effect of any such change.

ARTICLE 12 – COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK; PLANS QUANTITY MEASUREMENT**12.01 *Cost of the Work***

- A. *Purposes for Determination of Cost of the Work:* The term “Cost of the Work” means the sum of all costs necessary for the proper performance of the Work at issue, as further defined below. The provisions of this Paragraph 12.01 are used for two distinct purposes:
1. To determine Cost of the Work when Cost of the Work is a component of the Contract Price, under cost-plus-fee, time-and-materials, or other cost-based terms; or
 2. When needed to determine the value of a Change Order. When the value of any such adjustment is determined on the basis of Cost of the Work, Contractor is entitled only to those additional or incremental costs required because of the change in the Work or because of the event giving rise to the adjustment.
- B. *Costs Included:* The term, “Cost of the Work” means the sum of all costs, except those excluded in Paragraph 12.01.C, necessarily incurred and paid by Contractor in the proper performance of the Work. When the value of any Work is covered by a Change Order, the costs reimbursed to Contractor will be only those additional or incremental costs required because of the change in the Work. Such costs shall be in amounts no higher than those calculated based on the prevailing wage rates contained in the Contract Documents, shall not include any of the costs itemized in Paragraph 12.01.C, and may include as applicable, but not be limited to the following items:
1. Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by City and Contractor. Such employees shall include, without limitation, superintendents, foremen, safety managers, safety representatives, and other personnel employed full time on the Work. Payroll costs for employees not employed full time on the Work will be apportioned on the basis of their time spent on the Work. Payroll costs shall include, salaries and wages plus the cost of fringe benefits, which include social security contributions, unemployment, excise, and payroll taxes, workers’ compensation, health and retirement benefits, sick leave, and vacation and holiday pay applicable thereto. The expenses of performing Work outside of regular working hours on Business Days, during Weekend Working Hours, or on a state or federal holiday observed by the City, shall be included in the above to the extent authorized by City.
 2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers’ field services required in connection therewith.
 3. Rentals of all construction equipment and machinery and the parts thereof, whether rented from Contractor or others, in accordance with rental agreements approved in writing by City, and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs shall be in accordance with the terms of said rental agreements. and the Contract Documents. The rental of any such equipment, machinery, or parts shall cease when the use thereof is no longer necessary for the Work.

4. Payments made by Contractor to Subcontractors for Work performed by Subcontractors. If required by City, Contractor shall obtain competitive bids from subcontractors acceptable to City. Contractor shall deliver such bids to City, which will then determine, which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee will be determined in the same manner as Contractor's Cost of the Work and fee as provided in this Paragraph 12.01 and Paragraph 11.08.C.
5. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed or retained for services specifically related to the Work and specifically included in the agreed upon schedule of job classifications referred to in Paragraph 12.01.B.1 or otherwise specifically included in the Contract.
6. Supplemental costs consisting of the following:
 - a. The proportion of necessary transportation, travel, and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work.
 - b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, and temporary office or facilities at the Site, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of Contractor.
 - c. Sales, consumer, use, and other similar taxes related to the Work, and for which Contractor is liable, as imposed by Laws and Regulations, excluding those taxes for which an exemption is available as described in Paragraph 7.12.
 - d. Deposits lost for causes other than the negligence or willful misconduct of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.
 - e. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by Contractor in connection with the performance of the Work, provided such losses and damages have resulted from causes other than the negligence or willful misconduct of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses include settlements made with the written consent and approval of CityCity. No such losses, damages, and expenses will be included in the Cost of the Work for the purpose of determining Contractor's fee.
 - f. The cost of utilities, fuel, and sanitary facilities at the Site.
 - g. Minor expenses such as communication service at the Site, express and courier services, and similar petty cash items in connection with the Work.
 - h. The costs of premiums for all bonds and insurance that Contractor is required by the Contract Documents to purchase and maintain.

C. *Costs Excluded:* The term Cost of the Work does not include any of the following items:

1. Payroll costs and other compensation of Contractor's officers, executives, principals, general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by Contractor, whether at the Site or in Contractor's principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 12.01.B.1 or otherwise specifically covered in the Contract. The payroll costs and other compensation excluded here are to be considered administrative costs covered by the Contractor's fee.
2. Expenses of Contractor's principal and branch offices other than Contractor's office at the Site.
3. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.
4. Costs due to the acts, omissions, negligence or willful misconduct of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.
5. Other overhead or general expense costs of any kind.

D. *Contractor's Fee*

1. When the Work as a whole is performed on the basis of cost-plus-a-fee, then:
 - a. Contractor's fee for the Work set forth in the Contract Documents as of the Effective Date of the Agreement will be determined as set forth in the Contract.
 - b. for any Work covered by a Change Order for an adjustment in Contract Price on the basis of Cost of the Work, Contractor's fee will be determined as set forth in Paragraph 11.08.C.
2. When the Work as a whole is performed on the basis of a stipulated sum, or any other basis other than cost-plus-a-fee, then Contractor's fee for any Work covered by a Change Order for an adjustment in Contract Price on the basis of Cost of the Work will be determined in accordance with Paragraph 11.08.C.2.

- E. *Documentation and Audit:* Whenever the Cost of the Work for any purpose is to be determined pursuant to this Article 12, Contractor and pertinent Subcontractors will establish and maintain records of the costs in accordance with generally accepted accounting practices, and submit in a form acceptable to City an itemized cost breakdown together with supporting data. Subject to prior written notice, City will be afforded reasonable access, during normal business hours, to all Contractor's accounts, records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda, and similar data relating to the Cost of the Work and Contractor's fee. Contractor shall preserve all such documents for a period of three years after the final payment by City. Contractor will be responsible for ensuring that pertinent Subcontractors will afford such access to City, and preserve such documents, to the same extent as is required of Contractor.

12.02 Allowances

- A. *Specified Allowance*: It is understood that Contractor has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be performed for such sums and by such persons or entities as may be acceptable to City.
- B. *Cash Allowances*: Contractor agrees that:
 - 1. the cash allowances include the cost to Contractor (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and
 - 2. Contractor's costs for unloading and handling on the Site, labor, installation, overhead, profit, and other expenses contemplated for the cash allowances, have been included in the Contract Price and not in the allowances, and no demand for additional payment for any of the foregoing will be valid.
- C. *Contingency Allowance*: Contractor agrees that a contingency allowance, if any, is for the sole use of City.
- D. Prior to final payment, an appropriate Change Order will be issued to reflect actual amounts due Contractor for Work covered by allowances, and the Contract Price will be correspondingly adjusted.

12.03 Unit Price Work

- A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work multiplied by the estimated quantity of each item as indicated in the Agreement.
- B. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Determinations of the actual quantities and classifications of Unit Price Work performed by Contractor will be made by City subject to the provisions of Paragraph 10.03.
- C. Each unit price will be deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead and profit for each separately identified item. Work described in the Contract Documents, or reasonably inferred as required for a functionally complete installation, but not identified in the listing of unit price items shall be considered incidental to Unit Price Work listed and the cost of incidental work included as part of the unit price.
- D. Adjustments in Contract Price
 - 1. City may make an adjustment in the Contract Price in accordance with Paragraph 11.08 if:
 - a. the quantity of the item of Work performed by Contractor differs materially and significantly from the estimated quantity of such item indicated in the Agreement; and
 - b. there is no corresponding adjustment with respect to any other item of Work.
 - 2. Adjusted unit prices will apply to all units of that item.

- E. Increased or Decreased Quantities: The City reserves the right to order Extra Work in accordance with Paragraph 11.04.
1. If the changes in quantities or the alterations do not significantly change the character of the Work under the Contract Documents, the altered Work will be paid for at the Contract unit price.
 2. If the changes in quantities or alterations materially and significantly change the character of the Work, the Contract will be amended by a Change Order.
 3. If no unit prices exist, this any increase or decrease in quantities will be considered Extra Work and the Contract will be amended by a Change Order in accordance with Article 11.
 4. A significant change in the character of Work occurs when:
 - a. the character of work for any Item as altered differs materially or significantly in kind or nature from that in the Contract; or
 - b. a Major Item of work varies by more than 25% from the original Contract quantity.
 5. When the quantity of work to be done under any Major Item of the Contract is more than 125% of the original quantity stated in the Contract, then either party to the Contract may request an adjustment to the unit price on the portion of the work that is above 125%.
 6. When the quantity of work to be done under any Major Item of the Contract is less than 75% of the original quantity stated in the Contract, then either party to the Contract may request an adjustment to the unit price.

12.04 Plans Quantity Measurement for Unclassified Excavation or Embankment

- A. Plans quantities may or may not represent the exact quantity of Work performed or material moved, handled, or placed during the term of the Contract. The estimated bid quantities are designated as final payment quantities, unless revised in accordance with the Contract.
- B. If the total actual quantity measured for an individual item varies by more than 25% (or as stipulated under "Price and Payment Procedures" for specific Items) from the total estimated quantity for an individual Item originally shown in the Contract Documents, an adjustment may be made to the quantity of authorized Work done for payment purposes. The party to the Contract requesting the adjustment will provide field measurements and calculations showing the final quantity for which payment will be made. Payment for revised quantity will be made at the unit price bid for that Item, except as provided for in Article 11.
- C. When quantities are revised by a change in design approved by the City, by Change Order, or to correct an error, or to correct an error on the plans, the plans quantity will be increased or decreased by the amount identified in the approved change, and the 25% variance provisions of Paragraph 12.04.B will apply to the new plans quantity.
- D. If the total Contract quantity multiplied by the unit price bid for an individual Item is less than \$250 and the Item is not originally a plans quantity Item, then the Item may be paid as a plans quantity Item if the City and Contractor agree in writing to fix the final quantity as a plans quantity.

- E. For callout work or non-site specific Contracts, the plans quantity measurement requirements are not applicable.

ARTICLE 13 – TESTS AND INSPECTIONS; CORRECTION, REMOVAL, OR ACCEPTANCE OF DEFECTIVE WORK

13.01 Access to Work

- A. City and its Engineer, consultants, representatives, employees, and independent testing laboratories, and authorities having jurisdiction shall have access to the Site and the Work at reasonable times for their observation, inspection, and testing. Contractor shall provide them proper and safe conditions for such access and advise them of Contractor's safety procedures and programs so that they may comply with such procedures and programs as applicable.

13.02 Tests and Inspections

- A. Contractor shall give City timely notice of readiness of the Work (or specific parts thereof) for all required inspections and tests and shall cooperate with inspection and testing personnel to facilitate required inspections and tests.
- B. If the Contract Documents or any Laws and Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish City the required certificates of inspection, testing or approval, except that those fees specifically identified in the Supplementary Conditions or any Texas Department of Licensure and Regulation (TDLR) inspections, which shall will be paid as described in the Supplementary Conditions.
- C. Contractor shall be responsible for arranging, obtaining, and paying for all inspections, tests, re-tests, and approvals required:
1. by the Contract Documents, unless the Contract Documents expressly allocate responsibility for a specific inspection or test to City;
 2. to attain City's acceptance of materials or equipment to be incorporated in the Work;
 3. by manufacturers of equipment furnished under the Contract Documents;
 4. for testing, adjusting, and balancing of mechanical, electrical, and other equipment to be incorporated into the Work; and
 5. for acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work.

Such inspections and tests will be performed by independent inspectors, testing laboratories, or other qualified individuals or entities acceptable to City.

- D. City may arrange for the services of an independent testing laboratory ("Testing Lab") to perform any inspections or tests ("Testing") for any part of the Work, as determined solely by City.
1. City will coordinate such Testing to the extent possible, with Contractor;

2. Should any Testing under this Section 13.03.D result in a “fail”, “did not pass” or other similar negative result, the Contractor shall be responsible for paying for any and all retests. Contractor’s cancellation without cause of City initiated Testing shall be deemed a negative result and require a retest.
 3. Any amounts owed for any retest under this Section 13.02.D shall be paid directly to the Testing Lab by Contractor. City will forward all invoices for retests to Contractor.
 4. If Contractor fails to pay the Testing Lab, City will not issue Final Payment until the Testing Lab is paid.
- E. If the Contract Documents require the Work (or part thereof) to be approved by City or another designated individual or entity, then Contractor shall assume full responsibility for seeking and obtaining such approvals.
- F. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by Contractor without the written approval of City, Contractor shall, if requested by City, uncover such Work for observation. Such uncovering and the recovering of such Work will be at Contractor’s expense.

13.03 *Defective Work*

- A. *Contractor’s Obligation:* It is Contractor’s obligation to assure that the Work is not defective.
- B. *City’s Authority:* City has the authority to determine whether Work is defective, and to reject defective Work.
- C. *Notice of Defects:* Written notice of all defective Work of which City has actual knowledge will be given to Contractor.
- D. *Correction, or Removal and Replacement:* Promptly after receipt of written notice of defective Work, Contractor shall correct all such defective Work, whether or not fabricated, installed, or completed, or, if City has rejected the defective Work, shall remove the defective Work from the Project and replace it with Work that is not defective. Failure to require the removal of any defective Work shall not constitute acceptance of such Work.
- E. *Preservation of Warranties:* When correcting defective Work, Contractor shall take no action that would void or otherwise impair City’s warranty and guarantee, if any, on said Work.
- F. *Costs and Damages:* In addition to its correction, removal, and replacement obligations with respect to defective Work, Contractor shall pay all claims, costs, losses, and damages arising out of or relating to defective Work, including but not limited to the cost of the inspection, testing, correction, removal, replacement, or reconstruction of such defective Work, fines levied against Contractor or City by governmental authorities because the Work is defective, and the costs of repair, replacement or reconstruction of work of others resulting from defective Work.

13.04 *Rejecting Defective Work*

- A. City will have authority to reject Work which City believes to be defective or will not produce a completed Project that conforms to the Contract Documents or that will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. City will have authority to conduct special inspection or testing

of the Work as provided in this Article 13, whether or not the Work is fabricated, installed, or completed.

13.05 *Acceptance of Defective Work*

- A. If, instead of requiring correction or removal and replacement of defective Work, City prefers to accept it, City may do so. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) attributable to City's evaluation of and determination to accept such defective Work, and for the diminished value of the Work to the extent not otherwise paid by Contractor. If any such acceptance occurs prior to Final Acceptance, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work, and City shall be entitled to an appropriate decrease in the Contract Price, reflecting the diminished value of the Work so accepted.

13.06 *Uncovering Work*

- A. City has the authority to require additional inspection or testing of the Work, whether or not the Work is fabricated, installed, or completed.
- B. If any Work is covered contrary to the Contract Documents or specific instructions of City and if requested by City, Contractor shall uncover such Work for City's observation, inspection or testing and then replace the covering, all at Contractor's expense.
- C. If City considers it necessary or advisable that covered Work be observed by City or inspected or tested by others, then Contractor, at City's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as City may require, that portion of the Work in question, and provide all necessary labor, material, and equipment.
 - 1. If it is found that the uncovered Work is defective, Contractor shall be responsible for all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or dispute resolution costs) arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others). City shall be entitled to accept defective Work in accordance with Paragraph 13.05 and in such case Contractor shall still be responsible for all costs associated with exposing, observing, and testing defective Work.
 - 2. If the uncovered Work is not found to be defective, Contractor shall be allowed an extension of the Contract Time to the extent directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction.

13.07 *City May Stop the Work*

- A. If the Work is defective, or Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or Contractor fails to perform the Work in such a way that the completed Work will conform to the Contract Documents, then City may order Contractor to stop the Work, or any portion thereof, until the cause for such order has been corrected or eliminated; however, this right of City to stop the Work will not give rise to any duty on the part of City to exercise this right for the benefit of Contractor, any Subcontractor, any Supplier, any other individual or entity, or any surety for, or any employee or agent of, any of them.

13.08 City May Correct Defective Work

- A. If Contractor fails within a reasonable time after written notice from City to correct defective Work, or to remove and replace defective Work as required by City, or if Contractor fails to perform the Work in accordance with the Contract Documents, or if Contractor fails to comply with any other provision of the Contract Documents, then City may, after providing 7 days' advance written notice to Contractor, correct or remedy any such deficiency.
- B. In connection with such corrective or remedial action, City may exclude Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor's services related thereto, and incorporate in the Work all materials and equipment stored at the Site or for which City has paid Contractor but which are stored elsewhere. Contractor shall allow City, City's representatives, agents and employees, and City's other contractors access to the Site to enable City to exercise the rights and remedies under this Paragraph 13.08.
- C. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court, or arbitration or other dispute resolution costs) incurred or sustained by City in exercising the rights and remedies under this Paragraph 13.08 will be the responsibility of and will be charged against Contractor. A Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work, and City shall be entitled to an appropriate decrease in the Contract Price. Such claims, costs, losses and damages will include, but not be limited to, all costs of repair or replacement of work of others destroyed or damaged by correction, removal, or replacement of Contractor's defective Work.
- D. Contractor shall not be allowed an extension of the Contract Time because of any delay in the performance of the Work attributable to the exercise by City of City's rights and remedies under this Paragraph 13.08.

ARTICLE 14 – PAYMENTS TO CONTRACTOR; COMPLETION; CORRECTION PERIOD**14.01 Progress Payments**

- A. *Basis for Progress Payments:* The Schedule of Values established as provided in Paragraph 2.03 will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to City. Progress payments for Unit Price Work will be based on the number of units completed during the pay period, as determined under the provisions of Paragraph 12.03. Progress payments for cost-based Work will be based on Cost of the Work completed by Contractor during the pay period.
- B. Applications for Payments
 - 1. Contractor is responsible for providing all information as required to become a vendor of the City.
 - 2. At least 20 days before the date established in the General Requirements for each progress payment (but not more often than once a month), Contractor shall submit to City for review an Application for Payment filled out and signed by Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents.

3. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment must also be accompanied by: (a) bill of sale, invoice, or purchase order payments, copies of cancelled checks or other documentation establishing full payment by Contractor for the materials and equipment; (b) at City's request, documentation warranting that City has received the materials and equipment free and clear of all Liens; and (c) evidence that the materials and equipment are covered by appropriate property insurance, or other arrangements to protect City's interest therein, all of which must be satisfactory to City.
4. Beginning with the second Application for Payment, each Application must include an affidavit of Contractor stating that all previous progress payments received on account of the Work by Contractor have been applied to discharge Contractor's legitimate obligations associated with prior Applications for Payment.
5. The amount of retainage with respect to progress payments will be as stipulated in the Contract Documents.

C. Review of Applications

1. City will, after receipt of each Application for Payment, either indicate in writing it will proceed to process the Application for Payment or return the Application to Contractor indicating reasons for refusing payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application.
2. City's processing of any payment requested in an Application for Payment will be based on City's observations of the executed Work, and on City's review of the Application for Payment and the accompanying data and schedules, that based City's actual knowledge:
 - a. the Work has progressed to the point indicated; and
 - b. the quality and/or quantity of the Work is generally in accordance with the Contract Documents (subject to any subsequent evaluations of the Work, an evaluation of the Work as a functioning whole prior to or upon Final Acceptance, the results of any subsequent tests or inspections called for in the Contract Documents, a final determination of quantities and classifications for Unit Price Work under Paragraphs 10.05 and 12.03, and any other qualifications stated).
3. Processing any such payment will not thereby be deemed to have represented that:
 - a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work; or
 - b. there are no other matters or issues between the parties that might entitle Contractor to be paid additionally by City or entitle City to withhold payment to Contractor; or
 - c. Contractor has complied with Laws and Regulations applicable to Contractor's performance of the Work.
4. City may refuse to process or pay the whole or any part of any payment because of subsequently discovered evidence or the results of subsequent inspections or tests, and

may revise or revoke any such payment previously made, to such extent as may be necessary to protect City from loss because:

- a. the Work is defective, or the completed Work has been damaged by the Contractor or his subcontractors, requiring correction or replacement;
- b. there are discrepancies in quantities contained in previous applications for payment;
- c. the Contract Price has been reduced by Change Orders;
- d. City has been required to correct defective Work in accordance with Paragraph 1313.08, or has accepted defective Work pursuant to Paragraph 13.05;
- e. City has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible; or
- f. City has actual knowledge of the occurrence of any of the events enumerated in Paragraph 15.02.A that would constitute a default by Contractor and therefore justify termination for cause under the Contract Documents.

D. Retainage:

1. For all contracts, retainage shall be five percent (5%).

E. *Liquidated Damages*: For each calendar day that any work shall remain uncompleted after the time specified in the Contract Documents, the sum per day specified in the Agreement will be paid by the Contractor to the City, not as a penalty, but as liquidated damages suffered by the City. If feasible, the parties may agree to have the liquidated damages deducted from any amounts owned to Contractor by City instead of being paid directly to City by Contractor.

F. *Payment*: Contractor will be paid pursuant to the requirements of this Article 14 and payment will become due in accordance with the Contract Documents.

G. Reduction in Payment

1. City may refuse to make payment of the of the amount requested because:
 - a. Claims have been made against City based on Contractor's performance or furnishing of the Work, or City has incurred costs, losses, or damages resulting from Contractor's performance or furnishing of the Work, including but not limited to claims, costs, losses, or damages from workplace injuries, adjacent property damage, non-compliance with Laws and Regulations, or patent infringement;
 - b. Contractor has failed to take reasonable and customary measures to avoid damage, delay, disruption, and interference with other work at or adjacent to the Site;
 - c. Contractor has failed to provide and maintain required bonds or insurance;
 - d. City has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible;
 - e. City has incurred extra charges or engineering costs related to submittal reviews, evaluations of proposed substitutes, tests and inspections, or return visits to manufacturing or assembly facilities;
 - f. The Work is defective, requiring correction or replacement;

- g. City has been required to correct defective Work in accordance with Paragraph 13.08, or has accepted defective Work pursuant to Paragraph 13.05;
 - h. The Contract Price has been reduced by Change Orders;
 - i. An event has occurred that would constitute a default by Contractor and therefore justify a termination for cause;
 - j. Liquidated or other damages have accrued as a result of Contractor's failure to achieve Milestones or Final Acceptance of the Work;
 - k. Liens have been filed in connection with the Work, except where Contractor has delivered a specific bond satisfactory to City to secure the satisfaction and discharge of such Liens;
 - l. Other items entitle City to a set-off against the payment amount requested; or
 - m. City has actual knowledge of the occurrence of any of the events enumerated in Paragraph 15.02.
2. If City refuses to make payment of the amount requested, City will give Contractor written notice stating the reasons for such action and promptly pay Contractor any amount remaining after deduction of the amount so withheld. City shall pay Contractor the amount so withheld, or any adjustment thereto agreed to by City and Contractor, within a reasonable time after Contractor remedies the reasons for such action to the satisfaction of City and City has confirmed such action.

14.02 *Contractor's Warranty of Title*

- A. Contractor warrants and guarantees that title to all Work, materials, and equipment covered by any Application for Payment, whether incorporated in the Project or not, will pass to City no later than the time of payment free and clear of all Liens.

14.03 *Partial Utilization*

- A. Prior to Final Acceptance of all the Work, City may use or occupy any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which City determines constitutes a separately functioning and usable part of the Work that can be used by City for its intended purpose without significant interference with Contractor's performance of the remainder of the Work. City at any time may notify Contractor in writing to of any such part of the Work which City determines to be ready for its intended use. In addition, City may request in writing that Contractor permit City to use or occupy any such part of the Work that City believes to be substantially complete, subject to the following conditions:
- 1. At any time, Contractor may notify City that Contractor considers any such part of the Work ready for its intended use.
 - 2. Within a reasonable time after notification as enumerated in Paragraph 14.03, City and Contractor shall make an inspection of that part of the Work to determine its status of completion. If City does not consider that part of the Work to be substantially complete, City will notify Contractor in writing giving the reasons therefor.
 - 3. Partial Utilization by City will not constitute Final Acceptance by City.

14.04 *Final Inspection*

- A. Upon written notice from Contractor that the entire Work is complete in accordance with the Contract Documents:
 - 1. City will promptly schedule a Final Inspection with Contractor.
 - 2. City will notify Contractor in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. Contractor shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.
- B. City reserves the right to deny request for Final Inspection if City determines that the entire Work is not sufficiently complete to warrant a Final Inspection.

14.05 *Final Acceptance*

- A. Upon completion by Contractor to City's satisfaction, of any and all Work in accordance with the Contract Documents, including any corrections or additional Work identified in the Final Inspection and delivery of all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurances, certificates of inspection, annotated record documents and other required documents in accordance with the Contract Documents, City will issue to Contractor a letter of Final Acceptance.

14.06 *Final Payment*

- A. Application for Payment
 - 1. Upon receipt of a letter of Final Acceptance from City, Contractor may make application for Final Payment following the procedures for requesting payments in accordance with the Contract Documents.
 - 2. The final Application for Payment must be accompanied (except as previously delivered) by:
 - a. all documentation called for in the Contract Documents, including but not limited to the evidence of insurance required by Paragraph 6.03;
 - b. consent of the surety, if any, to final payment;
 - c. satisfactory evidence that all title issues have been resolved such that title to all Work, materials, and equipment has passed to City free and clear of any Liens or other title defects or will so pass upon final payment.
 - d. a list of all Contract Claims or Damage Claims against City that Contractor believes are unsettled; and
 - e. affidavits of payments and complete and legally effective releases or waivers (satisfactory to City) of all Lien rights arising out of the Work, and of Liens filed in connection with the Work.
- B. Payment Becomes Due: The final payment requested by Contractor, less previous payments made and less any sum to which City is entitled, including but not limited to liquidated damages, will become due and payable:
 - 1. After City's acceptance of the Application for Payment and accompanying documentation; and

2. After all Damage Claims have been resolved:

- a. directly by the Contractor; or
- b. Contractor provides evidence that the Damage Claim has been reported to Contractor's insurance provider for resolution.

The making of the final payment by the City shall not relieve the Contractor of any guarantees or other requirements of the Contract that continue thereafter.

14.07 *Final Completion Delayed and Partial Retainage Release*

- A. If final completion of the Work is significantly delayed, and if City so confirms, City may, upon receipt of Contractor's final Application for Payment, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance to be held by City for Work not fully completed or corrected is less than the retainage stipulated in Paragraph 14.01.D, and if bonds have been furnished as required in Paragraph 6.02, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by Contractor to City with the Application for such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of Contract Claims.
- B. *Partial Retainage Release.* If the Contract provides for separate establishment and maintenance periods and/or test and performance periods following the completion of all other construction in the Contract Documents for all Work locations, the City may release a portion of the amount retained provided that all other work is completed as determined by the City. Before the release, all submittals and final quantities must be completed and accepted for all other work. An amount sufficient to ensure Contract compliance will be retained.

14.08 *Waiver of Claims*

- A. The acceptance of final payment will constitute a waiver and release by Contractor of all claims, rights, causes of action, or liabilities, including Contract Claims, against City arising out of, related to or under the Contract or for any act, omission or neglect of City.

14.09 *Correction Period*

- A. If within two (2) years after the date of Final Acceptance (or such longer period of time as may be prescribed by the Contract Documents) any Work has been found to be defective, or Contractor's repair of any damages to the Site, adjacent areas, or areas made available for Contractor's use by City has been found to be defective, then after receipt of City's written notice of defect, Contractor shall promptly, without cost to City and in accordance with City's written instructions:
 1. correct the defective repairs to the Site or such adjacent areas, or areas made available for Contractor's use by City;
 2. correct such defective Work;
 3. remove the defective Work from the Project and replace it with Work that is not defective, if the defective Work has been rejected by City, and

4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others, or to other land or areas resulting from the corrective measures.
- B. If Contractor does not promptly comply with the terms of City's written instructions, or in an emergency where delay would cause serious risk of loss or damage, City may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. Contractor shall pay all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others).
- C. In special circumstances where a particular item of equipment is placed in continuous service before Final Acceptance of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications.
- D. Where defective Work (and damage to other Work resulting therefrom) has been corrected, repaired or removed and replaced under this Paragraph 14.09, the correction period hereunder with respect to such Work may be extended for an additional period of one year after the end of the initial correction period.
- E. Contractor's obligations under this paragraph are in addition to all other obligations and warranties. The provisions of this Paragraph 14.09 are not to be construed as a substitute for, or a waiver of, the provisions of any applicable statute of limitation or repose.

ARTICLE 15 – SUSPENSION OF WORK AND TERMINATION

15.01 *City May Suspend Work*

- A. At any time and without cause, City may suspend the Work or any portion thereof by written notice to Contractor. City may fix the date on which Work will be resumed in such notice, and Contractor shall resume the Work on the date so fixed. During a temporary suspension of the Work covered by these Contract Documents, for any reason, the City will make no extra payment for stand-by time of construction equipment and/or construction crews.
- B. Should the Contractor not be able to complete a portion of the Project due to causes beyond the control of and without the fault or negligence of the Contractor, and should it be determined by mutual consent of the Contractor and City that a solution to allow construction to proceed is not available within a reasonable period of time, Contractor may request an extension in Contract Time, directly attributable to any such suspension.
- C. If it should become necessary to suspend the Work for an indefinite period, the Contractor shall store all materials in such a manner that they will not obstruct or impede the public unnecessarily nor become damaged in any way; Contractor shall take every precaution to prevent damage or deterioration of the work performed; and Contractor shall provide suitable drainage about the work, and erect temporary structures where necessary.
- D. Contractor may be reimbursed for the cost of moving its equipment off the job and returning the necessary equipment to the job when it is determined by the City that construction may be resumed. Such reimbursement shall be based on actual cost to the Contractor of moving the

equipment and no profit or overhead will be allowed. Reimbursement may not be allowed if the equipment is moved to another construction project for the City.

15.02 *City May Terminate for Cause*

- A. The occurrence of any one or more of the following events by way of example, but not of limitation, may justify termination for cause:
1. Contractor's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment, or failure to adhere to the Project Schedule established under Paragraph 2.06 as adjusted from time to time pursuant to Paragraph 7.05);
 2. Failure of Contractor to perform or otherwise to comply with a material term of the Contract; or
 3. Contractor's disregard of Laws and Regulations of any public body having jurisdiction; or
 4. Contractor's repeated disregard of the authority of City; or
 5. Contractor's failure to promptly make good any defect in materials or workmanship, or defects of any nature, the correction of which has been directed in writing by the City; or
 6. Substantial indication that the Contractor has made an unauthorized assignment of the Contract or any funds due therefrom for the benefit of any creditor or for any other purpose; or
 7. Substantial indication that the Contractor has become insolvent or bankrupt, or otherwise financially unable to perform the Work satisfactorily; or
 8. Contractor commences legal action in a court of competent jurisdiction against the City.
- B. If one or more of the events identified in Paragraph 15.02.A occurs, City will provide written notice to Contractor and Surety to arrange a conference with Contractor and Surety to address Contractor's failure to perform the Work. The conference shall be held not later than 15 days after receipt of notice. by both Contractor and surety.
1. If the City, the Contractor, and the Surety do not agree to allow the Contractor to proceed to perform the Contract, the City may, to the extent permitted by Laws and Regulations, declare a Contractor default and formally terminate the Contractor's right to complete the Contract. Contractor default shall not be declared earlier than 20 days after the Contractor and Surety have received notice of the conference to address Contractor's failure to perform the Work.
 2. If Contractor's services are terminated, Surety shall be obligated to take over and perform the Work. If Surety does not commence performance thereof within 15 consecutive calendar days after date of an additional written notice demanding Surety's performance of its obligations, then City, without process or action at law, may take over any portion of the Work and complete it as described below.
 - a. If City completes the Work, City may exclude Contractor and Surety from the Site and take possession of the Work, and all materials and equipment stored at the Site

or for which City has paid Contractor, but which are stored elsewhere, and the Work as City may deem expedient.

3. Whether City or Surety completes the Work, Contractor shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the Contract Price exceeds the cost to complete the Work, including all related claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals) sustained by City, such excess will be paid to Contractor. If the cost to complete the Work including such related claims, costs, losses, and damages exceeds such unpaid balance, Contractor shall pay the difference to City. Such claims, costs, losses, and damages incurred by City will be incorporated in a Change Order, provided that when exercising any rights or remedies under this Paragraph 15.02, City shall not be required to obtain the lowest price for the Work performed.
 4. Neither City, nor any of its respective consultants, agents, officers, elected or appointed officials, directors or employees shall be in any way liable or accountable to Contractor or Surety for the method by which the completion of the said Work, or any portion thereof, may be accomplished or for the price paid therefor.
 5. City, notwithstanding the method used in completing the Contract, shall not forfeit the right to recover damages from Contractor or Surety for Contractor's failure to timely complete the entire Contract. Contractor shall not be entitled to any claim, counterclaim or offset on account of the method used by City in completing the Contract.
 6. Maintenance of the Work shall continue to be Contractor's and Surety's responsibilities as provided for in the bond requirements of the Contract Documents or any special guarantees provided for under the Contract Documents or any other obligations otherwise under the Contract or prescribed by law.
- C. Notwithstanding Paragraph 15.02.B, Contractor's services will not be terminated if Contractor begins within seven days of receipt of notice of intent to terminate to correct its failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt of said notice.
- D. Where Contractor's services have been so terminated by City, the termination will not affect any rights or remedies of City against Contractor then existing or which may thereafter accrue, or any rights or remedies of City against Contractor or Surety. Any retention or payment of money due Contractor by City will not release Contractor from liability.
- E. If and to the extent that Contractor has provided a performance bond under the provisions of Paragraph 6.02, the termination procedures of that bond shall not supersede the provisions of this Article 15.

15.03 *City May Terminate for Convenience*

- A. City may, without cause and without prejudice to any other right or remedy of City, terminate the Contract, in whole or in part. Any termination shall be affected by giving notice of the termination to the Contractor specifying the extent to which performance of Work under the contract is terminated, and the date upon which such termination becomes effective. Notice shall be deemed validly given if given in accordance with Paragraph 17.01.A.

- B. After a notice of termination, has been given, and except as otherwise directed by the City, the Contractor shall:
1. stop work under the Contract on the date and to the extent specified in the notice of termination;
 2. place no further orders or subcontracts for materials, services or facilities except as may be necessary for completion of such portion of the Work under the Contract as is not terminated;
 3. terminate all orders and subcontracts to the extent that they relate to the performance of the Work terminated by notice of termination;
 4. transfer title to the City and deliver in the manner, at the times, and to the extent, if any, directed by the City:
 - a. the fabricated or unfabricated parts, Work in progress, completed Work, supplies and other material produced as a part of, or acquired in connection with the performance of, the Work terminated by the notice of the termination; and
 - b. the completed, or partially completed plans, drawings, information and other property which, if the Contract had been completed, would have been required to be furnished to the City.
 5. complete performance of such Work as shall not have been terminated by the notice of termination; and
 6. take such action as may be necessary, or as the City may direct, for the protection and preservation of the property related to the Contract that is in the possession of the Contractor and in which the City has or may acquire the rest.
- C. At a time not later than 30 days after the termination date specified in the notice of termination, the Contractor may submit to the City a list, certified as to quantity and quality, of any or all items of termination inventory not previously disposed of in accordance with the Contract, exclusive of items the disposition of which has been directed or authorized by City.
- D. Not later than 15 days after Contractor's submission of the certified list to City pursuant to Paragraph 15.03.C, the City shall accept title to such items, subject to verification of the list by the City upon removal of the items or, If the items are stored, then City shall have 45 days after submission of the list, to verify the list submitted and accept title to such items. Any necessary adjustments to correct the list as submitted, shall be made prior to final settlement.
- E. Not later than 60 days after the notice of termination has been given, the Contractor shall submit a termination claim to the City in the form and with the certification prescribed by the City. Unless an extension request is made in writing within such 60-day period by the Contractor, and granted by the City, any and all such claims of Contractor that are not submitted to City within such 60-day period shall be conclusively deemed waived.
- F. Should a termination claim be timely submitted to the City, Contractor shall be paid for (without duplication of any items):
1. completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead

- and profit on such Work calculated and determined in accordance with the Contract Documents;
2. expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses calculated and determined in accordance with the Contract Documents; and
 3. reasonable expenses directly attributable to reasonable and necessary wind-down and termination activities, without any overhead or profit.
- G. In the event of the failure of the Contractor and City to agree upon the whole amount to be paid to the Contractor by reason of the termination of the Work, the City shall determine, on the basis of information submitted and available to it, the amount, if any, due to the Contractor by reason of the termination and City shall pay to the Contractor the amounts so determined. Contractor shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of, related to or resulting from such termination.

ARTICLE 16 – RESOLUTION OF DISPUTES

16.01 *Methods and Procedures*

- A. Either City or Contractor may request mediation of any Contract Claim submitted for a decision under Paragraph 11.07 before such decision becomes final and binding. The request for mediation shall be submitted to the other party to the Contract. Timely submission of the request shall stay the effect of Paragraph 11.07.E.
- B. City and Contractor shall participate in the mediation process in good faith. The process shall be commenced within 60 calendar days of filing of the request.
- C. The parties shall agree on a mediator; however, if they cannot agree within 14 calendar days then the Denton County Alternative Dispute Resolution Program (“DCAP”) shall appoint a mediator. The mediation session shall be held within 45 days of the retention of the mediator, and last for at least one full mediation day, before any party has the option to withdraw from the process. The parties may agree to continue the mediation process beyond one day, until there is a settlement agreement, or one party, or the mediator, states that there is no reason to continue because of an impasse that cannot be overcome and sends a “notice of termination of mediation.” All reasonable efforts will be made to complete the mediation within 30 days of the first mediation session. All costs of mediation shall be borne equally by the parties.
- D. All communications, both written and oral, during Phases A and B are confidential and shall be treated as settlement negotiations for purposes of applicable rules of evidence; however, documents generated in the ordinary course of business prior to the Dispute, that would otherwise be discoverable, do not become confidential simply because they are used in the Negotiation and/or Mediation process.
- E. The process shall be confidential based on terms acceptable to the mediator and/or mediation service provider.

- F. If the Contract Claim is not resolved by mediation, City's action under Paragraph 11.07.C or a denial pursuant to Paragraphs 11.07.C.3 or 11.07.D shall become final and binding 30 days after termination of the mediation unless, within that time period, City or Contractor:
1. elects in writing to invoke any other dispute resolution process provided for in the Supplementary Conditions; or
 2. agrees with the other party to submit the Contract Claim to another dispute resolution process; or
 3. gives written notice to the other party of the intent to submit the Contract Claim to a court of competent jurisdiction as set forth within the Contract Documents.

ARTICLE 17 – MISCELLANEOUS

17.01 *Giving Notice*

- A. Whenever any provision of the Contract requires the giving of written notice, it will be deemed to have been validly given if delivered:
1. in person, by a commercial courier service or otherwise, if to City, to the duly authorized representative of City identified in the Contract Documents or to City's Project Manager or, if to Contractor, to a member of the firm or to an officer of the corporation for whom it is intended; or
 2. by registered or certified mail, postage prepaid, to the recipient's place of business; or
 3. by e-mail to the recipient.

17.02 *Computation of Time*

- A. When any period of time is referred to in the Contract by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day that is a state or federal holiday observed by the City, the next Business Day shall become the last day of the period.

17.03 *Cumulative Remedies*

- A. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws and Regulations, in equity, by special warranty or guarantee, or by other provisions of the Contract. The provisions of this Paragraph 17.03 will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply.

17.04 *Limitation of Damages*

- A. With respect to any and all claims, disputes subject to final resolution, and other matters at issue, neither City, nor any of its officers, directors, elected or appointed officials, members, partners, employees, agents, consultants, or subcontractors, shall be liable to Contractor for any claims, costs, losses, or damages sustained by Contractor on or in connection with any other project or anticipated project. Further, the Contractor may only claim and the City may only be liable for those damages that are set forth in Subchapter I, Chapter 271 of the Texas

Local Government Code and the City shall not be liable for any consequential damages, exemplary damages or damages for unabsorbed home office overhead.

17.05 *No Waiver*

- A. A party's non-enforcement of any provision will not constitute a waiver of that provision, nor will it affect the enforceability of that provision or of the remainder of this Contract.
- B. The City has not waived its sovereign immunity except as expressly set forth in Subchapter I, Chapter 271 of the Texas Local Government Code or as expressly waived by other statute.

17.06 *Survival of Obligations*

All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract, as well as all continuing obligations indicated in the Contract, will survive final payment, completion, and Final Acceptance of the Work or termination of the Contract or of the services of Contractor.

17.07 *Assignment of Contract*

- A. Unless expressly agreed to elsewhere in the Contract, no assignment by a party to this Contract of any rights under or interests in the Contract will be binding on the other party without the written consent of the party sought to be bound; and, specifically but without limitation, money that may become due and money that is due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract.

17.08 *Successors and Assigns*

- A. City and Contractor each binds itself, its successors, assigns, and legal representatives to the other party hereto, its successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

17.09 *Governing Law*

- A. The Contract shall be construed in accordance with the laws of the State of Texas without regard to conflicts of law principles.

17.10 *Headings*

- A. Article and paragraph headings are inserted for convenience only and do not constitute parts of these General Conditions.

SECTION 00 73 01
SUPPLEMENTARY CONDITIONS - CSP
TO
GENERAL CONDITIONS

Supplementary Conditions

These Supplementary Conditions modify and supplement Section 00 72 00 - General Conditions, and other provisions of the Contract Documents as indicated below. All provisions of the General Conditions that are modified or supplemented remain in full force and effect as so modified or supplemented. All provisions of the General Conditions which are not so modified or supplemented remain in full force and effect.

Defined Terms

The terms used in these Supplementary Conditions which are defined in the General Conditions have the meaning assigned to them in the General Conditions, unless specifically noted herein.

Modifications and Supplements

The following are instructions that modify or supplement specific paragraphs in the General Conditions and other Contract Documents.

SC-1.01 "Defined Terms"

The following Terms listed in the General Conditions are modified as follows:

Bid – See Proposal.

Bidder – See Offeror.

Bidding Documents – See Proposal Documents.

Bidding Requirements – See Proposal Requirements.

The following Terms are added to the General Conditions as follows:

Competitive Sealed Proposals – A procurement method by which governmental entity requests proposals, evaluates and ranks the Offerors, and negotiates a contract with a general contractor for the construction, rehabilitation, alteration, or repair of a facility.

Daily Value – The City-determined value in dollars as indicated in the Proposal Form as the value of one Day for the purposes of determining the Incentive (if applicable) for Substantial Completion relative to the Contract Time and achievement of Substantial Completion.

Offeror – The individual or entity that submits a Proposal directly to City.

Proposal – The offer or proposal of an Offeror submitted in accordance with the requirements set forth in the Instructions to Offerors.

Proposal Documents – The Proposal Requirements and the Proposed Contract Documents.

Proposal Requirements – The Advertisement or Invitation to Offerors, Instructions to Offerors, Offeror’s Bond or other Proposal security, if any, the Proposal Form, and the Proposal with any attachments.

Substantial Completion – The completion of the Work necessary for the project to function as it was intended pursuant to the Contract Documents and as specified below, to the reasonable satisfaction of the City. The date of Substantial Completion shall be memorialized by written notice given by the City to the Contractor.

SC-5.01A

Easement limits shown on the Drawing are approximate and were provided to establish a basis for proposals. Upon receiving the final easements descriptions, Contractor shall compare them to the lines shown on the Contract Drawings.

SC-5.01A.1., “Availability of Lands”

The following is a list of known outstanding right-of-way, and/or easements to be acquired, if any as of [\[5/1/23\]](#):

Outstanding Right-Of-Way, and/or Easements to Be Acquired

PARCEL NUMBER	OWNER	TARGET DATE OF POSSESSION
------------------	-------	------------------------------

None

The Contractor understands and agrees that the dates listed above are estimates only, are not guaranteed, and do not bind the City.

If Contractor considers the final easements provided to differ materially from the representations on the Contract Drawings, Contractor shall within five (5) Business Days and before proceeding with the Work, notify City in writing associated with the differing easement line locations.

SC-5.01A.2, “Availability of Lands”

Utilities or obstructions to be removed, adjusted, and/or relocated

The following is list of utilities and/or obstructions that have not been removed, adjusted, and/or relocated as of [\[5/1/23\]](#)

EXPECTED OWNER	UTILITY AND LOCATION	TARGET DATE OF ADJUSTMENT
-------------------	----------------------	------------------------------

None

The Contractor understands and agrees that the dates listed above are estimates only, are not guaranteed, and do not bind the City.

SC-5.03A., “Subsurface and Physical Conditions”

The following are reports of explorations and tests of subsurface conditions at the site of the Work:

1 *None.*

2
3 The following are drawings of physical conditions in or relating to existing surface and subsurface
4 structures (except Underground Facilities) which are at or contiguous to the site of the Work:

5 *"None"*

6
7 **SC-5.05 A., "Underground Facilities"**

8
9 The following are additional resources for identification of Underground Facilities which are at or
10 contiguous to the site of the Work, and which are not necessarily shown in the Drawings:

11 *None*

12
13 **SC-5.06A., "Hazardous Environmental Conditions at Site"**

14
15 The following are reports and drawings of existing hazardous environmental conditions known to the City:

16 *"None"*

17
18 **SC-6.02, "Performance, Payment, and Maintenance Bonds"**

19
20 **The "Contract Price" for Performance, Payment, and Maintenance Bonds will be the same as**
21 **indicated in Article 3 as listed in the Agreement.**

22
23 **SC-6.03A., "Certificates of Insurance"**

24
25 The entities listed below are "additional insureds as their interest may appear" including their respective
26 officers, directors, agents and employees.

- 27
28 (1) City
29 (2) Consultant: *None*
30 (3) Other: *None*

31
32 **SC-6.04A., "Contractor's Insurance"**

33
34 The limits of liability for the insurance required by Paragraph GC-6.04 shall provide the following
35 coverages for not less than the following amounts or greater where required by laws and regulations:

36
37 **6.04A. Workers' Compensation, under Paragraph GC-6.04A.**

38
39 *Statutory limits*
40 *Employer's liability*
41 *\$500,000 each accident/occurrence*
42 *\$500,000 Disease - each employee*
43 *\$500,000 Disease - policy limit*

44
45 **SC-6.04B., "Contractor's Insurance"**

46
47 **6.04B. Commercial General Liability, under Paragraph GC-6.04B. Contractor's Liability Insurance**
48 **under Paragraph GC-6.04B., which shall be on a per project basis covering the Contractor with**
49 **minimum limits of:**

50
51 *\$2,000,000 each occurrence*
52 *\$4,000,000 aggregate limit*
53

The policy must have an endorsement (Amendment – Aggregate Limits of Insurance) making the General Aggregate Limits apply separately to each job site.

The Commercial General Liability Insurance policies shall provide “X”, “C”, and “U” coverage’s. Verification of such coverage must be shown in the Remarks Article of the Certificate of Insurance.

SC 6.04C., “Contractor’s Insurance”

6.04C. Automobile Liability, under Paragraph GC-6.04C. Contractor’s Liability Insurance under Paragraph GC-6.04C., which shall be in an amount not less than the following amounts:

- (1) **Automobile Liability** - a commercial business policy shall provide coverage on "Any Auto", defined as autos owned, hired and non-owned.

\$1,000,000 each accident on a combined single limit basis.

SC 6.04D., “Contractor’s Insurance”

6.04D. Environmental Impairment/Pollution

Environmental Impairment/Pollution Insurance to include coverage for the handling, receiving, dispensing, removal, storage, testing, transportation, disposal, discharge, dispersal release or escape of any hazardous material into or upon land, or any structure on land, the atmosphere or any watercourse or body of water, including ground water, with a minimum combined bodily injury (including death) and property damage limit of \$2,000,000 per occurrence to be obtained upon substantial completion and acceptance of facility by the City.

SC-6.04E., “Contractor’s Insurance”

The Contractor’s construction activities will require its employees, agents, subcontractors, equipment, and material deliveries to cross railroad properties and tracks, or perform work within 25 feet of the center line of tracks: *“None”*.

The Contractor shall conduct its operations on railroad properties in such a manner as not to interfere with, hinder, or obstruct the railroad company in any manner whatsoever in the use or operation of its/their trains or other property. Such operations on railroad properties may require that Contractor to execute a “Right of Entry Agreement” with the particular railroad company or companies involved, and to this end the Contractor should satisfy itself as to the requirements of each railroad company and be prepared to execute the right-of-entry (if any) required by a railroad company. The requirements specified herein likewise relate to the Contractor’s use of private and/or construction access roads crossing said railroad company’s properties.

The Contractual Liability coverage required by Paragraph 5.04D of the General Conditions shall provide coverage for not less than the following amounts, issued by companies satisfactory to the City and to the Railroad Company for a term that continues for so long as the Contractor’s operations and work cross, occupy, or touch railroad property:

(1) General Aggregate: *\$Confirm Limits with Railroad*

(2) Each Occurrence: *\$Confirm Limits with Railroad*

 Required for this Contract *x* *Not required for this Contract*

With respect to the above outlined insurance requirements, the following shall govern:

1. Where a single railroad company is involved, the Contractor shall provide one insurance policy in the name of the railroad company. However, if more than one grade separation or at-grade crossing is affected by the Project at entirely separate locations on the line or lines of the same railroad company, separate coverage may be required, each in the amount stated above.
2. Where more than one railroad company is operating on the same right-of-way or where several railroad companies are involved and operated on their own separate rights-of-way, the Contractor may be required to provide separate insurance policies in the name of each railroad company.
3. If, in addition to a grade separation or an at-grade crossing, other work or activity is proposed on a railroad company's right-of-way at a location entirely separate from the grade separation or at-grade crossing, insurance coverage for this work must be included in the policy covering the grade separation.
4. If no grade separation is involved but other work is proposed on a railroad company's right-of-way, all such other work may be covered in a single policy for that railroad, even though the work may be at two or more separate locations.

No work or activities on a railroad company's property to be performed by the Contractor shall be commenced until the Contractor has furnished the City with an original policy or policies of the insurance for each railroad company named, as required above. All such insurance must be approved by the City and each affected Railroad Company prior to the Contractor's beginning work.

The insurance specified above must be carried until all Work to be performed on the railroad right-of-way has been completed and the grade crossing, if any, is no longer used by the Contractor. In addition, insurance must be carried during all maintenance and/or repair work performed in the railroad right-of-way. Such insurance must name the railroad company as the insured, together with any tenant or lessee of the railroad company operating over tracks involved in the Project.

SC-7.08C., "Concerning Subcontractors and Suppliers"

The following subcontractors shall be required to be utilized by the Contractor for specific portions of the Work as indicated below:

Required Subcontractors

SUBCONTRACTOR COMPANY NAME	DESCRIPTION OF WORK TO BE PERFORMED
----------------------------	-------------------------------------

None

SC-7.11., "Permits and Utilities"

SC-7.11A., "Contractor obtained permits and licenses"

The following are known permits and/or licenses required by the Contract to be acquired by the Contractor:
"None"

SC-7.11B. "City obtained permits and licenses"

The following are known permits and/or licenses required by the Contract to be acquired by the City:
"None".

SC-7.11C. "Outstanding permits and licenses"

The following is a list of known outstanding permits and/or licenses to be acquired, if any as of [\[5/1/23\]](#):

1	Outstanding Permits and/or Licenses to Be Acquired		
	OWNER	PERMIT OR LICENSE AND LOCATION	TARGET DATE OF POSSESSION

2 None

3 **SC-8.02., "Coordination"**

4 The individuals or entities listed below have contracts with the City for the performance of other work at the Site:

5 *"None"*

Vendor	Scope of Work	Coordination Authority

8 **SC-9.01, "Communications to Contractor"**

9 *No special requirements*

10 **SC-10.01B., "City's Project Manager"**

11 The City's Project Manager for this Contract is Scott Fettig, or his/her successor pursuant to **written notification from the City Engineer.**

12 **SC-13.02B., "Tests and Inspections"**

13 *"None"*

14 **SC-14.01G, "Reduction in Payment"**

15 Add Paragraph 14.01G.3:

- 16 3. *City may reduce payments to the Contractor, if the number of Days that have passed after the date listed on the Notice to Proceed exceeds the Contract Time for Substantial Completion.*

17 **SC-16.01C.1, "Methods and Procedures"**

18 *"None"*

19 **SC – 17.01, "Documents"**

20 *Any documents submitted to the City in electronic format shall be considered equivalent to an original of such document.*

21 **SC – 18.01, "Texas State Law Provisions"**

22 **SC – 18.01A. "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.

SC – 18.01B. “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 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.

SC – 18.01C. “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.

SC – 18.01D. “Prohibition On Contracts With Companies Doing Business with Iran, Sudan, or a Foreign Terrorist Organization”

1 Sections 2252 and 2270 of the Texas Government Code restricts CITY from contracting with
2 companies that do business with Iran, Sudan, or a foreign terrorist organization. *By signing this*
3 *agreement, Contractor certifies that Contractor’s signature provides written verification to the*
4 *City that Contractor, pursuant to Chapters 2252 and 2270, is not ineligible to enter into this*
5 *agreement and will not become ineligible to receive payments under this agreement by doing*
6 *business with Iran, Sudan, or a foreign terrorist organization.* Failure to meet or maintain the
7 requirements under this provision will be considered a material breach.
8

9 **SC – 18.01E. “Termination Right for Contracts with Companies Doing Business with**
10 **Certain Foreign-Owned Companies”**
11

12 The City of Denton may terminate this Contract immediately without any further liability if the
13 City of Denton determines, in its sole judgment, that this Contract meets the requirements under
14 Chapter 2274, and Contractor is, or will be in the future, (i) owned by or the majority of stock or
15 other ownership interest of the company is held or controlled by individuals who are citizens of
16 China, Iran, North Korea, Russia, or other designated country (ii) directly controlled by the
17 Government of China, Iran, North Korea, Russia, or other designated country, or (iii) is
18 headquartered in China, Iran, North Korea, Russia, or other designated country.
19
20
21
22
23

END OF SECTION

Revision Log		
DATE	NAME	SUMMARY OF CHANGE

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.

Mountain Cascade of Texas, LLC

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:



8/17/2023

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: 477DB46F8D3F4B66B6CD779F1684B579

Status: Sent

Subject: Please DocuSign: City Council Contract 8205 - Barrow Sanitary Sewer and Lift Station Abandonment

Source Envelope:

Document Pages: 106

Signatures: 4

Envelope Originator:

Certificate Pages: 6

Initials: 1

Cori Power

AutoNav: Enabled

901B Texas Street

Enveloped Stamping: Enabled

Denton, TX 76209

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

cori.power@cityofdenton.com

IP Address: 198.49.140.104

Record Tracking

Status: Original

Holder: Cori Power

Location: DocuSign

8/10/2023 11:31:54 AM

cori.power@cityofdenton.com

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

Cori Power

Completed

Sent: 8/10/2023 11:37:54 AM

cori.power@cityofdenton.com

Viewed: 8/10/2023 11:38:05 AM

Purchasing Supervisor

Signed: 8/10/2023 11:38:36 AM

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: 8/10/2023 11:38:40 AM

lori.hewell@cityofdenton.com

Viewed: 8/14/2023 8:21:48 AM

Purchasing Manager

Signed: 8/14/2023 8:23:00 AM

City of Denton

Signature Adoption: Pre-selected Style

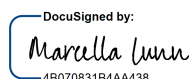
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Using IP Address: 198.49.140.10

Electronic Record and Signature Disclosure:

Not Offered via DocuSign

Marcella Lunn



Sent: 8/14/2023 8:23:04 AM

marcella.lunn@cityofdenton.com

Viewed: 8/16/2023 4:23:37 PM

Mack Reinwand City Attorney

Signed: 8/16/2023 5:01:06 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

Andrew McCulloch



Sent: 8/16/2023 5:01:10 PM

AMcCulloch@mountaincascade.com

Viewed: 8/17/2023 8:15:42 AM

Vice-President

Signed: 8/17/2023 8:23:33 AM

Harber Co.Inc. dba Mountain Cascade of Nevada

Signature Adoption: Pre-selected Style

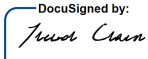
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Electronic Record and Signature Disclosure:

Accepted: 8/17/2023 8:15:42 AM

ID: 56ed259f-5c56-4be1-b3e2-0717595623e4

Signer Events	Signature	Timestamp
<p>Trevor Crain Trevor.Crain@cityofdenton.com Director of Capital Projects City of Denton Security Level: Email, Account Authentication (None)</p> <p>Electronic Record and Signature Disclosure: Accepted: 8/17/2023 8:25:14 AM ID: 87cd5bbc-331f-4f65-9e0b-55620b818793</p>	<p>DocuSigned by:  7B46EEAB11BC4F2...</p> <p>Signature Adoption: Pre-selected Style Using IP Address: 70.237.27.78</p>	<p>Sent: 8/17/2023 8:23:38 AM Viewed: 8/17/2023 8:25:14 AM Signed: 8/17/2023 8:25:51 AM</p>
<p>Cori Power cori.power@cityofdenton.com Purchasing Supervisor City of Denton Security Level: Email, Account Authentication (None)</p> <p>Electronic Record and Signature Disclosure: Not Offered via DocuSign</p>	<p>Completed</p> <p>Using IP Address: 198.49.140.10</p>	<p>Sent: 8/17/2023 8:25:56 AM Viewed: 8/17/2023 10:12:26 AM Signed: 8/17/2023 10:12:28 AM</p>
<p>Cheyenne Defee cheyenne.defee@cityofdenton.com Procurement Administration Supervisor City of Denton Security Level: Email, Account Authentication (None)</p> <p>Electronic Record and Signature Disclosure: Not Offered via DocuSign</p>		<p>Sent: 8/17/2023 8:25:56 AM</p>
<p>Sara Hensley sara.hensley@cityofdenton.com Security Level: Email, Account Authentication (None)</p> <p>Electronic Record and Signature Disclosure: Not Offered via DocuSign</p>		
<p>Jesus Salazar jesus.salazar@cityofdenton.com Security Level: Email, Account Authentication (None)</p> <p>Electronic Record and Signature Disclosure: Accepted: 8/16/2023 10:13:51 AM ID: 95e4abcd-c4d6-4f65-b110-7db54c160d81</p>		
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Agent Delivery Events	Status	Timestamp
Intermediary Delivery Events	Status	Timestamp
Certified Delivery Events	Status	Timestamp
Carbon Copy Events	Status	Timestamp

Carbon Copy Events	Status	Timestamp
Cheyenne Defee cheyenne.defee@cityofdenton.com Procurement Administration Supervisor City of Denton Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Not Offered via DocuSign	COPIED	Sent: 8/10/2023 11:38:40 AM
Gretna Jones gretna.jones@cityofdenton.com Legal Secretary City of Denton Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Not Offered via DocuSign	COPIED	Sent: 8/17/2023 8:25:55 AM Viewed: 8/17/2023 8:29:25 AM
City Secretary Office citysecretary@cityofdenton.com Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Not Offered via DocuSign		
Cole Tankersley Cole.Tankersley@cityofdenton.com Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Accepted: 8/15/2023 5:05:42 PM ID: f9d1e4a7-3a46-4c3a-9b5a-ead6bc29093a		
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Notary Events	Signature	Timestamp
Envelope Summary Events	Status	Timestamps
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Envelope Updated	Security Checked	8/17/2023 8:31:52 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 #: PUB23-161, 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 HACH Company, for the purchase of HACH brand products, including instrumentations and chemistry for the Water and Wastewater Departments, which is the sole provider of this software, 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 8263 - awarded to HACH Company, for three (3) years, with the option for two (2) additional one (1) year extensions, in the total five (5) year not-to-exceed amount of \$770,000.00).



City of Denton

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

AGENDA INFORMATION SHEET

DEPARTMENT: Procurement
ACM: Cassey Ogden
DATE: September 11, 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 HACH Company, for the purchase of HACH brand products, including instrumentations and chemistry for the Water and Wastewater Departments, which is the sole provider of this software, 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 8263 – awarded to HACH Company, for three (3) years, with the option for two (2) additional one (1) year extensions, in the total five (5) year not-to-exceed amount of \$770,000.00).

STRATEGIC ALIGNMENT

This action supports Key Focus Area: Enhance Infrastructure and Mobility.

INFORMATION/BACKGROUND

The Water and Wastewater Departments use various HACH Company products in their daily operations for testing, monitoring, and real-time control of plant operations as well as flow measurement in the wastewater collection system. HACH Company is the sole source manufacturer for all HACH-branded instrumentation and chemistry.

There are no other recognized or authorized sources to purchase HACH-branded instrumentation and chemistry products. Service isn't performed or available by any recognized company and unauthorized repairs will void the warranty. These products from HACH are fully integrated into the daily water and wastewater plant operations and are only available from HACH.

To streamline these purchases and stay within the State-mandated purchasing guidelines, the Water and Wastewater Departments are requesting approval of a contract for the proposed amount that will meet the needs of the departments.

Instrumentation and Chemistries	Estimated 5-Year Expenditure
Year 1	\$ 140,000
Year 2	\$ 140,000
Year 3	\$ 140,000

Year 4	\$ 140,000
Year 5	\$ 140,000
Contingency for Inflation	\$ 70,000
Total	\$770,000

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.

RECOMMENDATION

Award with a contract to HACH Company, for the purchase of HACH brand products including instrumentations and chemistry for the Water and Wastewater Departments, in a three (3) year, with the option for two (2) additional one (1) year extensions in the not-to-exceed amount of \$770,000.

PRINCIPAL PLACE OF BUSINESS

HACH Company
Loveland, CO

ESTIMATED SCHEDULE OF PROJECT

This is an initial three (3) year contract with options to extend the contract for two (2) additional one (1) year periods, with all terms and conditions remaining the same.

FISCAL INFORMATION

These services will be funded by Water and Wastewater Department Operating Funds. Requisitions will be entered on an as-needed basis. The budgeted amount for this item is \$770,000. 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: Daniel Parish, 940-349-7522.

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 ""VQ" EXECUTE A CONTRACT WITH HACH COMPANY, FOR THE PURCHASE OF HACH BRAND PRODUCTS, INCLUDING INSTRUMENTATIONS AND CHEMISTRY FOR THE WATER AND WASTEWATER DEPARTMENTS, WHICH IS THE SOLE PROVIDER OF THIS SOFTWARE, 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 8263 – AWARDED TO HACH COMPANY, FOR THREE (3) YEARS, WITH THE OPTION FOR TWO (2) ADDITIONAL ONE (1) YEAR EXTENSIONS, IN THE TOTAL FIVE (5) YEAR NOT-TO-EXCEED AMOUNT OF \$770,000.00).

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[Water and sewer service]; 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>
8263	HACH Company	\$770,000.00

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 _____. 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:	_____	_____	_____	_____
Paul Meltzer, District 3:	_____	_____	_____	_____
Joe Holland, District 4:	_____	_____	_____	_____
Brandon Chase McGee, At Large Place 5:	_____	_____	_____	_____
Chris Watts, At Large Place 6:	_____	_____	_____	_____


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

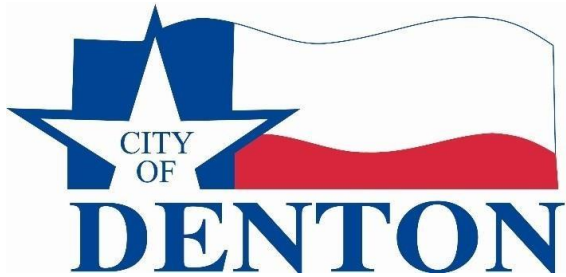
GERARD HUDSPETH, MAYOR

ATTEST:
JESUS SALAZAR, 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@cityofdenton.com, c=US
Date: 2023.08.24
20:31:20 -05'00'



Docusign City Council Transmittal Coversheet

FILE	8263
File Name	HACH W-WW TREATMENT PRODUCTS
Purchasing Contact	Crystal westbrook
City Council Target Date	
Piggy Back Option	Not Applicable
Contract Expiration	
Ordinance	

**CONTRACT BY AND BETWEEN
CITY OF DENTON, TEXAS AND HACH COMPANY
(Contract #8263)**

THIS CONTRACT is made and entered into this date _____, by and between **HACH COMPANY**, a Delaware Corporation, whose address is 5600 Lindbergh Drive, Loveland, Colorado 80538, hereinafter referred to as "Supplier," and the **CITY OF DENTON, TEXAS**, a home rule municipal corporation, hereinafter referred to as "City," to be effective upon approval of the Denton City Council and subsequent execution of this Contract by the Denton City Manager or his duly authorized designee.

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

SCOPE OF SERVICES

Supplier shall provide products in accordance with the City's document **FILE 8263 HACH Water and Wastewater Treatment Products**, a copy of which is on file at the office of Purchasing Agent and incorporated herein for all purposes. The Contract consists of this written agreement and the following items which are attached hereto, or on file, and incorporated herein by reference:

- (a) Special Terms and Conditions (**Exhibit "A"**);
- (b) Supplier's Sales Framework Agreement (**Exhibit "B"**);
- (c) Supplier's Product Discount List. (**Exhibit "C"**);
- (d) Insurance Requirements (**Exhibit "D"**);
- (e) Certificate of Interested Parties Electronic Filing (**Exhibit "E"**);
- (f) Form CIQ – Conflict of Interest Questionnaire (**Exhibit "F"**).

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

INDEMNITY

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

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

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 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.

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

DocuSigned by:

9EBFF5658E56492...

SIGNATURE

Stephen D. Gay

PRINTED NAME

Director,

TITLE

Water Utilities

DEPARTMENT

ATTEST:
JESUS SALAZAR, CITY SECRETARY

BY: _____

Contract 8263

SUPPLIER

DocuSigned by:

BY:



F67F2B6D940549E...

AUTHORIZED SIGNATURE

Printed Name: David Mueller

Title: Vice President, Service

1-800-227-4224

PHONE NUMBER

dmueller@hach.com

EMAIL ADDRESS
2023-1063195

TEXAS ETHICS COMMISSION
CERTIFICATE NUMBER

CITY OF DENTON, TEXAS

BY: _____

SARA HENSLEY
CITY MANAGER

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY


BY:  4B070831B4AA438...

Exhibit A

Special Terms and Conditions

1. Authorized Distributor

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

2. Contract Terms

The contract term will be three (3) year, effective from the date that the City provides notice of the award to supplier ("effective date"). The contract shall automatically renew each year on the month and day of the effective date ("renewal date"). This contract may only be automatically renewed for an additional two (2) one-year periods, subject to the terms herein, without City Council approval. 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. Total Contract Amount

The contract total shall not exceed \$770,000. Product discount shall be per Exhibit C attached.

4. Delivery Lead Time

Products or services shall be delivered fourteen (14) days or less after the receipt of order from the City. The products shall be FOB Destination and free of shipping charge for all ground shipping.

Exhibit B

HACH COMPANY SALES FRAMEWORK AGREEMENT

THIS AGREEMENT is entered into as of the Effective Date by and between Hach and Customer to set forth the terms and conditions for Customer's purchase of Hach's Products, with the foregoing capitalized terms each defined immediately below:

Parties: **Hach Company, 5600 Lindbergh Dr., Loveland, CO 80538** ("Hach")

City of Denton ("Customer")

Products: As set forth in Hach's Product Catalogue or Website ("Products") Term per Exhibit A

1. Scope

(a) Subject to the terms and conditions of this Agreement, Hach and Customer desire to transact business with each other in an arrangement under which Hach will sell and Customer will purchase the Products for its own use.

(b) The terms and conditions set forth herein, together with Hach's then current Terms and Condition of Sale ("Hach Ts&Cs of Sale") apply to Customer's individual purchases during the term of this Agreement. (The August 2015 version of the Hach Ts&Cs of Sale are included in Appendix A.) To the extent any provisions of the Terms and Conditions of Sale conflict with the provisions in the body of this Agreement, the provisions in the body of this Agreement shall prevail. In no event will any printed terms contained in any request for quotation, purchase order, or other Customer-provided document have any application to any purchase governed by this Agreement, whether such terms may be construed as different from or in addition to any terms set forth herein.

2. Products, Pricing and Updates

The prices for Products are the prices published by Hach from time to time in the Product and Pricing Manual. Hach may extend to Customer discounts or similar concessions (collectively, "Incentives"). As a special consideration for Customer, during the term of this agreement, a seven percent (7%) discount on certain Hach products purchased by Customer.

Customer is responsible for payment of any sales, use or any other taxes (including reasonable administrative charges) due on the sale of Products to Customer. For shipping, no ground freight charges will apply. Freight charges will apply for expedited shipments to Customer.

3. Orders

(a) Each Order will specify (1) the types of Products to be purchased by Hach SKU number, (2) the price of such Products, (3) the range of dates within which the Products must be delivered, and (4) the delivery location. Each such order will constitute an offer by Customer to purchase the Products specified therein at the price and for delivery during the period specified. Not later than the close of business on the second business day following delivery of any Order, Hach will notify Customer if Hach objects to any requirements of that Order. Unless Hach so objects, Hach will be deemed to have accepted such Order under the four parameters set forth therein and subject to this Agreement. No confirmation by Hach will be necessary in order to effect Hach's acceptance of any Order.

(b) If Products are ordered by Customer and Hach does not have sufficient stock to fill the Order, or for any reason, deems in its reasonable discretion that it cannot fill the Order in its usual course of business,

Hach may, at its option and without any liability (i) not fill the Order, (ii) allocate Products as to which there is a shortage among its Customers, Customers and agents in any reasonable manner, or (iii) accept the Order on such conditions as it may deem appropriate. If Hach agrees to fill the Order but for any reason beyond its reasonable control, including without limitation inventory shortages, work slowdowns or stoppages, war, insurrection, or the acts of any governmental jurisdiction, Hach will have no liability to Customer or Customer's Customers with respect to such Order.

(c) Customer may not cancel an order unless written notice of cancellation is received by the designated office prior to acceptance of the order by Hach. Hach may in its sole discretion permit cancellations after acceptance subject to a late cancellation fee or restocking charge.

4. Term/Termination

(a) This Agreement shall begin on the "Effective Date" and expire on "Expiration Date" unless renewed mutually in writing by Hach and Customer or terminated sooner.

(b) Either party may terminate this Agreement effective immediately upon notice to the other for material or persistent breach of any provision hereof; except that in the case of a breach capable of remedy, the terminating party shall give written notice giving particulars of the breach upon which the breaching party shall have fifteen (15) days to remedy the breach to avoid termination.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the day and year first above written.

CUSTOMER

Hach Company

By _____
 Title _____
 Date _____

By: _____
 Title: _____
 Date: _____

Address and/or telecopy number to which communication between the parties should be sent:

Hach Company
 Attention: VP & General Counsel
 5600 Lindbergh Drive
 Loveland, CO 80538

Appendix A**TERMS & CONDITIONS OF SALE FOR HACH COMPANY PRODUCTS AND SERVICES****HACH COMPANY****Headquarters**

P.O. Box 389
5600 Lindbergh Drive
Loveland, CO 80539-0389

Purchase Orders

PO Box 608
Loveland, CO 80539-0608

WebSite: www.hach.com

U.S.A.

Phone: 800-227-4224
Fax: 970-669-2932
E-Mail: orders@hach.com
quotes@hach.com
techhelp@hach.com

Export

Phone: 970-669-3050
Fax: 970-461-3939
Email: intl@hach.com

Remittance

2207 Collections Center Drive
Chicago, IL 60693

Wire Transfers

Bank of America
231 S. LaSalle St.
Chicago, IL 60604
Account: 8765602385
Routing (ABA): 071000039

Quotation Addendum

ADVANTAGES OF WORKING WITH HACH

<u>Technical Support</u>	<u>Pick&Ship™</u>	<u>Hach ServicePlus® Programs</u>
Provides post-sale instrumentation and application support	Pick&Ship™ Program offers a better way to keep your supplies in stock	Instrument Protection and Service
<ul style="list-style-type: none"> Hach's highly skilled Technical Support staff is dedicated to helping you resolve technical issues before, during and after the sale. Available via phone, e-mail, or live online chat at Hach.com! Toll-free phone: 800-227-4224 E-mail: techhelp@hach.com 	<ul style="list-style-type: none"> Convenience of one purchase order for the entire year Flexibility to change, cancel or create new orders Savings from locking in prices & thus avoiding price surges and rush charges Peace of mind with automatic, reliable shipments just as you need them 	<ul style="list-style-type: none"> Savings of more than 20% versus a "pay as you go" approach Freedom from maintenance Worry-free compliance with Hach's certification Fixed maintenance budget for the entire year
www.Hach.com	www.Hach.com/pickandship	www.hach.com/service-contracts

ADVANTAGES OF SIMPLIFIED SHIPPING AND HANDLING

<u>Safe & Fast Delivery</u>	<u>Save Time – Less Hassle</u>	<u>Save Money</u>
<ul style="list-style-type: none"> Receive tracking numbers on your order acknowledgement Hach will assist with claims if an order is lost or damaged in shipment 	<ul style="list-style-type: none"> No need to set up deliveries for orders or to schedule pickup Hach ships order as product is available, at no additional charge, when simplified shipping and handling is used. 	<ul style="list-style-type: none"> No additional invoice to process – save on time and administrative costs Only pay shipping once, even if multiple shipments are required

STANDARD SIMPLIFIED SHIPPING AND HANDLING CHARGES ^{1, 2, 3}						Collect ⁴
Total Price of Merchandise Ordered	Standard Surface (Mainland USA)	Second Day Delivery (Mainland USA)	Next Day Delivery (Mainland USA)	Second Day Delivery (Alaska & Hawaii)	Next Day Delivery (Alaska & Hawaii)	Handling Fee Effective 9/1/18
\$0.00 - \$49.99	\$11.99	\$29.99	\$55.93	\$48.14	\$91.51	\$8.55
\$50.00 - \$149.99	\$18.15	\$53.50	\$100.95	\$76.72	\$145.86	\$8.79
\$150.00 - \$349.99	\$31.89	\$85.07	\$173.28	\$107.34	\$208.91	\$9.34
\$350.00 - \$649.99	\$44.62	\$116.69	\$232.06	\$145.87	\$282.46	\$9.83
\$650.00 - \$949.99	\$56.51	\$122.52	\$256.39	\$151.70	\$285.96	\$10.18
\$950.00 - \$1,999.99	\$71.10	\$151.18	\$319.67	\$179.91	\$348.12	\$11.12
\$2,000.00 - \$3,999.99	\$81.68	\$159.89	\$327.55	\$185.99	\$353.77	\$12.84
\$4,000.00 - \$5,999.99	\$94.70	\$166.08	\$343.37	\$186.85	\$363.97	\$15.81
\$6,000.00 - \$7,999.99	\$111.89	\$189.09	\$390.97	\$206.11	\$397.36	\$18.44
\$8,000.00 - \$9,999.99	\$128.30	\$215.91	\$421.91	\$231.03	\$438.15	\$21.28
Over \$10,000	2% of Net Order Value	4% of Net Order Value	6% of Net Order Value	4% of Net Order Value	6% of Net Order Value	\$32.91

- Shipping & Handling charges shown are only applicable to orders billing and shipping to U.S. destinations. Shipping & Handling charges will be prepaid and added to invoice. Shipping & Handling for the Reagent Delivery Program is charged on each shipment release and is based on the total price of each shipment release. Shipping & Handling charges are subject to change without notice.
- Additional Shipping & Handling charges will be applied to orders containing bulky and/or especially heavy orders. Refrigerated and all weather Samplers do not qualify for simplified Shipping & Handling charges, and are considered heavy products. Dissolved Oxygen Sensors can be damaged if exposed to temps below freezing, causing sensor failure. Must be shipped over night or 2nd day air during the cold weather months.
- Orders shipping to Alaska or Hawaii: Additional Shipping & Handling charges may be applied at time of order processing. Second Day and Next Day delivery is not available to all destinations.
- Hach Company will assess a collect handling fee on orders with collect shipping terms. This handling fee covers the additional costs that Hach Company

incurs from processing and managing collect shipments.

SALESTAX

Sales Tax is not included in the attached quotation. Applicable sales and usage taxes will be added to your invoice, at the time of order, based on U.S. destination of goods, unless a valid resale/exemption certificate for destination state is provided to the above address or fax number, attention of the Tax Dept.

TERMS AND CONDITIONS OF SALE FOR HACH® PRODUCTS

HACH COMPANY | 5600 Lindbergh Drive | PO Box 389 | Loveland, Colorado 80539 | P 970.669.3050 | F 970.669.2932 | hach.com

TERMS & CONDITIONS OF SALE FOR HACH COMPANY PRODUCTS AND SERVICES

This document sets forth the Terms & Conditions of Sale for goods manufactured and/or supplied, and services provided, by Hach Company of Loveland, Colorado ("Hach") and sold to the original purchaser thereof ("Buyer"). Unless otherwise specifically stated herein, the term "Hach" includes only Hach Company and none of its affiliates. Unless otherwise specifically stated in a previously-executed written purchase agreement signed by authorized representatives of Hach and Buyer, these Terms & Conditions of Sale establish the rights, obligations and remedies of Hach and Buyer which apply to this offer and any resulting order or contract for the sale of Hach's goods and/or services ("Products").

APPLICABLE TERMS & CONDITIONS: These Terms & Conditions of Sale are contained directly and/or by reference in Hach's offer, order acknowledgment, and invoice documents. The first of the following acts constitutes an acceptance of Hach's offer and not a counteroffer and creates a contract of sale ("Contract") in accordance with these Terms & Conditions: (i) Buyer's issuance of a purchase order document against Hach's offer; (ii) acknowledgement of Buyer's order by Hach; or (iii) commencement of any performance by Hach pursuant to Buyer's order. Provisions contained in Buyer's purchase documents (including electronic commerce interfaces) that materially alter, add to or subtract from the provisions of these Terms & Conditions of Sale are not a part of the Contract.

CANCELLATION: Buyer may cancel goods orders subject to fair charges for Hach's expenses including handling, inspection, restocking, freight and invoicing charges as applicable, provided that Buyer returns such goods to Hach at Buyer's expense within 30 days of delivery and in the same condition as received. Buyer may cancel service orders on ninety (90) day's prior written notice and refunds will be prorated based on the duration of the service plan. Inspections and re-instatement fees may apply upon cancellation or expiration of service programs. Seller may cancel all or part of any order prior to delivery without liability if the order includes any Products that Seller determines may not comply with export, safety, local certification, or other applicable compliance requirements.

DELIVERY: Delivery will be accomplished FOB Destination located in Ames, Iowa or Loveland, Colorado, United States (Incoterms 2010). For orders having a final destination within the U.S., legal title and risk of loss or damage pass to Buyer upon transfer to the first carrier. For orders having a final destination outside the U.S., legal title and risk of loss or damage pass to Buyer when the Products enter international waters or airspace or cross an international frontier. Hach will use commercially reasonable efforts to deliver the Products ordered herein within the time specified on the face of this Contract or, if no time is specified, within Hach's normal lead-time necessary for Hach to deliver the Products sold hereunder. Upon prior agreement with Buyer and for an additional charge, Hach will deliver the Products on an expedited basis. Standard service delivery hours are 8 am – 5 pm Monday through Friday, excluding holidays.

INSPECTION: Buyer will promptly inspect and accept any Products delivered pursuant to this Contract after receipt of such Products. In the event the Products do not conform to any applicable specifications, Buyer will promptly notify Hach of such nonconformance in writing. Hach will have a reasonable opportunity to repair or replace the nonconforming product at its option. Buyer will be deemed to have accepted any Products delivered hereunder and to have waived any such nonconformance in the event such a written notification is not received by Hach within thirty (30) days of delivery.

PRICES & ORDER SIZES: All prices are in U.S. dollars and are based on delivery as stated above. Prices do not include any charges for services such as insurance; brokerage fees; sales, use, inventory or excise taxes; import or export duties; special financing fees; VAT, income or royalty taxes imposed outside the U.S.; consular fees; special permits or licenses; or other charges imposed upon the production, sale, distribution, or delivery of Products. Buyer will either pay any and all such charges or provide Hach with acceptable exemption certificates, which obligation survives performance under this Contract. Hach reserves the right to establish minimum order sizes and will advise Buyer accordingly.

PAYMENTS: All payments must be made in U.S. dollars. For Internet orders, the purchase price is due at the time and manner set forth at www.hach.com. Invoices for all other orders are due and payable NET 30

TERMS AND CONDITIONS OF SALE FOR HACH® PRODUCTS

DAYS from date of the invoice without regard to delays for inspection or transportation, with payments to be made by check to Hach at the above address or by wire transfer to the account stated on the front of Hach's invoice, or for customers with no established credit, Hach may require cash or credit card payment in advance of delivery. In the event payments are not made or not made in a timely manner, Hach may, in addition to all other remedies provided at law, either: (a) declare Buyer's performance in breach and terminate this Contract for default; (b) withhold future shipments until delinquent payments are made; (c) deliver future shipments on a cash-with- order or cash-in-advance basis even after the delinquency is cured; (d) charge interest on the delinquency at a rate of 1-1/2% per month or the maximum rate permitted by law, if lower, for each month or part thereof of delinquency in payment plus applicable storage charges and/or inventory carrying charges; (e) repossess the Products for which payment has not been made; (f) recover all costs of collection including reasonable attorney's fees; or (g) combine any of the above rights and remedies as is practicable and permitted by law. Buyer is prohibited from setting off any and all monies owed under this from any other sums, whether liquidated or not, that are or may be due Buyer, which arise out of a different transaction with Hach or any of its affiliates. Should Buyer's financial responsibility become unsatisfactory to Hach in its reasonable discretion, Hach may require cash payment or other security. If Buyer fails to meet these requirements, Hach may treat such failure as reasonable grounds for repudiation of this Contract, in which case reasonable cancellation charges shall be due Hach. Buyer grants Hach a security interest in the Products to secure payment in full, which payment releases the security interest but only if such payments could not be considered an avoidable transfer under the U.S. Bankruptcy Code or other applicable laws. Buyer's insolvency, bankruptcy, assignment for the benefit of creditors, or dissolution or termination of the existence of Buyer, constitutes a default under this Contract and affords Hach all the remedies of a secured party under the U.C.C., as well as the remedies stated above for late payment or non-payment. See [113](#) for further wire transfer requirements.

1. **LIMITED WARRANTY:** Hach warrants that Products sold hereunder will be free from defects in material and workmanship and will, when used in accordance with the manufacturer's operating and maintenance instructions, conform to any express written warranty pertaining to the specific goods purchased, which for most Hach instruments is for a period of twelve (12) months from delivery. Hach warrants that services furnished hereunder will be free from defects in workmanship for a period of ninety (90) days from the completion of the services. Parts provided by Hach in the performance of services may be new or refurbished parts functioning equivalent to new parts. Any non-functioning parts that are repaired by Hach shall become the property of Hach. No warranties are extended to consumable items such as, without limitation, reagents, batteries, mercury cells, and light bulbs. **All other guarantees, warranties, conditions and representations, either express or implied, whether arising under any statute, law, commercial usage or otherwise, including implied warranties of merchantability and fitness for a particular purpose, are hereby excluded.** The sole remedy for Products not meeting this Limited Warranty is replacement, credit or refund of the purchase price. This remedy will not be deemed to have failed of its essential purpose so long as Hach is willing to provide such replacement, credit or refund.

2. **INDEMNIFICATION:** Indemnification applies to a party and to such party's successors-in-interest, assignees, affiliates, directors, officers, and employees ("Indemnified Parties"). Hach is responsible for and will defend, indemnify and hold harmless the Buyer Indemnified Parties against all losses, claims, expenses or damages which may result from accident, injury, damage, or death due to Hach's breach of the Limited Warranty. Buyer is responsible for and will defend, indemnify and hold harmless the Hach Indemnified Parties against all losses, claims, expenses or damages which may result from accident, injury, damage, or death due to negligence, misuse or misapplication of any goods or services, violations of law, or the breach of any provision of this Contract by the Buyer, its affiliates, or those employed by, controlled by or in privity with them. Buyer's workers' compensation immunity, if any, does not preclude or limit its indemnification obligations. To the extent allowed by law

• **PATENT PROTECTION:** Subject to all limitations of liability provided herein, Hach will, with respect to any Products of Hach's design or manufacture, indemnify Buyer from any and all damages and costs as finally determined by a court of competent jurisdiction in any suit for infringement of any U.S. patent (or European patent for Products that Hach sells to Buyer for end use in a

member state of the E.U.) that has issued as of the delivery date, solely by reason of the sale or normal use of any Products sold to Buyer hereunder and from reasonable expenses incurred by Buyer in defense of such suit if Hach does not undertake the defense thereof, provided that Buyer promptly notifies Hach of such suit and offers Hach either: (i) full and exclusive control of the defense of such suit when Products of Hach only are involved, or (ii) the right to participate in the defense of such suit when products other than those of Hach are also involved. Hach's warranty as to use patents only applies to infringement arising solely out of the inherent operation of the Products according to their applications as envisioned by Hach's specifications. In case the Products are in such suit held to constitute infringement and the use of the Products is enjoined, Hach will, at its own expense and at its option, either procure for Buyer the right to continue using such Products or replace them with non-infringing products, or modify them so they become non-infringing, or remove the Products and refund the purchase price (prorated for depreciation) and the transportation costs thereof. The foregoing states the entire liability of Hach for patent infringement by the Products. Further, to the same extent as set forth in Hach's above obligation to Buyer, Buyer agrees to defend, indemnify and hold harmless Hach for patent infringement related to

(x) any goods manufactured to the Buyer's design, (y) services provided in accordance with the Buyer's instructions, or (z) Hach's Products when used in combination with any other devices, parts or software not provided by Hach hereunder.

3. **TRADEMARKS AND OTHER LABELS:** Buyer agrees not to remove or alter any indicia of manufacturing origin or patent numbers contained on or within the Products, including without limitation the serial numbers or trademarks on nameplates or cast, molded or machined components.

4. **SOFTWARE AND DATA.** All licenses to Hach's separately-provided software products are subject to the separate software license agreement(s) accompanying the software media. In the absence of such express licenses and for all other software, Hach grants Buyer only a personal, non-exclusive license to access and use the software provided by Hach with Products purchased hereunder solely as necessary for Buyer to enjoy the benefit of the Products. A portion of the software may contain or consist of open source software, which Buyer may use under the terms and conditions of the specific license under which the open source software is distributed. Buyer agrees that it will be bound by all such license agreements. Title to software remains with the applicable licensor(s). In connection with Buyer's use of Products, Hach may obtain, receive, or collect data or information, including data produced by the Products. In such cases, Buyer grants Hach a non-exclusive, worldwide, royalty-free, perpetual, non-revocable license to use, compile, distribute, display, store, process, reproduce, or create derivative works of such data, or to aggregate such data for use in an anonymous manner, solely to facilitate marketing, sales and R&D activities of Hach and its affiliates.

5. **PROPRIETARY INFORMATION; PRIVACY:** "Proprietary Information" means any information, technical data or know-how in whatever form, whether documented, contained in machine readable or physical components, mask works or artwork, or otherwise, which Hach considers proprietary, including but not limited to service and maintenance manuals. Buyer and its customers, employees and agents will keep confidential all such Proprietary Information obtained directly or indirectly from Hach and will not transfer or disclose it without Hach's prior written consent, or use it for the manufacture, procurement, servicing or calibration of Products or any similar products, or cause such products to be manufactured, serviced or calibrated by or procured from any other source, or reproduce or otherwise appropriate it. All such Proprietary Information remains Hach's property. No right or license is granted to Buyer or its customers, employees or agents, expressly or by implication, with respect to the Proprietary Information or any patent right or other proprietary right of Hach, except for the limited use licenses implied by law. Hach will manage Customer's information and personal data in accordance with its Privacy Policy, located at <http://www.hach.com/privacypolicy>.

6. **CHANGES AND ADDITIONAL CHARGES:** Hach reserves the right to make design changes or improvements to any products of the same general class as Products being delivered hereunder without liability or obligation to incorporate such changes or improvements to Products ordered by Buyer unless agreed upon in

writing before the Products' delivery date. Services which must be performed as a result of any of the following

conditions are subject to additional charges for labor, travel and parts: (a) equipment alterations not authorized in writing by Hach; (b) damage resulting from

TERMS AND CONDITIONS OF SALE FOR HACH® PRODUCTS

improper use or handling, accident, neglect, power surge, or operation in an environment or manner in which the instrument is not designed to operate or is not in accordance with Hach's operating manuals; (c) the use of parts or accessories not provided by Hach; (d) damage resulting from acts of war, terrorism or nature; (e) services outside standard business hours; (f) site prework not complete per proposal; or (g) any repairs required to ensure equipment meets manufacturer's specifications upon activation of a service agreement.

7. SITE ACCESS / PREPARATION / WORKER SAFETY / ENVIRONMENTAL

COMPLIANCE: In connection with services provided by Hach, Buyer agrees to permit prompt access to equipment. Buyer assumes full responsibility to back-up or otherwise protect its data against loss, damage or destruction before services are performed. Buyer is the operator and in full control of its premises, including those areas where Hach employees or contractors are performing service, repair and maintenance activities. Buyer will ensure that all necessary measures are taken for safety and security of working conditions, sites and installations during the performance of services. Buyer is the generator of any resulting wastes, including without limitation hazardous wastes. Buyer is solely responsible to arrange for the disposal of any wastes at its own expense. Buyer will, at its own expense, provide Hach employees and contractors working on Buyer's premises with all information and training required under applicable safety compliance regulations and Buyer's policies. If the instrument to be serviced is in a Confined Space, as that term is defined under OSHA regulations, Buyer is solely responsible to make it available to be serviced in an unconfined space. Hach service technicians will not work in Confined Spaces. In the event that a Buyer requires Hach employees or contractors to attend safety or compliance training programs provided by Buyer, Buyer will pay Hach the standard hourly rate and expense reimbursement for such training attended. The attendance at or completion of such training does not create or expand any warranty or obligation of Hach and does not serve to alter, amend, limit or supersede any part of this Contract.

8. LIMITATIONS ON USE: Buyer will not use any Products for any purpose other than those identified in Hach's catalogs and literature as intended uses. Unless Hach has advised the Buyer in writing, in no event will Buyer use any Products in drugs, food additives, food or cosmetics, or medical applications for humans or animals. In no event will Buyer use in any application any Product that requires FDA 510(k) clearance unless and only to the extent the Product has such clearance. Buyer will not sell, transfer, export or re-export any Hach Products or technology for use in activities which involve the design, development, production, use or stockpiling of nuclear, chemical or biological weapons or missiles, nor use Hach Products or technology in any facility which engages in activities relating to such weapons. Unless the "ship-to" address is in California, U.S.A., the Products are not intended for sale in California and may lack markings required by California Proposition 65; accordingly, unless Buyer has ordered Products specifying a California ship-to address, Buyer will not sell or deliver any Hach Products for use in California. Any warranty granted by Hach is void if any goods covered by such warranty are used for any purpose not permitted hereunder.

9. EXPORT AND IMPORT LICENSES AND COMPLIANCE WITH LAWS:

Unless otherwise specified in this Contract, Buyer is responsible for obtaining any required export or import licenses. Buyer will comply with all laws and regulations applicable to the installation or use of all Products, including applicable import and export control laws and regulations of the U.S., E.U. and any other country having proper jurisdiction, and will obtain all necessary export licenses in connection with any subsequent export, re-export, transfer and use of all Products and technology delivered hereunder. Buyer will comply with all local, national, and other laws of all jurisdictions globally relating to anti-corruption, bribery, extortion, kickbacks, or similar matters which are applicable to Buyer's business activities in connection with this Contract, including but not limited to the U.S. Foreign Corrupt Practices Act of 1977, as amended (the "FCPA"). Buyer agrees that no payment of money or provision of anything of value will be offered, promised, paid or transferred, directly or indirectly, by any person or entity, to any government official, government employee, or employee of any company owned in part by a government, political party, political party official, or candidate for any government office or political party office to induce such organizations or persons to use their authority or influence to obtain or retain an improper business advantage for Buyer or for Hach, or which otherwise constitute or have the purpose or effect of public or commercial bribery, acceptance of or acquiescence in extortion, kickbacks or other unlawful or improper means of obtaining business or any

TERMS AND CONDITIONS OF SALE FOR HACH® PRODUCTS

improper advantage, with respect to any of Buyer's activities related to this Contract. Hach asks Buyer to "Speak and the U.S., (ii) elsewhere in the U.S. if Buyer has minimum contacts with the Upl", if aware of any violation of law, regulation or our Standards of Conduct ("SOC") in relation to this Contract. See U.S. but not Colorado, or (iii) in a neutral location if Buyer does not have minimum contacts with the United States. <http://daniatier.com/integrity-and-compliance> and www.daniatierintegrity.com for a copy of the SOC and for access to our Helpline portal.

10. RELATIONSHIP OF PARTIES: Buyer is not an agent or representative of Hach and will not present itself as such under any circumstances unless and to the extent it has been formally screened by Hach's compliance department and received a separate duly-authorized letter from Hach setting forth the scope and limitations of such authorization. 23. ENTIRE AGREEMENT & MODIFICATION: These Terms & Conditions of Sale constitute the entire agreement between the parties and supersede any prior agreements or representations, whether oral or written. No change to or modification of these Terms & Conditions shall be binding upon Hach unless in a written instrument specifically referencing that it is amending these Terms & Conditions of Sale and signed by an authorized representative of Hach. Hach rejects any additional or inconsistent Terms & Conditions of Sale offered by Buyer at any time, whether blockages, terms or conditions materially alter the Terms & Conditions herein and irrespective of Hach's acceptance of Buyer's order for the described goods and services.

11. FORCE MAJEURE: Hach is excused from performance of its obligations under this Contract to the extent caused by acts or omissions that are beyond its control of, including but not limited to Government embargoes, any seizures or freeze of assets, delays or refusals to grant an export or import license or the suspension or not such or revocation thereof, or any other acts of any Government; fires, floods, severe weather conditions, or any other acts of God; quarantines; labor strikes or lockouts; riots; strife; insurrections; civil disobedience or acts of criminals or terrorists; war; material shortages or delays in deliveries to Hach by third parties. In the event of the existence of any force majeure circumstances, the period of time for delivery, payment terms and payments under any letters of credit will be extended for a period of time equal to the period of delay. If the force majeure circumstances extend for six months, Hach may, at its option, terminate this Contract without penalty and without being deemed in default or in breach thereof. * * *

12. NON ASSIGNMENT AND WAIVER: Buyer will not transfer or assign this Contract or any rights or interests hereunder without Hach's prior written consent. Failure of either party to insist upon strict performance of any provision of this Contract, or to exercise any right or privilege contained herein, or the waiver of any breach of the terms or conditions of this Contract will not be construed as thereafter waiving any such terms, conditions, rights, or privileges, and the same will continue and remain in force and effect as if no waiver had occurred.

13. WIRE TRANSFERS: Buyer and Hach both recognize that there is a risk of wire fraud when individuals impersonating a business demand immediate payment under new wire transfer instructions. To avoid this risk, Buyer must verbally confirm any new or changed wire transfer instructions by calling Hach at +1-970-663-1377 and speaking with Hach's Credit Manager before transferring any monies using the new wire instructions. Both parties agree that they will not institute wire transfer instruction changes and require immediate payment under the new instructions but will instead provide a ten (10) day grace period to verify any wire transfer instruction changes before any outstanding payments are due using the new instructions.

21. LIMITATION OF LIABILITY: None of the Hach Indemnified Parties will be liable to Buyer under any circumstances for any special, treble, incidental or consequential damages, including without limitation, damage to or loss of property other than for the Products purchased hereunder; damages incurred in installation, repair or replacement; lost profits, revenue or opportunity; loss of use; losses resulting from or related to downtime of the products or inaccurate measurements or reporting; the cost of substitute products; or claims of Buyer's customers for such damages, howsoever caused, and whether based on warranty, contract, and/or tort (including negligence, strict liability or otherwise). The total liability of the Hach Indemnified Parties arising out of the performance or nonperformance hereunder or Hach's obligations in connection with the design, manufacture, sale, delivery, and/or use of Products will in no circumstance exceed in the aggregate a sum equal to twice the amount actually paid to Hach for Products delivered hereunder.

22. APPLICABLE LAW AND DISPUTE RESOLUTION: The construction, interpretation and performance hereof and all transactions hereunder shall be governed by the laws of the State of Colorado, without regard to its principles or laws regarding conflicts of laws. If any provision of this Contract violates any Federal, State or local statutes or regulations of any countries having jurisdiction of this transaction, or is illegal for any reason, said provision shall be self-deleting without affecting the validity of the remaining provisions. Unless otherwise specifically agreed upon in writing between Hach and Buyer, any dispute relating to this Contract which is not resolved by the parties shall be adjudicated in order of preference by a court of competent jurisdiction (i) in the State of Colorado, U.S.A. if Buyer has minimum contacts with Colorado

EXHIBIT C

HACH COMPANY
City of Denton Discounts

Hach Lab	LI	Hach Lab Instruments	5.00%
Hach Lab	LA	Hach Lab Accessories/Consumables	5.00%
Hach Lab	LC	Hach Lab Chemistries (includes test kits)	5.00%
Hach Lab	LR	Hach Lab Resale	5.00%
Hach Lab	LM	Hach Lab Micro	5.00%
Sigma Samplers	SMP	Sampler Instruments	5.00%
Sigma Samplers	SMPA	Sampler Accessories/Consumables	5.00%
Sigma Samplers	SMPC	Sampler Chemistries	5.00%
Hach Process	HP	Hach Process Instruments	5.00%
Hach Process	HPA	Hach Process Accessories/Consumables	5.00%
Hach Process	HPC	Hach Process Chemistries	5.00%
GLI Process	G	GLI Instruments	5.00%
GLI Process	GA	GLI Accessories/Consumables	5.00%
GLI Process	GC	GLI Chemistries	5.00%
Orbisphere	OR	Orbisphere Instruments	5.00%
Orbisphere	ORA	Orbisphere Accessories/Consumables	5.00%
Orbisphere	ORC	Orbisphere Chemistries	5.00%
Shipping		Free Ground Shipping	

EXHIBIT D**INSURANCE REQUIREMENTS**

Respondent's attention is directed to the insurance requirements below. It is highly recommended that respondents confer with their respective insurance carriers or brokers to determine in advance of Proposal/Bid submission the availability of insurance certificates and endorsements as prescribed and provided herein. If an apparent low respondent fails to comply strictly with the insurance requirements, that respondent may be disqualified from award of the contract. Upon contract award, 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.

As soon as practicable after notification of contract award, 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, Contractors are strongly advised to make such requests prior to proposal/bid opening, since the insurance requirements may not be modified or waived after proposal/bid opening unless a written exception has been submitted with the proposal/bid. 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 specifications, and shall be maintained in compliance with these additional specifications throughout the duration of the Contract, or longer, if so noted:

A. COMMERCIAL GENERAL LIABILITY INSURANCE

Commercial General Liability Insurance including, but not limited to, Premises/Operations, Personal & Advertising Injury, Products/Completed Operations, Independent Contractors, and Contractual Liability with minimum combined bodily injury (including death) and property damage limits of \$1,000,000.00 per occurrence and \$2,000,000.00 general aggregate.

B. WORKERS' COMPENSATION and EMPLOYERS LIABILITY INSURANCE

Workers' Compensation within the regulations of the Texas Workers' Compensation Act. The minimum policy limits for **Employers Liability** are:

Bodily Injury by Accident: \$100,000.00 Each Accident
 Bodily Injury by Disease: \$100,000.00 Each Employee
 Bodily Injury by Disease: \$500,000,000.00 Policy Limit

NOTES:

- a. If CONTRACTOR will not be providing services under the contract at a City facility, has no employees and/or is operating as a sole owner and single operator, CONTRACTOR shall provide a signed

letter, with the current date, on official letterhead stating such to meet the requirement.

- b. If CONTRACTOR is a non-subscriber or is self-insured CONTRACTOR shall provide a copy of its Certificate of Authority to Self-Insure from the Texas Department of Insurance, Division of Workers' Compensation Self Insurance Regulation Program, evidence of alternative coverage and internal safety and injury coverage policies and procedures.

C. BUSINESS AUTOMOBILE LIABILITY INSURANCE

Business Automobile Liability Insurance covering owned, hired, and non-owned vehicles, with a minimum combined single limit for bodily injury (including death) and property damage limit of \$500,000.00 per occurrence.

NOTE:

- a. If CONTRACTOR does not have owned, hired and non-owned autos or vehicles and/or no autos or vehicles will not be used in the performance of services under the contract, CONTRACTOR shall provide a signed letter, with the current date, on official letterhead stating such to meet the requirement for owned autos.

D. PROFESSIONAL LIABILITY INSURANCE

If CONTRACTOR is a licensed or certified person who renders professional services, then **Professional Liability Insurance** to provide coverage against any claim which the CONTRACTOR becomes legally obligated to pay as damages arising out of the performance of professional services caused by any negligent error, omission or act with minimum limits of \$1,000,000.00 per claim, \$2,000,000.00 annual aggregate.

SUBCONTRACTING LIABILITY

- (1) Without limiting any of the other obligations or liabilities of the

CONTRACTOR, the CONTRACTOR shall require each Subcontractor performing work under the contract, at the Subcontractor's own expense, to maintain during the engagement with the CITY, types and limits of insurance that are appropriate for the services/work being performed, comply with all applicable laws and are consistent with industry standards. The Subcontractor's liability insurance shall name CONTRACTOR as an additional insured.

(2) CONTRACTOR shall obtain and monitor the certificates of insurance from each Subcontractor. CONTRACTOR must retain the certificates of insurance for the duration of the contract and shall have the responsibility of enforcing insurance requirements among its subcontractors. The CITY shall be entitled, upon request and without expense, to receive copies of these certificates.

Exhibit E
Certificate of Interested Parties Electronic Filing

In 2015, the Texas Legislature adopted House Bill 1295, which added section 2252.908 of the Government Code. The law states that the City may not enter into this contract unless the Contractor submits a disclosure of interested parties (Form 1295) to the City at the time the Contractor submits the signed contract. The Texas Ethics Commission has adopted rules requiring the business entity to file Form 1295 electronically with the Commission.

Contractor will be required to furnish a Certificate of Interest Parties before the contract is awarded, in accordance with Government Code 2252.908.

The contractor shall:

1. Log onto the State Ethics Commission Website at :
<https://www.ethics.state.tx.us/filinginfo/1295/>
2. Register utilizing the tutorial provided by the State
3. Print a copy of the completed Form 1295
4. Enter the Certificate Number on page 2 of this contract.
5. Complete and sign the Form 1295
6. Email the form to purchasing@cityofdenton.com with the contract number in the subject line.
(EX: Contract 1234 – Form 1295)

The City must acknowledge the receipt of the filed Form 1295 not later than the 30th day after Council award. Once a Form 1295 is acknowledged, it will be posted to the Texas Ethics Commission's website within seven business days.

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.

HACH COMPANY

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:

David Mueller

8/22/2023

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: 0B317F9E4B174BDBBCE949AA13DE79B6

Status: Sent

Subject: Please DocuSign: City Council Contract 8263 HACH W-WW Treatment Products

Source Envelope:

Document Pages: 24

Signatures: 4

Certificate Pages: 6

Initials: 1

AutoNav: Enabled

Envelope Stamping: Enabled

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

Envelope Originator:

Crystal Westbrook

901B Texas Street

Denton, TX 76209

crystal.westbrook@cityofdenton.com

IP Address: 198.49.140.10

Record Tracking

Status: Original

8/16/2023 2:23:30 PM

Holder: Crystal Westbrook

crystal.westbrook@cityofdenton.com

Location: DocuSign

Signer Events

Crystal Westbrook

crystal.westbrook@cityofdenton.com

Senior Buyer

City of Denton

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

Not Offered via DocuSign

Lori Hewell

lori.hewell@cityofdenton.com

Purchasing Manager

City of Denton

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

Not Offered via DocuSign

Marcella Lunn

marcella.lunn@cityofdenton.com

Mack Reinwand City Attorney

City of Denton

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

Not Offered via DocuSign

David Mueller

dmueller@hach.com

Vice President, Service

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

Accepted: 8/21/2023 6:57:28 AM

ID: f139add1-75e8-489e-ba04-8ba893a829aa

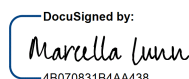
Signature**Completed**

Using IP Address: 198.49.140.10



Signature Adoption: Pre-selected Style

Using IP Address: 198.49.140.104



Signature Adoption: Pre-selected Style

Using IP Address: 198.49.140.10



Signature Adoption: Pre-selected Style

Using IP Address: 75.71.80.9

Timestamp

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Viewed: 8/16/2023 2:34:47 PM

Signed: 8/16/2023 2:35:51 PM

Sent: 8/16/2023 2:35:54 PM

Viewed: 8/17/2023 9:50:39 AM

Signed: 8/17/2023 9:51:06 AM

Sent: 8/17/2023 9:51:09 AM


Viewed: 8/18/2023 1:42:48 PM

Signed: 8/18/2023 4:50:52 PM

Sent: 8/18/2023 4:50:55 PM

Viewed: 8/21/2023 6:57:28 AM

Signed: 8/22/2023 5:13:20 PM

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: 198.49.140.10	Sent: 8/22/2023 5:13:24 PM Viewed: 8/23/2023 8:22:05 AM Signed: 8/23/2023 9:52:54 AM

Electronic Record and Signature Disclosure:
Accepted: 8/23/2023 8:22:05 AM
ID: 01d5aab5-1d4f-41ef-b4f1-5335350bc48f

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

Sent: 8/23/2023 9:52:57 AM

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

Jesus Salazar
jesus.salazar@cityofdenton.com
Security Level: Email, Account Authentication (None)

Electronic Record and Signature Disclosure:
Accepted: 8/23/2023 10:51:10 AM
ID: 6c55a3e9-4b35-4a6f-b2d5-e7598a7259c9

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)

Electronic Record and Signature Disclosure:
Not Offered via DocuSign

COPIED

Sent: 8/16/2023 2:35:54 PM

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 Daniel Parish daniel.parish@cityofdenton.com Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Accepted: 6/16/2023 12:01:41 PM ID: 0ab6291d-7af9-4647-9f21-4c01f02fb329	<div>COPIED</div>	Sent: 8/23/2023 9:52:57 AM Viewed: 8/23/2023 3:05:25 PM
Witness Events	Signature	Timestamp
Notary Events	Signature	Timestamp
Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	8/16/2023 2:34:32 PM
Payment Events	Status	Timestamps
Electronic Record and Signature Disclosure		

ELECTRONIC RECORD AND SIGNATURE DISCLOSURE

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

Getting paper copies

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

Withdrawing your consent

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

Consequences of changing your mind

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

All notices and disclosures will be sent to you electronically

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

How to contact City of Denton:

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

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

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

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

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

To request paper copies from City of Denton

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

To withdraw your consent with City of Denton

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

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

Required hardware and software

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

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

Acknowledging your access and consent to receive materials electronically

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

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

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



City of Denton

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

Legislation Text

File #: PUB23-162, **Version:** 1

AGENDA CAPTION

Consider recommending adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, rejecting any and all competitive proposals under RFP 8272 for the Modular Building Removal at 804 Texas Street for the Solid Waste & Recycling Department (SW&R) and 1527 Mayhill Road for the Water Department; and providing an effective date (RFP 8272).



City of Denton

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

AGENDA INFORMATION SHEET

DEPARTMENT: Procurement
ACM: Cassey Ogden
DATE: September 11, 2023

SUBJECT

Consider recommending adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, rejecting any and all competitive proposals under RFP 8272 for the Modular Building Removal at 804 Texas Street for the Solid Waste & Recycling Department (SW&R) and 1527 Mayhill Road for the Water Department; and providing an effective date (RFP 8272).

INFORMATION/BACKGROUND

The City of Denton issued a solicitation for the removal of two modular buildings on City property. One of these buildings, a triple-wide modular office, has been at 1527 South Mayhill Road for 20 years and has met its useable life. The second building, a single-wide modular structure, is located at 804 Texas Street and has also met its useful life.

The City aimed to find a mutually beneficial arrangement to avoid the cost of disposal. One vendor responded to the solicitation, but the proposal was to demolish the buildings instead of taking possession of them at a fee.

After evaluating the proposals, it was recommended to reject all of them due to cost concerns. As a cost-saving measure, the Solid Waste Department will use its equipment and staff to demolish the SW&R modular building, while the Facilities Department will remove and dispose of the Water Utility building. There will be no re-solicitation for this item.

This decision aligns with the Local Government Code 252.043, which permits the City Council to reject all bids if necessary.

RECOMMENDATION

Staff recommends rejection of all proposals for the Modular Building Removal.

EXHIBITS

Exhibit 1: Agenda Information Sheet
Exhibit 2: Ordinance

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

For information concerning this acquisition, contact: Arturo (Art) Garcia, 940-349-8021.

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, REJECTING ANY AND ALL COMPETITIVE PROPOSALS UNDER RFP 8272 FOR THE MODULAR BUILDING REMOVAL AT 804 TEXAS STREET FOR THE SOLID WASTE & RECYCLING DEPARTMENT (SW&R) AND 1527 MAYHILL ROAD FOR THE WATER DEPARTMENT; AND PROVIDING AN EFFECTIVE DATE (RFP 8272).

WHEREAS, the City has solicited, received, and tabulated competitive proposals to evaluate the Modular Building Removal (RFP 8272) in accordance with the procedures of state laws and the City's ordinances; and

WHEREAS, the City staff recommends, and the City Council has determined, that it is in the best interest of the City that the herein described proposals should be rejected; NOW, THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. All competitive proposals, as described in the "Request for Proposal", "Bid Proposals", or plans and specifications on file in the Office of the City's Purchasing Agent filed according to the bid number assigned herein (RFP 8272 – Modular Building Removal) are hereby rejected.

SECTION 2. The City Manager, or their designee, is hereby authorized to execute all necessary documents for the rejection of said proposals. The City Manager, or their designee, is hereby authorized, in their discretion, to re-advertise to receive competitive bids, or proceed otherwise, to procure goods and services described in RFP 8272.

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 the RFP 8272 to reject said proposals to the City Manager, or their designee.

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

The motion to approve this ordinance was made by _____ 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:	_____	_____	_____	_____
Paul Meltzer, District 3:	_____	_____	_____	_____
Joe Holland, 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:
JESUS SALAZAR, 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: 2023.08.24 20:29:03 -05'00'



City of Denton

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

Legislation Text

File #: PUB23-164, 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 Signature Automation, LLC, for the selection and design of a standardized Human Machine Interface (HMI) software system for the Water Production and Water Reclamation Departments as set forth in the contract; providing for the expenditure of funds therefor; and providing an effective date (RFQ 7574-022 - Professional Services Agreement for design services awarded to Signature Automation, LLC, in the not-to-exceed amount of \$1,913,152.00).



AGENDA INFORMATION SHEET

DEPARTMENT: Procurement
ACM: Cassey Ogden
DATE: September 11, 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 Signature Automation, LLC, for the selection and design of a standardized Human Machine Interface (HMI) software system for the Water Production and Water Reclamation Departments as set forth in the contract; providing for the expenditure of funds therefor; and providing an effective date (RFQ 7574-022 – Professional Services Agreement for design services awarded to Signature Automation, LLC, in the not-to-exceed amount of \$1,913,152.00).

STRATEGIC ALIGNMENT

This action supports Key Focus Area: Enhance Infrastructure and Mobility.

INFORMATION/BACKGROUND

The Water Production and Water Reclamation Divisions use Human Machine Interface (HMI) software applications to provide real-time monitoring and interactive control of the treatment processes. The HMI system provides remote monitoring and control of processes within treatment plants, and associated remote facilities (elevated storage tanks, booster, and lift stations), and provides a graphical representation to the operations personnel about abnormal conditions so that appropriate actions can be initiated to avoid potential Texas Commission on Environmental Quality (TCEQ) permit violations.

Each division currently has an HMI and Historical application that has been in service since 2002 and is using different vendors for the products that require technical support licenses for each one.

Purpose of the Project

1. Standardize an application that both Water Production and Water Reclamation can utilize.
 - This will provide for one product vendor for both utilities.
 - Creates a situation that allows support staff to assist each other during absences.
 - Provides for a single vendor for application licenses.
 - Aligns with industry best practices.
2. Design the new HMI windows to adhere to current HMI standards and practices (ANSI/ISA 101).
 - The current standards and practices promote “Situational Awareness” as a graphical design.

- Situational Awareness design concepts create a graphical representation of visual alerts utilizing high-contrast, graphical techniques. The advantage of this design method provides for quicker recognition of an abnormal condition or alarm.
3. Tag Name Database Review
 - All the Water Utility plants have been in service since 2002 and each plant has undergone modifications to processes and field instrumentation or actual removal.
 - This project will provide an assessment of the Tag Name database and remove unused tag names. By removing unused tag names, the system will run more efficiently and reduce the HMI / Historian application's cost.
 4. HMI Design / Modification Criteria Manual
 - The project will provide a document to control future modifications and establish nomenclature conventions.
 - This document is intended to protect this project's investment through the incorporation of specific design guides and controls.
 5. Evaluate the replacement of Alarm and Notification applications.
 - The goal is to standardize one Alarm Notification System.

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

RECOMMENDATION

Award a contract with Signature Automation, LLC, for the selection and design of a standardized Human Machine Interface (HMI) software system for the Water Production and Water Reclamation Departments, in a not-to-exceed amount of \$1,913,152.

PRINCIPAL PLACE OF BUSINESS

Signature Automation, LLC
Dallas, TX

ESTIMATED SCHEDULE OF PROJECT

This project will be started upon approval with a completion date by Fall of 2024.

FISCAL INFORMATION

These services will be funded from a combination of the accounts listed below.

Water CIP Account	630528523	\$956,576
Wastewater Utilities CIP	640507545	\$956,576

Requisition # 160875 has been entered into the Purchasing software system in the amount of \$1,913,152. The budgeted amount for this item is \$1,913,152.

EXHIBITS

Exhibit 1: Agenda Information Sheet
Exhibit 2: LLC Member
Exhibit 3: Ordinance and Contract

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

For information concerning this acquisition, contact: Chris Carroll, 940-349-7190.

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



Texas Secretary of State

Jane Nelson

[UCC](#) [Business Organizations](#) [Trademarks](#) [Notary](#) [Account](#) [Help/Fees](#) [Briefcase](#) [Logout](#)

BUSINESS ORGANIZATIONS INQUIRY - VIEW ENTITY

Filing Number: 801654808
Original Date of Filing: September 13, 2012
Formation Date: N/A
Tax ID: 32049002184
Duration: Perpetual
Entity Type: Domestic Limited Liability Company (LLC)
Entity Status: In existence
FEIN:
Name: Signature Automation, LLC
Address: 14677 MIDWAY RD STE 212
ADDISON, TX 75001 USA

REGISTERED AGENT		FILING HISTORY	NAMES	MANAGEMENT
Last Update		Name	Title	
October 29, 2022		HENRY HIDALGO	PARTNER	
October 29, 2022		KEVIN PATEL	PARTNER	

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 SIGNATURE AUTOMATION, LLC, FOR THE SELECTION AND DESIGN OF A STANDARDIZED HUMAN MACHINE INTERFACE (HMI) SOFTWARE SYSTEM FOR THE WATER PRODUCTION AND WATER RECLAMATION DEPARTMENTS AS SET FORTH IN THE CONTRACT; PROVIDING FOR THE EXPENDITURE OF FUNDS THEREFOR; AND PROVIDING AN EFFECTIVE DATE (RFQ 7574-022 – PROFESSIONAL SERVICES AGREEMENT FOR DESIGN SERVICES AWARDED TO SIGNATURE AUTOMATION, LLC, IN THE NOT-TO-EXCEED AMOUNT OF \$1,913,152.00).

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 Signature Automation, LLC, for the selection and design of a standardized Human Machine Interface (HMI) software system for the Water Production and Water Reclamation Departments, 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:	_____	_____	_____	_____
Paul Meltzer, District 3:	_____	_____	_____	_____
Joe Holland, 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:
JESUS SALAZAR, CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

BY:  _____
Digitally signed by Marcella Lunn
DN: cn=Marcella Lunn, o=City
of Denton,
email=marcella.lunn@cityofdenton.com, c=US
Date: 2023.08.31 11:26:03 -05'00'



Docusign City Council Transmittal Coversheet

PSA	7574-022
File Name	HMI Software
Purchasing Contact	Erica Garcia
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 Signature Automation, LLC, with its corporate office at 14677 Midway Rd, Suite 212, Addison, TX 75001 and authorized to do business in Texas, ("ENGINEER"), for a PROJECT generally described as: selection and design of a standardized Human Machine Interface (HMI) software system (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 \$1,913,152.00 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 and 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
Signature Automation, LLC

DocuSigned by:


Henry "Rick" Hidalgo

Authorized Agent, Title

Full Name: Henry "Rick" Hidalgo

TEXAS ETHICS COMMISSION
CERTIFICATE NUMBER

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

DocuSigned by:

9EBFF6668E66492...

Signature

Director,

Title

water utilities

Department

Date Signed: 8/30/2023

ATTEST:
JESUS SALAZAR, CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

DocuSigned by:

4B070831B4AA438...

BY: _____



17950 Preston Road, Suite 300, Dallas, TX 75252
Phone: 469-619-1241 | Fax: 469-619-1242

SCOPE OF WORK

The following scope of work applies to City of Denton Water/Wastewater facilities of Pecan Creek Water Reclamation Plant, Lake Lewisville Water Production Plant, and Ray Roberts Water Production Plant.

PHASE 1 - PROJECT PLANNING AND INITIATION

Signature Automation believes that effective project management is a critical factor in the successful completion of any project. Having executed numerous projects with municipal utilities, Signature Automation has developed a structured project management process optimized for use in the public sector. The key components of our project management approach are outlined below.

Task 1.1 - Project Execution Plan

Following contract award, Signature Automation will immediately mobilize to begin planning the work. The first step we will take is to develop a Project Execution Plan that will define the work at hand, communication protocols and other pertinent data related to how we will execute the work. Focus will be placed on areas of responsibility for each entity. The Project Execution Plan will be distributed to all stakeholders to assure all understand the overall project and fully understand their assigned tasks. It will include a baseline schedule to guide all project team members so that they fully understand the work ahead.

DELIVERABLES

- Project Execution Plan

Task 1.2 - Project Kickoff Meeting

Upon finalizing of the Project Execution Plan, our project manager will conduct an internal planning meeting with our team and will then make a formal request to the City of Denton to schedule the project kickoff meeting with all stakeholders, where we will review with you our Project Execution Plan.

During this two-hour kickoff meeting, we will ensure a common understanding of the detailed project scope and schedule by the entire project team. We will review the planned tasks, with special emphasis on the site visits, workshops, and review meetings that will involve the City of Denton staff.

DELIVERABLES

- Kickoff Meeting Agenda and Minutes

Task 1.3 - Project Execution and Control

Signature Automation understands that a project of this type that covers multiple systems and facilities will require a significant amount of internal and external coordination, especially when it comes to site assessments, workshop participation, and reviewing deliverables. **We are proposing that the City of Denton establish a "Core Team" at the beginning of the project.** Membership in the "Core Team" should be City of Denton staff that have the most in depth knowledge of the existing HMI windows (i.e., what functions work, do not work, additional information that would be beneficial for operation, etc.). The list will be developed as we progress through the early stages of the project. "Core Team" members must

have the support of management and supervisors to dedicate the time and resources to effectively participate in the development of the project. This group should also include representation from supervisors and managers. In summary, the Core Team should consist of a select number of City of Denton staff representing the various departments that utilize the SCADA system and (1) have knowledge of the existing SCADA system and facilities, (2) can collectively represent the interests of the City of Denton in defining the requirements for the Human Machine Interface (HMI) software selection and any upgrades and improvements to the existing systems that may be identified, and (3) can dedicate the necessary time to actively participate in the Human Machine Interface software selection, HMI upgrade planning, and applications development activities. The Core Team should be considered the governance team for the City of Denton's HMI Improvements project. This topic will be reviewed during the project kickoff meeting and Signature Automation will assist the City of Denton in identifying personnel that should be considered for this Core Team.

In addition to familiarizing participants with each other to foster open communications, the purpose of the kickoff meeting will be to:

- Establish and document project goals, parameters, and protocols
- Ensure a common understanding of the detailed project scope and schedule by the entire project team
- Review the baseline schedule and planned tasks, with special emphasis on the site visits, workshops, and review meetings that will involve the City of Denton staff
- Work with the City of Denton's project manager to select a Core Team, as well as to review and confirm the broad goals and objectives of the project

A key component of this workshop will be to establish the broad goals and objectives of the project as these decisions will be used to help guide the solutions and development of the HMI graphics provided throughout the remainder of the project. Input will be received from attendees to gain a vision and strategy for future operational needs.

The intent of this project is to provide a replacement for the existing HMI system with similar functionality to the existing system. However, as the project progresses and a better understanding is gained of the existing system and the new software to be provided, there may be opportunities for additional improvements that fall outside of the boundaries of the scope of services defined herein. Throughout the project, Signature Automation will maintain a list of these types of items in the form of a Future Enhancements List. At the conclusion of the work, Signature Automation will review the list with the City during a 2-hour meeting to determine if any of the items should be implemented as part of the Special Services on this contract or should be considered via a separate contracting mechanism.

DELIVERABLES:

- Revised Project Execution Plan (based on project kickoff meeting minutes)
- Future Enhancements List (updated throughout the project)

Task 1.4 – Progress Meetings

Throughout the execution of the work, Signature Automation will conduct monthly project meetings to review the progress of this project and to discuss any outstanding issues and potential problems. A standard agenda will be developed for these meetings, and minutes will be provided for each meeting. We will make use of online collaboration tools such as Microsoft Teams and SharePoint to help defray the



travel time and costs where feasible. In addition to the monthly progress meetings, additional meetings, conference calls and workshops will be conducted as needed to support each of the project tasks.

Our project manager will utilize our management and quality standards to guide the execution of the work. Each month, our project manager will prepare a monthly report to support our invoicing that will document the overall progress of the work, the work since the last report, and the anticipated work during the next reporting period. The report will also identify any potential areas of concern or any items that are pending to aid in keeping everything moving to meet the schedule. Schedule updates, Action Item Lists, and Decision Logs will also be provided to ensure all personnel are completely informed of the progress and the work remaining.

DELIVERABLES

- Monthly Progress Reports & Invoices
- Monthly Progress Meeting Agendas and Minutes

Task 1.5 – Pre-Functional Testing

To aid the assessment efforts, the Signature Automation team shall work with the City to perform a Pre-Functional analysis of all HMI, communications, and PLC systems. Results of the Pre-Functional assessments shall provide a more thorough understanding and documentation of the current state of the systems. Through several similar assessments on other projects executed by Signature Automation, the Pre-Functional assessment data and documentation has proven to greatly reduce risks and be the difference maker towards achieving successful, seamless, and error free transition. It aids in minimizing “finger pointing” by the contractor during later construction phases by establishing a detailed baseline understanding of the existing systems and providing important documentation and understanding during the future planning and design.

To accomplish this, Signature Automation will provide up to four (4) days at each treatment facility (Pecan Creek Water Reclamation Plant, Lake Lewisville Water Production Plant, and Ray Roberts Water Production Plant) with the City’s personnel to collaborate on this testing as it will provide an opportunity to help instruct new personnel within the City how to test the systems. The purpose of this test will be to only identify and document any items that do not work, not to debug and repair any anomalies found. Should the testing require more than the four days allocated, City personnel will complete the testing and provide their findings to Signature Automation.

The results of the pre-functional testing shall provide a recap of equipment that may warrant maintenance by plant staff or ultimate replacement. This will allow plant staff the opportunity to repair them prior to the new system coming online.

These results shall be provided in the form of a TM to the City support discussions for replacement of the HMI. A review workshop for this TM is not anticipated as the TM is merely aimed as serving as a record document for future project planning.

DELIVERABLES

- Pre-Functional Testing Technical Memorandum

PHASE 2 – DATA GATHERING AND SYSTEM SELECTION

Task 2.1 – Review of Existing HMI and Alarm System and Documentation

Upon finalizing of the Project Execution Plan, our project manager and team will conduct a site inspection to gather all pertinent data necessary to identify the equipment, such as servers, workstations, remote access points, etc., that will be part of the HMI Improvements project.

Signature Automation will furnish the City of Denton a list of the HMI system documents that we would need to review. These documents will include SCADA and HMI standards, process control narratives, process and mechanical drawings, etc. Signature Automation will perform a high-level review of these documents to gain an understanding of the HMI system currently in use. As part of this review and during the site investigations we will make note of missing or out-of-date documentation. Some of the key areas Signature Automation shall review are:

- SCADA facilities at each location
- Locations for servers and workstations
- Key personnel requiring access to the SCADA system
- Interfaces to remote site telemetry, both IP and serial communications
- Local area networks for SCADA/HMI communications
- List of all active sites monitored by SCADA at each facility
- List of any decommissioned sites which may have been monitored by SCADA
- Cybersecurity related policies and procedures
- Wastewater SCADA Master Plan

Signature Automation will conduct site visits to the Denton facilities. The goal of the site visits will be to:

- Develop and/or field verify system block diagrams
- Extract the input/output (I/O) list from the existing HMI systems and Win911 system
- Review the existing HMI graphics systems and scripting on each HMI and Win911 configuration
- Capture a backup copy of the HMI and Win911 applications to allow detailed assessment of previously developed HMI
- Discuss current and planned projects that may impact the HMI Improvements project.

Signature Automation has assumed that the site visits will begin in conjunction with the kickoff meeting and has budgeted a total of three (3) days of onsite activities.

DELIVERABLES

- List of Data Collected and Trip Reports

Task 2.2 – Define System Functional Requirements

Core Team Workshops

Signature Automation shall conduct two (2) half-day workshops with the city's Core Team along with any other key personnel to review current system functionality and performance and to discuss areas for upgrade and enhancement. The key personnel needed will be identified prior to scheduling the workshop. The intent of the workshops is to build understanding and consensus among the primary stakeholders with respect to the requirements and needs. Signature Automation will prepare a structured workshop



agenda for each workshop, which will help the city's team focus on the requirements for the new SCADA system.

Signature Automation will identify the features and functions of the existing system that work well, and which should be retained in the new system, as well as discuss features and functionality that are missing or not ideal in the current installation.

SCADA Requirements Documentation and Prioritization

Signature Automation shall document the requirements gathered during the stakeholder workshops. The requirements will be organized into general categories and decomposed into more detailed requirements as appropriate. An initial list of potential requirements categories is shown in Table 1.

Table 1: Potential Requirements Categories	
Vision and strategy for future operational controls, level of automation	Disaster recovery/business continuity
Overall SCADA system architecture	Integration with business systems
HMI hardware and software functionality	Integration with other control systems
Redundancy requirements	SCADA change management
Standardized configurations	Control center locations
Alarm/event management and notification	Organization, practices, and procedures
Data management, trending, and reporting	System maintenance and support
Communications hardware and software	Documentation standards
Cybersecurity	Mobile solutions
Ease of application configuration	Original Equipment Manufacturer (OEM) training

Signature Automation shall organize and prioritize the requirements and work with the core team to finalize the prioritization methodology. An initial list of prioritization categories is shown in Table 2.

Table 2: Requirements Prioritization	
Pass/Fail	The requirement is critical enough so that if a system does not meet the requirement, it cannot be considered further. Critical requirements may include Modbus capability, redundancy, and trending.
Critical	The requirement is essential to the operational mission of the city
Moderate	Important requirement that does not directly impact the operational mission but may have operational or management benefits.
Low	This category describes "nice to have" features which may not be operationally critical

Signature Automation shall assign initial prioritization ratings to each requirement and provide the SCADA Requirements Technical Memorandum to the city for review. After a two-week review period, a requirements validation review workshop will be conducted. Signature Automation will use this workshop to discuss and refine the information gathered during the requirements study and further refine the prioritization of requirements as well as assist in developing the HMI Scoring Criteria.

DELIVERABLES

- System Functionality Workshop Meeting Agenda and Minutes (2)
- Requirements Validation Review Workshop Meeting Agenda and Minutes
- SCADA Requirements Technical Memorandum

Task 2.3 – Develop Preliminary System Architecture

Based on the defined system requirements, Signature Automation will develop a preliminary SCADA system architecture. This system architecture will include considerations that will meet the current and future needs of the city. The architecture will depict a detailed representation of the SCADA system components, including:

- High Availability (redundancy) considerations
- Data interfaces to other enterprise systems, including future data warehouse
- Patching / Antivirus update considerations
- Sizing of system components
- Data Management considerations, including backups, storage, disaster recovery, and data retention.

Signature Automation shall submit the draft preliminary system architecture diagram for City review and comment. Signature Automation will update the draft preliminary architecture diagram based on comments received which will then be included with the HMI vendor proposal request.

DELIVERABLES

- Preliminary System Architecture

Task 2.4 – HMI and Alarm System Scoring Criteria

The HMI and alarm system scoring criteria will be developed with input from the City of Denton's Core Team along with the information gathered in the SCADA Requirements Technical Memorandum. See Table 3 for a sample set of evaluation criteria to be considered. Each individual scoring criterion will be provided with a weight factor based on its importance to the City of Denton staff. The scoring criterion shall include a rating based on the individuals' assessment during the site tours defined in Task 2.7.

Table 3: HMI Detailed Scoring Criteria		
General Considerations <ul style="list-style-type: none"> • Licensing Model • License Administration Methods • Annual Support Agreements • Local System Integrator Support • Presence in Marketplace • Industry Longevity 	HMI Considerations – Architecture <ul style="list-style-type: none"> • Thick Client Capabilities • Thin Client Methodology • Support of Replication into DMZ • Portable Device Interface Support • Trending Interface • Web Links support 	HMI Considerations – Configuration <ul style="list-style-type: none"> • Water/Wastewater Toolkit or Symbol Set Availability • High Performance HMI Toolkit availability • HMI Security Capabilities • Graphics Conversion to Web format
Data Acquisition Subsystem <ul style="list-style-type: none"> • Redundancy Methods • Scan Frequency Management • Data Quality Flagging Capability • Integrated Databases 	Alarm Management <ul style="list-style-type: none"> • Alarm Priority Capability • Alarm Grouping / Sorting Capability • Remote Alarm Notification (These features will be broken down further as the notification software may be a separate third-party solution such as Win911 or TopView) • Alarm and Event Historical Data Collection 	System Architecture <ul style="list-style-type: none"> • Support for Virtualization • Redundancy and Failover • Distributed Features • Centralized Development and Management



Table 3: HMI Detailed Scoring Criteria

Table 3: HMI Detailed Scoring Criteria		
Historical Data Subsystems <ul style="list-style-type: none"> • Database Type • Replication Capabilities • Long-Term Data Storage • Redundancy Methodology • Data Collection Frequency Configuration • Methods to Access Historical Data • Built-In Reporting Capabilities 	Data Management <ul style="list-style-type: none"> • Dashboard Support • Data Reporting • Other Integration Modules <ul style="list-style-type: none"> ○ Maintenance Management System ○ Lab Inventory Management System ○ GIS 	Security <ul style="list-style-type: none"> • Login / Tracking Capability • Support for Areas of Responsibility / Areas of Control • Support for Security Badge Login • Remote Access Security

DELIVERABLES

- HMI Scoring Criteria Technical Memorandum

Task 2.5 – Develop HMI RFP’s

Signature Automation will work with the City of Denton to identify the specific HMI packages to be considered. For the purposes of this proposal, we have assumed that a total of three packages will be identified; although, more than three vendors are anticipated to propose on this request.

Signature Automation will develop a Request for Proposal (RFP) that will be sent to each selected HMI vendor. As part of this effort, we will coordinate with the city’s contracting department to ensure the language in the RFP aligns with the city’s contracting requirements.

The RFP will provide a list of functional requirements desired by the city and will request that each vendor provide a brief written description of how their product meets each of the functional requirements reflected by the scoring criteria. The scoring criteria will NOT be included in the RFP but will be used by the project stakeholders to evaluate the various vendors. In addition, the RFP will include the preliminary system architecture diagram to aid the software vendors on the licensing and software required to meet the design intent (number of workstations, total I/O count, historical database size, etc.). Based on these requirements, each vendor will be asked to provide software pricing information.

DELIVERABLES

- HMI Request for Proposal (RFP)

Task 2.6 – HMI and Alarm System Demonstrations

Based on the RFP responses completed by each vendor, Signature Automation and the Core Team will short list the top 3 HMI and alarm system notification vendors and invite each selected vendor to provide a demonstration at the city’s facilities. Signature Automation will provide each vendor with an agenda of items that should be demonstrated to keep each presentation in a similar format to assist with final scoring. Agenda items will include many of the scoring criteria items but will also allow for a portion of



time dedicated to a surprise exercise for the vendor which will allow each vendor to showcase the software development of a simple equipment or instrument object animated from scratch. This demonstration will allow the Core Team to see the ease of development of applications for the software packages being evaluated.

DELIVERABLES

- Vendor Presentation Agenda

Task 2.7 – Site Tours

As a follow up to the vendor presentations, Signature Automation will coordinate half-day site visits to utilities that have the software being considered. During the site visits, the City will have an opportunity to view the installed software and speak with operations, maintenance and system administrator personnel to gauge their satisfaction with the product offering. Signature Automation will help to guide these discussions but encourages the City to openly discuss features and/or concerns with these end users during these site visits.

Attendees for these site visits should include all Core Team members that are taking part in the system selection so their input can be included into the scoring criteria for each product.

Task 2.8 – HMI and Alarm System Evaluation and Recommendation

The City of Denton's Core Team should complete an evaluation form based on the software list of scoring criteria developed for each HMI and alarm notification product. Select Signature Automation team members will also complete evaluation forms for each product based on the information from the vendors, the software demonstrations, and general knowledge of the products. Signature Automation will tabulate the results and provide to the city. We will then facilitate a workshop with the City of Denton's Core Team to review and finalize the ratings.

Based on the collective scorings and the discussions held during the workshop, Signature Automation will develop a recommendation to the City of Denton as to the selected HMI and alarm notification system that will summarize the evaluation process and present the scoring for each of the software packages.

DELIVERABLES

- Software Evaluation Tabulations
- Recommendation Letter

Task 2.9 – Historical Software Evaluation and Recommendation

Signature Automation understands that the City currently uses offerings within their Hach WIMS system for their operational reports. As part of the HMI evaluation, Signature Automation will assess whether the HMI software historian offering is a viable option for replacement of the Hach WIMS system including the ability for external users to enter lab entry data to be stored for future reporting.

Signature Automation will provide a discussion in our findings and our final recommendation in the form of a Historian Recommendation Letter. The letter will summarize the advantages and disadvantages of the options so that the City can make a final decision on how to proceed.

DELIVERABLES

- Historian Recommendation Letter

PHASE 3 – APPLICATION ENGINEERING

The City of Denton has elected to transition to Situational Awareness style graphics that align with ANSI/ISA 101. To accomplish this, in depth HMI standards must be developed to serve as guidance during the implementation phase. Standardized solutions are often difficult to achieve; however, following a consistent approach will eliminate confusion among staff and improve maintainability across all facilities, especially as newer employees join the City of Denton.

The Core Team should be considered the governance team for the HMI standards development process and will have veto power over other project stakeholders should it be required. This will expedite the decision-making process should there be any conflicting opinions between stakeholders.

Initially, we will work to establish the specific details that need to be covered within the standards document, thus assuring the completed SCADA Standards Document will meet the City of Denton's needs. We anticipate topics will consist of alarm management, situational awareness style graphics, tag naming, and other relevant HMI features. Portions of the standards development shall begin while the HMI evaluations described in Phase 2 are ongoing, however, the standards will be finalized once the selection is made so that they align with the specific HMI software offering selected. Considerations will be made for differences between the water and wastewater systems. Any differences that are approved by the City will be clearly documented within the standards.

Task 3.1 – HMI Graphics Definition

HMI Graphics Workshops

Signature Automation shall conduct a series of workshops that will be held to review current HMI graphics and determine which graphics and concepts should be brought forward to the new system. These workshops will also develop the new HMI tag naming conventions.

During these workshops, Signature Automation shall review, with city personnel, best practices in the industry by providing references from past experience and industry standards (i.e., ISA, IEC, or IEEE). These discussions will be focused to ensure City of Denton's new SCADA system is well positioned for future expansion, software upgrades, and integration to third-party applications. Topics will include alarm management, situation awareness, historical data access, mobility, and reporting.

Throughout the workshop process, Signature Automation shall document the decisions made and use it as the basis for the HMI Standards document. Leveraging our team's experience with SCADA system integration, design, and programming, Signature Automation shall develop standards that uniquely meet the needs and requirements of City of Denton.

Signature Automation shall conduct three (3) 6-hour workshops to review the existing system graphics and static graphics examples. The three (3) workshops are:

- Initial HMI Workshop
- Standards and Conventions
- HMI Demonstration

During the initial HMI workshop, Signature Automation will meet with the Core Team and review the configuration of HMI graphics and PLC programs from typical sites that are representative of the control system facilities. Signature Automation shall use the information gathered to determine if there are any commonalities already in place that should be incorporated into the standards document.

At the conclusion of the initial HMI workshop, Signature Automation shall develop a concise list of all process graphics that need to be developed.

Signature Automation shall then conduct a second workshop, focused on Standards and Conventions, which will determine the graphics interface standards that should be used. Signature Automation will use the information from discussions during the second workshop to establish the general HMI conventions that should be followed such as screen layouts, fonts, text colors, navigation, color attributes, piping colors, and alarm colors among other things. Signature Automation shall identify the methodologies to be used for operator input to process control. This workshop will include items such as process set point entry, equipment start/stop, alarm limit entry, alarm acknowledgement, control strategy mode selection, process diagnostics configuration screens, PID loop tuning templates, etc.

Signature Automation shall develop sample graphics for use in depicting the methodologies identified throughout the standards, which will include items such as operator set point entry, PID loop faceplates, equipment control and general operator interface. The sample graphics will be linked to "dummy" database points to mimic a live system. They will be developed in the selected HMI environment and will be presented to city personnel in a third workshop, focused on HMI demonstration. The goal of this workshop will be to use the sample graphics developed by Signature Automation as a visual representation of the anticipated standards that are to be developed, thus allowing city personnel a peek into the final graphics design. As Signature Automation reviews the sample graphics with city staff, Signature Automation shall seek input on any preferences or concerns they may have with the current system configuration and implementation and how it relates to the sample graphics that are developed.

During this workshop, Signature Automation shall present a detailed outline of the anticipated HMI Standards document to allow city staff to openly discuss the level of detail anticipated for the final document. Signature Automation's goal is to gain consensus as to the topics that should be covered as we move forward with documenting these standards.

SCADA System I/O List Development

Signature Automation shall review the extracted databases from the HMI systems to document the SCADA I/O list for use in the updated SCADA system.

This I/O list will include the parameters needed for the configuration of the HMI database and will include the new HMI tag naming convention, if applicable. The I/O list will also include designations of alarms to be configured, based on the alarm philosophy developed in the preliminary design.

Two (2) half-day workshops will be held to assist Signature Automation in developing the I/O List. During the first of these two (2) workshops, Signature Automation shall lead in depth discussions with city staff to review the I/O list and confirm Signature Automation's initial findings relative to any duplications and discrepancies that are identified. Signature Automation shall seek input from the city for concurrence on these and for any other issues that they may be aware of. Additionally, during the workshop, Signature Automation shall work with city staff to identify any tags that may no longer be in use. The objective of

this workshop is to develop a "clean" database with no misconfigured or unused tags to optimize the implementation of the database within the new system.

At the conclusion of the first workshop, Signature Automation shall modify the database to reflect the changes that result from those discussions. The resulting database will be used as a starting point for the second workshop. During the second workshop, Signature Automation will focus on identifying the alarming associated with the tags. Prior to this second workshop, Signature Automation shall use the alarm philosophy defined to pre-configure the alarming requirements for each tag. Signature Automation, however, understands that there may be some tags that will deviate from the overall philosophy and during this second workshop, Signature Automation will review the pre-configured alarming with city staff to gain consensus of the overall configuration and to identify any deviations from the philosophy that may exist for specific tags. The objective of this second workshop is to develop a concise database that can be implemented in the new system.

Reporting Workshop

Two (2) half-day workshops will be held to review existing SCADA reports, and to document reports that will be required to be developed. During the initial workshop, Signature Automation shall provide samples of reports developed for other utilities to allow city staff to brainstorm about possible reports that would be beneficial for future use. Data that will populate these reports will also be reviewed based on the information that is available within the existing system. Additionally, discussions will be held regarding any new calculations or other new data that is required to achieve the operational reports desired by the city.

After the initial workshop, Signature Automation shall develop sample layouts of the reports desired in Microsoft Excel format. These will be submitted to the city and a two-week period will be allowed for review. Approximately halfway through the review period, a second Reports workshop will be held to present the sample reports templates and gather review comments from city staff. City of Denton will then have the rest of the review period to complete the review and provide written comments. The resulting comments will be used to finalize the reports templates and in developing the final reports for the city once the new system is implemented.

DELIVERABLES

- Initial HMI Workshop Meeting Agenda and Minutes
- Standards and Conventions Workshop Meeting Agenda and Minutes
- HMI Demonstration Workshop Meeting Agenda and Minutes
- I/O List Development Workshop Meeting Agenda and Minutes (2)
- Report Workshop Meeting Agenda and Minutes (2)

Task 3.2 – Alarm Management Approach Development

Signature Automation shall interview key operations staff to determine the general effectiveness of the alarms as they are currently configured on each system. Signature Automation shall also work with staff to gather a snapshot of the alarms from each HMI system. Signature Automation shall review the snapshot data and the information gained through the interviews to obtain a thorough understanding of the existing alarming on each system.

Signature Automation shall conduct two (2) half-day alarm management workshops. The workshops will discuss alarm performance metrics that should be targeted on the new system and how to achieve those metrics, as well as the alarm management capabilities of the future HMI system.

Signature Automation shall use the information gathered, as well as the discussions held during the alarm management workshops, as the basis for developing a preliminary Alarm Management Approach TM. This memorandum will leverage current best practices in alarm management into this philosophy and will incorporate the principles of commonly referenced standards and practices such as ISA-18.2, API-1167, and EEMUA 191.

The Alarm Management Approach will consist of the following key elements:

- Alarm management philosophy overview, purpose, and use
- Requirements for alarm determination
- Proper and consistent determination and use of alarm priority
- Specific alarm design considerations
- Alarm rationalization principles and practices
- Specification of documentation required for each alarm
- Management of change of the alarm system
- Operator and staff training requirements

Signature Automation shall prepare a draft version of the Alarm Management Approach TM which will be provided to the city for a two-week review period. Approximately halfway through the review period, a workshop will be held to present the TM and gather initial review comments. The city will have the remainder of the review period to complete the TM review and provide written comments.

Signature Automation shall prepare a final Alarm Management Approach TM, which will be finalized based on the city's comments. The Alarm Management Approach TM will be used during HMI programming to define system alarms. The document will also become part of the SCADA system standards.

DELIVERABLES

- Alarm Management Workshop Meeting Agenda and Minutes (2)
- DRAFT Alarm Management Approach Technical Memorandum (TM)
- FINAL Alarm Management Approach Technical Memorandum (TM)

Task 3.3 - Human Machine Interface (HMI) Standards

Signature Automation shall work closely with city staff to develop HMI Standards that fully utilize the capabilities of the planned SCADA components and software. Signature Automation recognizes that no one knows how to manage these facilities and systems better than your staff as you operate and maintain the systems daily. To leverage the City of Denton's knowledge, we will proactively engage personnel identified by the City of Denton's project manager in the development of the HMI programming standards. This will ensure that the City of Denton's personnel, as the end users, take an active role in defining the foundation of the SCADA database and graphical infrastructure that provides the basis for ensuring a user-friendly system of navigation and graphics. Furthermore, it helps the personnel to gain an understanding of the inner workings of the new SCADA system from the ground up, thus improving their overall knowledge once the new system is brought online.



Signature Automation will work closely with the City of Denton to develop HMI Standards that provide the foundation for the graphical interface and historical data collection based on the new HMI system selected. The objective of these standards is to provide guidance to upgrade the existing HMI and within future bidding documents to allow the bidders to assess the level of development required to support the features desired by the City of Denton as defined within these standards.

The topics covered for the HMI standards will be based on the following outline:

- 1 Purpose – Summary of Intent
- 2 Definitions – Terms Specific to the Procedure
- 3 Roles and Responsibilities
- 4 Detailed Procedure
 - 4.1 Requirements for Deviations from Standard
 - 4.2 Process Philosophy
 - 4.3 Modifications to Legacy HMI Graphics
- 5 Evaluation Criteria and Performance Measures
 - 5.1 Programmer Requirements
- 6 Key Words or Phrases
- 7 Related Policies, Procedures and Standards
- 8 Version Control and Change Management
- 9 SCADA System Overview
- 10 HMI Software Naming Conventions
 - 10.1 Introduction
 - 10.2 Database Tag Names
 - 10.3 Graphic Display File Names
- 11 Graphic Display Standards
 - 11.1 Introduction
 - 11.2 General Graphics Standards
 - 11.2.1 Display Types (Overview, Process, Pop-ups, Tabular, Dashboards)
 - 11.2.2 Display Navigation
 - 11.2.3 Display Attributes
- 12 Alarming
 - 12.1 Introduction
 - 12.2 Alarm Indication
 - 12.3 Alarm Groups
 - 12.4 Alarm Summary Display
 - 12.5 Alarm Acknowledgement
 - 12.6 Alarm Shelving
 - 12.7 Alarm Logging
- 13 Trending
 - 13.1 Introduction
 - 13.2 System Trending
 - 13.3 Trend Faceplates
 - 13.4 Tag Selection
- 14 Operator Control Standards
 - 14.1 Introduction
 - 14.2 Variable Frequency Drive (VFD) Motor Control Pop-Up
 - 14.3 Modulating (Analog) Valve Control Pop-Up
 - 14.4 Constant Speed Motor Control Pop-Up
 - 14.5 Discrete (Open/Close) Valve Control Pop-Up
 - 14.6 Lockout/Tagout/Information Displays



- 14.7 PID Controller Pop-Up
- 14.8 Analog Alarm Setpoint Adjustment
- 15 Security Configuration Standards
 - 15.1 Introduction
 - 15.2 Account Types
 - 15.3 User Accounts
 - 15.4 User Login
 - 15.5 Auto Logout
- 16 Historical Collection
 - 16.1 Introduction
 - 16.2 Tagging/Naming
 - 16.3 Data Reporting Methodologies
 - 16.4 Configuration Settings
 - 16.4.1 Compression Settings

The HMI Standards will be developed first in a DRAFT format and submitted to the City of Denton for review and comment. In conjunction with submission of the DRAFT HMI Standards, Signature Automation will request the scheduling of a DRAFT HMI Standards Review Workshop. During this half-day workshop, our team will review the DRAFT document developed with the City of Denton to aid in answering any questions and/or clarify any items. Minutes will be developed and provided to all attendees to gain concurrence that our understanding of the discussions accurately captures the direction given.

The discussions held during the DRAFT review workshop along with the formal review comments received from the City of Denton will be used as the basis for finalizing HMI Standards. The FINAL HMI Standards will be provided to the City of Denton in both PDF and the native Microsoft Word format for future use.

DELIVERABLES

- DRAFT HMI Standards
- HMI Standards Review Workshop Meeting Agenda and Minutes
- FINAL HMI Standards

Task 3.4 – Develop SCADA System Migration Plan

Signature Automation will develop a System Migration Plan that details the steps necessary to transition from the existing HMI System to the selected replacement system. The plan will outline an approach for field installation and testing, including an approach for parallel operation during the transition period.

DELIVERABLES

- SCADA System Migration Plan

PHASE 4 – HMI PROGRAMMING AND INTEGRATION

Task 4.1 – Submittals

Signature Automation will provide submittals throughout the duration of the project to the city for review and concurrence that the work is proceeding as intended. The submittals listed below will be provided.

- Process Graphics Submittal – Signature Automation will provide the process graphics submittal which will include all proposed graphic displays, examples of each type of popup, and examples

of trends. The tag database will also be included with information provided on abnormal tag settings.

- Historical Data Management and Reports Submittal – Signature Automation will provide the historical data management and reports submittal which will include listing of all signals to be collected and stored, listing of all reports, methods for generating and accessing reports, data backup procedures and copies of the reports.
- Testing Procedures Submittal – Signature Automation will provide a thorough testing submittal that will detail the testing to be provided, setup required, and steps required for each test which is formatted in a cause-and-effect manner.
- Software Maintenance Documentation Submittal – Signature Automation will provide the software maintenance documentation which will include application software manuals, software listings and databases, and machine-readable documentation.
- Operations and Maintenance Manuals Submittal – Signature Automation will provide the operations and maintenance manuals for the system operators. These manuals shall be bound and contain all information necessary for operations staff to operate the system.

DELIVERABLES

- Process Graphics Submittal (1 electronic copy)
- Historical Data Management and Reports Submittal (1 electronic copy)
- Testing Procedures Submittal (1 electronic copy)
- Software Maintenance Documentation Submittal (1 electronic copy)
- Operations and Maintenance Manuals Submittal (2 hard copies and 1 electronic copy)

Task 4.2 – Graphics Development

Signature Automation will use the approved HMI Standards Submittal as the basis for developing the process graphics on the control system. Development will begin with planning and defining the common objects and templates utilized on the HMI. Once all the standard objects and HMI layouts are developed, a half day workshop will be scheduled where the graphics will be presented to the city for review and comment.

Upon approval of all HMI standard objects and graphic layouts, Signature Automation will begin planning and developing HMI graphics based on the existing HMI graphics for each site. In some cases, there may be existing HMI calculations and scripts being performed by the HMI software. For reliable execution of logic and data storage, most calculations and scripting functions should be performed in the PLC. Therefore, these calculations and scripts will be reviewed to determine if any can be replicated in a PLC associated with the process area the calculation or script is being performed for. The PLC programming services needed will be on a case-by-case basis, performed under the special services task, and should be approved by the City prior to making the changes. All other calculations and scripts will be duplicated within the new HMI software. Signature Automation will submit graphics and scripts for approval by the city after each process area is completed. Signature Automation will continue this process until all graphics and scripts are developed in the future HMI software. Once all review comments are incorporated, the final graphics will be compiled for the Process Graphics Submittal.

Additionally, this task includes the development and configuration of the HMI database defining all associated I/O interface points between the PLC and HMI and all pseudo points required to support the user interface. Signature Automation will perform a review of all tag settings and descriptions to determine if any seem abnormal. All abnormal data from the database shall be presented to the city for resolution.

This task includes the proper redundancy configuration and testing for the servers which include the HMI servers and historians.

DELIVERABLES

- Interim HMI Graphics as process areas are completed (Electronic copy only)

Task 4.3 – Historical Configuration

This task will include creation, modification, and deletion of historian tags as appropriate for tags affected by this project. These historian changes will be coordinated with the City of Denton personnel. Signature Automation will export up to seven (7) years of data from the existing legacy systems for importing into the new historian. Prior to importing the data to the new historian, the list of tags and files of data will be submitted to the City for review. The City should review to see if there are any tags where historical data is not needed and to verify the quality of data for data points that may not be reporting properly or have excessive gaps or runs of bad data. This information will then be utilized to finalize the historical data import files for the new historian. After historical data has been imported, it will be tested through trends and reports to verify the data can be properly queried.

In addition, Signature Automation will modify and create up to five (5) reports affected by the tag creation, modification, and deletions. Each report is defined as a single or multi-page report that includes no more than 50 data points.

DELIVERABLES

- Historian Tag Additions and Modifications Report
- Historical Reports (5)

Task 4.4 – Testing and Commissioning

Signature Automation will conduct software testing at various stages of the system to confirm the applications development activities meet the intent of the design. Testing will be based on a cause-and-effect approach. Signature Automation will develop test procedures to use for each test. For all field testing, the new HMI hardware will be staged such that the graphics between the existing and new HMI applications can be compared on a screen-by-screen basis. The following tests will be conducted by Signature Automation.

- Software Demonstration Test – This test will be conducted at Signature Automation’s facility and will be witnessed. The purpose of the software demonstration test is to verify the complete HMI system functionality, performance, and stability of the hardware and software. Upon successful completion of this test, the system will be shipped to the project site. In addition to a system audit, testing performed includes demonstration of operability of all servers, network, communication failure and recovery, I/O, reports, backup and storage, and alarm/events. Signature Automation will provide up to 2 days for testing.

- **Operational Readiness Test (ORT)** – This test will be conducted on site, is unwitnessed, and includes field testing and comparisons to the existing HMI system. Each facility will be tested individually when the graphics are completed and internally tested. The new HMI system shall run in parallel with the existing HMI system and data checks will be performed between the HMI applications. Once all graphics are fully tested and in production on the new HMI system, the old HMI system will be decommissioned. Signature Automation will then review all work with the City and discuss scheduling for testing the next facility. Additionally, Signature Automation will spot check existing control strategies prior to demonstrating the applications to the city. Upon successful completion of the ORT, Signature Automation will coordinate with the City to demonstrate the new HMI application. Signature Automation will provide up to 10 days for testing at each facility.
- **30-day Site Acceptance Test (SAT)** – This testing will allow the HMI system to operate for up to 30 days without any programming or configuration changes being made. When needed to resolve punch list items or correct any deficiencies, Signature Automation will provide support (1 days onsite, on call for 28 additional days thereafter).

DELIVERABLES

- Copies of Software Demonstration Test Sign Off Sheets
- Copies of ORT Sign Off Sheets
- 30-day Acceptance Test Discrepancy and Resolution Log

Task 4.5 – Training

Signature Automation will provide the training for the new HMI system. Each training session includes time to prepare the manuals and presentations that will be used during the training course. Training details are shown in Table 4. To ensure all shifts are provided the opportunity to take part in a training session, several classes will be provided per each session listed below. Signature Automation will coordinate the schedule of these sessions with the City to ensure all shifts for all facilities are covered. Training will be focused based on the facility type. For example, training at the water facilities will be focused on the water treatment standards and training at the wastewater facilities will be focused on the wastewater treatment standards.

Table 4: Training Details			
Session Description	Number of Sessions	Approximate Duration (hours)	Maximum Number of Trainees per Session
Control System Overview	1	2	5
Operator Control System	12	6	10

Table 4: Training Details			
Session Description	Number of Sessions	Approximate Duration (hours)	Maximum Number of Trainees per Session
Software Maintenance and Administration	1	16	5
Historian	1	6	5

The training listed below will be provided.

- Control System Overview Training
 - An overview of the process control system explaining how the hardware and software supplied is used for the operation and control of the facilities.
 - A block diagram presentation of the process control system showing how and what information flow within the System and what is done by each functional unit.
 - An explanation of the operator interfaces including a demonstration of how to use an Operator's workstation to access displays, reports, control, etc.
 - A walk-through of the installed system explaining each of the items covered in the functional unit's discussion. The features and functions of operator controls and interfaces shall be discussed.
- Operator Control System Training
 - Overview of Process Control System
 - HMI Software Naming Conventions
 - Graphic Display Standards
 - Review of HMI and Navigation
 - Alarming
 - Trending
 - Review historical logged data
 - Review reports
 - Operator Control Standards
 - Security Configuration Standards
- Software Maintenance and Administration Training
 - Review of HMI application and configuration implemented
 - Review of Process Control Systems Software
 - Review of Process Control Systems Hardware
 - Review of HMI/PLC/Historian/Reporting and Backup System
 - Review of change management procedures and applications
 - Provide O&M documents containing application programs and configuration information
- Historian Training
 - Review of accessing and modifying historical data from the historian
 - Review backup and restore of historical data
 - Review methods to visualize and share data



- Review reports

DELIVERABLES

- Training Documents

PHASE 5 – PLC UPGRADES

Under this phase, Signature Automation will perform PLC replacement for all LPUs at the Water Reclamation Plant (1100 S Mayhill Rd., Denton, TX 76208) using the equipment provided by the City of Denton.

Task 5.1 – Submittals

Signature Automation will provide drawings, test documents, and operations and maintenance submittals. The submittals listed below will be provided.

- PLC and I/O Drawing Submittal – Signature Automation will provide the PLC and I/O Drawing submittal which will include all PLC I/O card level shop drawings for each LPU. Drawings will depict PLC and I/O connected.
- Testing Procedures Submittal – Signature Automation will provide a loop testing submittal that will detail the I/O loops for each PLC and test results for each point.
- Operations and Maintenance Manuals Submittal – Signature Automation will provide the operations and maintenance manuals for the PLC replacements. These manuals shall be bound and contain all information necessary for operations and maintenance staff to service and maintain the hardware in the future.

DELIVERABLES

- PLC and I/O Drawing Submittal (1 electronic copy)
- Testing Procedures Submittal (1 electronic copy)
- Operations and Maintenance Manuals Submittal (2 hard copies and 1 electronic copy)

Task 5.2 – Field Assessment

Signature Automation will perform a field assessment with operations staff prior to commencement of work to verify existing I/O points, current PLC programs, replacement BOM scheduled, existing control panel hardware, and other current field conditions. This task will include a thorough test of the existing PLC I/O, pre-functional testing, which will allow our team to identify all valid I/O vs. I/O that is no longer in service or is now obsolete. This will minimize the future replacement PLC hardware and footprint. The following LPUs identified for replacement will be assessed. In addition to the PLC hardware being replaced, the 24 VDC power supplies will also be replaced.

- | | |
|-----------|---------------------------------------|
| a. LPU #1 | North Return Building (M340 Platform) |
| b. LPU #2 | South Return Building (M340 Platform) |
| c. LPU #3 | Turblex Building (M340 Platform) |
| d. LPU #4 | Belt Press Building (M340 Platform) |
| e. LPU #5 | Diurnal Basin (M340 Platform) |



- | | |
|------------|--|
| f. LPU #6 | Digester Building (M340 Platform) |
| g. LPU #7 | Municipal Lab Building (M340 Platform) |
| h. LPU #9 | UV Electrical Building (Momentum PLC) |
| i. LPU #10 | Raw Pump Station (M340 Platform) |

Task 5.3 – PLC Planning and Programming

Signature Automation will utilize the results from the field assessment to plan out the new PLC hardware layout. This includes development of new PLC I/O lists, PLC hardware and I/O drawings, and test procedures to be utilized during the testing task. Once all work is complete, final operations and maintenance manuals will be compiled and delivered. The PLC hardware and I/O layouts are to be reviewed by the City to ensure the hardware is available or purchased in a timely manner prior to beginning the hardware replacement effort.

Additionally, the existing PLC logic will all be converted for each PLC to the latest version of Control Expert. All logic conversions will be replaced in kind and will not include any changes to the existing controls.

Task 5.4 – PLC Replacement and Testing

Signature Automation will coordinate with City of Denton personnel on scheduling for the PLC replacements and downtime available during replacement to ensure hardware is replaced in a timely manner to minimize plant downtime while maintaining personnel safety.

As each 24VDC power supply and PLC is replaced, Signature Automation will utilize the test procedures developed to perform complete I/O and controls testing from the HMI to the field devices. This test shall be witnessed by City of Denton to provide final approval for each PLC replacement as they are completed. Once testing is approved, the PLC and all controls will be turned over to the City for continued operation.

The following items are NOT included in this scope of work:

- PLC Hardware - The City of Denton will supply all PLC hardware required for this project.
- Electrical conduit, raceway, duct banks, wire, etc. – Only PLC hardware is being replaced and all existing terminations and wiring will remain in place. Miscellaneous Control Panel Equipment (Wire Tags/ Relays/ Terminal Blocks/etc.) required for PLC swap and basic control panel clean-up will be provided as needed.
- Furnishing and installation of all electrical power and specialty panels/products – No additional power sources or equipment will be provided such as switchgear, MCCs, distribution panels, AFD's/VFD's, disconnects, heat tracing, power monitor devices, etc.
- Furnishing and installation of any Miscellaneous Control Panels – All existing panels will be utilized for the replacement hardware. No additional panels will be provided.
- Furnishing and installation of mechanical piping saddles/mating flanges/process taps and isolating valves required to connect field instrumentation.
- Disposal of removed or demolished material – All material will be turned over to the owner for salvage or disposal.
- All "Civil" work including building and vessel modifications, asphalt demolition, patching, concrete foundations, piers, etc.



PHASE 6 – SPECIAL SERVICES

These Services are items which must be authorized in advance and in writing by the City's Project Manager and will be paid only on a direct expenses and hourly billings of time expended by the consultant. Such items are so designated because it is difficult to determine an accurate level of services required for the items at this time. Consultant will establish an estimate amount for each item and submit to the City's Project manager for written authorization prior to beginning the work. Consultant shall notify the City's Project Manager in advance and receive written authorization to exceed the total amount authorized by the CITY; however, the amounts allocated to each item may be adjusted by the City's Project Manager as needed.

Special Services for this project shall include:

1. Additional Engineering Services – Provide additional engineering services for items identified during the evaluation, construction and startup. Provide all documentation, calculation, and graphical report as required to complete the defined objective(s).
2. Additional HMI configuration and support services as defined by the City beyond the in-kind replacement.
3. Additional Historical configuration and operational reports development services as defined by the City beyond the items in this scope of work.
4. Develop and deliver video training modules as defined by the City.
5. Design and configure the HMI to all data to be shared to the asset management system.
6. Configure change management software for water production facilities using MDT AutoSave.

Compensation

City of Denton agrees to compensation for services under Phases 1 through 6 of this agreement for a Lump Sum amount not to exceed \$1,913,152.00.

Description	Fee
PHASE 1 - PROJECT PLANNING AND INITIATION	\$ 99,737
PHASE 2 - DATA GATHERING AND SYSTEM SELECTION	\$ 117,459
PHASE 3 - APPLICATION ENGINEERING	\$ 187,308
PHASE 4 - HMI PROGRAMMING AND INTEGRATION	\$ 1,215,523
PHASE 5 - PLC UPGRADES	\$ 201,775
PHASE 6 - SPECIAL SERVICES	\$ 91,350
Contract Total	\$ 1,913,152

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.

Signature Automation, LLC

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:**

Henry "Rick" Hidalgo

8/30/2023

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: 881C5B4A9629476ABF74D811D0B1D414

Status: Sent

Subject: Please DocuSign: City Council Contract 7574-022 HMI Software

Source Envelope:

Document Pages: 43

Signatures: 4

Certificate Pages: 6

Initials: 1

AutoNav: Enabled

Envelope Stamping: Enabled

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

Envelope Originator:

Erica Garcia

901B Texas Street

Denton, TX 76209

erica.garcia@cityofdenton.com

IP Address: 198.49.140.104

Record Tracking

Status: Original

8/24/2023 12:21:24 PM

Holder: Erica Garcia

erica.garcia@cityofdenton.com

Location: DocuSign

Signer Events

Erica Garcia

erica.garcia@cityofdenton.com

Senior Buyer

City of Denton

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

Not Offered via DocuSign

Lori Hewell

lori.hewell@cityofdenton.com

Purchasing Manager

City of Denton

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

Not Offered via DocuSign

Marcella Lunn

marcella.lunn@cityofdenton.com

Mack Reinwand City Attorney

City of Denton

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

Not Offered via DocuSign

Henry "Rick" Hidalgo

hjhidalgo@sig-auto.com

President/CEO

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

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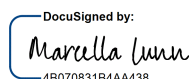
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Using IP Address: 198.49.140.10



Signature Adoption: Pre-selected Style

Using IP Address: 198.49.140.10



Signature Adoption: Pre-selected Style

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Timestamp

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Signed: 8/24/2023 12:27:56 PM

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Viewed: 8/24/2023 1:44:01 PM

Signed: 8/24/2023 1:44:40 PM

Sent: 8/24/2023 1:44:43 PM

Viewed: 8/25/2023 1:09:42 PM

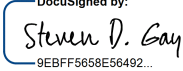
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Resent: 8/29/2023 9:03:51 AM

Viewed: 8/29/2023 2:28:33 PM

Signed: 8/30/2023 1:42:59 PM

Signer Events	Signature	Timestamp
Steven D. Gay stephen.gay@cityofdenton.com Director, Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Accepted: 8/30/2023 2:09:27 PM ID: 958dd2d3-a4a5-48e1-afe7-5b2a97bf72c6	<div> <div>DocuSigned by:</div>  <div>9EBFF5658E56492...</div> </div> Signature Adoption: Pre-selected Style Using IP Address: 184.169.45.4 Signed using mobile	Sent: 8/30/2023 1:43:01 PM Viewed: 8/30/2023 2:09:27 PM Signed: 8/30/2023 2:12:20 PM
Cheyenne Defee cheyenne.defee@cityofdenton.com Procurement Administration Supervisor City of Denton Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Not Offered via DocuSign		Sent: 8/30/2023 2:12:22 PM
Sara Hensley sara.hensley@cityofdenton.com Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Not Offered via DocuSign		
Jesus Salazar jesus.salazar@cityofdenton.com Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Accepted: 8/25/2023 9:22:13 AM ID: 8c106f4b-ce48-4a8a-9fbe-160540f2d6f2		

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) Electronic Record and Signature Disclosure: Not Offered via DocuSign	<div>COPIED</div>	Sent: 8/24/2023 12:27:59 PM

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 Daniel Parish daniel.parish@cityofdenton.com Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Accepted: 6/16/2023 12:01:41 PM ID: 0ab6291d-7af9-4647-9f21-4c01f02fb329	<div>COPIED</div>	Sent: 8/30/2023 2:12:23 PM Viewed: 8/30/2023 2:29:40 PM
Witness Events	Signature	Timestamp
Notary Events	Signature	Timestamp
Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	8/24/2023 12:27:05 PM
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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.

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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.

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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 #: PUB23-163, **Version:** 1

AGENDA CAPTION

Consider approval for the August 28, 2023 minutes.

CITY OF DENTON PUBLIC UTILITIES BOARD MINUTES
August 28, 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, August 28, 2023, at 9:00 a.m. in the Council Work Session Room at City Hall, 215 E. McKinney Street, Denton, Texas.

PRESENT: Chair Susan Parker, Barbara Russell, Lee Riback, Devin Taylor, and Thomas Plock

Also present: General Manager Antonio Puente and Deputy City Attorney Marcella Lunn

Absent: Vice Chair Billy Cheek

REGULAR MEETING

1. PRESENTATIONS FROM MEMBERS OF THE PUBLIC

There were no public comments.

2. ITEMS FOR INDIVIDUAL CONSIDERATION

A. PUB23-143 Consider approval of the August 14, 2023, minutes.

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

YES (5): Chair Susan Parker, Barbara Russell, Lee Riback, Devin Taylor, and Thomas Plock

NO (0):

B. PUB23-153 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 Stella-Jones Corporation, for the supply of wood utility poles for the Denton Municipal Electric to be stocked in the Warehouse; providing for the expenditure of funds therefor; and providing an effective date (IFB 8252 - awarded to Stella-Jones Corporation, for three (3) years, with the option for two (2) additional one (1) year extensions, in the total five (5) year not-to-exceed amount of \$8,250,000.00).

Randy Key gave the presentation regarding the wooden poles. There were questions by the Board Members that staff answered.

Board Member Russell moved to recommend approval of agenda item 2B. Motion seconded by Board Member Taylor; motion carried.

YES (5): Chair Susan Parker, Barbara Russell, Lee Riback, Devin Taylor, and Thomas Plock

NO (0):

- C. PUB23-154** Consider recommending adoption of an ordinance of the City of Denton, Texas, establishing the rates and fees for Solid Waste and Recycling Collection service; repealing Ordinance No. 22-1855; providing for a repealer; providing for a severability clause; and providing an effective date.

Aimee Kaslik gave the presentation that covered all three rates and fees agenda items that included items C, D and E. She began with the Solid Waste and Recycling Collection Service rates. There were questions by the Board Members that Staff answered.

There will be an amendment on this item before it goes to Council to add the \$50 cart fee to be added to the red line ordinance.

Board Member Riback moved to recommend approval of agenda item 2C. Motion seconded by Board Member Taylor; motion carried.

YES (5): Chair Susan Parker, Barbara Russell, Lee Riback, Devin Taylor, and Thomas Plock
NO (0):

- D. PUB23-156** Consider recommending adoption of an ordinance of the City of Denton, Texas, establishing the schedule of rates and fees for Wastewater service; repealing Ordinance No. 22-1857; providing for a repealer; providing for a severability clause; and providing an effective date.

There will be an amendment on this item before it goes to Council to not remove the colored mulch fees, brown and black colors will stay, the red will be discontinued.

Board Member Russell moved to recommend approval of agenda item 2D. Motion seconded by Board Member Taylor; motion carried.

YES (5): Chair Susan Parker, Barbara Russell, Lee Riback, Devin Taylor, and Thomas Plock
NO (0):

- E. PUB23-158** Consider recommending adoption of an ordinance of the City of Denton, Texas, establishing the rates and fees for Water and Water service; repealing Ordinance No. 22-1856; providing for a repealer; providing for a severability clause; and providing an effective date.

There are no changes to this item before it goes to Council.

Board Member Plock moved to recommend approval of agenda item 2E. Motion seconded by Board Member Taylor; motion carried.

YES (5): Chair Susan Parker, Barbara Russell, Lee Riback, Devin Taylor, and Thomas Plock
NO (0):

F. PUB23-157 Management Reports

1. Future Agenda Items
2. New Business Action Items

4. CONCLUDING ITEMS

Devin Taylor would like to see a policy or guideline of what commercial solar PPA (purchase power agreement) would look like.

With no further business, the meeting was adjourned at 9:19 AM.

SUSAN PARKER
CHAIR
CITY OF DENTON, TEXAS

KIM MANKIN
UTILITIES ADMIN MANAGER
CITY OF DENTON, TEXAS

Minutes approved on: September 11, 2023.



City of Denton

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

Legislation Text

File #: PUB23-165, Version: 1

AGENDA CAPTION

Management Reports

1. Gibbon's Creek Memo Update
2. Large Rooftop Solar PPA Memo
3. Management of telecoms use of right-of-way and pole attachments within the city rights-of-way
4. Future Agenda Items
5. New Business Action Items



DATE: September 11, 2023
TO: Public Utilities Board
FROM: Tony Puente, DME General Manager
SUBJECT: Gibbons Creek Steam Electric Station Update

At the July 24, 2023 meeting of the PUB, Board Member Barbara Russell requested an update on the Gibbons Creek Steam Electric Station (“Gibbons Creek”).

On January 26, 2021, the City Council of Denton, concurrently with the cities of Garland, Greenville and Bryan, approved an ordinance that allowed TMPA (Texas Municipal Power Agency) to execute an Asset Purchase Agreement (APA) for the sale of the Gibbons Creek and related assets in Grimes County, Texas. Gibbons Creek was a 470 MW coal-fired power plant situated on 6,200 acres which included the 2,200-acre Gibbons Creek Reservoir. Gibbons Creek began operation in 1983 and was retired in 2018 due to its uneconomic operating costs as compared to market based alternative supplies of wholesale electric. Gibbons Creek was sold to the Gibbons Creek Environmental Redevelopment Group (GCERG), a Texas LLC wholly owned by Charah Solutions, Inc. This sale did not include the adjacent 10,600-acre lignite mine nor the TMPA transmission system.

Since the shutdown and sale of Gibbons Creek, TMPA has been focused on monitoring the demolition of the station and the remediation/closure of the coal combustion residual (CCR) units and landfill sites. Under the APA, GCERG was required to decommission the existing plant structures, remove all oils/chemicals from the plant site, and demolish the plant structures and associated equipment. Additionally, GCERG was required to remediate the CCR units which included Site A landfill, Site F landfill, the ash ponds and the scrubber sludge pond. Figure 1 below provides a bird’s eye view of the site:

Figure 1



Decommissioning, demolition, and remediation activities were anticipated to take up to three (3) years to complete. The completion of all regulator closure activities is currently projected to be by the end of 2024.

Asset Purchase Agreement Major Terms and Conditions – The APA contains the following major provisions:

Obligations of the Buyer

- Decommissioning – decommission and demolish the power plant and associated structures
- Remediation – remediate all CCR units and any other environmental contamination discovered to levels and specifications deemed compliant with applicable TCEQ regulations.
- Indemnify TMPA and the member cities against all environmental claims for past, present and future site activities
 - Buyer must provide and maintain a \$25 million pollution liability environmental

- insurance naming TMPA and the member cites as additional insured
 - Assume all environmental liabilities (past/present/future)
- Provision of Performance Bond – Buyer must provide a performance bond in the amount of \$36.5 million to securitize performance of all remediation requirements. The amount of the bond will be reduced as remediation activities are completed.
- Post Closure – Buyer must meet the post closure bonding requirements imposed by TCEQ and must operate and maintain any post closure treatment and monitoring equipment.
- Provide perpetual deed restrictions on land use for CCR containing real estate parcels.

Obligations of TMPA as Seller

- Convey to Buyer ~6,200 acres of real estate including all improvements and equipment present at closing
 - Ten separate deeds describing the parcels of real estate conveyed to Buyer
- Pay Buyer an initial amount of \$6.354 million
- Deposit into an Environmental Escrow \$28.546 million which shall be used by Buyer to remediate the CCR units and will be drawn down during the remediation activities.
 - The balance in the escrow shall not drop below \$2.854 million until the post-closure performance bond is issued, to ensure delivery of post-closure bonding.
- Pay Buyer 50% of the initial \$36.5 million performance bond premium at the time of closing

Figure 2 below shows what the plant looked like as demolition activity began.

Figure 2



The Plant and associated equipment have been demolished and hauled off as reflected in Figure 3 below.

Figure 3



Site A Landfill (3/37/23) is completely capped, see Figure 4 below.

Figure 4



The capping of Site F landfill is currently on hold waiting for final waste placement from Site A Landfill Leachate Ponds. Figure 5 shows the current status of Site F. Approximately 65 acres have been capped and revegetated and the remaining 20 acres will be finished in the fall.

Figure 5



The CCR material in all ash ponds have been completely removed. Figure 6 below shows the ash ponds.

Figure 6



TMPA, and the member cities, continue to monitor remediation activities at the site as contemplated in the APA. At this time, the work continues to progress in compliance with the APA.

If you have any questions, please do not hesitate to let me know.



DATE: September 6, 2023
TO: Public Utilities Board
FROM: Bill Shepherd, DME Executive Manager of Business Services
THROUGH: Tony Puente, DME General Manager
SUBJECT: Purchase Power Agreement (PPA) requirements for Large Commercial Solar installations

A question was asked by Member Taylor about the process or guideline that is used for commercial customers with large solar installations to enter into PPAs with DME.

Currently, most residential and small commercial customers that install PV systems are doing so at sizes 20 kW or smaller. These systems are automatically enrolled in the Distributed Generation Rate (DGR) Schedule ordained in the DME rate book. The DGR is the net billing rate that pays slightly above the tariff rate for any generation that flows back to DME. It's important to note that the threshold between Small Commercial and Medium Commercial customers is also 20kW. For those larger commercial facilities who may have the roof space to install larger systems, DME has the option of requiring a PPA for the energy that may flow back from the customer.

Typically, when systems larger than 20kW are installed, it's on a facility that uses much more energy than what the PV system can generate on a regular basis. Most, if not all, the energy generated on these system gets used up by the facility's own load and never makes it back to DME. This is the most optimal use for that generation, in that it is offsetting electricity that would have otherwise been purchased from DME. This is, and should be, the basis for the customer's economic analysis of whether to install the system. Some commercial customers, however, choose to install solar for other reasons such as corporate environmental initiatives.

Even though these large customers are absorbing most of their PV output, there is a small chance that a business may have to shut down operations and just opt to leave the solar activated. This would result in a large amount of excess solar generation to flow back to DME which DME would have to pay a credit for. If these customers were allowed to be on the DGR Schedule, DME would be overpaying for essentially the same renewable energy it's already obligated to provide for it's customers through Renewable PPAs in the ERCOT Market. The PPA option for large systems provides a level of risk mitigation for DME while at the same time pays a more appropriate and equitable amount to that customer for any excess energy sent back. Specific terms of the PPAs are confidential, however, DME uses the average amount it pays in the market for it's renewable PPAs as a basis for the customer PPA pricing. Currently we have 2 customers with PPAs; Embassy Suites and Toyota of Denton.

MEMORANDUM

DATE: September 7, 2023
TO: Public Utilities Board
FROM: Jerry Fielder, Engineering Division Manager, DME
SUBJECT: Response for additional information related to the City of Denton's and DME's management of telecoms use of right-of-way and pole attachments within the city rights-of-way

Thank you for your recent inquiry regarding telecommunication companies and their interactions with both the City of Denton and Denton Municipal Electric personnel at the August 14, 2023, Public Utilities Board meeting. A telecommunication, telephone, or data provider (use of telecom as a collective) have been granted the right to use the assets of an electric utility for the purpose of installation of their copper and/or fiber cables under Subtitle C of the Public Utility Regulatory Act (Texas Utilities Code Chapters 51-66). The City of Denton's interface with telecom companies often takes dual paths as both the City's Engineering (City) and DME's (DME) Engineering deal with telecoms. Both groups receive and manage citizens' complaints and concerns, but the relationship model for each group is unique due to the differences in challenges and accountability each group faces related to telecoms.

One common challenge is the identification of whom the owner of the telecom cable is. It has been our experience telecoms do not always mark their cables in a manner that ownership is easily identified. Cable providers can laser etch, into their telecom cable, ownership but the availability of this option does not appear to be utilized by telecoms very much. DME rolls a bucket truck and field crews will go up in the truck to see if ownership is labeled. Without identification of ownership, delays can be experienced as the City of Denton or DME tries to gain understanding if the cable is energized or dead, or a coax or fiber.

Additional City challenges include:

- After a telecom has completed work within the City right of way, the City faces the challenge of assuring the work area is restored to an acceptable condition as required by City codes and ordinances.
- Due to the telecom providers use of Single Source Providers, it does not appear the telecom's contractors can support their workloads which translates into the City having an additional challenge in getting the telecoms to provide adequate resources and crews when needed to correct issues.
- Gathering accurate and up to date as-builts from each telecom highlighting the blueprint of how many/much assets that have within the City of Denton.

As the provider of the wood poles on the DME distribution system, the DME is responsible for the management, compliance, and oversight for all telecom pole attachments within the city. This responsibility includes the development and execution of the standards, practices, and processes for attachments and management of assuring pole attachments meet the criteria. Management of the pole attachments and associated processes is a herculean task and requires a great deal of coordination, communication, and staff man-hours. Understanding both the regulatory and

engineering components, used to develop DME's current pole attachment practices and policies, requires staff to maintain a consistent vigil for changes to regulations and codes, such as the National Electrical Safety Code (NESC), which may affect how requests for attachment are managed and approved. DME has

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established a process for all attachment requests which is followed by both DME Engineering staff and its contractor, TRC – who handles much of the field inspections, clarifications, and final approvals. There are times when a request is not “cut and dry” per the process. When this is the case, DME Engineering staff will perform studies or reviews to assure the request meets criteria.

The City of Denton adopted a “wired” pole attachment agreement on September 20, 2016 (ordinance 2016-271). The pole attachment agreement provides DME more authority to force, if needed, telecoms to perform the installation of their assets in a fashion which helps with many of the identified issues such as marking ownership on their cable, payment of pole attachment fees per DME’s rate tariff, adherence to codes such as the NESC, removal of stub poles, and timely transfer of their cables among other things. This agreement has been forwarded to the telecoms who attach to DME poles in the city. Very few have completed the entire process which includes city council approval. The major players in Denton have not completed the agreement even through several follow-up actions were taken.

There are a few specific challenges that DME is currently working through to arrive at a result in the City of Denton’s best interest.

- DME is aware of an aesthetic blight within the city where multiple “stub poles” with telecom cables attached remain along the right of way. A stub pole is a pole that likely had electric distribution on it, but DME rebuilt the line thus making the old poles unnecessary. Telecoms are notified when distribution is rebuilt, and they are requested to transfer their cable to the new pole line. After their cable is transferred, DME removes the stub pole – which provides a much cleaner look for the right of way. Notification is done either through the National Joint Utilities Notification System and/or by emailing the telecom owner of the need to transfer. Admittedly, these actions are not always successful. For DME to facilitate the transfer, the utility takes on a great deal of liability if the cable should get damaged or data running through the cable is for safety (fire, police, 911, hospital traffic) and is stopped. There are occasions when the transfer is simple, and DME construction crews can, at times, take the risk and will go ahead and transfer cables. DME has had some success with a limited number of telecoms with notification they need to relocate to the new distribution line.
- A second challenge for DME is what appears to be a lack of proactive inspections on the part of telecoms to assure their systems are safe and do not pose a hazard to the public. As mentioned at the PUB meeting, citizens see boxes which are open with exposed cables or the see cables that hang dangerously low to the ground (sometimes that are actually on the ground). The citizen is unaware if these cables are hazardous. In these cases, the city has two avenues for citizens to report their concerns: one is by calling customer service to report it and the second is through the Engage Denton application. Safety is DME’s primary focus so, in both cases, DME receives the concern, and a truck roll is initiated to determine if the issue belongs to DME or a telecom. Most of the time it is related to telecoms.
- Finally, Ice Storm Mara, which caused havoc in the state at the end of January 2023, identified another potential safety concern for DME and the citizens of Denton. During the ice storm, the

Texas hill country was inundated with ice which built up on trees adjacent to power lines. With vegetation management in the communication area of a pole appearing to be minimal or non-existent, ice burdened branches fell on the telecom cables which dominoed and brought the distribution poles to the ground. This resulted in the loss of power and communication for a large percentage of that area’s population. Since January 2021, Engage Denton has logged over nineteen (19) citizen concerns of “lines” in trees. After DME rolls a truck and the investigation is complete, most of the time it is a telecom cable – not power.

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For City specific challenges mentioned above, these are the actions that can/are be(ing) taken:

- The City can employ enforcement actions. The first action is to file a complaint directly to the Public Utility Commission of Texas. The second is to assess a fine or penalty to the telecom based on the City of Denton Right of Way Ordinance 25-76.
- The City uses their inspectors to follow up with telecoms and their contractors to assure the telecom's construction area is returned to regular conditions. The City does meet with telecom representatives as soon as an issue is identified to come to a resolution as quickly as possible. This option helps maintain the relationship between the City and the telecom provider, and the City feels the telecoms are much more responsive now than what they have been in the past.

For the DME specific challenges mentioned above, these are the actions being taken:

- DME has included funding in its Capital Budget dollars to address the stub pole issue. Currently, the plan is for DME to give notice to a telecom of the need for them to transfer their facilities to DME poles (after going through the processes established). If the telecom does not meet the date, DME will facilitate (through a contractor) the transfer for the telecom and bill the telecom for the work. The telecom does have the option to place their facilities underground within a reasonable time frame for compliance.
- To reduce potential issues identified from Ice Storm Mara, an ordinance has been written that will require telecom companies to meet the same vegetation clearance requirements DME must meet. The ordinance will not eliminate the threat; but by requiring the telecoms to maintain proper vegetation clearances, the potential to have ice laden tree branches take out the distribution circuit is lessened. The ordinance was recommended for approval by the Public Utilities Board (PUB23-101) during their August 14, 2023, meeting. This ordinance is scheduled to go to the Council (ID23-1082) for approval at the September 19, 2023, meeting.
- Finally, DME is currently working with the City of Denton legal staff to develop a broad ordinance, based on a City of Austin ordinance, which provides the City and DME greater authority and policing power to fine a telecom for not meeting standards. This could include not allowing them to attach to DME poles. This ordinance is expected to have much of the same language and requirements of the pole attachment agreement but will include other topics which requires the telecom to properly mark and identify their assets and have a pole attachment agreement or their attachment requests can be denied. It will also further support the ability to push telecoms to be more proactive with inspections and the maintenance of their assets in Denton.

Hopefully, the information provided will assist with understanding of the challenges the City of Denton and DME face with the telecommunication providers in the city. As always, if there are any other questions, please do not hesitate to contact me.

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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
September 25, 2023		
October 9, 2023	Final Wastewater Master Plan - Work Session	Water Utilities
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
1.	5/8/23	Cheek	Update on Winter Storm Uri	DME	8/14/23
2.	7/24/23	Russell	Update on the Coal Plant	DME	9/11/23
3.	8/14/23	Russell	Information on cables hanging or dangling from the City's Utility Poles	DME	9/11/23
4.	8/28/23	Taylor	Would like to see a policy or guideline of what commercial solar PPA (purchase power agreement) would look like for the City of Denton	DME	9/11/23