



# City of Denton

City Hall  
215 E. McKinney St.  
Denton, Texas 76201  
[www.cityofdenton.com](http://www.cityofdenton.com)

## Meeting Agenda City Council

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Tuesday, April 2, 2024

2:00 PM

Council Work Session Room  
&  
Council Chambers

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**WORK SESSION BEGINS AT 2:00 P.M. IN THE COUNCIL WORK SESSION ROOM**

**CLOSED MEETING BEGINS IMMEDIATELY FOLLOWING THE WORK SESSION IN THE COUNCIL WORK SESSION ROOM**

**REGULAR MEETING BEGINS AT 6:30 P.M. IN THE COUNCIL CHAMBERS**

### **REGISTRATION GUIDELINES FOR ADDRESSING THE CITY COUNCIL**

Individuals may speak during a Council meeting under one of the following categories:

#### **Open Microphone:**

At regular meetings only, individuals can speak on any topic that is not on the agenda for no longer than four (4) minutes per individual. This portion of the meeting occurs immediately after the start of the regular meeting session. Please note, Council members cannot engage in a discussion on topics presented during this portion and there are limited slots available for this portion of the meeting.

#### **Comments on Agenda Items:**

Public comments can be given for any item considered by the Council, EXCEPT work session reports or closed meetings. Individuals are only able to comment one time per agenda item and cannot use more than one method to comment on a single agenda item. Public comments are limited to three (3) minutes per citizen.

#### **Public Hearing Items:**

Individuals are limited to four (4) minutes per public hearing item.

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Individuals may participate by using one of the following methods:

#### **1. In Person for Regular or Consent Agenda Items:**

To provide in-person comments regular or consent agenda items (excluding public hearing items), Individuals must be present at the meeting and submit a speaker card (available at the meeting location) to the City Secretary prior to the item being called.

#### **2. In Person for Public Hearing Items:**

For public hearing items, speaker cards are encouraged but not required.



**3. eComment:**

The agenda is posted online at [www.cityofdenton.com/publicmeetings](http://www.cityofdenton.com/publicmeetings). 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 City Council immediately upon submission and recorded by the City Secretary into the Minutes of the Meeting.

**4. By Phone:**

Individuals may register to provide comments by phone. Instructions and a link to register to comment by phone will be available at [www.cityofdenton.com/publicmeetings](http://www.cityofdenton.com/publicmeetings) until noon of the meeting date. Residents will submit contact information using the link provided and receive further instructions via email on how to join the meeting by phone and provide comments.

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After determining that a quorum is present, the City Council of the City of Denton, Texas will convene in a Work Session on Tuesday, April 2, 2024 at 2:00 p.m. in the Council Work Session Room at City Hall, 215 E. McKinney Street, Denton, Texas at which the following items will be considered:

**WORK SESSION****1. Citizen Comments on Consent Agenda Items**

This section of the agenda allows citizens to speak on any item listed on the Consent Agenda prior to its consideration. Each speaker will be given a total of three (3) minutes to address any item(s). Any person who wishes to address the City Council regarding these items may do so by utilizing the "By Phone" registration process as referenced under the REGISTRATION GUIDELINES FOR ADDRESSING THE CITY COUNCIL detailed at the beginning of this agenda. Registration is required prior to the time the City Council considers this item. Registrants may call in and remain on hold or receive a call back at the time the Work Session is called to Order and are encouraged to ensure they remain accessible to accept the call.

**2. Requests for clarification of agenda items listed on this agenda for public hearing and individual consideration.**

This section allows members of the City Council to ask questions on items listed on this agenda for public hearing and individual consideration. Responses to questions on items listed under the consent agenda that are received prior to the meeting are available by clicking on Exhibit 1 below. The responses will be available prior to the start of the meeting, when applicable. Any handouts distributed at the meeting will also be uploaded to the below link by 12:00 p.m. on the business day following the meeting. Members of the Council may remove items from the consent agenda. When items are removed from the consent agenda and placed on the regular agenda by members of the council, the removed items shall be taken up in the order of removal right after the consent agenda.

**A. [ID 24-467](#) Meeting Questions, Responses & Handouts**

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

**3. Work Session Reports**

- A. [ID 24-111](#) Receive a report, hold a discussion, and give staff direction regarding potential subject matter to be discussed by a future Charter Review Committee.  
[Estimated Presentation/Discussion Time: 45 minutes]  
**Attachments:** [Exhibit 1. AIS - Charter Amendment Process 04022024.pdf](#)  
[Exhibit 2. Article 14 Charter Review Presentation 4.2.2024.pdf](#)  
[Exhibit 3. Denton City Charter.pdf](#)  
[Exhibit 4. Ethics Ordinance \(23-2251\).pdf](#)  
[Exhibit 5. Boards and Commissions Handbook \(PDF\).pdf](#)
- B. [ID 24-485](#) Receive a report and hold a discussion on the Denton Police Department Annual Update and 2023 Annual Report.  
[Estimated Presentation/Discussion Time: 45 minutes]  
**Attachments:** [Exhibit 1 - Agenda Information Sheet](#)  
[Exhibit 2 - Police Department Annual Update 2024](#)  
[Exhibit 3 - 2023 Denton Police Department Annual Report](#)
- C. [ID 24-317](#) Receive a report, hold a discussion, and give staff direction regarding menstrual products in City facilities.  
[Estimated Presentation/Discussion Time: 30 minutes]  
**Attachments:** [Exhibit 1. Agenda Information Sheet.pdf](#)  
[Exhibit 2. Presentation.pdf](#)
- D. [ID 24-519](#) Receive a report, hold a discussion, and give staff direction regarding appointments to vacancies on City of Denton boards and commissions.  
[Estimated Presentation/Discussion Time: 1 hour]  
**Attachments:** [Exhibit 1. Agenda Information Sheet](#)  
[Exhibit 2. Presentation](#)

Following the completion of the Work Session, the City Council will convene in a Closed Meeting in the Council Work Session Room to consider specific item(s) when these items are listed below under the Closed Meeting section of this agenda. The City Council reserves the right to adjourn into a Closed Meeting on any item on its Open Meeting agenda consistent with Chapter 551 of the Texas Government Code, as amended, or as otherwise allowed by law.

**1. Closed Meeting:**

- A. [ID 24-659](#) Consultation with Attorneys - Under Texas Government Code Section 551.071.
- Consult with City attorneys regarding the definition and land use regulations for donation boxes within the City of Denton, Texas, where public discussion of these legal matters would conflict with the duty of the City's attorneys to the City of Denton and the Denton City Council under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas, or otherwise compromise the City's legal position.

Any final action, decision, or vote on a matter deliberated in a Closed Meeting will only be taken in an Open Meeting that is held in compliance with Texas Government Code, Chapter 551, except to the extent such final decision, or vote is taken in the Closed Meeting in accordance with the provisions of Section 551.086 of the Texas Government Code (the 'Public Power Exception'). The City Council reserves the right to adjourn into a Closed Meeting or Executive Session as authorized by Texas Government Code, Section 551.001, et seq. (The Texas Open Meetings Act) on any item on its open meeting agenda or to reconvene in a continuation of the Closed Meeting on the Closed Meeting items noted above, in accordance with the Texas Open Meetings Act, including, without limitation Sections 551.071-551.086 of the Texas Open Meetings Act.

**NOTE:** Any item for which a formal action at the Regular Meeting has been taken by Council may be subject to a request for a motion for reconsideration at any time during the meeting, at the Concluding Items Section, or after the meeting. In order to comply with the Texas Open Meetings Act, a request for a motion for reconsideration made during, at the end of, or after a Council meeting will be placed on the agenda and considered at the next official meeting of the City Council.

Following the Closed Meeting, the City Council will reconvene in Open Meeting to take action, if any, on matters discussed in closed session.

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**AFTER DETERMINING THAT A QUORUM IS PRESENT, THE REGULAR MEETING OF THE CITY OF DENTON CITY COUNCIL WILL CONVENE AT 6:30 P.M. IN THE COUNCIL CHAMBERS AT CITY HALL, 215 E. MCKINNEY STREET, DENTON, TEXAS AT WHICH THE FOLLOWING ITEMS WILL BE CONSIDERED:**

**1. PLEDGE OF ALLEGIANCE**

- A. U.S. Flag
- B. Texas Flag

"Honor the Texas Flag – I pledge allegiance to thee, Texas, one state under God, one and indivisible."

**2. PROCLAMATIONS/PRESENTATIONS**

- A. [ID 24-461](#) Proclamation: Child Abuse Prevention Month
- B. [ID 24-599](#) Proclamation: National Community Development Week
- C. [ID 24-720](#) Proclamation: City of Denton Fleet Services ASE Blue Seal of Excellence Award
- D. [ID 24-721](#) Proclamation: 25th Annual Women's Symposium

**3. PRESENTATIONS FROM MEMBERS OF THE PUBLIC**

- A. Review of procedures for addressing the City Council.
- B. Reports from members of the public shall be received through the following two (2) methods. A total of up to seven (7) speakers are permitted to provide public comment and may include any combination of prior registration and open microphone speakers.

1) Pre-registration. This section of the agenda permits any person who has registered in advance to make a citizen report regarding a public business item he or she wishes to be considered by the City Council. Each speaker is allowed a maximum of four (4) minutes to present their report. At the conclusion of each report, the City Council may pose questions to the speaker or may engage in discussion. If the City Council believes that a speaker's report requires a more detailed review, the City Council will give the City Manager or City Staff direction to place the item on a future work session or regular meeting agenda and advise staff as to the background materials to be desired at such meeting.

- a. [ID 24-661](#) Mr. Stephen Dillenberg regarding "The usurpation of the law by Denton City Council is killing us. Their actions are not compliant with Local, State nor Federal Law, so frequently in fact, I asked why, and one of them actually told me, "We can do whatever we want."
- b. [ID 24-662](#) Ms. Dana Dillenberg regarding "Recovering from A Seriously Debilitating Series of Neurological Issues (3 TIA's) after dose 1 of Pfizer, without support from the people who recommended it, who then congratulated themselves for their successes, without acknowledging the harm done to this community."
- c. [ID 24-669](#) Mr. Jeff Barr regarding ETJ.
- d. [ID 24-670](#) Mr. Ed Soph regarding Denton Climate Action and Adaptation Plan.
- e. [ID 24-671](#) Ms. Melinda Preston regarding Israel.
- f. [ID 24-672](#) Mr. Tad Preston regarding Israel.
- g. [ID 24-673](#) Ms. Carole Novielli regarding Volunteer Storm Spotters.

2) Open Microphone. This section of the agenda permits any person who has not registered in advance for a citizen report to make comments about public business items not listed on the agenda. Such person(s) shall have registered using the "Virtual White Card" or "By Phone" process outlined by the City on its website or meeting notice.

During open microphone reports under this section of the agenda, the Council may listen to citizens speak. However, because notice of the subject of the open microphone report has not been provided to the public in advance, the Texas Open Meetings Act limits any deliberation or decision by the Council to: a proposal to place the item on a future agenda; a statement of factual information; or a recitation of existing policy. Council Members may not ask the open microphone speakers questions or discuss the items presented during open microphone reports.

NOTE: If audio/visual aids during presentations to Council are needed, they must be submitted to the City Secretary 24 hours prior to the meeting.

#### **4. CONSENT AGENDA**

Each of these items is recommended by Staff or a board, commission, and committee. Approval thereof will be strictly on the basis of the those recommendations. Approval of the Consent Agenda authorizes the City Manager or his designee to implement each item in accordance with the Staff recommendations. The City Council has received background information and has had an opportunity to raise questions regarding these items prior to consideration.

For those items recommended by a specific board, commission, or committee, the agenda item will

reference that recommendation. To view the video of the related board, commission, or committee meeting, as applicable, a link can be found within the applicable supporting documentation (Exhibit 1).

Listed below are bids, purchase orders, contracts, and other items to be approved under the Consent Agenda (Agenda Items A – U). This listing is provided on the Consent Agenda to allow Council 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. [ID 24-089](#) Consider approval of the minutes of the March 19, 2024 Regular Meeting.

Attachments: [Exhibit 1 - Agenda Information Sheet](#)  
[Exhibit 2 - March 19, 2024 Minutes](#)

- B. [ID 24-248](#) Consider adoption of an ordinance of the City of Denton approving an Airport Land Lease Agreement for a term of twenty-five (25) years between the City of Denton, Texas, and Roanoke Air and Auto, Inc covering property at 904 Aeronca Lane, Denton, Texas at the Denton Enterprise Airport; authorizing the City Manager to execute the Airport Lease Agreement; and providing an effective date. Airport Advisory Board recommends approval (5-0).

Attachments: [Exhibit 1. Agenda Information Sheet](#)  
[Exhibit 2. Location Map](#)  
[Exhibit 3. Ordinance - Roanoke Air and Auto, Inc Lease Agreement](#)  
[Exhibit 4. Lessee Information](#)

- C. [ID 24-345](#) Consider adoption of an ordinance of the City of Denton authorizing the City Manager to execute Amendment 1 to the funding agreement between the City and Cumberland Youth and Family Services approved by City Council on April 19, 2022; said first amendment to extend the term of the agreement and to require additional services; and providing an effective date.

Attachments: [Exhibit 1 – Agenda Information Sheet](#)  
[Exhibit 2 – Cumberland Youth and Family Services Ordinance-Agreement 1](#)  
[Exhibit 3 – Ordinance #22-428](#)

- D. [ID 24-346](#) Consider adoption of an ordinance of the City of Denton authorizing the City Manager to execute Amendment 1 to the funding agreement between the City and Denton County MHMR approved by City Council on April 19, 2022; said first amendment to extend the term of the agreement and to require additional services; and providing an effective date.

Attachments: [Exhibit 1 – Agenda Information Sheet](#)  
[Exhibit 2 – Denton County MHMR Ordinance-Agreement 1](#)  
[Exhibit 3 – Ordinance #22-430](#)

- E. [ID 24-564](#) Consider approval of a resolution of the City of Denton amending Resolution No. 19-2886 relating to the Bond Oversight Committee, to amend the scope of responsibilities of the committee; and provide for an effective date.

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

[Exhibit 2. Resolution](#)

- F.    [ID 24-588](#)      Consider adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the City Manager to accept on behalf of the City an offer from the Federal Aviation Administration (“FAA”), administered by the Texas Department of Transportation (“TxDOT”) relating to an Infrastructure Investment and Jobs Act (“IIJA”) grant of \$763,000.00 for the Airport Master Plan with the City responsible for ten percent of total project costs; requiring the City to provide \$78,864.40 in contributory funds for the Airport Master Plan at the Denton Enterprise Airport with an estimated total project cost of \$788,644.00; and providing an effective date. The Airport Advisory Board recommends (5-0).

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

[Exhibit 2 - Ordinance](#)

[Exhibit 3 - Airport Master Plan Scope and Project Cost](#)

[Exhibit 4 - Master Plan Schedule](#)

[Exhibit 5 - Designation of Sponsor](#)

[Exhibit 6 - Airport Project Grant Agreement](#)

- G.    [ID 24-604](#)      Consider adoption of an ordinance of the City of Denton authorizing the City Manager to execute a temporary utility service contract by and between the City of Denton and the Kansas City Southern Railroad Company D/B/A CPKC (“KCSRR”) relating to the construction of Hickory Creek Road within the railroad right-of-way located at KCSRR Milepost MM99.54, within the County and City of Denton, Texas; providing for the expenditure of funds not to exceed the amount of \$22,470.86 for the temporary utility service line installation (the City will receive a final invoice upon completion of the work); and providing an effective date.

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

[Exhibit 2 - Ordinance](#)

[Exhibit 3 - Contract](#)

- H.    [ID 24-349](#)      Consider adoption of an ordinance of the City of Denton, Texas, authorizing the City Manager to execute a supplement to the agreement for street lighting service by and between Oncor Electric Delivery Company LLC and the City of Denton for Townsend Green Phase 2 - McKinney Street and Trinity Road authorizing the expenditure of funds; and providing for an effective date.

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

[Exhibit 2 - Ordinance and Agreement](#)

- I.    [ID 24-417](#)      Consider approval of a resolution of the City Council of the City of Denton, approving the 2022/2023 Tax Increment Reinvestment Zone Number Two (Westpark TIRZ) annual report; and declaring an effective date. The TIRZ Number Two Board recommends approval (11-0).

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

[Exhibit 2 - Resolution and TIRZ Two 2022-23 Annual Report](#)

[Exhibit 3 - 50-806 Form](#)

- J.    [ID 24-420](#)      Consider approval of a resolution of the City of Denton authorizing the submission of an application to the U.S. Department of Transportation FY 2024 Safe Streets and Roads for All grant program funded by the Infrastructure Investment and Jobs Act (IIJA) in the amount of \$600,000 to develop a comprehensive safety action plan; and providing an effective date.

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

[Exhibit 2 Resolution](#)

- K.    [ID 24-641](#)      Consider adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the City Manager to execute a Professional Services Agreement with Kimley-Horn and Associates, Inc., for water and wastewater modeling services for the Water Utilities Department as set forth in the contract; providing for the expenditure of funds therefor; and providing an effective date (RFQ 7574-031 - Professional Services Agreement for water and wastewater modeling services awarded to Kimley-Horn and Associates, Inc., in the not-to-exceed amount of \$95,000.00). The Public Utilities Board recommends approval (5 - 0).

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

[Exhibit 2 - Ordinance and Contract](#)

- L.    [ID 24-642](#)      Consider adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the City Manager to execute a contract with PowerWorld Corporation, for the annual licensing, maintenance, and support of PowerWorld Simulator software, currently used by Denton Municipal Electric, 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 8404 - awarded to PowerWorld Corporation, in the not-to-exceed amount of \$63,112.50, with a contract term expiring February 21, 2027). The Public Utilities Board recommends approval (5 - 0).

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

[Exhibit 2 - Ordinance and Contract](#)

- M.    [ID 24-643](#)      Consider adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the City Manager to execute a contract with Strong Data, Inc., for scalehouse software and hardware for the Solid Waste and Recycling Department, 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



8431 - awarded to Strong Data, Inc., for one (1) year, with the option for four (4) additional one (1) year extensions, in the total five (5) year not-to-exceed amount of \$339,080.85). The Public Utilities Board recommends approval (5 - 0).

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

- N. [ID 24-644](#) Consider adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the City Manager to execute a contract with Xylem Water Solutions U.S.A., Inc., to purchase Flygt pumps, equipment, parts, supplies, and services to operate and maintain the City of Denton sewage pumping stations and treatment plants for the Water Utilities Department, which is the sole provider of this service, in accordance with Texas Local Government Code 252.022, which provides that procurement of commodities and services that are available from one source are exempt from competitive bidding, and if over \$50,000, shall be awarded by the governing body; providing for the expenditure of funds therefor; and providing an effective date (File 8476 - awarded to Xylem Water Solutions U.S.A., Inc., 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 \$1,875,000.00). The Public Utilities Board recommends approval (5 - 0).

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

- O. [ID 24-645](#) Consider adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the approval of a sixth amendment to a Professional Services Agreement between the City of Denton and Nelson + Morgan Architects, Inc., amending the contract approved by Purchasing on February 13, 2014, in the not-to-exceed amount of \$24,840.00, amended by Amendments 1-5 approved by Purchasing and City Council, said sixth amendment to provide additional design services for the base project and additional design services of the HVAC system at Fleet Maintenance; providing for the expenditure of funds therefor; and providing an effective date (File 5497 - providing for an additional sixth amendment expenditure amount not-to-exceed \$171,299.00, with the total contract amount not-to-exceed \$541,698.97).

Attachments:      [Exhibit 1 - Agenda Information Sheet](#)  
                              [Exhibit 2 - Original Contract, Ordinances, and Amendments 1-5](#)  
                              [Exhibit 3 - Ordinance and Amendment 6](#)

- P. [ID 24-646](#) Consider adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the approval of a second amendment to a Professional Services Agreement between the City of Denton and Coffman Associates, Inc., amending the contract approved by Purchasing on July 26, 2023, in the not-to-exceed amount of \$15,000.00; amended by Amendment 1 approved by City Council; said second amendment to provide additional objectives within the Scope of Work for the Airport Master Plan; providing for the expenditure of funds therefor; and providing an effective date (File 8133 - providing for an additional second amendment expenditure amount not-to-exceed \$788,644.00, with the total



contract amount not-to-exceed \$874,894.00). The Airport Advisory Board recommends approval (5 - 0).

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

- Q. [ID 24-647](#) Consider adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, for the approval of a pre-qualified professional services list for operations and management of the Denton Community Shelter; and providing an effective date (RFQ 8268 - for a three (3) year term).

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

- R. [ID 24-648](#) Consider 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 Nelson/Nygaard Consulting Associates, Inc., for a Citywide Parking Study for the Engineering Department as set forth in the contract; providing for the expenditure of funds therefor; and providing an effective date (RFP 8360 - Professional Services Agreement for Citywide Parking Study awarded to Nelson/Nygaard Consulting Associates, Inc., in the not-to-exceed amount of \$109,967.00).

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

- S. [ID 24-649](#) Consider adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the City Manager to execute a contract with T.G. Whitton Company, for welding and fabrication services for various City of Denton Departments; providing for the expenditure of funds therefor; and providing an effective date (RFP 8437 - awarded to T.G. Whitton Company, for one (1) year, with the option for four (4) additional one (1) year extensions, in the total five (5) year not-to-exceed amount of \$600,000.00).

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

- T. [ID 24-650](#) Consider adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the City Manager to execute a contract with Reeder Distributors, Inc., through the Buy Board Cooperative Purchasing Network Contract # 715-23, for the purchase of new equipment, as well as repairs, inspections, and replacement of existing shop equipment for the Fleet Services Department; providing for the expenditure of funds therefor; and providing an effective date (File 8485 - awarded to Reeder Distributors, Inc., for one (1) year, with the option for four (4) additional one (1) year extensions, in the total five (5) year not-to-exceed amount of \$2,000,000.00).

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

- U.    [ID 24-651](#)      Consider adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the City Manager to execute a contract with Frazer, LTD, through the Buy Board Cooperative Purchasing Network Contract Number 650-21, and through the Houston-Galveston Area Council of Governments (H-GAC) Cooperative Purchasing Program Contract Numbers AM10-20 & AM10-23, for the purchase of ambulances for the Fleet Services Department; providing for the expenditure of funds therefor; and providing an effective date (File 8495 - awarded to Frazer, LTD, for one (1) year, with the option for four (4) additional one (1) year extensions, in the total five (5) year not-to-exceed amount of \$4,200,000.00).

Attachments:      [Exhibit 1 - Agenda Information Sheet](#)  
                              [Exhibit 2 - Cooperative Pricing Sheets](#)  
                              [Exhibit 3 - Ordinance and Contract](#)

## **5. ITEMS FOR INDIVIDUAL CONSIDERATION**

- A.    [ID 24-415](#)      Consider adoption of an ordinance approving an economic development agreement under Chapter 380 of the Local Government Code to promote economic development, increase foot traffic, stimulate business activity and economic growth of the City of Denton between the City of Denton and Fine Arts Theater of Denton, LLC for an amount not to exceed \$1,620,869 of Tax Increment Reinvestment Zone One funds; authorizing the expenditure of funds therefor; and providing an effective date. The Downtown Tax Increment Reinvestment Zone Number One Board recommends approval (5-0).

Attachments:      [Exhibit 1 - Agenda Information Sheet](#)  
                              [Exhibit 2 - Project Concept](#)  
                              [Exhibit 3 - Incentive Evaluation Matrix](#)  
                              [Exhibit 4 - Underwriting Report](#)  
                              [Exhibit 5 - Project Impact Report](#)  
                              [Exhibit 6 - Ordinance and Contract](#)  
                              [Exhibit 7 - Presentation](#)

- B.    [ID 24-266](#)      Consider adoption of an ordinance establishing the City of Denton Utility System Nodal Market Revenue Financing Program and authorizing Utility System Nodal Market Revenues Notes, Taxable Series A, in a maximum aggregate principal amount not to exceed sixty million five thousand dollars (\$60,005,000) to satisfy ERCOT financial security requirements; and providing an effective date. The Public Utilities Board recommends approval (5-0).

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

- C. [ID 24-568](#) Consider adoption of an ordinance directing the publication of Notice of Intention to issue \$84,770,000 in principal amount of Certificates of Obligation of the City of Denton for General Government and Solid Waste projects; and providing an effective date. The Public Utilities Board recommends approval (5-0).
- Attachments: [Exhibit 1. Agenda Information Sheet](#)  
[Exhibit 2. Ordinance](#)  
[Exhibit 3. Presentation](#)
- D. [ID 24-569](#) Consider adoption of an ordinance directing the publication of Notice of Intention to issue \$177,560,000 in principal amount of Certificates of Obligation of the City of Denton for Waterworks and Wastewater System and Electric System projects; and providing an effective date. The Public Utilities Board recommends approval (5-0).
- Attachments: [Exhibit 1 - Agenda Information Sheet](#)  
[Exhibit 2 - Ordinance](#)  
[Exhibit 3 - Presentation](#)
- E. [ID 24-562](#) Consider approval of a resolution of the City of Denton authorizing the submission of an application through the Water Utilities Department to the Texas Water Development Board for financial assistance via a fixed rate loan in the amount of \$195,845,000 from the State Water Implementation Fund for Texas to fund the Ray Roberts Water Treatment Plant Expansion Project; and providing an effective date. The Public Utilities Board recommends approval (5-0-1).
- Attachments: [Exhibit 1 - Agenda Information Sheet](#)  
[Exhibit 2 - Resolution](#)  
[Exhibit 3 - Presentation](#)

## **6. CONCLUDING ITEMS**

A. Under Section 551.042 of the Texas Open Meetings Act, respond to inquiries from the City Council 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.

B. Possible Continuation of Closed Meeting topics, above posted.

### **C E R T I F I C A T E**

I certify that the above notice of meeting was posted on the official website (<https://tx-denton.civicplus.com/242/Public-Meetings-Agendas>) and bulletin board at City Hall, 215 E. McKinney Street, Denton, Texas, on March 29, 2024, in advance of the 72-hour posting deadline, as applicable, and in accordance with Chapter 551 of the Texas Government Code.

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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

City Hall  
215 E. McKinney St.  
Denton, Texas 76201  
[www.cityofdenton.com](http://www.cityofdenton.com)

## Legislation Text

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**File #:** ID 24-467, **Version:** 1

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### AGENDA CAPTION

Meeting Questions, Responses & Handouts



# City of Denton

City Hall  
215 E. McKinney Street  
Denton, Texas  
[www.cityofdenton.com](http://www.cityofdenton.com)

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## AGENDA INFORMATION SHEET

**DEPARTMENT:** City Secretary's Office

**CM:** Sara Hensley

**DATE:** April 2, 2024

### **SUBJECT**

[Meeting Questions, Responses & Handouts](#)

### **BACKGROUND**

City Councilmembers direct questions related to items on the agenda to City staff. The questions are assigned to applicable departments and corresponding responses are compiled to a Question & Answer Report (Q&A) which is placed in a file directory for the applicable meeting. Selecting the link above will gain access to the final version of the Q&A for this meeting, which will be available prior to the start of the meeting.

Periodically during a meeting, handouts are distributed to members of the City council. Any information distributed at this meeting will also be added to the directory by 12:00 p.m. on the business day following the meeting.

### **EXHIBITS**

Exhibit 1 – Agenda Information Sheet

Respectfully submitted:

Jesus Salazar  
City Secretary



# City of Denton

City Hall  
215 E. McKinney St.  
Denton, Texas 76201  
[www.cityofdenton.com](http://www.cityofdenton.com)

## Legislation Text

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**File #:** ID 24-111, **Version:** 1

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### **AGENDA CAPTION**

Receive a report, hold a discussion, and give staff direction regarding potential subject matter to be discussed by a future Charter Review Committee.

[Estimated Presentation/Discussion Time: 45 minutes]



## AGENDA INFORMATION SHEET

**DEPARTMENT:** City Manager's Office

**CM/DCM/ACM:** Sara Hensley

**DATE:** April 2, 2024

### **SUBJECT**

Receive a report, hold a discussion, and give staff direction regarding potential subject matter to be discussed by a future Charter Review Committee.

### **BACKGROUND**

The Denton City Charter was originally adopted in February 1959. Section 14-13 of the Charter states that amendments to the charter may be framed and submitted to the voters subject to requirements of the Texas Local Government Code, Chapter 9, and all other applicable laws. Since its original adoption, the charter was further amended in 1976, 1980, 1999, 2006, 2009, and 2017.

On Dec. 5, 2023, the City Council provided direction to move forward with a Charter Amendment Election process, which would include a Charter Review Committee.

On Jan. 9, 2024, the City Council provided additional direction for staff to plan for a May 2025 election, scheduling elements of the process accordingly, and direction that the Charter Review Committee would be composed of 14 members.

On Feb. 20, 2024, the City Council provided direction to move forward with several priority sections of the Charter for Council to review at subsequent work sessions.

On Mar. 19, 2024, staff provided a briefing on Sections 2.01 and 2.02 of the City Charter. Council provided direction to develop Charter Review Committee charges.

### **General Charter Review and Amendment Process:**

The City of Denton intends to use the following general process in holding a Charter Amendment Election:

1. **Council Direction to Begin Process.** At the Council's direction, staff will initiate the charter review process and develop information and decision points for council discussion and consideration.
2. **Develop Charter Review Committee Charges.** The Council will discuss elements of the Charter that it wishes to direct the Charter Review Committee to evaluate and potential proposals to consider. These discussions will generally be spread across multiple work sessions.
3. **Charter Review Committee Work.** The Charter Review Committee, after being established and appointed by Council, will meet to receive information, deliberate options, and ultimately make recommendations to the Council regarding which amendments to place on the ballot. A benefit of the committee is that residents participate in the process and provide direct input to the Council.
4. **Council Review and Decision.** Through a series of one or more work sessions, the Council will receive, review, and discuss the recommendations of the committee. The Council may accept,



amend, or reject committee recommendations. If a consensus on one or more amendments is reached, the Council may adopt an ordinance that calls an election on the next available uniform election date and outlines the specific text amendments that will be placed on the ballot.

#### Objectives for Work Session:

The objectives for this work session are:

1. Council will receive a review of the current provisions in Sections 14.03, 14.04, and 14.16 of the City Charter.
2. Staff will provide current practices, recommendations, and other considerations.
3. Council will discuss and provide direction to the forthcoming Charter Review Committee.
4. Questions will be notated and answered through the committee process.

The current schedule allows for four (4) work sessions to develop the components of the Charter Review Committee Charge. The first of which will be held at the March 19, 2024 Work Session Meeting of City Council.

In addition to the areas that the Council gives direction to discuss, staff also recommends that the following are included in the charge to the Charter Review Committee:

1. Resolution of conflicts with state law, where applicable
2. Resolution of vague/unclear language, where applicable
3. Replacement of gendered language with non-gendered language

#### Next Steps:

Staff will continue to hold additional work sessions, in the sequence specified by Council, to review specific provisions under each Charter area and receive direction on any Charter Review Committee Charges.

#### **RECOMMENDATION**

Staff will receive direction for specific Charter Review Committee charges.

#### **PRIOR ACTION/REVIEW (Council, Boards, Commissions)**

Nov. 3, 2022:	Agenda Committee Discussion
Dec. 6, 2022:	City Council Work Session
Aug. 15, 2023:	2-Minute Policy Pitch
Dec. 5, 2023:	City Council Work Session
Jan. 9, 2024:	City Council Work Session
Feb. 20, 2024:	City Council Work Session
Mar. 19, 2024:	City Council Work Session

#### **EXHIBITS**

1. Agenda Information Sheet
2. Presentation
3. City of Denton Charter
4. Ethics Ordinance
5. Boards and Commissions Handbook

Respectfully submitted:  
Kristi Fogle  
Chief of Staff



# **Charter Review Work Session**

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**Article XIV. General Provisions**

**Sections 14.03, 14.04, 14.16**

**April 2, 2024**

# Objectives

- A review of the current provisions in Sections 14.03, 14.04, and 14.16
- Staff will provide current practices and other considerations
- Council will discuss and provide direction to the forthcoming Charter Review Committee
- Questions will be notated and answered through the committee process



## Section 14.03. Official Newspaper

The city council shall annually select and designate by resolution the official newspaper of the city in which all ordinances and official notices that are required to be published shall be published.



## Section 14.03. Current Publication Practices

- State law requires certain notices be published in a newspaper of general circulation
- Denton Record Chronicle is a newspaper of general circulation
- In 2023, a total of \$7,704.30 was spent on Denton Record Chronicle publications
- Fee per publication is dependent on publication length



## Section 14.03. Council Direction

Option 1: Council can consider changing the current official newspaper through the resolution process.

Option 2: Council can provide direction to the Charter Review Committee to make changes to Section 14.03 through the Charter review process.



# Section 14.04. Ethics Ordinance Requirement

The City Council shall adopt an ethics ordinance. The ethics ordinance shall prohibit the use of public office for private gain and shall incorporate the conflict of interest standards that appear in V.T.C.A., Local Government Code, Ch. 171 and all state law as presently exist or may be hereafter amended or adopted. The Council may adopt more stringent standards than those that appear in state law, but the ethics ordinance shall at a minimum include the following components:

- (1) Definition of a prohibited improper economic interest and personal gain;
- (2) Definition of recusal and improper participation when a potential conflict of interest is present;
- (3) Avoidance of appearance of conflict of interest; and
- (4) Administration and enforcement of ethics ordinance, including the power to subpoena witnesses and documents, coupled with strong and meaningful remedies for infraction.



# Section 14.04. Current Ethics Ordinance

- Duty to report
- Financial disclosures
- Business disclosures
- Conflicts of interest
- Gifts
- Representation of others
- Improper influence
- Misuse of information
- Abuse of resources
- Abuse of position
- Subsequent work on prior projects





## Section 14.04. Council Direction

Option 1: Council can modify the existing Ethics Ordinance through the Board of Ethics process.

Option 2: Council can provide direction to the Charter Review Committee to modify Section 14.04 through the Charter review process.



# Section 14.16. Boards and Commissions

Members of boards and commissions of the City of Denton shall serve at the pleasure of the council. Members of such boards and commissions may be removed by the council only for cause and only after being given notice by the council.



# Section 14.16.

## Current Boards & Commissions Practices

Requirements for service on boards and commissions (ordinance):

- Current resident of the City of Denton
- 18 years old

Some boards and commissions have special qualifications



## Section 14.16. Council Direction

Option 1: Council can modify the existing Boards & Commissions practices through resolution or ordinance.

Option 2: Council can provide direction to add additional requirements for service or otherwise modify Section 14.16 through the Charter review process.



# Reminder: Charter Review Timeline

Work Session Date	Charter Area to Review
March 19, 2024	The Council: 2.01, 2.02
April 2, 2024	General Provisions: 14.03, 14.04, 14.16
April 16, 2024	Initiative, Referendum and Recall: 4.12
May 21, 2024	2-Minute Pitch



## **PART I CHARTER<sup>1</sup>**

### **ARTICLE I. INCORPORATION, FORM OF GOVERNMENT AND POWERS**

#### **Sec. 1.01. Incorporation.**

The inhabitants of the City of Denton, in Denton County, Texas, within the corporate limits as now established or as hereafter established in the manner prescribed by this charter, shall be and continue to be municipal corporation and the inhabitants thereof shall be a body politic and corporate in perpetuity under the name of the "City of Denton," possessing all power, property and interests which it possessed immediately prior to the time this charter takes effect or may hereafter acquire, and having the duties, obligations and liabilities now incumbent upon or hereafter incurred by the city as a municipal corporation.

#### **Sec. 1.02. Boundaries.**

The boundaries and limits of the City of Denton until changed in the manner herein provided, shall be the same as have heretofore been established and as exist on the date of the adoption of this charter, which boundaries are more fully set out and described by metes and bounds in a book entitled "Official Corporate Limits of the City of Denton, Texas," which is now, and shall hereafter be, on file in the office of the city secretary of the City of Denton.

#### **Sec. 1.03. Extension of city limits.**

The city council, by a vote of not less than four-fifths ( $\frac{4}{5}$ ) of its membership, shall have the power by ordinance to provide for the alteration and extension of said boundary limits, and the annexation of territory lying adjacent to the City, with or without the consent of the inhabitants of the territory annexed. Upon the introduction of any such ordinance to the City Council, such ordinance shall be published one time in the official newspaper of the City of Denton. Amendments may later be incorporated into the proposed ordinance by a vote of not less than four-fifths ( $\frac{4}{5}$ ) of the membership of the City Council and publication one time in the official newspaper of the City of Denton. The proposed ordinance, or any amendment thereof shall not thereafter be finally acted upon until at least thirty (30) days after the publication thereof; and upon the final passage of any such ordinance, or any amendment thereto, the boundary limits of the City shall thereafter be as fixed thereby. When any additional territory has been so annexed, same shall be a part of the City of Denton, and the property situated therein shall be subject to and shall bear its pro rata part of the taxes levied by the city, and the inhabitants thereof shall be entitled to and shall possess all the rights and privileges of the citizens of the City of Denton, and shall be under obligations as such citizens.

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<sup>1</sup>Editor's note(s)—Published herein is the city's Home Rule Charter which was adopted by the voters at an election held on February 24, 1959. The original arrangement and section numbers have been retained. Subsequent amendments to the Charter are denoted by a history note at the end of the affected section and/or by a note explaining the effect of the amendment. Obviously misspelled words have been corrected without notation. Words added for clarity are enclosed in brackets.

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#### **Sec. 1.04. Form of government.**

The municipal government provided by this charter shall be known as the "council-manager government." Pursuant to its provisions and subject only to the limitations imposed by the state Constitution and by this charter, all powers of the City shall be vested in an elective council, hereinafter referred to as "the council," which shall enact local legislation, adopt budgets, determine policies and appoint the city manager, who shall execute the laws and administer the government of the city. All powers of the city shall be exercised in the manner prescribed by this charter, or if the manner be not prescribed, then in such manner as may be prescribed by ordinance.

#### **Sec. 1.05. Powers of the city.**

The City of Denton shall have and may exercise all the powers granted to cities by the Constitution or laws of Texas including specifically those powers made available to cities of more than five thousand (5,000) inhabitants by what is known as the Home Rule Amendment to the Constitution of Texas (Article XI, Section 5 and the Home Rule Enabling Act (Vernon's Texas Codes Annotated, Texas Local Government Code Section 5.004, Chapter 9, Chapter 26, and Subchapter E of Chapter 51), as these laws now read or may hereafter be amended. The city may acquire property within or without its corporate limits for any municipal purpose; may cooperate with the government of Texas or any agency thereof, or with the federal government or any agency thereof, or with the government of any county, city, or political subdivision to accomplish any lawful purpose for the advancement of the health, morals, safety, convenience, or welfare of the city or its inhabitants; may sell, lease, mortgage, hold, manage, and control such property as its interest may require; provided the city shall not sell, convey, lease, mortgage, or otherwise alienate the entire assets of any public utility system or any portion thereof essential to continued effective utility service without the prior approval by a majority of the qualified voters of the city who vote at an election held for this purpose; and may exercise the power of eminent domain when necessary or desirable to carry out any of the powers conferred upon it by this Charter or the Constitution or laws of Texas. The enumeration of particular powers in this Charter shall not be held or deemed to be exclusive, but in addition to the powers enumerated herein, implied thereby or appropriate to the exercise thereof, the city shall have and may exercise all other powers which under the Constitution and general laws of this state it would be competent for this Charter to specifically enumerate.

(Ord. No. 99-057, Amend. No. 2, 2-16-99, ratified 5-1-99)

#### **Sec. 1.06. Liabilities, exemptions and limitations.**

- (a) No property belonging to the city shall be subject to any execution of any kind or nature.
- (b) No fund belonging to the city shall be subject to garnishment, attachment or sequestration, and the city shall never be required to answer in any garnishment proceedings.
- (c) No assignment of wages or other compensation earned, or to be earned, by any employee of the city shall be valid and the city shall never be required to recognize any such assignment or to answer in any proceeding thereon.
- (d) The City of Denton shall never be liable for death or personal injury of a person or for property damages of any kind unless within ninety (90) days after the occurrence causing the damage, death, injury, or destruction a notice in writing by or on behalf of the person injured or claiming damages, if living, or the person's representative, if dead, or the owners of the property injured or destroyed is delivered to the city manager stating specifically and accurately in complete detail when, where, and how the exact death, injury, destruction, or damages occurred, the full extent of the injury, the basis of the claim, and the amount of damages claimed or asserted. This notice shall also include the residence of the claimant by street number on the date the claim is presented, the residence of the claimant for six (6) months immediately preceding

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the occurrence of the death, injury, or destruction, and the names and addresses of all witnesses that are known at the time upon who it is relied to establish the claim for damages; provided, however, nothing in this subsection shall be construed to affect or repeal the provision in subsection (e) of this section relating to the liability of the city for damages on account of injuries received on the public streets, highways, alleys, grounds, public works, and public places of the city.

- (e) The City of Denton shall never be liable for personal injury or property damages resulting from any defect in any public street, highway, alley, grounds or public work of the city unless the specific defect causing the injury or damage shall have been known to the city manager from personal inspection or written notice thereof for a period of at least twenty-four (24) hours prior to the occurrence of the injury or damage and proper diligence shall not have been used to rectify the defect after such inspection or notice. Such notice shall be required whether the defect arose from any act or omission of the city itself through its agent or employee, or otherwise.
- (f) No provision of this section shall ever be so construed to expand the liability of the city.

(Ord. No. 99-057, Amend. No. 3, 2-16-99, ratified 5-1-99; Ord. No. 2006-232, Amend. No. 2, 8-28-06, ratified 11-7-06)

### **Sec. 1.07. Gender neutral.**

Whenever used in this Charter, a word importing the masculine gender only shall extend and be applied to include females, and, where applicable, to firms, partnerships, and corporations, as well as males.

(Ord. No. 99-057, Amend. No. 4, 2-16-99, ratified 5-1-99)

## **ARTICLE II. THE COUNCIL**

### **Sec. 2.01. Number, selection and term.**

- (a) The city council shall have seven (7) members, six (6) councilpersons and a mayor. The manner of their election is prescribed herein. Each councilperson shall be elected to and occupy a place on the council, such places being numbered one (1), two (2), three (3), four (4), five (5) and six (6). The mayor's position on the council shall be place seven (7).
- (b) Four (4) members of the council whose positions shall be places one (1), two (2), three (3) and four (4), shall be residents of and elected by the qualified voters of single-member geographical districts of the city, known as districts one (1), two (2), three (3) and four (4), as such districts may from time to time be determined by the city council in accordance with Section 2.01(d), and created and described by ordinance. Two (2) members of the council and the mayor shall be elected by the qualified voters of the entire city, commonly known as at large. One (1) at large member, place five (5), shall be a resident of district one (1) or two (2), and one (1) at large member, place six (6), shall be a resident of district three (3) or four (4).
- (c) (1) Each member of the council including the mayor shall hold a place on the city council, and shall be elected to such place for a two-year term. No member of the council or the mayor, who has been elected to three (3) consecutive full terms in a place, shall be eligible to file for election for that same place, whether elected before or after the effective date of this provision, without having first been off the council for at least one annual council election cycle. Nothing herein shall be deemed to prohibit the council members or the mayor from being elected to other places on the council or as mayor, so long as otherwise eligible, except that no council member or the mayor shall be elected to or serve for more than twelve (12) consecutive years.



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- (2) A person who has become ineligible to serve pursuant to Section 2.01(c)(1) shall not be eligible to be elected to a place on the council or as mayor without having first been off the council for at least one annual council election cycle, after which such person shall regain eligibility for office, if otherwise eligible under this Charter.
- (d) The council shall from time to time create and describe by ordinance election districts known as districts one (1), two (2), three (3) and four (4). Such districts shall be created so that each will contain, as nearly as possible, a population equivalent to the others, according to the latest available census data.
- (Ord. No. 76-12, Amend. No. 1, 4-5-76; Ord. No. 79-86, § 2, 12-11-79, ratified 1-19-80; Ord. No. 2009-199, Amend. No. 1, 9-1-09, ratified 11-3-09)

## **Sec. 2.02. Qualifications.**

- (a) Each member of the council, in addition to having the other qualifications prescribed by law:
- (1) Shall be registered to vote in the city;
  - (2) Shall have domiciled for at least one year next preceding his or her election within the corporate limits of Denton and, if running within a single member geographic district, or at large place five (5) requiring a domicile in district one (1) or two (2), or at large place six (6) requiring a domicile in district three (3) or four (4), as set forth in Section 2.01, for at least one year preceding his or her election in the district in which elected; further, shall continuously be domiciled within the corporate limits of Denton and, if elected within a single member geographic district, or at large place five (5) requiring a domicile in district one (1) or two (2), or at large place six (6) requiring a domicile in district three (3) or four (4), in the district in which elected throughout his or her term of office.
  - (3) Shall not hold any other public office of emolument;
  - (4) Shall have and maintain the eligibility requirements for municipal officers set forth in Section 141.001 of the Texas Election Code, Vernon's Texas Civil Statutes Annotated hereinafter referred to as "Election Code" as it may now read or hereafter be amended.
- (b) If a member of the council shall, after being elected, cease to possess any of these qualifications or eligibility requirements, or shall hold another office of emolument, or enter a plea of guilty to a felony, or be convicted of a felony he or she shall immediately forfeit his or her office.
- (c) City Councilmember Stipend. Each member of the City Council shall receive compensation in the form of a monthly stipend as set forth in this section. The initial monthly stipend shall be seven hundred fifty dollars (\$750.00) for each member of the City Council elected from a district or at large position, and one thousand dollars (\$1,000.00) for the Mayor elected at large. These initial amounts shall become effective on ratification of this charter provision.

City Council may, by a separate ordinance, approve an adjustment in the stipend no more frequently than once per fiscal year, but no increase in such compensation shall take effect until commencement of the terms of the Mayor and/or Council Members elected at the next regular election. Any increase in the amount of the stipend shall not exceed three (3) percent of the then-current stipend amount unless approved by a two-thirds ( $\frac{2}{3}$ ) vote of the Council. The stipend shall be reported in the annual city budget as a separate line item.

(Ord. No. 79-86, § 2, 12-11-79, ratified 1-19-80; Ord. No. 99-057, Amend. No. 5, 2-16-99, ratified 5-1-99; Ord. No. 2009-199, Amend. No. 2, 9-1-09, ratified 11-3-09; Ord. No. 2017-237, § 1(Amend. A, E), 8-15-17, ratified 11-7-17; Ord. No. 2017-373, § 2(Props. A, E), 11-20-17)

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### **Sec. 2.03. Presiding officer: Mayor and mayor pro tem.**

The mayor shall preside at the meetings of the council and shall be recognized as head of the city government for all ceremonial purposes and by the governor for purposes of martial law, but shall not interfere with the managerial duties and responsibilities of the city manager. The mayor shall have all the same powers and privileges as any other councilmember, including entitlement to vote upon all matters considered by the council, but shall have no veto power. The council shall, as soon as possible after the annual election, elect from its membership a mayor pro tem. The mayor pro tem shall act as mayor during the absence or disability of the mayor.

(Ord. No. 79-86, § 2, 12-11-79, ratified 1-19-80; Ord. No. 2009-199, Amend. No. 3, 9-1-08, ratified 11-3-09)

### **Sec. 2.04. Vacancies in council.**

Where a vacancy in any place on the council, including that of mayor, shall occur, the vacant place shall be filled by a special election, and, where necessary, by a runoff election, in the same manner as provided in this Charter for the regular election of the councilperson. Such special election shall be held on the first authorized uniform election date following the creation of the vacancy occurring on or after the thirtieth day after the date the election is ordered. The runoff election, where necessary, shall be held in accordance with the requirements of the Election Code and all other applicable laws; provided, however, that where a vacancy shall occur within one hundred and twenty (120) days of a regular election, no special election to fill the vacancy shall be called, unless more than one vacancy occurs.

(Ord. No. 76-12, Amend. No. 2, 4-5-76; Ord. No. 99-057, Amend. No. 6, 2-16-99, ratified 5-1-99; Ord. No. 2009-199, Amend. No. 3, 9-1-09, ratified 11-3-09)

### **Sec. 2.05. Meetings of the council.**

- (a) As soon as practicable after each city council election and in accordance with state law, the council shall meet at the city hall and the newly-elected members shall qualify and assume the duties of office. Thereafter, the council shall meet regularly at city hall at such times as may be prescribed by its rules but not less frequently than once each calendar month. Special called meetings may be held from time to time at city hall or other locations accessible to the public.
- (b) Special meetings shall be called by the city secretary upon request of the mayor, city manager, or a majority of the members of the council.
- (c) The city manager shall attend all meetings of the council and may take part in the discussion of all matters coming before the council but shall have no vote.

(Ord. No. 79-86, § 2, 12-11-79, ratified 1-19-80; Ord. No. 2006-232, Amend. No. 3, 8-28-06, ratified 11-7-06)

### **Sec. 2.06. Quorum, voting.**

- (a) A majority of the members of the council shall constitute a quorum for the transaction of business, and the affirmative vote of a majority of the council shall be necessary to repeal any ordinance or take any official action in the name of the city, except as otherwise provided in this Charter or by the general laws of the State of Texas.
- (b) The ayes and noes shall be taken upon the passage of all ordinances or resolutions and the vote of each member shall be recorded in the minutes.

(Ord. No. 76-12, Amend. No. 3, 4-5-76; Ord. No. 79-86, § 2, 12-11-79, ratified 1-19-80)

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## **Sec. 2.07. Rules of procedure, minutes.**

The council shall determine its own rules of procedure and order of business. Except as may otherwise be provided by state law, such as certain executive sessions under the Texas Open Meetings Act, being Chapter 551 of the Texas Government Code, minutes of all meetings of the council shall be taken and preserved as a permanent record open to the public for inspection.

(Ord. No. 2006-232, Amend. No. 4, 8-28-06, ratified 11-7-06)

## **Sec. 2.08. Powers of the council.**

Except as otherwise provided by this charter all powers of the city and the determination of all matters of policy shall be vested in the council. Without limitation of the powers granted or delegated to the city by the Constitution, statutes, or this Charter, the council shall have power to:

- (a) Appoint and remove the city manager.
- (b) Appoint and remove the city attorney, the city auditor, and the municipal court judge.
- (c) Approve members of all boards, commissions and committees serving the city.
- (d) Adopt the budget of the city.
- (e) Fix the salary of the city manager, city auditor, city attorney, and the municipal court judge.
- (f) Authorize by ordinance the issuance of bonds, assignments of revenue or warrants.
- (g) Approve plats.
- (h) Adopt and modify the official map of the city.
- (i) Adopt and modify the zoning plan, including any and all zoning and land use regulations to the fullest extent allowed by law.
- (j) Provide for the establishment and designation of fire limits and prescribe the kind and character of buildings, structures, or improvements which may be erected therein, and provide for the condemnation of dangerous or dilapidated buildings or structures which increase the fire hazard and the manner of their removal or destruction.
- (k) Adopt and modify the building code.
- (l) After receiving a recommendation from the planning commission adopt, modify and carry out plans proposed by the planning commission for the clearance of slum districts and rehabilitation of blighted areas, and for the replanning, improvement and redevelopment of any area or district which may have been destroyed in whole or in part by disaster.
- (m) Regulate, license and fix the charges or fares made by any person, firm or corporation owning, operating or controlling any vehicle of any character used for the carrying of passengers for hire or the transportation of freight for hire on the public streets or alleys of the city.
- (n) Provide by ordinance for the exercise of the police powers of the city.
- (o) Establish and maintain a free public library and to cooperate for such purposes with any person, firm, association or political subdivision in the manner prescribed by ordinance.
- (p) Provide by ordinance for the exercise by this city of any and all powers of local self-government not made self-enacting by this charter or by statute.

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- (q) Inquire into the conduct of any office, department or agency of the city and make investigations of municipal affairs.
  - (r) Provide for an independent audit.
  - (s) Perform the districting and redistricting function.

(Ord. No. 76-12, Amend. No. 4, 4-5-76; Ord. No. 79-86, § 2, 12-11-79, ratified 1-19-80; Ord. No. 2006-232, Amend. No. 5, 8-28-06, ratified 11-7-06)

## **Sec. 2.09. Ordinances.**

- (a) In addition to such acts of the council as are required by statutes or by this charter to be by ordinance, every act of the council establishing a fine or other penalty or providing for the expenditure of funds or for the contracting of indebtedness, shall be by ordinance. The enacting clause of all ordinances shall be: "The Council of the City of Denton hereby ordains:"
- (b) Every ordinance shall be introduced in written, printed, or electronic form and passed in compliance with section 2.06 of this Article, authenticated by the signatures of the mayor (or mayor pro tem) and the city secretary and systematically recorded in an ordinance book in a manner approved by the council. It shall be necessary to record only the caption or title of each ordinance in the minutes of the council.
- (c) A full text of every penal ordinance, or in lieu thereof a descriptive caption or title stating in summary the purpose of the ordinance and the penalty for violation thereof, shall be published at least twice in the official newspaper of the City of Denton within ten (10) days after the passage of such ordinance; provided that any penal ordinance shall become effective not less than fourteen (14) days from the date of its passage. All other ordinances, except those specifically required by this charter to be published, are not required to be published in either the official newspaper of the city or in any other publication, and such ordinances shall become effective upon passage or on the date specified therein.
- (d) The council shall have power to cause the ordinances of the city to be corrected, amended, revised, codified and printed in code form as often as the council deems necessary and advisable, and such printed code, when adopted by the council, shall be in full force and effect without the necessity of publishing the same or any part thereof in the official newspaper except that the ordinance adopting the same shall be published one time in the official newspaper of the city. Such printed code shall be admitted in evidence in all courts and places without further proof.

(Ord. No. 2006-232, Amend. No. 6, 8-28-06, ratified 11-7-06)

## **Sec. 2.10. Council not to interfere in appointments or removals.**

Neither the council nor any of its members shall direct or request the appointment of any person to, or his or her removal from, office by any officer appointed by the city council under Section 2.08 of this Charter or by any of his or her subordinates. Except for the purpose of inquiry, the council and its members shall deal with the administrative service solely through the officers appointed by the city council and neither the council nor any member thereof shall give orders to any subordinates of the officers appointed by the city council, either publicly or privately.

(Ord. No. 2009-199, Amend. No. 4, 9-1-09, ratified 11-3-09)

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### **Sec. 2.11. Employee bonds.**

The council shall require bonds of all municipal officers and employees who receive or pay out any monies of the city. The amount of such bonds shall be determined by the council and the cost thereof shall be borne by the city.

### **Sec. 2.12. City secretary.**

The city secretary shall be appointed by the city manager subject to the approval of the council. He shall serve as clerk of the council, give notice of its meetings, keep the journal of its proceedings, authenticate by his signature and record in full in a book kept for the purpose all ordinances and resolutions, and perform such other duties as this charter may provide or as the city manager may assign him.

### **Sec. 2.13. Independent annual audit.**

- (a) Prior to the end of each fiscal year, the council shall designate a certified public accountant who, as of the end of the fiscal year, shall make an independent audit of accounts and other evidences of financial transactions of the city government and shall submit his report to the council and to the city manager. Such accountant shall have no personal interest, direct or indirect, in the fiscal affairs of the city government or of any of its officers. He shall not maintain any accounts or records of the city business, but within specifications approved by the council, shall post-audit the books and documents kept by the department of finance and any separate or subordinate accounts kept by any other office, department or agency of the city government.
- (b) A copy of such audit shall be kept in the office of the city secretary subject to inspection by any citizen during regular office hours.

## **ARTICLE III. NOMINATIONS AND ELECTIONS**

### **Sec. 3.01. Municipal elections.**

- (a) The regular election for the choice of members of the City Council as provided in Article II shall be held each year on the uniform election day for municipal elections in May established by the Election Code. The Council may by resolution or ordinance order special elections which shall be held as nearly as practicable according to the provisions for a regular election. The hours and places for holding all City elections shall be determined by the City Council. All elections shall be conducted in accordance with the Election Code and all other applicable laws as they now read or may hereafter be amended.
- (b) On the first Saturday in April immediately following adoption of Section 2.01, and the drawing of election district boundaries by the council, the voters shall elect:
  - (1) The mayor, place seven (7), for a term of two (2) years.
  - (2) Two (2) councilmembers, places five (5) and six (6), for terms of two (2) years each.
  - (3) One (1) councilmember for an interim term of one (1) year. This position shall be denominated for such interim term as place four (4) and such councilmember shall be elected from the city at large and may be a resident of any district.

At the next following regular annual municipal election after the one referred to above in this section, the district and at large system provided in Section 2.01 shall take full effect.

- (c) Councilmembers holding office at the time the charter amendments to Section 2.01 are adopted (places one (1), two (2) and three (3)) shall serve the remainder of their unexpired terms as at large members of the council.
- (d) If any councilmember whose term would not otherwise expire at the time of the canvass of the results of the election specified in Section 3.01(b) shall enter said election, such councilmember's term shall be deemed to have been vacated at the time of the canvass of said election results, whether the candidacy of said councilmember is successful or not.
- (e) Neither the mayor nor any member of the council shall become a candidate for election to any position on the council, other than for reelection to the same seat, unless such candidate shall first submit to the city secretary his written resignation from the council to be effective at the time of the canvass of the results of the next regularly scheduled election. If such candidate's unexpired term would otherwise extend beyond the date of such canvass, the city secretary shall notify the council and an election shall be held on the date of the next regularly scheduled election to fill the unexpired term of said resigning councilmember.

(Ord. No. 79-86, § 2, 12-11-79, ratified 1-19-80; Ord. No. 99-057, Amend. No. 7, 2-16-99, ratified 5-1-99; Ord. No. 2006-232, Amend. No. 7, 8-28-06, ratified 11-7-06)

### Sec. 3.02. Nominations.

- (a) Any qualified person may have his or her name placed on the ballot as a candidate for councilmember by filing with the city secretary not more than ninety (90) days nor less than thirty (30) days prior to the date of election an application in substantially the following form:

I, \_\_\_\_\_, do hereby declare that I am a candidate for the Council of the City of Denton and request that my name be printed upon the official Ballot for that office in the next city election. I am aware of the nepotism law, chapter 573 of the Government Code. I am qualified to serve on the council with respect to the qualifications set forth in the Charter. I reside at \_\_\_\_\_, Denton, Texas.

	Signed
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The foregoing petition was filed with the City Secretary on the \_\_\_\_ day of \_\_\_\_\_, 19\_\_.

	City Secretary
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- (b) As an alternative method, any qualified person may be nominated for councilmember by a written petition signed by the greater twenty five (25) qualified voters of the city or one-half of one percent of the total votes received by all candidates for mayor in the most recent mayoral general election, provided the candidate signs the petition certifying his or her acceptance. One such petition shall be circulated and signed for each nominee or candidate. With each signature shall be stated the place of residence of the signer, giving the street and number or other description sufficient to identify it. Nominating petitions shall be filed with the city secretary not more than ninety (90) days nor less than thirty (30) days before the election day, and shall be in substantially the following form:

We, the undersigned electors of the City of Denton, hereby nominate \_\_\_\_\_ whose residence address is \_\_\_\_\_ as a candidate for councilmember of the City of Denton, to be voted for at the election to be held on the \_\_\_\_ day of \_\_\_\_\_, 19\_\_; and we individually certify that we are qualified to vote for a candidate for the council.

Name	Address	Date of Signing
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(Spaces for the greater twenty five (25) or one-half of one percent of the total votes received for candidates for Mayor signatures and required data)

#### Acceptance of Nomination

I am qualified to serve on the council of the City of Denton with respect to the qualifications set forth in this Charter. I hereby accept the nomination for councilmember and agree to serve if elected.

	Signature of Candidate
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#### Statement of Circulator

The undersigned is the circulator of the foregoing petition containing signatures. Each signature was appended thereto in my presence and is the genuine signature of the person whose name it purports to be.

	Signature of Circulator
	Address of Circulator

The foregoing petition was filed with the City Secretary on the \_\_\_\_ day of \_\_\_\_\_, 19\_\_.

	City Secretary
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(Ord. No. 99-057, Amend. No. 8, 2-16-99, ratified 5-1-99)

### Sec. 3.03. Official ballot.

The city secretary shall make up the official ballot from the names presented to him. The order in which the names of the candidates for each place shall appear on the ballot shall be determined by lot in a drawing held under the supervision of the city secretary, at which drawing each candidate or his designated representative shall have a right to be present. All official ballots shall be printed at least twenty (20) days prior to the date of any general or special election, and absentee voting shall be governed by the general laws of the State of Texas.

### Sec. 3.04. Canvass: Election returns, results.

- (a) Immediately after counting the votes, the presiding judge shall deliver the official returns of the election to the city secretary. Not earlier than the third day or later than the sixth day after the election or as otherwise required by the Election Code and all other applicable laws, the city council shall canvass the returns and declare the results. The returns of every municipal election shall be recorded in the minutes of the council.
- (b) The candidates receiving the majority of the votes cast for each place shall be declared elected. If no candidate receives a majority, or if there is a tie for any one place, the council shall order a runoff election which shall be held not earlier than the twentieth or later than the thirtieth day after the date the final canvass of the regular election is completed or as otherwise required by the Election Code and all other applicable laws. Only the names of the candidates who tie for the highest number of votes cast for that

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place, or the two (2) candidates who receive the highest number of votes with neither having a majority of votes cast for that place, shall be printed on the ballot for each election. In the event of a tie vote at the runoff election, the candidates who tie shall cast lots in the presence of the City Secretary to determine which one shall be declared elected, and said lots shall be cast within five (5) days of the runoff election in accordance with Section 2.028 of the Election Code and all other applicable laws.

- (c) Immediately after the election results have been declared the mayor shall deliver certificates of election to the successful candidates. Each councilman shall take the oath of office as soon thereafter as practicable at which time his term of office shall begin.

(Ord. No. 76-12, Amend. No. 1, 4-5-76; Ord. No. 79-86, § 2, 12-11-79, ratified 1-19-80; Ord. No. 99-057, Amend. No. 9, 2-16-99, ratified 5-1-99)

### **Sec. 3.05. Regulation of elections.**

Except as otherwise provided by this charter, all city elections shall be governed by the applicable provisions of the Election Code of the State of Texas, as now or hereafter amended. The council shall have the power to make such additional regulations as may be necessary.

State law reference(s)—Elections, V.T.C.A., Election Code § 1.005 et seq.

## **ARTICLE IV. INITIATIVE, REFERENDUM AND RECALL**

### **Sec. 4.01. Power of initiative.**

The electors shall have power to propose any ordinance, except an ordinance appropriating money or authorizing the levy of taxes, and to adopt or reject the proposed ordinance at the polls, such power being known as the initiative. Any initiative ordinance may be submitted to the council by a petition signed by qualified voters of the city equal in number to at least twenty-five percent of the number of votes cast at the last regular municipal election.

### **Sec. 4.02. Power of referendum.**

The electors shall have power to approve or reject at the polls any ordinance passed by the council or submitted by the council to a vote of the electors, except an ordinance appropriating money, issuing bonds or authorizing the levying of taxes, such power being known as the referendum. Within twenty (20) days after the enactment by the council of any ordinance which is subject to a referendum, a petition signed by qualified voters of the city equal in number to at least twenty-five percent (25%) of the number of votes cast at the last preceding regular municipal election may be filed with the city secretary requesting that any such ordinance be either repealed or submitted to a vote of the electors.

### **Sec. 4.03. Form of petition, committee of petitioners.**

Initiative petition papers shall contain the full text of the proposed ordinance. Referendum petition papers shall contain the full text of the ordinance which they propose to repeal. The signatures to initiative or referendum petitions need not all be appended to one paper, but to each separate petition there shall be attached a statement of the circulator thereof as provided by this section. Each signer shall sign his name in ink or indelible pencil and shall give after his name his place of residence by street and number, or other description sufficient to identify the place. There shall appear on each petition the names and addresses of the same five (5) electors, who, as a committee of the petitioners, shall be regarded as responsible for the circulation and filing of the petition.



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Attached to each separate petition paper there shall be an affidavit of the circulator thereof that he, and he only, personally circulated the foregoing paper, that it bears a stated number of signatures, that all the signatures were appended thereto in his presence and that he believes them to be the genuine signatures of the persons whose names they purport to be.

#### **Sec. 4.04. Filing, examination and certification of petitions.**

All papers comprising an initiative or referendum petition shall be assembled and filed with the city secretary as one instrument. Within twenty (20) days after a petition is filed, the city secretary shall determine whether each paper of the petition bears the required affidavit of the circulator and whether the petition is signed by a sufficient number of qualified voters. After completing his examination of the petition, the city secretary shall certify the result thereof to the council at its next regular meeting. If he shall certify that the petition is insufficient he shall set forth in his certificate the particulars in which it is defective and shall at once notify the committee of the petitioners of his findings.

#### **Sec. 4.05. Amendment of petitions.**

An initiative or referendum petition may be amended at any time within ten (10) days after the notification of insufficiency has been sent by the city secretary, by filing a supplementary petition upon additional papers signed and filed as provided in the case of an original petition. The city secretary shall within five (5) days after such an amendment is filed, examine the amended petition and, if the petition is still insufficient, he shall file his certificate to that effect in his office and notify the committee of the petitioners of his findings and no further action shall be had on such insufficient petition. The findings of the insufficiency of a petition shall not prejudice the filing of a new petition for the same purpose.

#### **Sec. 4.06. Effect of certification of referendum petition.**

When a referendum petition, or amended petition as defined in section 4.05 of this article, has been certified as sufficient by the city secretary, the ordinance specified in the petition shall not go into effect, or further action thereunder shall be suspended if it shall have gone into effect, until and unless approved by the electors as hereinafter provided.

#### **Sec. 4.07. Consideration by council.**

Whenever the council receives a certified initiative or referendum petition from the city secretary, it shall proceed at once to consider such petition. A proposed initiative ordinance shall be read and provision shall be made for a public hearing upon the proposed ordinance. The council shall take final action on the ordinance within sixty (60) days after the date on which such ordinance was certified to the council by the city secretary. A referred ordinance shall be reconsidered by the council and its final vote upon such reconsideration shall be upon the question, "Shall the ordinance specified in the referendum petition be repealed?"

#### **Sec. 4.08. Submission of electors.**

If the council shall fail to pass an ordinance proposed by initiative petition, or shall pass it in a form different from that set forth in the petition therefor, or if the council shall fail to repeal a referred ordinance, the proposed or referred ordinance shall be submitted to the electors not less than thirty (30) days nor more than sixty (60) days from the date the council takes its final vote thereon. If no regular election is to be held within such period the council shall provide for a special election.

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#### **Sec. 4.09. Form of ballot for initiated and referred ordinances.**

Ordinances submitted to a vote of the electors in accordance with the initiative and referendum provisions of this charter shall be submitted by ballot title, which shall be prepared in all cases by the city attorney. The ballot title may be different from the legal title of any such initiated or referred ordinance and shall be a clear, concise statement, without argument or prejudice, descriptive of the substance of such ordinance. If a paper ballot is used it shall have below the ballot title the following propositions, one above the other, in the order indicated: "FOR THE ORDINANCE" and "AGAINST THE ORDINANCE." Any number of ordinances may be voted on at the same election and may be submitted on the same ballot, but any paper ballot used for voting thereon shall be for that purpose only. If voting machines are used, the ballot title shall have below it the same two (2) propositions, one above the other or one preceding the other in the order indicated, and the elector shall be given an opportunity to vote for or against the ordinance.

#### **Sec. 4.10. Results of election, publication.**

- (a) If a majority of the electors voting on a proposed initiative ordinance shall vote in favor thereof, it shall thereupon be an ordinance of the city. A referred ordinance which is not approved by a majority of the electors voting thereon shall thereupon be deemed repealed.
- (b) Initiative ordinances adopted and referendum ordinances approved by the electors shall be published, and may be amended or repealed by the council in the same manner as other ordinances.

#### **Sec. 4.11. Recall of councilmen.**

Any member of the city council may be removed from office by a recall election.

#### **Sec. 4.12. Recall petition, committee of petitioners.**

Recall petition papers shall contain the name of the councilman (or names of the councilmen) whose removal is sought, and a clear and concise statement of the grounds for his (or their) removal. There shall appear at the head of each petition the names and addresses of five electors, who, as a committee of the petitioners shall be regarded as responsible for the circulation and filing of the petition. Each signer of any petition paper shall sign his name in ink or indelible pencil and give after his name his place of residence by street and number, or other description sufficient to identify the place, and the date his signature was affixed. No signature to such petition shall remain effective or be counted which was placed thereon more than forty-five (45) days prior to the filing of such petition with the city secretary. The signatures to a recall petition need not all be appended to one paper, but to each separate petition there shall be attached an affidavit of the circulator thereof that he, and he only, personally circulated the foregoing paper, that it bears a stated number of signatures, that all signatures were appended thereto in his presence and that he believes them to be the genuine signatures of the persons whose names they purport to be.

#### **Sec. 4.13. Filing and certification of petitions, recall election.**

- (a) All papers comprising a recall petition shall be assembled and filed with the city secretary as one instrument. Within seven (7) days after a petition is filed, the city secretary shall determine whether each paper bears the names of five (5) electors who constitute a committee of the petitioners, and the required affidavit of the circulator thereof, and whether the petition is signed by qualified voters of the constituency of the councilmember whose removal is sought equal in number to at least twenty-five (25) percent of the number of the votes cast for that councilmember and all of his opponents in the last preceding general municipal election in which he was a candidate. As used herein "constituency" shall mean the qualified voters eligible

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to vote for the councilmember whose removal is sought, either by geographical district or at large, as the case may be.

- (b) If the city secretary finds the petition insufficient he shall return it to the committee of the petitioners, without prejudice, however, to the filing of a new petition based upon new and different grounds, but not upon the same grounds. If the city secretary finds the petition sufficient and in compliance with the provisions of this Article of the Charter he shall submit the petition and his certificate of its sufficiency to the council at its next regular meeting and immediately notify the councilman whose removal is sought of such action.
- (c) If the councilman whose removal is sought does not resign within seven (7) days after such notice the city council shall thereupon order and fix a date for holding a recall election not less than thirty (30) nor more than sixty (60) days after the petition has been presented to the council. If no general election is to be held within this time the council shall provide for a special election.

(Ord. No. 79-86, § 2, 12-11-79, ratified 1-19-80)

#### **Sec. 4.14. Recall election ballots.**

Ballots used at recall elections shall conform to the following requirements:

- (a) With respect to each person whose removal is sought the question shall be submitted: "SHALL (name of person) BE REMOVED FROM THE CITY COUNCIL BY RECALL?"
- (b) Immediately below each such question shall be printed the two following propositions, one above the other, in the order indicated:

"YES"

"NO"

#### **Sec. 4.15. Results of recall election.**

If a majority of the votes cast at a recall election shall be against the recall of the councilman named on the ballot, he shall continue in office. If a majority of the votes cast at a recall election be for the recall of the councilman named on the ballot, he shall be deemed removed from office and the vacancy shall be filled in the manner prescribed in Article II, section 2.04 of this charter.

#### **Sec. 4.16. Limitations on recalls.**

No petition shall be filed against a councilmember within six (6) months after he takes office nor against a councilmember who has been subjected to a recall election and not removed thereby until at least six (6) months after such election. Should a regular election occur during the time when a recall petition is current and should the person(s) being recalled be reelected, the recall petition shall be null and void.

(Ord. No. 79-86, § 2, 12-11-79, ratified 1-19-80)

#### **Sec. 4.17. District judge may order election.**

Should the city council fail or refuse to order any recall election when all of the requirements for such election have been complied with by the petitioning electors in conformity with this Article of the charter, then it shall be the duty of the District Judge of Denton County, upon proper application therefor, to order such election and effectuate the provisions of this Article of the charter.

## ARTICLE V. THE CITY MANAGER

### Sec. 5.01. The city manager: Qualifications.

The city manager shall be chosen by the council solely on the basis of his executive and administrative qualifications with special reference to his actual experience in or his knowledge of accepted practice in respect to the duties of his office, as hereinafter set forth, provided that any person who is appointed city manager must have had at least two (2) years of experience as a city manager or assistant city manager, or the equivalent thereof. At the time of his appointment he need not be a resident of the city or state but during his tenure of office he shall reside within the city.

(Ord. No. 79-86, § 2, 12-11-79, ratified 1-19-80)

### Sec. 5.02. The city manager: Term and salary.

- (a) The council shall appoint the city manager for an indefinite term and may remove him by a majority vote of its members. At least thirty (30) days before such removal shall become effective, the council shall by a majority vote of its members adopt a preliminary resolution stating the reasons for his removal. The city manager may reply in writing and may request a hearing at a public meeting of the council, which shall be held not earlier than twenty (20) days nor later than thirty (30) days after the filing of such request. Pending such hearing the council may suspend the city manager from duty but may not suspend or reduce his salary. After such public hearing, if one be requested, and after full consideration, the council by majority vote of its members may adopt a final resolution of removal.
- (b) The city manager's salary shall be fixed by the council.

### Sec. 5.03. The city manager: Powers and duties.

The city manager shall be the chief executive officer and the head of the administrative branch of the city government. He shall be responsible to the council for the proper administration of all affairs of the city placed under his control by this Charter or by ordinance or resolution of the council, and to that end he shall:

- (a) Appoint and remove any employee of the city, except as otherwise provided by this Charter and except as he, or she may authorize the head of a department to appoint and remove subordinates in such department.
- (b) Prepare the annual budget and submit it to the council and be responsible for its administration after adoption.
- (c) Prepare and submit to the council at the end of the fiscal year a complete report on the finances and administrative activities of the city for the preceding year.
- (d) Attend all meetings of the council, with the right to take part in the discussion, but having no vote.
- (e) Keep the council advised of the financial condition and future needs of the city and make such recommendations as may seem to him desirable.
- (f) Appoint, subject to the approval of the council, the city secretary.
- (g) Perform such other duties as may be prescribed by this Charter or required of him by the council not inconsistent with this Charter.

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(Ord. No. 2006-232, Amend. No. 8, 8-28-06, ratified 11-7-06)

**Sec. 5.04. Absence of city manager.**

To perform his duties during his temporary absence or disability, the [city] manager shall designate by letter filed with the city secretary a qualified administrative officer of the city. The administrative officer thus designated shall perform the duties of the [city] manager until he shall return or his disability shall cease or until the council by resolution designates another officer of the city to perform such duties.

**Sec. 5.05. Administrative departments.**

The city manager is hereby authorized to organize the employees of the city into various departments and divisions with the concurrence of the city council.

(Ord. No. 79-86, § 2, 12-11-79, ratified 1-19-80)

**Secs. 5.06, 5.07. Reserved.**

Editor's note(s)—Ord. No. 79-86, § 2, adopted Dec. 11, 1979, and ratified Jan. 19, 1980, deleted former sections 5.06 and 5.07 which pertained to directors of departments and departmental divisions and were derived unamended from the Charter adopted Feb. 24, 1959.

## **ARTICLE VI. CITY ATTORNEY, MUNICIPAL COURT AND CITY AUDITOR**

**Sec. 6.01. City attorney: appointment.**

The city attorney, who shall be head of the legal department, shall be a qualified attorney-at-law licensed to practice in the State of Texas. He, or she shall be appointed by the council, and serve at the pleasure of the city council. He, or she shall receive such compensation as may be fixed by the council.

(Ord. No. 2006-232, Amend. No. 9, 8-28-06, ratified 11-7-06)

**Sec. 6.02. City attorney: powers and duties.**

- (a) The city attorney shall represent the city in all litigation and controversies and shall prosecute all cases brought before the municipal court. He, or she shall draft, approve or file his, or her written opinion on the legality of every proposed ordinance before it is acted upon by the council, and shall pass upon all documents, contracts and other legal instruments in which the city may have an interest.
- (b) He, or she shall be the legal advisor of the city manager, city council, and of all boards, commissions, agencies, officers and employees with respect to any legal question involving their official powers or duties. He, or she shall perform such other duties as may be required by statute, by this Charter or by ordinance.
- (c) The council may authorize the appointment of such assistant city attorneys as may be needed to perform the duties of this department. The city attorney may designate an assistant city attorney to act as city attorney in case of his or her temporary absence of not more than three weeks. The council may authorize the appointment of a temporary city attorney to act for the city attorney in the case of a longer temporary absence or disability.

(Ord. No. 79-86, § 2, 12-11-79, ratified 1-19-80; Ord. No. 2006-232, Amend. No. 9, 8-28-06, ratified 11-7-06)

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### **Sec. 6.03. Municipal court.**

- (a) There is hereby established a court which shall be known as the "Municipal Court No. 1 of the City of Denton." Municipal Court No. 1 shall have the jurisdiction and be conducted as a municipal court of record in accordance with Vernon's Texas Codes Annotated Texas Government Code subchapter FF, chapter 30, §§ 30.1211 through 30.01233 inclusive and applicable state law as these laws may now read or hereafter be amended. All costs and fines imposed by the municipal court shall be paid into the city treasury for the use and benefit of the city. The city council may, by ordinance, create additional municipal courts or municipal courts of record if so authorized under the provisions of applicable law.
- (b) The municipal judge shall preside over the municipal court. The municipal judge shall be a qualified attorney-at-law licensed to practice in the State of Texas in good standing and shall have such other qualifications as required by subchapter FF of chapter 30 of the Texas Government Code and other applicable laws as these laws may now read or hereafter be amended. He or she shall be appointed by, and shall serve at the pleasure of the council. The municipal judge shall receive such compensation as may be fixed by the council. The municipal judge shall have all the powers and duties assigned to a municipal judge by the Charter, other city ordinances, subchapter FF of chapter 30 of the Texas Government Code, or other applicable state laws.
- (c) There shall be one regularly scheduled session of the court each week and as many other sessions as, in the discretion of the municipal judge, may be necessary for the timely transaction of the business of the court.
- (d) The council may appoint such assistant municipal judges or additional municipal judges as may be necessary to perform the duties of the municipal court or a temporary municipal judge to act for the municipal judge in the case of his or her temporary absence or disability, and such assistant, additional, or temporary municipal judge shall receive such compensation as may be set by the council. All such assistant, additional, or temporary municipal judges, when appointed, shall have all of the other powers and duties assigned to the municipal judge herein.

(Ord. No. 79-86, § 2, 12-11-79, ratified 1-19-80; Ord. No. 99-057, Amend. No. 10, 2-16-99, ratified 5-1-99)

### **Sec. 6.04. City Internal Auditor.**

The City Internal Auditor shall be appointed by the City Council, shall serve at the pleasure of the City Council, and shall perform such auditing duties herein described or as may be assigned by the Council. The position of the City Internal Auditor is to be held on a continuous, fulltime basis. On an interim basis, the City Council may engage external independent auditing resources to accomplish the Internal Audit function.

The City Internal Auditor is responsible for providing (a) an independent appraisal of City operations to ensure policies and procedures are in place and complied with, inclusive of purchasing and contracting; (b) information that is accurate and reliable; (c) that assets are properly recorded and safeguarded; (d) that risks are identified and minimized; and (e) that resources are used economically and efficiently, and that the City's objectives are being achieved.

The City Internal Auditor is responsible for directing all internal audit functions for the City of Denton to eliminate waste, fraud, and abuse.

(Ord. No. 2006-232, Amend. No. 9, 8-28-06, ratified 11-7-06; Ord. No. 2017-237 , § 1(Amend. C), 8-15-17, ratified 11-7-17; Ord. No. 2017-373 , § 2(Prop. C), 11-20-17)

## ARTICLE VII. REVENUE AND TAXATION<sup>2</sup>

### Sec. 7.01. Property subject to tax.

The city council is authorized to levy and collect taxes, to seize and sell property for delinquent taxes, to create tax liens, and to exercise all other powers and authority pursuant to the Tax Code, Vernon's Texas Codes Annotated and all other applicable laws as they now read or may hereafter be amended.

(Ord. No. 79-86, § 2, 12-11-79, ratified 1-19-80; Ord. No. 99-057, Amend. No. 11, 2-16-99, ratified 5-1-99)

### Sec. 7.02. Reserved.

Editor's note(s)—Ord. No. 99-057, Amend. No. 1, adopted February 16, 1999, ratified May 1, 1999, repealed § 7.02, which pertained to payment, delinquencies, and penalties, and derived from Ord. No. 79-86, § 2, adopted Dec. 11, 1979, ratified Jan. 19, 1980.

### Sec. 7.03. Reserved.

Editor's note(s)—Ord. No. 99-057, Amend. No. 11, adopted February 16, 1999, ratified May 1, 1999, repealed § 7.02, which pertained to seizure and sale of property for delinquent taxes, and derived from Ord. No. 79-86, § 2, adopted Dec. 11, 1979, ratified Jan. 19, 1980.

### Sec. 7.04. Reserved.

Editor's note(s)—Ord. No. 99-057, Amend. No. 11, adopted February 16, 1999, ratified May 1, 1999, repealed § 7.02, which pertained to tax liens, and derived from Ord. No. 79-86, § 2, adopted Dec. 11, 1979, ratified Jan. 19, 1980.

### Sec. 7.05. Ratification.

All taxes heretofore assessed by the City of Denton are ratified and all ordinances relating to taxes now in force shall continue until amendment or repeal by the council.

(Ord. No. 79-86, § 2, 12-11-79, ratified 1-19-80)

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<sup>2</sup>Editor's note(s)—Ord. No. 79-86, § 2, adopted Dec. 11, 1979, and ratified Jan. 19, 1980, deleted former sections 7.01—7.15 and 7.17—7.23 which pertained to the director of finance; procedures relative to accounting, payment of claims, purchasing, disbursement of funds, payment of claims and audits; the treasurer; the tax assessor-collector; the board of equalization and procedures relative to taxation and were derived from the Charter adopted Feb. 24, 1959, as amended by Ord. No. 76-12, Amend. No. 5, adopted April 5, 1976. Section 2 of Ord. No. 79-86 also renumbered former sections 7.16 and 7.24—7.29 as sections 7.01—7.07.

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### **Sec. 7.06. General powers.**

In addition to the powers herein conferred with reference to the assessment and collection of taxes, the City of Denton shall have and may exercise all powers and authority now conferred or that may hereafter be conferred upon cities having a population of more than five thousand (5,000) inhabitants by the general laws of the State of Texas.

(Ord. No. 79-86, § 2, 12-11-79, ratified 1-19-80)

### **Sec. 7.07. Borrowing in anticipation of property taxes.**

In any budget year, in anticipation of the collection of the property tax for such year, whether levied or to be levied in such year, the council may by resolution authorize the borrowing of money by the issuance of negotiable notes of the city, each of which shall be designated "Tax Anticipation Note for the Year 19\_\_\_\_" (stating the budget year). Such notes shall not be renewable but shall mature and be paid not later than the end of the fiscal year in which the original notes have been issued.

(Ord. No. 79-86, § 2, 12-11-79, ratified 1-19-80)

## **ARTICLE VIII. BUDGET**

### **Sec. 8.01. Fiscal year.**

The fiscal year of the city government which began on June 1, 1958, shall end on May 31, 1959. The next succeeding fiscal year shall begin on June 1, 1959, and end on September 30, 1959, and shall constitute an interim fiscal period. After September 30, 1959, the fiscal year of the city shall begin on the first day of October and end on the last day of September of each calendar year. The fiscal year established by this charter shall also constitute the budget and accounting year.

### **Sec. 8.02. Interim budget.**

The city manager shall submit to the council an interim budget which shall be prepared, as nearly as practicable in accordance with the requirements for the budget document herein prescribed, for the interim fiscal period hereinabove established. Following the approval of such interim budget, the council shall enact such appropriation or other ordinances as may be necessary for the effectuation of the interim budget.

### **Sec. 8.03. Preparation and submission of budget.**

Within the time period required by law, the city manager shall submit to the council a proposed budget for the ensuing fiscal year. The budget shall provide a complete financial plan for the fiscal year, and the budget shall be prepared on the basis of policy priorities defined by the council for the city manager at least one hundred twenty (120) days before the end of the fiscal year.

(Ord. No. 76-12, Amend. No. 6, 4-5-76; Ord. No. 2006-232, Amend. No. 10, 8-28-06, ratified 11-7-06)



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#### **Sec. 8.04. Public hearing on budget.**

The council shall hold a public hearing on the proposed budget.. Any taxpayer of the municipality may attend and may participate in the hearing, which shall be set for a date after the fifteenth day after the date the proposed budget is filed with the city secretary but before the date the city council makes its tax levy. The council shall provide for public notice of the date, time, and location of the hearing. In addition to this notice, the city council shall publish notice before the public hearing related to the budget in at least one newspaper of general circulation in Denton County. This notice shall be published not earlier than the thirtieth or later than the tenth day before the date of the public hearing. The city council shall provide such other notice as may be required by state and all other applicable law. The city council may make such changes in the budget that it considers warranted by the law or by the best interests of the municipal taxpayers and may increase or decrease the items of the budget provided the total proposed expenditures shall not exceed the total anticipated revenue.

(Ord. No. 99-057, Amend. No. 12, 2-16-99, ratified 5-1-99)

#### **Sec. 8.05. Adoption of budget.**

The budget shall be finally adopted by the favorable votes of at least a majority of all members of the council after the conclusion of the public hearing. Should the council take no final action at the conclusion of the public hearing and before the end of the fiscal year, the budget as submitted by the city manager shall be deemed to have been finally adopted by the council.

(Ord. No. 99-057, Amend. No. 13, 2-16-99, ratified 5-1-99)

#### **Sec. 8.06. Budget establishes appropriations and tax levy.**

Upon final adoption, the budget shall be in effect for the budget year. Final adoption of the budget by the council shall constitute the official appropriation of the several amounts stated therein as proposed expenditures for the budget year. A copy of the budget as finally adopted shall be filed with the city secretary, the county clerk of Denton County and the state comptroller of public accounts in Austin. All appropriations that have not been expended or lawfully encumbered shall lapse at the end of the budget year.

(Ord. No. 79-86, § 2, 12-11-79, ratified 1-19-80)

#### **Sec. 8.07. Transfer of appropriations.**

At any time during the fiscal year, the city manager may transfer any part of the unencumbered appropriation balance or the entire balance thereof between programs or general classifications of expenditures within an office, department, agency, or organizational unit. At any time during the fiscal year, at the request of the city manager the council may by resolution transfer any part of the unencumbered appropriation balance or the entire balance thereof from one office, department, agency, or organizational unit to another.

(Ord. No. 99-057, Amend. No. 14, 2-16-99, ratified 5-1-99)

#### **Sec. 8.08. Amending the budget.**

The budget may be amended for municipal purposes by the affirmative vote of at least five (5) members of the council, in accordance with applicable law.

(Ord. No. 79-86, § 2, 12-11-79, ratified 1-19-80; Ord. No. 2006-232, Amend. No. 11, 8-28-06, ratified 11-7-06)

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### **Sec. 8.09. Budget a public record.**

The budget, budget message and all supporting schedules shall be a public record in the office of the city secretary open to public inspection. The city manager shall cause sufficient copies of the budget and budget message to be prepared for distribution to interested persons.

## **ARTICLE IX. BORROWING FOR PERMANENT IMPROVEMENTS**

### **Sec. 9.01. Power to issue bonds.**

- (a) The City of Denton shall have the right and power to issue general obligation bonds to finance any capital project which it may lawfully construct or acquire or for any other legitimate public purpose. The general obligation bonded debt of the city shall only be increased by the consent of the majority of the qualified voters of the city voting at an election held for that purpose. A bond election shall be ordered and notice given by ordinance, consistent with the requirements for holding elections set forth in Article III of this Charter and in accordance with the applicable laws of the State of Texas as they now read or may hereafter be amended.
- (b) The city shall have the power to issue revenue bonds against the anticipated revenues of any municipally-owned utility or other self-liquidating municipal function to pay the debt incurred on account of such utility or function. In no event shall revenue bonds be considered an indebtedness of the city nor be repaid from bonds secured by taxation.
- (c) No bonds or warrants shall be issued to fund any overdraft or indebtedness incurred for current expenses of the city government.

(Ord. No. 79-86, § 2, 12-11-79, ratified 1-19-80; Ord. No. 99-057, Amend. No. 15, 2-16-99, ratified 5-1-99)

### **Sec. 9.02. Bond ordinance and election.**

- (a) After approval by a majority of the qualified voters voting at a general obligation bond election called for the purpose of authorizing the issuance of general obligation bonded debt, the city shall authorize the issuance of such bonds by a bond ordinance passed by an affirmative vote of a majority of all members of the council. The city council may approve the issuance of revenue bonds without an election by authorizing the issuance of such bonds by bond ordinance passed by an affirmative vote of the majority of all members of the council.
- (b) Before any bond ordinance is passed by the council an attorney or attorneys specializing in municipal bonds shall be retained by the city to advise with the council in all matters pertaining to the proposed bond ordinance, and no action shall be taken until a written instrument has been prepared by the bond attorneys certifying the legality of the proposal. The bond attorneys shall assist the city attorney and the council in preparing all ordinances and other legal instruments required in the execution and sale of any bonds issued.
- (c) The election ordinance on a bond proposal shall provide for proper notice, the calling of the election and the propositions to be submitted. It shall distinctly specify:
  - (1) The purpose for which the bonds are to be issued, and where possible, the probable period of usefulness of the improvements for which the bond funds are to be expended.
  - (2) The amount thereof.
  - (3) The rate of interest, if known.
  - (4) The levy of taxes sufficient to pay interest and sinking fund.

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- (5) That the bonds to be issued shall mature serially within a given number of years.
  - (6) A determination of the net debt of the city after issuance of the bonds thereby authorized, together with a declaration that the bonds thereby authorized will be within all debt and other limitations prescribed by the Constitution and laws of the State of Texas.

(Ord. No. 99-057, Amend. No. 16, 2-16-99, ratified 5-1-99; Ord. No. 2006-232, Amend. No. 12, 8-28-06, ratified 11-7-06)

### **Sec. 9.03. Execution of bonds.**

All bonds shall be signed by the mayor, countersigned by the city secretary, and imprinted with the seal of the city, and shall be payable at such time as may be fixed, not more than forty (40) years from their date.

### **Sec. 9.04. Sale of bonds.**

All bonds shall be sold in accordance with applicable law.

(Ord. No. 2006-232, Amend. No. 13, 8-28-06, ratified 11-7-06)

### **Sec. 9.05. Sinking fund for general obligation bonds.**

It shall be the duty of the council each year to levy a tax sufficient to pay the interest and provide the necessary sinking fund required by law on all general obligation bonds outstanding, and if a deficiency appears at any time in such fund the council shall, for the next succeeding year, levy an additional tax sufficient to discharge such deficiency.

### **Sec. 9.06. Bond register.**

The director of finance shall prepare, maintain and cause to be filed in the office of the city secretary a complete bond register, showing all bonds, the date and amount thereof, the rate of interest, a schedule of maturity dates, and a record of all bonds and all other transactions of the council having reference to the refunding of any indebtedness of the city. When bonds or their coupons are paid, their payment or cancellation shall be noted in the register.

### **Sec. 9.07. Misapplication of bond funds.**

Any officer or employee of the city who shall wilfully or knowingly, direct or use any funds arising from the issuance of any bond or sinking fund for any other purpose than that for which the fund is created or is herein otherwise authorized, shall be subject to prosecution as provided by the laws of the state on the diversion and conversion of funds belonging to any of the municipalities of the state.

### **Sec. 9.08. Assessments for improvements.**

All of the terms, powers and applicable provisions of Chapter 9, Title 28, of the Revised Civil Statutes of the State of Texas, as now or hereafter amended, relating to assessments for street improvements are hereby adopted as a part of this charter and hereby constitute an alternative authority and method which the City of Denton may use in improving streets, alleys, and public places and levying assessments therefor; provided, the city shall have the power in all cases to make such improvements with its own forces if, in the opinion of the council, the work can be done more expeditiously or economically.

## ARTICLE X. PLANNING AND ZONING

### Sec. 10.01. Reserved.

Editor's note(s)—Ord. No. 79-86, § 2, adopted Dec. 11, 1979, and ratified Jan. 19, 1980, deleted former section 10.01 which pertained to the director of planning and was derived unamended from the Charter adopted Feb. 24, 1959.

### Sec. 10.02. Planning and zoning commission.

- (a) There shall be a planning and zoning commission which shall consist of seven (7) members, who, during their respective terms of office and for at least one year prior to beginning thereof, shall be residents of the City of Denton. They shall be appointed by the council for a term of two (2) years, provided four (4) members shall be appointed each odd-numbered year and three (3) members each even-numbered year.
- (b) None of the appointed members shall hold any other public office or position in the city while serving on the planning and zoning commission. The planning and zoning commission shall elect its chairman from among its members. Seven (7) members shall serve without pay and shall adopt such rules and regulations as they deem best governing their actions, proceedings, deliberations, and the times and places of meetings, subject to council review.
- (c) If a vacancy occurs in the city planning and zoning commission the council shall appoint a commissioner to fill such vacancy for the unexpired term.

(Ord. No. 76-12, Amend. No. 7, 4-5-76; Ord. No. 2006-232, Amend. No. 14, 8-28-06, ratified 11-7-06)

### Sec. 10.03. Planning and zoning commission: Powers and duties.

- (a) In addition to the powers and duties set forth in this charter, the planning and zoning commission shall have the powers and duties of a planning and zoning commission under state law, including without limitation those under Chapters 211 and 212 of the Texas Local Government Code, as may be amended from time to time, and shall perform such other powers and duties as may be assigned by the council. The planning and zoning commission may:
  - (1) Make, amend, extend and add to the master plan for the physical development of the city.
  - (2) Recommend to the council regulations governing the platting or subdividing of land within the city. (The applicable provisions of Chapter 212 of the Texas Local Government Code as now or hereafter amended, are hereby adopted and made a part of this charter, and shall be controlling on the planning and zoning commission.)
  - (3) Make recommendations to the council regarding proposed changes to the official map of the city and keep such map up-to-date so as to reflect any changes in the boundary or the zoning plan of the city.
  - (4) Make and recommend plans for the clearance and rebuilding of any slum districts or blighted areas within the city.
  - (5) Make recommendations to the council regarding proposed changes in the zoning plan and ordinance of this city and have all the power, duty and authority of a zoning commission as provided in Chapter 211

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of the Texas Local Government Code, as now or as hereinafter amended, all of which are hereby adopted as a part of this charter.

- (6) Submit annually to the City Manager prior to the beginning of the budget year, a list of recommended general obligation capital improvements which in the opinion of the Commission ought to be constructed during the forthcoming five (5) year period. (Such list shall be arranged in order of preference, with recommendations as to which projects should be constructed in which year, and the City Manager shall forthwith furnish a copy of such recommendations to each member of the Council.)
  - (7) Promote public interest in and understanding of the master plan and of planning, zoning, clearance of blighted areas and development of the city.
  - (8) Meet not less than once each month and keep a public record of its resolutions, findings and determinations.
  - (9) Hold such public hearings as it may deem desirable in the public interest and advise the council upon such matters as the council may request its advice.
- (b) For the accomplishment of the foregoing purposes the planning and zoning commission is hereby empowered to:
- (1) Require information which shall be furnished within a reasonable time from the other departments of the city government in relation to its work.
  - (2) Request additional assistance for special survey work of the city manager, who may at his discretion assign to the planning and zoning commission, employees of any administrative department or direct such department to make special studies requested by the commission.
  - (3) In the performance of its functions, enter upon any land and make examinations and surveys.
  - (4) Make and recommend plans for the replanning, improvement and redevelopment of neighborhoods or of any area or district which may be destroyed in whole or in part or seriously damaged by fire, earthquake, flood or disaster.

(Ord. No. 99-057, Amend. No. 17, 2-16-99, ratified 5-1-99; Ord. No. 2006-232, Amend. No. 15, 8-28-06, ratified 11-7-06)

#### **Sec. 10.04. The master plan.**

The master plan for the physical development of the city, with the accompanying maps, plats, charts, descriptive and explanatory matter, shall show the commission's recommendations for the development of city territory, and may include, among other things:

- (a) The general location, character and extent of streets, bridges, parks, waterways and other public ways, grounds and spaces.
- (b) The general location of public buildings and other public property.
- (c) The general location and extent of public utilities, whether publicly or privately owned.
- (d) The removal, relocation, widening, extension, narrowing, vacation, abandonment or change of use of such existing or future public ways, grounds, spaces, buildings, property or utilities.
- (e) The general extent and location of public housing projects and slum-clearance projects.

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### **Sec. 10.05. Legal effect of master plan.**

Except in circumstances where plat approval is not required or the public improvement is so small as not to appear on the master plan, no street, park, or other public way, ground or space, no public building or structure and no public utility whether publicly or privately owned, shall be constructed or authorized in the City until and unless the location and extent thereof shall have been submitted to and approved by the Planning and Zoning Commission; provided that, in case of disapproval, the Commission shall within thirty (30) days communicate its reasons to the Council, which shall have the power to overrule such disapproval, and, upon such overruling, the Council or the appropriate office, department, or agency shall have the power to proceed.

(Ord. No. 99-057, Amend. No. 18, 2-16-99, ratified 5-1-99; Ord. No. 2006-232, Amend. No. 16, 8-28-06, ratified 11-7-06)

### **Sec. 10.06. Zoning.**

- (a) For the purpose of promoting health, safety, morals or the general welfare of the community, the council may by ordinance regulate and restrict the height, number of stories and size of buildings and other structures, the percentage of lot that may be occupied, the size of yards, courts and other open spaces, the density of population and the location and use of buildings, structures and land for trade, industry, residence or other purposes. Such ordinance shall provide that the board of adjustment may, in appropriate cases and subject to appropriate principles, standards, rules, conditions and safeguards set forth in the ordinance, authorize variances from and make special exceptions to the zoning regulations in harmony with their general purpose and intent.
- (b) For any or all of said purposes the council may divide the city into districts of such number, shape and area as may be deemed best suited to carry out the purposes of this section; and within such districts it may regulate and restrict the erection, construction, reconstruction, alteration, repair or use of buildings, structures or land. All such regulations shall be uniform for each district, but the regulations in one district may differ from those in other districts.
- (c) Such regulations shall be made in accordance with a comprehensive plan and be designed to lessen congestion in the streets; to secure safety from fire, panic and other dangers; to promote health or the general welfare; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; to facilitate the adequate provision of transportation, water, sewerage, schools, parks, public convenience and other public requirements. Such regulations shall be made with reasonable consideration of the character of the district and its peculiar suitability for particular uses, and with a view of conserving the value of buildings and encouraging the most appropriate use of land throughout the city.

### **Sec. 10.07. Board of adjustment.**

The city council shall by ordinance establish a board of adjustment which shall consist of at least seven (7) members who shall have the qualifications, powers, and duties and serve for the terms provided by the city council in an ordinance creating the board. All current members of the board of adjustment and the board shall continue to serve under the current provisions of the City Charter until such ordinance creating the board is enacted and effective.

(Ord. No. 99-057, Amend. No. 19, 2-16-99, ratified 5-1-99)

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### **Sec. 10.08. Platting or subdivision control.**

The planning and zoning commission shall recommend to the council the adoption of regulations governing the platting or subdividing within the city or within the area under the extraterritorial jurisdiction of the city, and the owner of every such subdivision shall comply with all of the provisions of Article 974a and 6626, Vernon's Texas Civil Statutes, 1948, [V.T.C.A., Local Government Code § 212.002 et seq. and V.T.C.A., Property Code § 12.001 et seq.] as now or hereafter amended. Such regulation may provide for the harmonious development of the city within the subdivided land with other existing or planned streets and ways or for conformance with the master plan or official map, for adequate open spaces, spaces for traffic, utilities, recreation, light and air and for the avoidance of congestion of population. Such regulations may include requirements as to the extent to which and the manner in which streets and other ways shall be graded and improved and water, sewer and other utility mains, piping, connections or other facilities shall be installed as a condition precedent to the approval of a subdivision.

(Ord. No. 79-86, § 2, 12-11-79, ratified 1-19-80; Ord. No. 2006-232, Amend. No. 17, 8-28-06, ratified 11-7-06)

### **Sec. 10.09. Reserved.**

Editor's note(s)—Ord. No. 79-86, § 2, adopted Dec. 11, 1979, and ratified Jan. 19, 1980, deleted former section 10.09 which pertained to the tentative approval of plats and was derived unamended from the Charter adopted Feb. 24, 1959.

### **Sec. 10.10. Building permits, use and occupancy certificates.**

- (a) The city shall have the power to prohibit the erection, construction or use of any building or structure of any kind within the city without a permit having first been issued, by the city, for the construction or erection of such building or structure, and without a use and occupancy certificate having been issued for the use actually made of such premises and structure and may authorize a fee to be charged for such permit. In pursuance of this authority the council may authorize the inspection of all buildings and structures during the progress of their construction or thereafter and may require new construction, renovation, or reconstruction to comply with all building regulations.
- (b) For the purpose of preserving property values, protecting the public health, preventing the blighting of areas within the city, promoting safety and the public welfare the council may fix a minimum standard for the construction and use of housing accommodations and other structures within this city and prohibit the construction, erection and use of substandard housing and other substandard structures.

(Ord. No. 2006-232, Amend. No. 18, 8-28-06, ratified 11-7-06)

### **Sec. 10.11. Official map.**

The council may by ordinance establish an official map of the city, on which shall be shown and indicated all public streets existing and established by law at the time of the establishment of the official map.

### **Sec. 10.12. Slum clearance and rehabilitation of blighted areas.**

The council may, after receiving a recommendation from the planning and zoning commission adopt, modify and carry out plans for the clearance of slum districts and blighted areas within the city and, for the accomplishment of this purpose, may acquire by purchase or condemnation all privately owned lands, buildings and other real property interests within the district; may establish, locate, relocate, build and improve the streets

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and other public open spaces provided for in the plan; may maintain, operate, lease or sell said buildings or any of them; may sell the land or any part thereof designated for buildings and private open spaces upon such terms and conditions and subject to such restrictions as to building uses and open spaces as will substantially carry out and effect the plan.

(Ord. No. 2006-232, Amend. No. 19, 8-28-06, ratified 11-7-06)

## **ARTICLE XI. PARKS AND RECREATION**

### **Sec. 11.01. Reserved.**

Editor's note(s)—Ord. No. 79-86, § 2, adopted Dec. 11, 1979, and ratified Jan. 19, 1980, deleted former section 11.01 which pertained to the director of parks and recreation and was derived unamended from the Charter adopted Feb. 24, 1959.

### **Sec. 11.02. Park and recreation board.**

The city council shall by ordinance establish a board which shall advise the council on parks and recreation and which shall consist of at least seven (7) residents of the city who shall have the qualifications, duties, and powers and serve for the terms provided by the city council in the ordinance creating the board. All current members of the parks and recreation board and the board shall continue to serve under the current provisions of the City Charter until the ordinance creating the board is enacted and effective.

(Ord. No. 99-057, Amend. No. 20, 2-16-99, ratified 5-1-99)

## **ARTICLE XII. PUBLIC UTILITIES**

### **Sec. 12.01. General powers respecting utilities.**

- (a) The City of Denton may license, regulate, fix the rates, control and supervise public utilities of all kinds.
- (b) In addition to such public utilities as it may now own, the City of Denton may own, acquire, construct, maintain, and operate any other public utility that may be approved by a majority of the qualified voters of the City voting therefor at an election held for such purpose; and shall have power for the purpose of operating and maintaining any such utility, and for distributing such service throughout the city or any portion thereof, but in such condemnation proceedings no allowance shall be made for the value of any franchise and only the actual physical assets shall be purchased by the City.

### **Sec. 12.02. Rates.**

The city shall have the power, subject to limitations imposed by state law and this Charter, to fix and, from time to time, revise such rates and charges as it may deem advisable for supplying such utility services as the city may provide. The utilities shall provide no free services; the rates and charges for services to city departments and other public agencies shall be the same as the regular rates and charges fixed for similar services to consumers generally. The rates and charges for services to consumers outside the corporate limits of the city may be greater but shall not be less than the rates and charges for similar service to consumers within the corporate limits of the city.



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### **Sec. 12.03. Excess revenues of utility systems.**

- (a) Any money remaining in the "System Fund" after all necessary expenses of operation and maintenance of the utility systems, including salaries, labor and materials, have been paid, upon proper approval, and after all payments have been made into the several funds required and provided to be made by the ordinance or ordinances authorizing the issuance of any revenue bonds of the city, now outstanding or hereafter authorized and issued which may be payable from and secured by a pledge of the net earnings of the light, water or sewer systems, shall be deemed "Excess Revenues" for the purposes of this section. "System Fund" as used herein shall mean the fund (or funds as may be required by outstanding bond issues) into which are deposited the gross incomes derived from the operation of the above named utility systems.
- (b) Excess Revenues shall be utilized at the times and for the purposes as follows:
  - (1) After all of the requirements of the various funds have been met, there shall be computed a return on the net investment in the utility system. The "Net Investment" figure used in these computations shall be taken from the independent audit of the utility systems for the last fiscal period. The city shall be entitled to receive annually on the net investment from excess revenues, if any, not more than six (6) percent of the net investment.
  - (2) Any remaining excess revenues shall be used for the redemption and retirement of utility revenue bonds, as they become available at not more than fair market value. If utility revenue bonds are not available, these funds shall immediately be invested in short-term United States Government securities or at the option of the city, placed on time deposit in the city depository to draw interest. As utility revenue bonds become available, sufficient United States Government securities shall be sold or time deposits withdrawn to purchase the longest maturities available on the market.

### **Sec. 12.04. Disposal of utility properties.**

No sale, conveyance, lease, or other alienation of the entire assets of any utility system or any part thereof essential to continued effective utility service, shall ever be made unless such sale, lease, or disposal is approved by a majority vote of all the qualified voters voting in an election held for that purpose in the City of Denton.

(Ord. No. 99-057, Amend. No. 22, 2-16-99, ratified 5-1-99)

### **Sec. 12.05. Cooperation of other city departments.**

The [public utilities] board shall have the right to request the services of any officer or department of the city government; provided, however, that the utility system shall pay out of its revenues a proportionate part of the expenses of the department used in an amount agreed upon by the city manager and the board. If they fail to agree, the final decision on any such expenses shall be made by the city council.

### **Sec. 12.06. Reserved.**

Editor's note(s)—Ord. No. 79-86, § 2, adopted Dec. 11, 1979, and ratified Jan. 19, 1980, deleted former section 12.06 which pertained to the director of utilities and was derived unamended from the Charter adopted Feb. 24, 1959.

### **Sec. 12.07. The public utilities board.**

- (a) There is hereby created a public utilities board to be composed of seven (7) members, or as many members as there are councilmembers, whichever is greater, appointed by the council for four-year terms and until

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their respective successors have been appointed and qualified. Members of the board may be removed by the council only for cause and only after charges have been filed and published and the member has been given a reasonable opportunity to defend himself in an open public hearing before the council. Vacancies shall be filled for any unexpired term in the same manner as provided for regular appointments.

- (b) The city manager and director of utilities shall be ex officio members of the board. They shall attend all meetings of the board and shall have the right to discuss any matter that is under consideration by the board but shall have no vote.
- (c) Members of the public utilities board shall have the same qualifications as are required by membership on the city council.
- (d) At its organizational meeting, and annually thereafter as soon as the newly appointed member (or members) has qualified; the board shall select from its own membership a chairman, vice-chairman, and secretary. A majority of the regularly appointed members shall constitute a quorum. The board shall determine its own rules and order of business. The board shall meet at least once each month; all meetings shall be conducted in accordance with the Texas Open Meetings Act, chapter 551 of the Texas Government Code, as it may now read or hereafter be amended and all other applicable laws and a permanent record of proceedings shall be maintained, except as otherwise provided by law.

(Ord. No. 76-12, Amend. No. 8, 4-5-76; Ord. No. 99-057, Amend. No. 23, 2-16-99, ratified 5-1-99; Ord. No. 2006-232, Amend. No. 20, 8-28-06, ratified 11-7-06)

#### **Sec. 12.08. Powers and duties of the public utilities board.**

- (a) The board shall serve the department of utilities and city council as a consulting, and advisory board.
- (b) The annual budget for the department of utilities shall be prepared by the director and submitted to the board in the form required by the city manager. The board shall review the budget, make such changes therein as they deem appropriate, then return it to the director who shall deliver it to the city manager for incorporation without any changes, in the proposed general budget of the city and transmission to the council.
- (c) The public utilities board is hereby authorized to expend such funds for information and advertising as shall be budgeted for this purpose.
- (d) All actions recommending expansion of the system and the making of additions and betterments thereto or extensions thereof, the incurring of indebtedness, the issuance of bonds, and the fixing of rates and charges for utility services shall be submitted to the board for review and approval; provided, that in case of disapproval, the board shall within thirty (30) days communicate the reasons for its disapproval to the council, which shall have the power to overrule such disapproval, and, upon such overruling, the council or the appropriate department shall have power to proceed; and provided further that all rates and charges for utility services shall be reviewed by the board and revised or reenacted by the council at intervals not exceeding five (5) years and beginning with the year 1960.
- (e) The board shall submit annually to the planning and zoning commission (for incorporation in its report), prior to the beginning of the budget year, a list of recommended capital improvements, which in the opinion of the board ought to be constructed during the forthcoming five (5) year period. Such list shall be arranged in order of preference, with recommendations as to which projects should be constructed in which year.
- (f) It shall be the duty of the board to act in an advisory capacity to the council, with authority to hold public hearings and to study and recommend policies relating to the operation, promotion, enlargement, future planning and such other matters involving city-owned utilities as may be referred to it by the council. At intervals not exceeding ten (10) years the council shall at the expense of the utilities involved, cause a

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general management survey to be made of all utilities under the jurisdiction of the board by a competent management consulting or industrial engineering firm, the report and recommendations of which shall be made public; provided, that the first such survey shall be made within three (3) years of the effective date of this Charter.

(Ord. No. 2006-232, Amend. No. 21, 8-28-06, ratified 11-7-06)

## **ARTICLE XIII. FRANCHISES**

### **Sec. 13.01. Franchises: public utilities.**

- (a) The city council may by ordinance grant, renew and extend all franchises of all public utilities operating within the city, and, with the consent of the franchise holder, amend such franchise. No franchise shall ever be granted for a longer term than twenty (20) years. No franchise for a term of twenty (20) years shall be granted except upon the condition that the City of Denton shall have the right, at any time after the expiration of eighteen (18) years, to purchase the property of such franchise holder, or cause a purchaser to buy such property and thereby terminate or transfer the franchise and all privileges enjoyed thereunder, provided that the purchase when made by the city shall not in the case of a fixed term franchise take effect until the expiration of twenty (20) years from the time such franchise was granted.
- (b) The city shall have the power to provide and fix in any franchise the amount or amounts (or the basis for determining the same), to be paid in case it shall buy or cause a purchaser to buy any such property.
- (c) Every ordinance granting, amending, renewing or extending a public utility franchise shall be passed by a majority vote of the entire city council at three (3) regular meetings of the council; no such ordinance shall take effect until thirty (30) days after its final passage; pending such time the full text of the ordinance shall be published once each week for three (3) consecutive weeks in the official newspaper published in the City of Denton, and the expense of such publication shall be borne by the grantee of the franchise; and such ordinance shall be subject to referendum as provided in Article IV of this Charter. No public utility franchise shall be transferable except with the approval of the council expressed by ordinance.
- (d) After due notice and hearing, the council may by ordinance cancel or repeal a public utility franchise for failure of the grantee to comply with the terms of the franchise.

### **Sec. 13.02. Franchises: use of streets.**

The city may by ordinance grant franchises or permits for the use and occupancy of streets, avenues, alleys or other public grounds belonging to or under the control of the city. Before such ordinance can become effective it shall be passed by a majority vote of the entire city council at two (2) regular meetings of the council; no such ordinance shall take effect until twenty-one (21) days after its final passage; pending such time the full text of the ordinance shall be published once each week for two (2) consecutive weeks in the official newspaper of the City of Denton, and the expense of such publication shall be borne by the grantee of the franchise and such ordinance shall be subject to referendum as provided in Article IV of this Charter.

### **Sec. 13.03. Franchise fee.**

The holder or grantee of any franchise or license to use public streets, alleys, highways, or other public property may be required, as compensation for the right or privilege enjoyed, to pay to the City of Denton each year such reasonable sum (not less than two (2) percent of the gross receipts of the business pursued by the holder of the franchise earned for service rendered in the City of Denton), or to pay compensation, rent, or any other fee or charge authorized by law, including, without limitation, specific charges per service line, access line

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fees, and all other legally permissible charges for the use of its streets, alleys, highways, and other public property, as the council may determine by ordinance or by contract with any such utility, which compensation shall be in addition to all ad valorem and corporation taxes paid by the utility.

(Ord. No. 99-057, Amend. No. 24, 2-16-99, ratified 5-1-99)

### **Sec. 13.04. Regulation of utilities.**

The city council shall have the power and the duty to:

- (a) Determine, fix and regulate the charges, fares or rates of all public utilities operating within the city, provided the council shall not prescribe any rate of compensation which will yield more than a fair return upon the fair value of the physical property used and useful in rendering service to the public.
- (b) Require such franchise holders who request an increase in rates, charges or fares to reimburse the city for reasonable expenses incurred in employing independent rate consultants to conduct investigations, present evidence and advise the council on such requested increase.
- (c) Prescribe reasonable standards of service and quality of products to be furnished by each utility and prevent unjust discrimination.
- (d) Require such extensions of plant and service and such maintenance of plant and fixtures as may be necessary to provide adequate and efficient service.
- (e) Collect from every public utility operating in the city its fair and just proportion of the expense of excavating, grading, paving, repaving, constructing, reconstructing, draining, repairing, maintaining, lighting, sweeping and sprinkling such portions of the alleys, bridges, culverts, viaducts and other public places and ways of the city as may be occupied or used in whole or in part by such utilities; or compel such public utility to perform, at its own expense, its just share of such excavating, grading, paving, repaving, constructing, reconstructing, draining, repairing, maintaining, lighting, sweeping and sprinkling.
- (f) Prescribe the form of accounts which shall be kept by each utility; provided, that if the utility shall keep its accounts in accordance with the uniform system of accounts for said utility as prescribed by the National Association of Railroad and Public Utility Commissioners, the Federal Power Commission, the Federal Communications Commission, the Railroad Commission of Texas, or their respective successors, this shall be deemed sufficient compliance with this paragraph.
- (g) Examine or cause to be examined at any time the accounts and other records of any utility operating within the city for the purpose of ascertaining any fact relating to the business done by such utility and pertinent to the council's power of regulation.
- (h) The council shall provide means and prescribe regulations for independent testing of all gas, water, light and other public utility meters on complaint of any person who may be dissatisfied with the readings of the employees of those utilities, whether owned by private corporations or by the City of Denton.
- (i) Enact and enforce such reasonable regulations and restrictions as may be deemed desirable or conducive to the safety, welfare and accommodation of the public.
- (j) The City of Denton shall have power to prohibit the use of any street, alley, highway, boulevard or grounds of the city by any telegraph, telephone, electric light, street railway, interurban railway, gas company or any other character of public utility without first obtaining the consent of the governing authorities expressed by ordinance, and upon paying such compensation as may be prescribed and upon such conditions as may be provided for by such ordinances, and the City of Denton shall have the

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power to require all telegraph, telephone and electric light companies to place their wires underground.

- (k) Require each utility operating in the city to file with the city such reports and other information pertaining to its operations that are required by its franchise agreement with the city, this Charter, city code, other applicable laws, or that may be required from time to time by the council.
- (l) Fix appropriate penalties to enforce compliance with all rules and regulations enacted by the council.
- (m) Give due notice and a fair hearing to persons or corporations to be affected by such rules and regulations before they shall be adopted.

(Ord. No. 2006-232, Amend. No. 22, 8-28-06, ratified 11-7-06; Ord. No. 2006-297, § 2, 10-3-06, ratified 11-7-06)

#### **Sec. 13.05. Other conditions.**

All franchises heretofore granted are recognized as contracts between the City of Denton and the grantee, and the contractual right as contained in any such franchise shall not be impaired by the provisions of this Charter, except that the power of the City of Denton to exercise the right of eminent domain in the acquisition of any utility property is in all things reserved, and except the general power of the city heretofore existing and herein provided for to regulate the rates and services of a grantee which shall include the right to require proper and adequate extension of plant and service and the maintenance of the plant and fixtures at the highest reasonable standard of efficiency. Every public utility franchise hereafter granted shall be held subject to all of the terms and conditions contained in the various sections of this Article whether or not such terms are specifically mentioned in the franchise. Nothing in this Charter shall operate to limit in any way, as specifically stated, the discretion of the council or the electors of the city in imposing such terms and conditions as may be reasonable in connection with any franchise grant.

#### **Sec. 13.06. Franchise records.**

The city secretary shall compile and maintain a public record of all franchises heretofore or hereafter granted by the City of Denton.

### **ARTICLE XIV. GENERAL PROVISIONS**

#### **Sec. 14.01. Reserved.**

Editor's note(s)—Ord. No. 79-86, § 2, adopted Dec. 11, 1979, and ratified Jan. 19, 1980, deleted former section 14.01 which pertained to the health officer and was derived unamended from the Charter adopted Feb. 24, 1959.

#### **Sec. 14.02. Publicity of records.**

All public records collected, assembled, or maintained by the city in accordance with the transaction of official business shall be available to the public during normal business hours, subject to the exceptions and regulations authorized by applicable state law.

(Ord. No. 79-86, § 2, 12-11-79, ratified 1-19-80)

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### **Sec. 14.03. Official newspaper.**

The city council shall annually select and designate by resolution the official newspaper of the city in which all ordinances and official notices that are required to be published shall be published.

### **Sec. 14.04. Ethics Ordinance Requirement.**

The City Council shall adopt an ethics ordinance. The ethics ordinance shall prohibit the use of public office for private gain and shall incorporate the conflict of interest standards that appear in V.T.C.A., Local Government Code, Ch. 171 and all state law as presently exist or may be hereafter amended or adopted. The Council may adopt more stringent standards than those that appear in state law, but the ethics ordinance shall at a minimum include the following components:

- (1) Definition of a prohibited improper economic interest and personal gain;
- (2) Definition of recusal and improper participation when a potential conflict of interest is present;
- (3) Avoidance of appearance of conflict of interest; and
- (4) Administration and enforcement of ethics ordinance, including the power to subpoena witnesses and documents, coupled with strong and meaningful remedies for infraction.

( Ord. No. 2017-237 , § 1(Amend. D), 8-15-17, ratified 11-7-17; Ord. No. 2017-373 , § 2(Prop. D), 11-20-17)

Editor's note(s)—Ord. No. 2017-237 , § 1(Amend. D), adopted August 15, 2017, ratified 11-7-17 repealed the former §§ 14.04, 14.05 and enacted a new § 14.04 as set out herein. The former §§ 14.04, 14.05 pertained to personal interest and nepotism and derived from Ord. No. 79-86, § 2, 12-11-79, ratified 1-19-80; Ord. No. 99-057, Amend. No. 25, 2-16-99, ratified 5-1-99; Ord. No. 2006-232, Amend. No. 23, 8-28-06, ratified 11-7-06.

### **Sec. 14.05. Reserved.**

Editor's note(s)—See Editor's Note for § 14.04.

### **Sec. 14.06. Oath of office.**

Every officer of the city shall before entering upon the duties of his office take and subscribe to the following oath or affirmation, to be filed and kept in the office of the city secretary:

"I, \_\_\_\_\_, do solemnly swear (or affirm) that I will faithfully execute the duties of the office of \_\_\_\_\_ of the City of Denton, Texas, and will to the best of my ability preserve, protect and defend the Constitution and laws of the United States and of this State and the Charter and ordinances of this City; and I furthermore solemnly swear (or affirm) that I have not directly or indirectly paid, offered or promised to pay, contributed or promised to contribute any money, or valuable thing, or promised any public office or employment, as a reward for the giving or withholding a vote at the election at which I was elected. (or if the office is one of appointment, "to secure my appointment.") So Help Me God."

### **Sec. 14.07. Continuation of present offices.**

All persons holding administrative office either by election or appointment at the time this Charter becomes effective shall continue in office and in the performance of their duties until provision shall have been made in accordance therewith for the performance of such duties or the discontinuance of such office. The powers conferred and the duties imposed upon any office, department or agency of the city by the laws of the state shall,

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if such office, department or agency be abolished by this Charter or under its authority, be thereafter exercised and discharged by the office, department or agency designated by the council unless otherwise provided herein.

**Secs. 14.08, 14.09. Reserved.**

Editor's note(s)—Ord. No. 79-86, § 2, adopted Dec. 11, 1979, and ratified Jan. 19, 1980, deleted former sections 14.08 and 14.09 which pertained to the commissioners and mayor holding office when the present Charter was adopted and which were derived unamended from said Charter adopted on Feb. 24, 1959.

**Sec. 14.10. Continuance of contracts and public improvements.**

All contracts entered into by the city, or for its benefit, prior to the taking effect of this Charter, shall continue in full force and effect. Public improvements for which legislative steps have been taken under laws or charter provisions existing at the time this Charter takes effect may be carried to completion as nearly as practicable in accordance with the provisions of such existing laws and charter provisions.

**Sec. 14.11. Effect of charter on existing law.**

All ordinances, resolutions, rules and regulations now in force under the city government and not in conflict with any provisions of this Charter shall remain in force under this Charter until altered, amended or repealed by the council after this Charter takes effect.

**Sec. 14.12. Severable provisions.**

If any section, subsection, sentence, clause or phrase of this Charter, or the application thereof to any person or circumstance, is held invalid by a court of competent jurisdiction, such invalidity shall not affect any other provisions or applications of this Charter which can be given effect without the invalid provision or application, and to this end the provisions of this Charter are declared severable.

**Sec. 14.13. Amending the charter.**

Amendments to this Charter may be framed and submitted to the voters of the city in the manner provided by Vernon's Texas Codes Annotated, Texas Local Government Code Chapter 9 and all other applicable laws, as they now read or may hereafter be amended.

(Ord. No. 99-057, Amend. No. 26, 2-16-99, ratified 5-1-99)

**Sec. 14.14. Submission of charter to electors.**

The Charter Commission in preparing this Charter finds and decides that it is impracticable to segregate each subject so as to permit a vote of "yes" or "no" on the same, for the reason that the Charter is so constructed that in order to enable it to work and function it is necessary that it should be adopted in its entirety. For these reasons the Charter Committee directs that this Charter be voted upon as a whole and that it shall be submitted to the qualified voters of the City of Denton at an election to be held for that purpose on the 24th day of February, 1959.

**Sec. 14.15. When provisions take effect.**

If a majority of the qualified voters voting in such election shall vote in favor of the adoption of this Charter the present city commission, after canvassing the returns, shall enter an official order upon the records of the city

declaring the same adopted and this Charter shall be in full force and effect on and after the date of official adoption.

We, the undersigned members of the Denton Charter Commission, heretofore duly elected to prepare a Charter for the City of Denton, Texas, do hereby certify that this publication constitutes a true copy of the proposed Charter for the City of Denton, Texas, as unanimously adopted by the members thereof.

SAM B. McALISTER, Chairman

STANLEY A. MUNSON, Vice Chairman

ETHELYN DAVIS, Secretary

Tom Harpool	Walter B. McClurkan
Don Robinson	H. W. Kamp
Roland Laney	James R. Reed
M. G. Ramey	David Mulkey
W. D. Barrow	Mrs. W. F. "Pat" Hamilton
Lee E. Johnson	Paul P. Young

#### Sec. 14.16. Boards and commissions.

Members of boards and commissions of the City of Denton shall serve at the pleasure of the council. Members of such boards and commissions may be removed by the council only for cause and only after being given notice by the council.

(Ord. No. 79-86, § 2, 12-11-79, ratified 1-19-80)

### CHARTER COMPARATIVE TABLE ORDINANCES

This table shows the location of the sections of the basic Charter and any amendments thereto.

Ordinance Number	Date	Election Date	Section	Section this Code
	2-24-59		1.01—14.16	1.01—14.16
76-12	4- 5-76		Amend. No. 1	2.01
				3.04
			Amend. No. 2	2.04
			Amend. No. 3	2.06
			Amend. No. 4	2.08
			Amend. No. 6	8.03
			Amend. No. 7	10.02
			Amend. No. 8	12.07
79-86	12-11-79	1-19-80	2	2.01—2.03
				2.05, 2.06
				2.08
				3.01
				3.04
				4.13
				4.16

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CHARTER COMPARATIVE TABLE ORDINANCES

				5.01
				5.05
				6.02, 6.03
				7.01—7.07
				8.06
				8.08
				9.01
				10.08
				14.02
				14.04
				14.16
99-057	2-16-99	5- 1-99	Amend. No. 2	1.05
			Amend. No. 3	1.06
			Amend. No. 4	1.07
			Amend. No. 5	2.02
			Amend. No. 6	2.04
			Amend. No. 7	3.01
			Amend. No. 8	3.02
			Amend. No. 9	3.04
			Amend. No. 10	6.03
			Amend. No. 11	7.01
			Rpld	7.02, 7.03, 7.04
			Amend. No. 12	8.04
			Amend. No. 13	8.05
			Amend. No. 14	8.07
			Amend. No. 15	9.01(a)
			DItd	9.01(d)
			Amend. No. 16	9.02(a)
			Amend. No. 17	10.03(a)(6)
			Amend. No. 18	10.05
			Amend. No. 19	10.07
			Amend. No. 20	11.02
			Amend. No. 22	12.04
			Amend. No. 23	12.07(a), (d)
			Amend. No. 24	13.03
			Amend. No. 25	14.04
			Amend. No. 26	14.13
2006-232	8-28-06	11- 7-06	Amend. No. 2	1.06(f)
			Amend. No. 3	2.05(a)
			Amend. No. 4	2.07
			Amend. No. 5	2.08
			Amend. No. 6	2.09(b)
			Amend. No. 7	3.01(a)
			Amend. No. 8	5.03
			Amend. No. 9	6.01

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CHARTER COMPARATIVE TABLE ORDINANCES

				6.02
				6.04
			Amend. No. 10	8.03
			Amend. No. 11	8.08
			Amend. No. 12	9.02(a)
			Amend. No. 13	9.04
			Amend. No. 14	10.02
			Amend. No. 15	10.03
			Amend. No. 16	10.05
			Amend. No. 17	10.08
			Amend. No. 18	10.10(a)
			Amend. No. 19	10.12
			Amend. No. 20	12.07(d)
			Amend. No. 21	12.08(a)
				12.08(e)
			Amend. No. 22	13.04
			Amend. No. 23	14.05
2006-297	10- 3-06	11- 7-06	2	13.04
2009-199	9- 1-09	11- 3-09	Amend. No. 1	2.01(a)
			Amend. No. 2	2.02(a)(2)
			Amend. No. 3	2.03
				2.04
			Amend. No. 4	2.10
2017-237	8-15-17	11- 7-17	Amend. A	2.02(a)
			Amend. C	6.04
			Amend. D Rpld	14.04, 14.05
			Added	14.04
			Amend. E Added	2.02(c)
2017-373	11-20-17	11- 7-17	Prop. A	2.02(a)
			Prop. C	6.04
			Prop. D Rpld	14.04, 14.05
			Added	14.04
			Prop. E Added	2.02(c)

**CITY OF DENTON**  
**CODE OF ORDINANCES**  
**CHAPTER 2: ADMINISTRATION**  
**ARTICLE XI. ETHICS**

**DIVISION 1. GENERAL**

**Sec. 2-265. Authority**

This Article is enacted pursuant to the authority granted to the City under Section 14.04 of the Charter.

**Sec. 2-266. Purpose**

The purpose of this Article is to foster an environment of integrity for those that serve the City of Denton and our citizenry. The City Council enacted this Article in order to increase public confidence in our municipal government. It is the policy of the City that all City Officials and employees shall conduct themselves in a manner that assures the public that we are faithful stewards of the public trust. City Officials have a responsibility to the citizens to administer and enforce the City Charter and City Ordinances in an ethical manner. To ensure and enhance public confidence in our municipal government, each City Official must strive not only to maintain technical compliance with the principles of conduct set forth in this Article, but to aspire daily to carry out their duties objectively, fairly, and lawfully. Furthermore, this Article was enacted to ensure that decision makers provide responsible stewardship of City resources and assets.

It is not the purpose of this Article to provide a mechanism to defame, harass or abuse their political opponents, or publicize personal grudges. Rather, this Article is intended to provide a framework within which to encourage ethical behavior, and enforce basic standards of conduct while providing due process that protects the rights of the Complainant and the Respondent.

**Sec. 2-267. Prospective**

This Article shall apply prospectively, and shall not sustain any Complaints based on acts or omissions alleged to have taken place prior to May 15, 2018.

**Sec. 2-268. Applicability**

This Article applies to the following persons:

- (a) City Officials;
- (b) Former City Officials whose separation from city service occurred less than one (1) year from the date of the alleged violation of this Article. Application of this Article to Former City Officials shall be limited to alleged violations:
  - (1) that occurred during the term as a City Official;
  - (2) of the prohibition on representing others for compensation (§2-273(d)(2)); or
  - (3) of the prohibition of subsequent work on prior projects (§2-273(h));
- (c) Vendors; and
- (d) Complainant(s), who must comply with this Article's procedures and the prohibition on Frivolous Complaints.

## **Sec. 2-269. Definitions**

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

*Accepted Complaint:* a sworn allegation of a violation of this Article after the required documentation has been submitted to the City Auditor and determined to be administratively complete.

*Actionable Complaint:* an Accepted Complaint that has been deemed by a Panel to contain allegations and evidence that, if accepted as true, would support a finding that a violation of this Article occurred.

*Advisory Opinions:* written rulings regarding the application of this Article to a particular situation or behavior.

*Article:* this Chapter 2, Article XI of the Code of Ordinances for the City of Denton.

*Baseless Complaint:* a Complaint that does not allege conduct that would constitute a violation of this Article, or that does not provide evidence that, if true, would support a violation of this Article.

*Board of Ethics:* the oversight entity established by the Council to administer this Article.

*Business Entity:* a sole proprietorship, partnership, firm, corporation, holding company, joint-stock company, receivership, trust, political subdivision, government agency, university, or any other entity recognized by law.

*Candidate:* a person who has filed an application for a place on a ballot seeking public office, or one who has publicly announced the intention to do so.

*Charged:* to be charged with a violation of this Article is to have an Accepted Complaint deemed Actionable.

*City:* the City of Denton in the County of Denton and State of Texas.

*City Auditor:* the person appointed to serve in the capacity provided for by Section 6.04 of the City Charter, or their designee and clerical staff acting in the City Auditor's absence.

*City Official:* for purposes 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.

*City Secretary:* the person appointed to serve in the capacity provided for by Section 2.12 of the City Charter, or their designee and clerical staff acting in the City Secretary's absence.

*Code:* the Code of Ordinances of the City of Denton, Texas, as such Code may be amended from time to time.

*Complainant:* the human individual who submitted a Complaint to the City.

*Complaint:* written documentation submitted to the City accusing a City Official of violating this Article.

*Confidential Information:* any written information that could or must be excepted from disclosure pursuant to the Texas Public Information Act, if such disclosure has not been authorized; or any non-written information which, if it were written, could be excepted from disclosure under that Act, unless disclosure has been authorized by the City Council or City Manager.

*Council:* the governing body of the City of Denton, Texas, including the Mayor and City Council Members.

*Deliberations:* discussions at the dais; voting as a Member of the Board or Commission; or presentations as a member of the audience before any City Board or Commission; conversing or corresponding with other City Officials or Staff. This term does not apply to a general vote on a broad, comprehensive, or omnibus motion, such as approval of the City budget or polling places.

*Department Heads:* the employees appointed by the City Council, those being the City Manager, City Auditor, City Attorney, and Municipal Court Judge.

*Former City Official:* a City Official whose separation from city service occurred less than one (1) year from the date of an alleged violation of this Article.

*Frivolous Complaint:* a sworn Complaint that is groundless and brought in bad faith, or groundless and brought for the purpose of harassment.

*Interfere:* a person interferes with a process or activity pertaining to this Article when they intentionally and wrongfully take part in, or prevent, a City process or activity from continuing or being carried out properly or lawfully.

*Panel:* an *ad hoc* subcommittee of the Board of Ethics consisting of three (3) members assigned by the Chairperson or designated by the City Auditor (as applicable) on a rotating basis,

*Pending Matter:* an application seeking approval of a permit or other form of authorization required by the City, State, or Federal law; a proposal to enter into a contract or arrangement with the City for the provision of goods, services, real property, or other things of value; a case involving the City that is (or is anticipated to be) before a civil, criminal, or administrative tribunal.

*Person:* associations, corporations, firms, partnerships, bodies politic, and corporate, as well as individuals.

*Recklessly:* a person acts recklessly when they are aware of but consciously disregard a substantial and unjustifiable risk that a certain result is probable from either their conduct, or in light of the circumstances surrounding their conduct. The risk must be of such a nature and degree that to disregard it constitutes a gross deviation from the standard of care that an ordinary person would exercise under the circumstances.

*Relative:* a family member related to a City Official within the third (3<sup>rd</sup>) degree of affinity (marriage) or consanguinity (blood or adoption) in accordance with Texas Government Code, Title 5, Subtitle B, Chapter 573.

*Respondent:* a City Official who has been charged in a Complaint with having violated this Article.

*Shall:* a mandatory obligation, not a permissive choice.

*Special Counsel:* an independent, outside attorney engaged by the City to advise the City as an organization and/or the Board of Ethics.

*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.

## **Sec. 2-270. Cumulative & Non-Exclusive**

This Article is cumulative of and supplemental to all applicable provisions of the City Charter, other City Ordinances, and State/Federal laws and regulations. Compliance with this Article does

not excuse or relieve any person from any obligation imposed by any other Rule. Attempts to enforce this Article shall not be construed as foreclosing or precluding other enforcement options provided by other law.

## **DIVISION 2. RULES OF CONDUCT**

### **Sec. 2-271. Expectations**

The following list conveys the City Council's expectations for City Officials. These expectations are aspirational, and shall not serve as the basis for a Complaint.

- (a) City Officials are expected to conduct themselves in a manner that fosters public trust.
- (b) City Officials are charged with performing their public duties in a way that projects a high level of personal integrity and upholds the integrity of the organization.
- (c) City Officials must avoid behavior that calls their motives into question and erodes public confidence.
- (d) City Officials shall place the municipality's interests and the concerns of those the City serves above private, personal interests.
- (e) Those who serve the City are expected to value honesty, trustworthiness, diligence, objectivity, fairness, due process, efficiency, and prudence as values the City professes.
- (f) City Officials must balance transparency with the duty to protect personal privacy and preserve the confidential information with which the City has been entrusted.
- (g) It is neither expected nor required that those subject to this Article relinquish or waive their individual rights.

### **Sec. 2-272. Mandates**

- (a) **Duty to Report.** City Officials shall report any conduct that the person knows to be a violation of this Article. Failure to report a violation of this Article is a violation of this Article. For purposes of this section, submittal of a Complaint or a report made to the Fraud, Waste, or Abuse hotline shall be considered to be a report under this Section. A report to the hotline may remain anonymous unless disclosed by the caller.
- (b) **Financial Disclosures.** All Candidates for City Council, including Candidates for Mayor, shall file financial information reports as required by, and in accordance with, State law. All prospective Vendors and City Officials shall file disclosure forms as required by, and in accordance with, State law.
- (c) **Business Disclosures.** When a Pending Matter is before the City Official, and the City Official has knowledge of being a partner with one of the owners of the Business Interest with the Pending Matter, all City Officials shall file with the City Auditor a report listing the known names of human individuals with whom the City Official or the City Official's spouse is named partner in the following types of businesses: General Partnership, Limited Partnership, Limited Liability Partnership, or Limited Liability Corporation, or

Professional Corporation. Annual reports shall be submitted within ninety (90) days of taking office. Failure to submit a report shall not serve as a basis for a Complaint unless the City Official fails to submit a report within thirty (30) days of being provided written notification of the omission. Neither the existence of a business relationship as described in this Section, nor the submission of a report required by this Section shall prevent a City Official from participating in Deliberations on matters pending before the City absent a Conflicting Interest.

- (d) **Disclosure Process.** Disclosures mandated by this section shall be filed with the City Auditor and City Secretary at least one business day prior to deliberation of the Pending Matter. Disclosures received shall be distributed by City staff to the relevant body prior to the Pending Matter being deliberated.

## **Sec. 2-273. Prohibitions**

### **(a) Conflicts of Interest:**

- (1) *Deliberation Prohibited.* It shall be a violation of this Code for a City Official to knowingly deliberate regarding a Pending Matter for which the City Official currently has a Conflicting Interest. City Officials with a current Conflicting Interest in a Pending Matter must recuse themselves and abstain from Deliberations. It is an exception to this recusal requirement if the City Official serves on the City Council, Planning and Zoning Commission, Board of Ethics, Historic Landmark Commission, Public Utilities Board, or Board of Adjustment; where a majority of the members of that body is composed of persons who are likewise required to file (and who do file) disclosures on the same Pending Matter.
- (2) *Disclosure Required.* If a City Official has a Conflicting Interest in a Pending Matter, the City Official shall disclose the nature of the Conflicting Interest by filing a sworn statement with the City Auditor. Disclosures under this subsection shall be for the time period, including the previous calendar year, and up to date where the Conflicting Interest arises before the City Official.
- (3) *Definition of Conflicting Interest.* For purposes of this Article, the term is defined as follows:

*Conflicting Interest:* a stake, share, equitable interest, or involvement in an undertaking in the form of any one (1) or more of the following:

- (A) ownership of five percent (5%) or more voting shares or stock in a Business Entity;



- (B) receipt of more than six-hundred dollars (\$600.00) in gross annual income from a Business Entity, as evidenced by a W-2, 1099, K-1, or similar tax form;
- (C) ownership of more than six-hundred dollars (\$600.00) of the fair market value of a Business Entity;
- (D) ownership of an interest in real property with a fair market value of more than six-hundred dollars (\$600.00);
- (E) serves on the Board of Directors or as an Officer of a Business Entity, unless the City Official was appointed to that position by the City Council;
- (F) serves on the Board of Directors (i.e., governing body) or as an Officer of a nonprofit corporation or an unincorporated association, unless the City Official was appointed to that position by the City Council; and/or
- (G) direct or indirect solicitation of an offer of employment for which the application is still pending, receipt of an offer of employment that has not been rejected, or acceptance of an offer of employment from or to a person or Business Entity within the past twelve (12) months;

A City Official is considered to have a Conflicting Interest if the City Official's Relative has a Conflicting Interest.

The term Conflicting Interest does not include ownership of an interest in a mutual or common investment fund that holds securities or assets unless the City Official participates in the management of the fund.

**(b) Gifts.**

- (1) *General.* It shall be a violation of this Article for a City Official or a City Official's Relative to accept any Gift that might reasonably tend to influence such Officer in the discharge of official duties.
- (2) *Specific.* It shall be a violation of this Article for a City Official to accept any Gift for which the fair market value is greater than fifty dollars (\$50.00). It shall be a violation of this Article for a City Official to accept multiple Gifts for which the cumulative fair market value exceeds two hundred dollars (\$200.00) in a single fiscal year. It shall be a violation of this Article for a Vendor to offer or give a Gift to a City Official or a City Official's Relative exceeding fifty dollars (\$50.00) per Gift, or multiple Gifts cumulatively valued at more than two hundred dollars (\$200.00) in a single fiscal year.

- (3) *Definition of Gift.* Anything of monetary value, including but not limited to cash, personal property, real property, services, meals, entertainment, and travel expenses, except those provided in 2-273(b)(3) below.
  - (4) *Exceptions.* For the purposes of this Article, the term Gift does not include any of the following:
    - (A) a lawful campaign contribution;
    - (B) meals, lodging, transportation, entertainment, and related travel expenses paid for (or reimbursed by) the City in connection with the City Official's attendance at a conference, seminar or similar event, or the coordinator of the event;
    - (C) meals, lodging, transportation, or entertainment furnished in connection with public events, appearances, or ceremonies related to official City business, nonprofit functions, or charity functions, or community events, if furnished by the sponsor of such events (who is in attendance);
    - (D) complimentary copies of trade publications and other related materials;
    - (E) attendance at hospitality functions at local, regional, state, or national association meetings and/or conferences;
    - (F) any gift that would have been offered or given to the City Official because of a personal, familial, professional relationship regardless of the City Official's capacity with the City;
    - (G) tee shirts, caps, and other similar promotional material; and
    - (H) complimentary attendance at political, nonprofit, or charitable fund raising events.
  - (5) *Donations.* It is not a violation under this Article for a City Official to accept a Gift prohibited by this Article on behalf of the City of Denton. Conveyance of a Gift prohibited by this Article to the City of Denton or a nonprofit corporation cures any potential violation.
  - (6) *Reimbursement.* It is not a violation under this Article for a City Official to accept a Gift prohibited by this Article and promptly reimburse the Person the actual cost or fair market value of the Gift.
  - (7) *Disclosure Required.* If a City Official chooses to accept a Gift, the City Official shall disclose the value of the Gift and the nature of the Gift's acceptance by filing an affidavit with the City Auditor.
- (c) **Outside Employment.**
- (1) *Applicability of Section.* This subsection applies to Department Heads.

- (2) *Prohibition.* It is a violation of this Article for a Department Head to solicit, accept, or engage in concurrent outside employment which could reasonably be expected to impair independence of judgment in, or faithful performance of, official duties.
  - (3) *Disclosure and Consent.* It is a violation of this Article for a Department Head to accept employment from any Person other than the City without first disclosing the prospective employment arrangement in writing to the Mayor and receiving the Mayor's written consent.
- (d) **Representation of Others.**
- (1) *Current City Officials.* It shall be a violation of this Article for a City Official to represent for compensation any person, group, or entity before a board or commission of the City. For purposes of this subsection, the term compensation means money or any other thing of value that is received, or is to be received, in return for or in connection with such representation.
  - (2) *Former City Officials.* It shall be a violation of this Article for a City Official to represent for compensation any person, group, or entity before the City Council or a board, commission, or staff of the City for a period of one (1) year after termination of official duties. This prohibition applies to representation in the form of advocacy or lobbying regarding discretionary approvals of the City, not routine, ministerial actions. For purposes of this subsection, the term compensation means money or any other thing of value that is received, or is to be received, in return for or in connection with such representation. The prohibition in this subsection solely applies to the Former City Official, and shall not be construed to apply to other affiliated Persons. This subsection does not apply to Former City Officials who represent others for compensation in the course of applying for non-discretionary, ministerial permits and routine approvals. It shall be an exception to this Article when the Former City Official is employed by or owns a small business which existed before the Former City Official commenced service as a City Official and is the sole source of specialized knowledge or expertise necessary within that small business, and that knowledge or expertise is necessary to transact business with the City.
- (e) **Improper Influence.** It shall be a violation of this Article for a City Official to use such person's official title/position to:
- (1) secure special privileges or benefits for such person or others;
  - (2) grant any special consideration, treatment, or advantage to any citizen, individual, business organization, or group beyond that which is normally available to every other citizen, individual, business organization, or group;
  - (3) assert the prestige of the official's or employee's City position for the purpose of advancing or harming private interests;

- (4) state or imply that the City Official is able to influence City action on any basis other than the merits; or
  - (5) state or imply to state or local governmental agencies that the City Official is acting as a representative of the City, as an organization, or as a representative of the City Council without first having been authorized by the City Council to make such representation (except the Mayor, City Manager, and City Attorney).
- (f) **Misuse of Information.**
  - (1) *Personal Gain.* It shall be a violation of this Article for a former City Official to use any confidential information to which the City Official had access by virtue of their official capacity and which has not been made public concerning the property, operations, policies, or affairs of the City, to advance any personal or private financial interest of any Person.
  - (2) *Confidential Information.* It shall be a violation of this Article for a City Official to intentionally, knowingly, or recklessly disclose any confidential information gained by reason of the City Official's position concerning the property, operations, policies, or affairs of the City. This rule does not prohibit the reporting of illegal or unethical conduct to authorities designated by law.
- (g) **Abuse of Resources.** It shall be a violation of this Article for a City Official to use, request, or permit the use of City facilities, personnel, equipment, software, supplies, or staff time for private purposes (including political purposes), except to the extent and according to the terms that those resources are generally available to other citizens and the City Officials for official City purposes.
- (h) **Abuse of Position.** It shall be a violation of this Article for any City Official to engage in the following:
  - (1) *Harassment & Discrimination.* Use the Official's position to harass or discriminate against any person based upon ethnicity, race, gender, gender identity, sexual orientation, marital status, parental status, or religion.
  - (2) *Interference.* Interfere with any criminal or administrative investigation alleging the violation of any provision of this Article, the City Charter, administrative policy, or executive order in any manner, including but not limited to seeking to persuade or coerce City employees or others to withhold their cooperation in such investigation is a violation of this Article.
- (i) **Subsequent Work on Prior Projects.** It shall be a violation of this Article for any former City Official, within one (1) year of the cessation of official duties for the City, to perform work on a compensated basis relating to a City contract or arrangement for the provision of goods, services, real property, or other things of value, if while in City service the former City Official personally and substantially participated in the negotiation, award or administration of the contract or other arrangement. This Section does not apply to a City Official whose involvement with a contract or arrangement was limited to Deliberations

as a member of the City Council, Planning and Zoning Commission, Board of Adjustment, Historic Landmark Commission, or Public Utilities Board.

### **DIVISION 3. IMPLEMENTATION**

#### **Sec. 2-274. Staffing**

- (a) **City Auditor.** The City Auditor's Office shall be responsible to provide staff and clerical support to the Board of Ethics to assist in the implementation and enforcement of this Article. The degree of support required shall be at the discretion of the City Auditor. Nothing herein creates a duty for the City Auditor to enforce this Article. Furthermore, this Article shall not be construed as requiring the City Auditor to investigate allegations of violations of this Article submitted via the Fraud, Waste, or Abuse hotline.
- (b) **Conflicts Log.** The City Auditor's Office shall, in cooperation with the City Secretary's Office, maintain a Conflicts Log on an ongoing basis listing the Conflicting Interests disclosed by City Officials in accordance with this Article. The log is a public record. The City Auditor is neither authorized nor required to inspect or act upon the content of the Conflicts Log.
- (c) **City Manager.** If a Complaint accuses the City Auditor of violating this Article, the duties of the City Auditor under this Article shall be performed by the City Manager for purposes of processing that Complaint.

#### **Sec. 2-275. Legal Counsel**

- (a) **City Attorney.** The City Attorney shall provide legal support to the City Auditor and the Board of Ethics in the administration of this Article. Nothing herein shall be construed to limit the authority of the City Attorney to render legal guidance in accordance with the City Attorney's professional obligations and standards.
- (b) **Special Counsel.** Independent, outside legal services shall be engaged by the City Attorney on the City's behalf to provide legal support to the City Auditor and the Board of Ethics when:
  - (1) in the City Attorney's discretion it is necessary in order to comply with the Texas Disciplinary Rules of Professional Conduct (for lawyers), or is in the best interest of the City;
  - (2) when the City Council deems Special Counsel is necessary; or
  - (3) when action is being taken by the Board of Ethics regarding any council member.

#### **Sec. 2-276. Training**

- (a) **Curriculum.** The City Auditor shall approve a training program that provides an introduction and overview of the expectation, mandates, and prohibitions provided for by this Article.

- (b) **Orientation.** City Officials shall complete a training session regarding this Article within ninety (90) days of commencing their official duties.
- (c) **Annual.** City Officials shall complete an annual training session regarding this Article.
- (d) **Exiting Officials.** Information shall be provided to City Officials terminating their City service regarding the continuing restrictions on the representation of others by certain former City Officials.

**Sec. 2-277. Board of Ethics**

- (a) **Creation.** There is hereby created a Board of Ethics for the City of Denton.
- (b) **Appointment.** The Board of Ethics shall be appointed by majority vote of the City Council.
- (c) **Number.** The Board of Ethics shall consist of seven (7) regular members.
- (d) **Terms.** Board of Ethics members shall be appointed for two (2) year, staggered terms. Members may be reappointed for successive terms. Appointment to fill a vacancy shall be for the remainder of the unexpired term. Members of the inaugural Board of Ethics shall draw straws to determine which three (3) members shall receive an initial term of one (1) year in order to stagger terms. In total, members may only serve three (3) consecutive terms. A member may be reappointed no sooner than one (1) year after expiration of a previous term.
- (e) **Eligibility.** Membership on the Board of Ethics is limited to residents of the City of Denton.
- (f) **Ineligibility.** The following shall disqualify a person from serving on the Board of Ethics:
  - (1) current service as a City Official;
  - (2) separation from city service as a City Official within two (2) years of the appointment;
  - (3) familial relations to a City Official within the third (3<sup>rd</sup>) degree of affinity (marriage) or consanguinity (blood or adoption);
  - (4) current service as an elected official in Denton County; and / or
  - (5) conviction of a felony or crime of moral turpitude.
- (g) **Scope of Authority.** The Board of Ethic's jurisdiction shall be limited to implementation and enforcement of this Article, and shall include the authority to administer oaths and affirmations, issue and enforce limited subpoenas to compel the attendance of witnesses and the production of testimony, evidence, and/or documents as is reasonably relevant to the Actionable Complaint, as provided by the City Charter. The issuance and enforcement of subpoenas shall be only upon a majority vote of the Board of Ethics, in accordance with the Rules of Procedure, and enforcement shall be through any of the Sanction options listed herein.

- (h) **Amendments.** The Board of Ethics may recommend amendments to this Article. A recommendation from the Board of Ethics is not required for the City Council to exercise its discretion in amending this Article.
- (i) **Officers.** At the first meeting of each fiscal year the Board of Ethics shall select from among its members a Chairperson and Vice-Chairperson.
- (j) **Rules of Procedure:** The Board of Ethics shall adopt rules of procedure governing how to conduct meetings and hearings. Such procedural rules are subject to confirmation or modification by the City Council.
- (k) **Removal:** The City Council may, by a vote of two-thirds (2/3), remove a member of the Board of Ethics for cause. Justifications warranting removal for cause shall include neglect of duty, incompetence, gross ignorance, inability or unfitness for duty, or disregard of the Code of Ordinances.

#### **Sec. 2-278. Advisory Opinions**

- (a) **Requests.** Any City Official may request an Advisory Opinion on a question of compliance with this Article. Requests shall be submitted in writing to the City Auditor, who shall assign the request to a Panel or Special Counsel.
- (b) **Issuance.** A Panel of the Board of Ethics shall issue Advisory Opinions upon request. Advisory Opinions shall be issued within thirty (30) days of receipt of the request. This time limitation is tolled and shall not run until the Board of Ethics is empaneled and its Rules of Procedure are confirmed by the City Council.
- (c) **Reliance.** It shall be an affirmative defense to a Complaint that the Respondent relied upon an Advisory Opinion. In making a determination on the proper disposition of a Complaint, the Board of Ethics may dismiss the Complaint if the Board finds that:
  - (1) the Respondent reasonably relied in good faith upon an Advisory Opinion;
  - (2) the request for an Advisory Opinion fairly and accurately disclosed the relevant facts; and
  - (3) less than five (5) years elapsed between the date the Advisory Opinion was issued and the date of the conduct in question.

#### **Sec. 2-279. Complaints**

- (a) **Complainants.** Any person who has first-hand knowledge that there has been a violation of Sections 2-272 and/or 2-273 of this Article may allege such violations by submitting a Complaint. The persons who may submit Complaints includes (but is not limited to) members of the Board of Ethics.
- (b) **Form.** Complaints shall be written on, or accompanied by, a completed form promulgated by the City Auditor.

- (c) **Contents.** A Complaint filed under this section must be in writing, under oath, must set forth in simple, concise, direct statements, and state:
- (1) the name of the Complainant;
  - (2) the street or mailing address, email address, and the telephone number of the Complainant;
  - (3) the name of each person Respondent of violating this Article;
  - (4) the position or title of each person Respondent of violating this Article;
  - (5) the nature of the alleged violation, including the specific provision of this Article alleged to have been violated;
  - (6) a statement of the facts constituting the alleged violation and the dates on which, or period of time in which, the alleged violation occurred; and
  - (7) all documents or other material available to the Complainant that are relevant to the allegation.
- (d) **Violation Alleged.** The Complaint must state on its face an allegation that, if true, constitutes a violation of this Article.
- (e) **Affidavit.** A Complaint must be accompanied by an affidavit stating that the Complaint is true and correct or that the Complainant has good reason to believe and does believe that the facts alleged constitute a violation of this Article. The Complainant shall swear to the facts by oath before a Notary Public or other person authorized by law to administer oaths under penalty of perjury.
- (f) **Limitations Period.** To be accepted, a Complaint must be brought within six (6) months of the Complainant becoming aware of the act or omission that constitutes a violation of this Article. A Complaint will not be accepted more than two (2) years after the date of the act or omission. Notwithstanding the foregoing, nothing in this subsection shall be construed to extend the one (1) year limitation of activity applicable to Former City Officials. The time for filing a Complaint regarding an alleged violation of this Article where the alleged violation occurred after the Effective Date but before the Board of Ethics is empaneled shall be tolled and not begin to run until such time as the Board of Ethics is empaneled and its Rules of Procedure are confirmed by the City Council.
- (g) **Filing.** Complaints shall be submitted to the City Auditor. Submission of Complaints may be made by hand delivery, U.S. Mail, or email directed to an email address publicly listed by the City Auditor.
- (h) **Acceptance of Complaint.** Within five (5) business days of receiving a Complaint, the City Auditor shall determine if it is administratively complete and timely.
- (1) *Administratively Complete.* A Complaint is administratively complete if it contains the information described above. If the Complaint is administratively complete, the City Auditor shall proceed as described in this Article. If the



Complaint is incomplete, the City Auditor shall send a written deficiency notice to the Complainant identifying the required information that was not submitted.

The Complainant shall have ten (10) business days after the date the City Auditor sends a deficiency notice to the Complainant to provide the required information to the City Auditor, or the Complaint is automatically deemed abandoned and may not be processed in accordance with this Article. Within five (5) business days of a Complaint being abandoned, the City Auditor shall send written notification to the Complainant and the Respondent.

- (2) *Timely.* To be timely, a Complaint must be brought within six (6) months of the Complainant becoming aware of the act or omission that constitutes a violation of this Article. A Complaint will not be accepted more than two (2) years after the date of the act or omission.
- (i) **Notification of Acceptance.** Within five (5) business days of determining that a Complaint is administratively complete and timely, the City Auditor shall send a written notification of acceptance and a copy of the complaint to the Complainant, the Respondent, and the City Attorney.

For purposes of this provision, a Complaint shall be considered Accepted when the City Auditor has deemed the submittal administratively complete and timely.

- (j) **Confidentiality.** A Complaint that has been submitted to the City is hereby deemed confidential until such time as the Complaint is either dismissed or placed on an agenda for consideration by the Board of Ethics in accordance with this Article. Clerical and administrative steps shall be taken to identify and manage confidential information in accordance with this Article. The confidentiality created by this Article includes the fact that a Complaint was submitted and the contents of that Complaint. It shall be a violation of this Article for a City Official to publicly disclose information relating to the filing or processing of a Complaint, except as required for the performance of official duties or as required by law. Requests for records pertaining to Complaints shall be responded to in compliance with the State law. The limited confidentiality created by this Article is limited in scope and application by the mandates of the Texas Public Information Act, Chapter 552 of the Texas Government Code.
- (k) **Ex Parte Communications.** After a Complaint has been filed and during the pendency of a Complaint before the Board of Ethics, it shall be a violation of this Article:
  - (1) for the Complainant, the Respondent, or any person acting on their behalf, to engage or attempt to engage directly or indirectly about the subject matter or merits of a Complaint in *ex parte* communication with a member of the Board of Ethics or any known witness to the Complaint; or
  - (2) for a Member of the Board of Ethics, to knowingly allow an *ex parte* communication about the subject matter or merits of a Complaint, or to communicate about any issue of fact or law relating to the Complaint directly or indirectly with any person other than a Member of the Board of Ethics, the City Auditor's office, the City Attorney's office, or Special Counsel.

- (1) **Retaliation Prohibited.** After a Complaint has been filed, and during or after the pendency before the Board of Ethics, it shall be a violation of this Article:
  - (1) For a City Official, Former City Official, or Vendor to directly or indirectly discriminate against, harass, threaten, harm, damage, penalize, or otherwise retaliate against any person who:
    - (A) Files a complaint regarding an alleged violation of this Article, or
    - (B) Testifies, assists, or participates in any manner in a proceeding or hearing under this Article.
  - (2) The outcome of the original ethics complaint shall not be deemed relevant to the complaint of retaliation itself.

## **Sec. 2-280. Preliminary Assessment**

- (a) **Referral to Chairperson.** Accepted Complaint(s) shall be referred to the Chairperson of the Board of Ethics within five (5) business days of being determined administratively complete.
- (b) **Assignment of Panel.** Within five (5) business days of receiving an Accepted Complaint, the Chairperson of the Board of Ethics shall assign the Complaint to a Panel for Preliminary Assessment. Board members who have previously submitted an Ethics Complaint against the Respondent in a Preliminary Assessment shall not be assigned to the Panel unless a majority of the Board members have previously submitted an Ethics Complaint against the Respondent. The Chairperson shall order a meeting of the Panel, which shall be conducted in compliance with the Texas Open Meetings Act. Each Panel shall select a Presiding Officer to conduct Panel deliberations.
- (c) **Panel Determination.** Within ten (10) business days of being assigned an Accepted Complaint, the Panel shall review the Complaint on its face and determine whether the Complaint is:
  - (1) *Actionable:* the allegations and evidence contained in the Complaint, if true, would constitute a violation of this Article.
  - (2) *Baseless:* the allegations and evidence contained in the Complaint, if true, would not constitute a violation of this Article.

Actionable Complaints shall be returned to the Chairperson for listing on an agenda for a public hearing to be held within thirty (30) calendar days of a Panel's Actionable determination. Baseless Complaints shall be dismissed. Written notification of the Panel's determination shall be filed with the City Auditor and sent to the Chairperson, the Complainant, the Respondent, and the City Attorney within two (2) business days. Written notifications of dismissal shall include notice of the right to appeal.

- (d) **Recommendation to Determine Frivolity.** Before filing notification of its determination, the Panel may consider recommending a hearing first be held to determine

if an Accepted Complaint is frivolous. Written notification of the Panel's recommendation to hold a hearing to determine frivolity shall be filed with the City Auditor and sent to the Chairperson, the Complainant, the Respondent, and the City Attorney within two (2) business days. Hearings to determine frivolity shall be held within thirty (30) calendar days of a Panel's recommendation.

- (e) **Appeals.** A Panel's preliminary assessment under this Section 2-280 may be appealed to the Board of Ethics by either the Complainant or the Respondent, as applicable. An appeal shall be perfected by filing a written notice of appeal with the City Auditor within ten (10) business days of the date of the written notification.

## **Sec. 2-281. Meetings**

- (a) **Calling Meetings.** Meetings of the Board of Ethics shall be called upon request of the Chairperson, three (3) members, or the City Auditor.
- (b) **Quorum.** The quorum necessary to conduct meetings of the Board of Ethics shall be four (4). The Chairperson (or acting chairperson) shall count toward the establishment of a quorum and retains the right to vote.
- (c) **Hearings:**
  - (1) *Scheduling:* Hearings shall be scheduled by the City Auditor upon the filing of:
    - (A) a Panel determination that a Complaint is Actionable;
    - (B) an Appeal challenging a Panel's dismissal of a Complaint as Baseless; or
    - (C) a Panel recommendation that a hearing be held to determine if an Accepted Complaint is Frivolous.
  - (2) *Purpose:* The purpose of the hearing(s) shall be solely to determine whether:
    - (A) a violation of this Article occurred, and if so to assess the appropriate sanction;
    - (B) an Accepted Complaint was erroneously dismissed as Baseless by a Panel; and/ or
    - (C) an Accepted Complaint is Frivolous.
  - (3) *Sworn Testimony:* All witness testimony provided to the Board of Ethics shall be under oath.
  - (4) *Burden of Proof:* Because the burden of showing that a violation of this Article occurred is placed on the Complainant, it is the Complainant that has the obligation to put forth evidence, including testimony, supporting the Complaint. The Complainant is required to testify at the hearing unless it is held to determine if an Accepted Complaint is frivolous. A Complainant's failure to testify at a hearing,

other than a hearing to determine frivolity, shall be grounds for dismissal of a Complaint.

- (5) *Representation:* The Respondent shall have a right to present a defense. Both the Complainant and the Respondent have a right to be represented by legal counsel.
- (d) **Open Meetings.** All meetings and hearings of the Board of Ethics, including Panel deliberations, shall be conducted pursuant to the Texas Open Meetings Act. The Board of Ethics may convene in Executive Session (i.e., conduct a closed meeting) as allowed by the Act. All final actions of the Board of Ethics shall take place in open session.
- (e) **Postponement in Certain Instances.**
  - (1) *Board:* Proceedings may be postponed upon majority vote by the members of the Board of Ethics.
  - (2) *Parties:* The Complainant and the Respondent are each entitled to one (1) postponement without cause. Additional postponements shall be solely for good cause and at the discretion of the Board of Ethics.
  - (3) *Criminal Proceedings:* If a Complaint alleges facts that are involved in a criminal investigation or a criminal proceeding before a grand jury or the courts, the Board of Ethics may, when a majority of its members deem appropriate, postpone any hearing or any appeal concerning the Complaint until after the criminal investigation or criminal proceedings are terminated.

#### **Sec. 2-282. Disposition**

- (a) **Dismissal.** If the Board of Ethics determines at the conclusion of a hearing by simple majority vote of its members that a Complaint should be dismissed, it may do so upon finding:
  - (1) the Complaint is Baseless;
  - (2) the alleged violation did not occur;
  - (3) the Respondent reasonably relied in good faith upon an Advisory Opinion, as provided in this Article; or
  - (4) the Complainant failed to testify at the hearing.
- (b) **Sanctions.** If the Board of Ethics determines by simple majority vote of those present and voting at the conclusion of a hearing that a violation has occurred, it may within ten (10) business days impose or recommend any of the following sanctions:
  - (1) *Letter of Notification.* If the violation is clearly unintentional, or when the Accuser's action was made in reliance on a written Advisory opinion, a letter of notification shall advise the Respondent of any steps to be taken to avoid future violations.

- (2) *Letter of Admonition.* If the Board of Ethics finds that the violation is minor and may have been unintentional, but calls for a more substantial response than a letter of notification.
- (3) *Letter of Reprimand.* If the Board of Ethics finds that the violation:
  - (A) was minor and was committed knowingly, intentionally, or in disregard of this Article; or
  - (B) was serious and may have been unintentional.
- (4) *Recommendation of Suspension.* If the Board of Ethics finds that a violation was committed by a member of the Planning & Zoning Commission, Zoning Board of Adjustment, Board of Ethics, Public Utilities Board, Historic Landmark Commission, or a Department Head, and it:
  - (A) was serious and was committed knowingly, intentionally, or in disregard of this Article or a state conflict of interest law; or
  - (B) was minor but similar to a previous violation by the Person, and was committed knowingly, intentionally or in disregard of this Article.

The final authority to impose a suspension rests with the City Council.

- (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.

Notice of all sanctions imposed by the Board of Ethics shall be transmitted to the Respondent, Complainant, City Auditor, City Attorney, and City Council.

(c) **Frivolous.**

- (1) *Prohibition.* It is a violation of this Article for a Person to submit a Frivolous Complaint.
- (2) *Hearing.* A hearing shall be scheduled on frivolity if the Preliminary Panel recommends an Accepted Complaint first be considered for frivolity. The Complainant is not required to testify at a hearing to determine if their submitted Complaint is frivolous.
- (3) *Super-Majority Vote.* If the Board of Ethics determines at the conclusion of a hearing by a vote of two-thirds (2/3) of its Members that a Complaint was Frivolous, the Board may impose a sanction as provided by Section 2-282(b).

Upon finding that a Complaint is Frivolous, the Complaint is dismissed.

- (4) *Factors.* In making a determination on frivolity, the Board of Ethics shall consider the following factors:

- (A) the timing of the sworn Complaint with respect to when the facts supporting the alleged violation became known or should have become known to the Complainant, and with respect to the date of any pending election in which the Respondent is a Candidate or is involved with a candidacy, if any;
  - (B) the nature and type of any publicity surrounding the filing of the sworn Complaint, and the degree of participation by the Complainant in publicizing the fact that a Complaint was filed;
  - (C) the existence and nature of any relationship between the Respondent and the Complainant before the Complaint was filed;
  - (D) if the Respondent is a Candidate for Election to Office, the existence and nature of any relationship between the Complainant and any Candidate or group opposing the Respondent;
  - (E) any evidence that the Complainant knew or reasonably should have known that the allegations in the Complaint were groundless; and
  - (F) any evidence of the Complainant's motives in filing the Complaint.
- (5) *External Remedies.* Complainants who submit Frivolous Complaints are hereby notified that their actions may subject them to criminal prosecution for perjury (criminal prosecution), or civil liability for the torts of defamation or abuse of process.

#### **Sec. 2-283. Reconsideration**

The Complainant or Respondent may request the Board of Ethics to reconsider its decision. The request must be filed with the City Auditor within five (5) business days of receiving the final opinion of the Board of Ethics. The request for reconsideration shall be sent to the Chairperson of the Board of Ethics and the non-filing party (Complainant or Respondent). If the Chairperson finds, in the Chairperson's sole discretion, that the request includes new evidence that was not submitted at a prior hearing, and that the new evidence bears directly on the Board of Ethics's previous determination, the Chairperson shall schedule a hearing on the request for reconsideration to occur within thirty (30) business days after filing with the City Auditor. Absent new evidence, the Chairperson shall unilaterally dismiss the request for reconsideration and provide notice to the Parties.

#### **Sec. 2-284. Nepotism**

- (a) **City Council.** No Person shall be employed by the City who is a relative of any member of the City Council within the third (3<sup>rd</sup>) degree of affinity or consanguinity.
- (b) **Preexisting Employment.** The prohibitions of this Section do not apply to a Person who was employed by the City more than six (6) months prior.

**Sec. 2-285. General Procedural Matters**

- (a) **Deadlines.** Any deadline provided in this Article shall be construed as expiring at 5:00 p.m. local time on the last day.
- (b) **Mailbox Rule.** Under this Article, a deadline for any response or request for appeal is met when the date the response or request for appeal is mailed falls within the timeline requirements of this Article. The posted date of any mailing will control whether it meets the timeline requirements of this Article.

**Sec. 2-286. Lobbyists [*reserved*]**

23-2251

\_\_\_\_ Additional File Contains Records Not Public, According to the Public Records Act

Other

[illegible]



## ORDINANCE NO. 23-2251

AN ORDINANCE OF THE CITY OF DENTON AMENDING THE CODE OF ORDINANCES, RELATED TO CHAPTER 2, TITLED "ADMINISTRATION," ARTICLE XI, TITLED "ETHICS," TO ELIMINATE THE ALTERNATE MEMBER POSITIONS; PROVIDING FOR FINDINGS OF FACT; PROVIDING SEVERABILITY; PROVIDING A REPEALER CLAUSE, PROVIDING CODIFICATION; CONFIRMING PROPER NOTICE AND MEETING; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, on May 1, 2018, the City Council of the City of Denton enacted a new Code of Ethics, codified in Chapter 2, Article XI of the City of Denton Code of Ordinances, to foster a culture of integrity for those who serve the municipality and our citizenry (the "Code"); and

WHEREAS, the Code represented the consensus of preferences expressed by the City Council over a period of eight (8) public work sessions, and four (4) public hearings, which were broadcasted. Altogether, the work sessions exceeded twenty (20) hours of deliberations; and

WHEREAS, this Code of Ethics applies to the Mayor, City Council, Planning and Zoning, Zoning Board of Adjustment, Historic Landmark Commission, Board of Ethics, Public Utilities Board, Department Heads appointed by the City Council, and Vendors; and

WHEREAS, on June 2, 2020, by Ordinance No. 20-1035, the City Council repealed the previously adopted Chapter 2, Article XI, entitled "Ethics," in its entirety and replaced it with an amended Code; and

WHEREAS, on January 25, 2022, by Ordinance No. 22-056, the City Council passed an amendment removing preference qualifications for Members of the Board of Ethics; and

WHEREAS, on July 19, 2022, by Ordinance No. 22-1245, the City Council passed an amendment updating the composition requirements of a panel, clarifying what is included in the contents of an accepted ethics complaint, and clarifying the process for recommending a frivolity hearing; and

WHEREAS, on July 18, 2023, by Ordinance No. 23-1165, the City Council passed an amendment clarifying gift disclosure requirements, adding to the definition of conflict of interest recent offers of employment, clarifying the process to submit business disclosures, and requiring the City Auditor to provide a copy of an Accepted Complaint to the Complainant; and

WHEREAS, in order to enhance governmental efficiency and facilitate expedient appointment of future board member vacancies, the City Council deems it in the public interest to amend Chapter 2 Article, XI, Section 2-277 and eliminate the Board alternate member positions; NOW, THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The findings and recitations contained in the preamble of this ordinance are

found to be true and are incorporated herein by reference as if fully set forth in the body of this ordinance.

**SECTION 2.** Chapter 2, Article XI of the Code of Ordinances of the City of Denton is hereby amended by striking Section 2-277 in its entirety and replacing it with the following:

“Sec. 2-277. – Board of Ethics

- (a) *Creation.* There is hereby created a Board of Ethics for the City of Denton.
- (b) *Appointment.* The Board of Ethics shall be appointed by majority vote of the City Council.
- (c) *Number.* The Board of Ethics shall consist of seven (7) regular members.
- (d) *Terms.* Board of Ethics members shall be appointed for two (2) year, staggered terms. Members may be reappointed for successive terms. Appointment to fill a vacancy shall be for the remainder of the unexpired term. Members of the inaugural Board of Ethics shall draw straws to determine which three (3) members shall receive an initial term of one (1) year in order to stagger terms. In total, members may only serve three (3) consecutive terms. A member may be reappointed no sooner than one (1) year after expiration of a previous term.
- (e) *Eligibility.* Membership on the Board of Ethics is limited to residents of the City of Denton.
- (f) *Ineligibility.* The following shall disqualify a person from serving on the Board of Ethics:
  - (1) current service as a City Official;
  - (2) separation from city service as a City Official within two (2) years of the appointment;
  - (3) familial relations to a City Official within the third (3<sup>rd</sup>) degree of affinity (marriage) or consanguinity (blood or adoption);
  - (4) current service as an elected official in Denton County; and / or
  - (5) conviction of a felony or crime of moral turpitude.
- (g) *Scope of Authority.* The Board of Ethic’s jurisdiction shall be limited to implementation and enforcement of this Article, and shall include the authority to administer oaths and affirmations, issue and enforce limited subpoenas to compel the attendance of witnesses and the production of testimony, evidence, and/or documents as is reasonably relevant to the Actionable Complaint, as provided by the City Charter. The issuance and enforcement of subpoenas shall be only upon a majority vote of the Board of Ethics, in accordance with the Rules of Procedure, and enforcement shall be through any of the Sanction options listed herein.

- (h) *Amendments.* The Board of Ethics may recommend amendments to this Article. A recommendation from the Board of Ethics is not required for the City Council to exercise its discretion in amending this Article.
- (i) *Officers.* At the first meeting of each fiscal year the Board of Ethics shall select from among its members a Chairperson and Vice-Chairperson.
- (j) *Rules of Procedure:* The Board of Ethics shall adopt rules of procedure governing how to conduct meetings and hearings. Such procedural rules are subject to confirmation or modification by the City Council.
- (k) *Removal:* The City Council may, by a vote of two-thirds (2/3), remove a member of the Board of Ethics for cause. Justifications warranting removal for cause shall include neglect of duty, incompetence, gross ignorance, inability or unfitness for duty, or disregard of the Code of Ordinances.”

SECTION 3. All prior ordinances, resolutions, amendments, policies, or guidelines that conflict with this amendment are hereby rescinded and repealed in whole or in part to the extent necessary to give full effect to his amendment.

SECTION 4. If any section, subsection, paragraph, sentence, clause, phrase, or word in this ordinance, or its application thereof to any person or circumstance is determined to be invalid by any court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of this ordinance, as the remaining portions are enacted in spite of any such invalidity.

SECTION 5. Save and except as amended hereby, all portions of the Code of Ordinances shall remain in effect.

SECTION 6. It is hereby officially found and determined that the meeting at which this Ordinance was passed was open to the public, and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act, Texas Government Code, Chapter 551. Notice was also provided as required by Chapter 52 of the Texas Local Government Code.

SECTION 7. Upon the effective date of this ordinance, the City Secretary shall cause the codification of the provisions contained herein into the City of Denton Code of Ordinances.

SECTION 8. This ordinance shall become effective immediately upon its passage and approval.

*[Rest of page intentionally left blank. Signatures to appear on following page.]*


The motion to approve this ordinance was made by Gerard Hudspeth and seconded by Brandon Chase McGee, the ordinance was passed and approved by the following vote [ 6 - 0 ]:

	Aye	Nay	Abstain	Absent
Mayor Gerard Hudspeth:	<u>✓</u>	_____	_____	_____
Vicki Byrd, District 1:	<u>✓</u>	_____	_____	_____
Brian Beck, District 2:	<u>✓</u>	_____	_____	_____
Paul Meltzer, District 3:	<u>✓</u>	_____	_____	_____
Joe Holland, District 4:	<u>✓</u>	_____	_____	_____
Brandon Chase McGee, At Large Place 5:	<u>✓</u>	_____	_____	_____
Chris Watts, At Large Place 6:	_____	_____	_____	<u>✓</u>


PASSED AND APPROVED this the 12<sup>th</sup> day of December, 2023.

  
GERARD HUDSPETH, MAYOR

ATTEST:  
JESUS SALAZAR, CITY SECRETARY

BY: 

APPROVED AS TO LEGAL FORM:  
MACK REINWAND, CITY ATTORNEY

BY:  Scott Bray  
2023.11.27  
10:41:03 -06'00'





# **HANDBOOK FOR BOARDS, COMMISSIONS, AND COUNCIL COMMITTEES**



**Last Revised on April 20, 2021 (Resolution 21-271)**

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## INTRODUCTION

Congratulations on your appointment to one of our City's boards, commissions or City Council committees! Boards and commissions are essential to the successful function of City government, and your contributions will help shape the future of Denton. You will be studying and recommending policy application on a variety of issues vital to the City's future. The basic duty of each board is to apply City policy as expressed in the City Charter, its Code of Ordinances, and through Council directives to individual circumstances and issues placed before the board. Should a policy or directive require clarification, the board should request such from the Council.

The handbook is designed to assist you in your service. It consolidates provisions of the City Charter, Code of Ordinances, and other regulations into one place to assist you as a board member. It will provide a general introduction to topics and processes that directly affect members of boards. Discussion in the handbook applies to all City Council appointed citizen boards, commissions, and committees including citizen task forces, ad hoc boards, commissions, and committees, and all City Council committees, unless stated otherwise. Throughout the document, reference to "boards" should be interpreted to mean all City Council appointed citizen boards, commissions, and committees, including citizen task forces, ad hoc boards, commissions, and committees, as well as all City Council committees, unless otherwise stated. Keep in mind, not all the provisions will apply equally to every board. In case of legal liability, for example, members of some boards may be more susceptible than members of other boards. The staff liaison assigned to your board will be able to provide you with more information on the specific duties and responsibilities of the particular board and its members. Additionally, due to the unique nature of citizen boards, commissions, and committees, citizen task forces, and ad hoc boards, commissions, and committees, a section providing additional guidance has been included under Membership Information in the handbook. While no one document could adequately cover all aspects of serving on a board, the handbook has been designed as a basic reference point from which a board member can build an extensive knowledge of his/her responsibilities to the citizenry of Denton. The handbook has been adopted by resolution of the City Council and will be updated from time to time. If any provision of the handbook is in conflict with any Code or Ordinance of the City, then such Code or Ordinance shall prevail.

The City Secretary, City Attorney, and staff liaisons are available as resources to all boards. Any requests for assistance shall be coordinated through the staff liaison assigned to the board on which you serve.

Thank you for your interest in serving your community. Your efforts will make Denton a better place to live and work.

## **DENTON MUNICIPAL GOVERNMENT**

### **City Charter**

The Denton City Charter was adopted in 1959 and is the basic governing authority of the City. The Charter determines the form of municipal government, the composition and powers of the City Council, and establishes the legal framework necessary for a city to function. The Charter provides for the operation of municipal functions under the council-manager form of government. Under this system, the City Council serve as political leaders and policy makers and retain a professionally trained manager to oversee the delivery of public services.

### **City Council**

The City Council consists of a mayor and six council members who are elected to serve as the legislative body of the City. Four council members are elected from one of four single member districts. The mayor and two other council members are elected at-large. The mayor and each council member serve two-year terms with a consecutive three full term limit.

The mayor, in a council-manager form of government, is one of seven voting members of the Council and serves as the ceremonial head and policy leader. The mayor presides at meetings, serves as a spokesperson to the community, facilitates communication and understanding between elected officials, advocates policy decisions, assists the Council in setting goals, and serves as a promoter and defender of the community. In addition, the mayor serves as a key representative in intergovernmental relations.

The council members in this form of government are the leaders and policy-makers elected to represent various segments of the community and concentrate on policy issues that are responsive to citizens' needs and wishes. As a legislative body, the council members are the community decision-makers. They approve the budget and determine the tax rate. The Council focuses on community goals, major projects, and long-term considerations such as community growth, land-use development, capital improvement plans, capital financing, and strategic planning.

The City Council appoints the city manager, city attorney, city auditor, and municipal judge. The City Council also affirms the City Manager's appointment of a City Secretary. All other employees of the city report to the city manager. Pursuant to the City Charter, the Council is prohibited from giving direction to City staff. The Council gives policy direction to the city manager, who is responsible for its administration and implementation.

### **City Manager**

The city manager is appointed by the council to serve the community through the professional administration of local government projects and programs. The city manager prepares the budget for the Council's consideration; recruits, hires, and supervises the local government staff; and serves as the Council's chief adviser by bringing forth objective information regarding policy matters. The manager makes policy recommendations to the Council, which the Council may adopt, modify, or reject.

### **City Attorney**

The city attorney is appointed by the City Council. The City Attorney's Office serves as the legal branch of the City, representing the City's legal interests and rights, providing legal advice, and prosecuting criminal complaints. Among other things, the City Attorney's Office drafts and reviews the City's legal documents and issues legal opinions.

### **City Secretary**

The city secretary administers the City's board and commission program. The city secretary is also responsible for conducting city elections, preparing and posting City Council meeting agendas and minutes, and maintaining the official records of the City.

### **Staff Liaison**

The city manager assigns a staff member to work with each board or commission. The staff liaison's role is to:

- Prepare meeting agendas, staff reports and supporting information to the commission prior to meetings.
- Ensure compliance with the Texas Open Meetings Act.
- Prepare board recommendations to the City Council and make presentations to the City Council on behalf of the board.
- Respond to board member requests for information related to the business of the board.

Board members do not have authority over the work program of city staff. Rather, the liaison acts as an information resource and provides technical assistance. Board and commission members may not direct city staff in the performance of their commission-related activities, nor can they assign projects or direct the work of staff. A board or commission may request staff's assistance on various projects; however, the city manager must approve all requests which create a substantial demand for a work product.

## **MEMBERSHIP INFORMATION**

### **Appointments**

Each City Council member is responsible for making nominations for board and commission places assigned to him or her, which corresponds to the City Council member's place. Individual City Council members make nominations to the full City Council for the governing body's approval or disapproval. Council members will consider interested persons on a citywide basis and review an individual's qualifications, willingness to serve, application information in selecting nominations for service, and any prior board service/attendance, as applicable. The City Council will make an effort to be inclusive of all segments of the community and will consider ethnicity, gender, socio-economic levels, and other factors to ensure a diverse representation of citizens. In an effort to ensure maximum citizen participation, council members will continue the practice of nominating new citizens to replace board members who have served the maximum terms established by the Denton Code of Ordinances.

### **Member Information Subject to Public Information Act**

The Texas Public Information Act requires government entities give citizens access to information about what public servants are doing on their behalf and how taxpayer funds are spent. Most information held by a governmental entity is public including emails regarding official city business and city issued email addresses of governmental officials/employees. If the City of Denton provides you a city e-mail, that e-mail address is subject to disclosure at the will of the City and upon any request received pursuant to the Public Information Act. Using a non-city email address for official city business, subjects the email address and any email related to official city business to public disclosure. Text messages and social media posts regarding official city business are also subject to public disclosure even if the information is maintained on personal devices not paid for by the City. There are exceptions in the law that allow certain information to be withheld.

Section 552.137 of the Texas Government code excepts from public disclosure information of current or previous public employees or officials that relates to the home address, home telephone number, emergency contact information, social security number, or information that reveals whether an individual has family members provided the employee/official has elected to withhold the information on the Public Access form which must be submitted not later than the 14<sup>th</sup> day after appointment. The Public Access form is a part of the orientation packet.

### **Service Limitations/Terms**

Members are usually appointed to a two-year term. The Denton Code of Ordinance currently establishes the number of consecutive terms a member can serve. A board member who has served the maximum terms established by the Denton Code of Ordinances shall not be eligible for reappointment to that same board for a period of one year. However, appointment to a different board is permitted.

## **Termination of Appointment**

A member's appointment to a board can be terminated by written resignation from the member, by action of the City Council pursuant to the Denton Code of Ordinances. Examples of removal for cause are failure to meet attendance requirements, complete City-mandated ethics training (as applicable), and/or no longer meeting residency/registered voter requirements. The examples are not a comprehensive list of reasons of why termination or removal may occur. Members continue to hold over past a term end date until the member resigns or is replaced. A resignation may be submitted to a city official, member of city staff, or another member of the board and shall become effective immediately. Once the resignation has been submitted to any of the above-noted individuals, that resignation cannot be withdrawn.

## **Oath of Office**

Board members are required to take one or more oaths of office. Consult the City Secretary's office to make sure you have taken and signed such oaths before serving as a board member. The corresponding staff liaison is also responsible for ensuring all documents finalizing the appointment processes have been completed before allowing a member to participate in a meeting.

## **Orientation and Training**

Board members are required to participate in training session(s) provided by the City Secretary's Office. These training session(s) will be scheduled as a regular agenda item by your board's staff liaison. ***Members are also required to complete open government training through the Texas Attorney General's Office.*** Training is available online at [www.texasattorneygeneral.gov](http://www.texasattorneygeneral.gov). Upon completion of training, members must submit a completed certificate to the city secretary.

Staff liaisons are encouraged to meet with "new" appointees well in advance of the first meeting to provide a general overview of the board's responsibilities, agenda/meeting process, and any other issues relevant to the board, commission or committee.

## **Attendance**<sup>1</sup>

You, as an interested and informed citizen, are essential to effective local government. Because your viewpoint is so valuable to the City Council members, they take your appointment, attendance, and involvement on a board very seriously and ask that you do also.

The Council is aware that board members have careers and other responsibilities that demand their time. However, because of the importance of citizen boards, the City Council asks that each new board member make every effort to attend all meetings of the board and notify the chair or appropriate staff liaison of their board in advance if they will be unable to attend a board meeting.

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<sup>1</sup> Not applicable to City Council committees.

Per §2-83(c) of the Code of Ordinances of the City of Denton, an excused absence shall include personal or family illness, death of a family member, jury duty, service in the armed forces, testifying before the legislature, attending a seminar involving municipal matters of importance to the member's duties, absence necessary for the member's business or employment, and any related emergencies or other matters which the board finds qualifying as an excused absence.

Per §2-83 (c) Code of Ordinances, the unexcused absence of any board member from more than three regularly called and scheduled meetings of the board of which he or she is a member in any one year or lack of attendance at 50 percent of the number of regular meetings in a year, unless such absence is excused,, shall be considered "cause," as that term is used in §14.16 of the Charter of the City of Denton for removal of said member by the City Council from such board.

If a board member violates the above attendance policy, the staff liaison shall immediately notify the City Secretary. The City Secretary will contact the member in writing, as required under §14.16 of the Charter of the City of Denton, advising the member of his/her upcoming removal for cause at a duly posted meeting if a resignation is not received within 10 business days as of the date of that notification letter. In the event the member fails to submit his/her resignation within those 10 business days, the City Secretary shall place an action item on the next available agenda providing for the removal of the board member.

The attendance of all members shall be recorded by the staff liaison and forwarded to the City Secretary on a quarterly basis.

### **Removal from Office**

In the event a new member fails to submit the required appointment forms (oath of office, appointment of officer, and/or affirmation of qualifications) within 14 days of notice of appointment or make an appointment with the City Secretary's office, or complete the open government training within the timeframe specified by the Office of the Attorney General, that failure shall constitute for-cause removal as outlined in City Charter, Article XIV, Section 14.16. At that time, the City Secretary's Office shall send written notification to the member of such failure; and as required under §14.16 of the Charter of the City of Denton, advising the member of his/her upcoming removal for cause at a duly posted meeting if the member fails to remedy within 10 business days as of the date of that notification letter.. In the event the member fails to submit all the required appointment forms within those 10 business days, the City Secretary shall place an action item on the next available agenda providing for the removal of the board member. City Council shall reserve the right to consider reappointment of the individual either to the same or a different board, commission or committee.

### **Minutes**

The staff liaison will provide a staff member at the meeting of each board to take minutes of each meeting in a form consistent with City Council meeting minutes as prescribed by the city secretary to reflect an accurate record of business transacted at the meeting. Minutes of the meeting will be submitted for approval by the members present at the next meeting with revisions, corrections, or amendments being made at that time. The approved minutes shall be

signed by the presiding officer of that meeting, reflect the date of approval, and forwarded to the City Secretary's office on a monthly basis. Preparation of the Minutes shall clearly outline the agenda captions applicable to the item being recorded. The retention period shall be as prescribed by the City Records Management Policy.

The City Secretary is authorized to transfer any such records to the City Archivist for historical preservation purposes as deemed appropriate.

### **Election of Officers**

Procedures for the election of officers for appointed boards are established to ensure consistency with the City Council's goals and policies in making board appointments. Except where otherwise provided by state law, federal law, City Charter, or City ordinances or resolutions, election of officers for City of Denton council-appointed boards will be as follows:<sup>2</sup>

- The chair and vice-chair will be elected by voting board members.
- Election of officers shall be annually and occur in January or February. For those boards not meeting regularly, the election shall be held during the first board meeting of the calendar year. If, for any reason, the chair or vice-chair vacates their seat, a special election shall be held to fill the unexpired term. A temporary chair may be selected by the board pursuant to Roberts Rules of Order.
- The staff liaison, designated by the City Manager, shall serve as the official secretary to the board or commission to ensure records are maintained in accordance with requirements of the City Secretary's office.
- The City Council shall reserve the right, as deemed necessary in individual instances, to appoint the chair and vice-chair for any special issue or temporary advisory committees. If the City Council chooses not to make the appointment for chair and vice-chair, then the procedure outlined in this policy will apply.

Questions regarding the election of officers should be directed to the city attorney through your staff liaison.

### **Ethics Policy**

Pursuant to Resolution No. R2006-003, as may be amended, the City Council has adopted an ethics policy that applies to council members and appointed officials, including board and commission members, depicted below. Note the ethics policy lists some state penal laws that may be applicable to members. A copy of the policy is noted below. Please consult the city attorney with any questions about the policy.

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<sup>2</sup> Check with staff liaison for special rules that apply to your board.

RESOLUTION NO. R2006-003

**A RESOLUTION AMENDING THE ETHICS POLICY FOR ELECTED AND APPOINTED OFFICIALS FOR THE CITY OF DENTON, TEXAS; AND PROVIDING AN EFFECTIVE DATE**

**WHEREAS**, on May 18, 2004 City Council passed Resolution R2004-025 adopting an Ethics Policy for Elected and Appointed Officials and upon a recommendation by the Council Ethics Sub-committee hereby approves an amendment to the policy as set forth herein; and

**WHEREAS**, the City Council of the City of Denton acknowledges that our government is a representative democracy and those who are elected or appointed to serve others as representatives accept a public trust that requires them to faithfully and diligently fulfill their public responsibilities; and

**WHEREAS**, the City Council of the City of Denton recognizes the those individuals who serve as public servants must adhere to a higher ethical standard of conduct since the activities of government should benefit the community as a whole and should never benefit the individual interest of public decision makers; **NOW, THEREFORE**,

**THE COUNCIL OF THE CITY OF DENTON HEREBY RESOLVES:**

**SECTION 1.** That the following **ETHICS POLICY for Elected and Appointed Officials – City of Denton, Texas**, which shall apply to all elected and appointed officials of the City, is hereby amended to read as follows:

**ETHICS POLICY for Elected and Appointed Officials - City of Denton, Texas.**

This Ethics Policy has been adopted to encourage and ensure the highest standards of personal and public conduct during tenure in office. Adherence to this Policy will maintain the confidence and trust in the decision-makers and representatives of the City who must remain independent, impartial, and accountable to the people they serve. In addition, elected and appointed officials must adhere to Texas state statutes and City Charter provisions and City Council Rules of Procedure governing their conduct. These are listed at the end of this Policy. Thus, elected City Council Members as well as appointed members of the City's Boards and Commissions are asked to subscribe to the Texas statutes, City of Denton Charter, Rules of Procedures for City Boards and Commissions, and this Ethics Policy.

**1. As a representative of the City of Denton, I will be ethical.**

I will act with integrity and moral courage. I will be absolutely truthful. I will make impartial decisions that are free of bribes, unlawful gifts, narrow political interests and other personal interests that might impair my independence of judgment. I will always decide what is best for the whole city. I will respect confidences and information designated "confidential" to the extent



permitted by law. I will use my title and city logo or letterhead only when conducting official City business and will not exceed my authority.

**2. As a representative of the City of Denton, I will be service-oriented.**

I will be friendly, receptive, courteous, and respectful to everyone. I will be attuned to and care about the needs and issues of all Denton citizens.

**3. As a representative of the City of Denton, I will be fiscally responsible.**

I will make prudent decisions, taking into account the long-term financial needs of the City and its financial stability. I will make decisions that seek to promote programs and services for City residents.

**4. As a representative of the City of Denton, I will be communicative.**

I will communicate that I am approachable, open-minded and willing to enter into dialog. I will listen carefully and my response will add value to the conversation.

**5. As a representative of the City of Denton, I will be cooperative.**

I will work toward consensus building and gain value from diverse opinions. I will approach my position and relationships with a positive attitude. I will consider the broader regional and statewide implications of decisions. I will work with the Universities, DISD, the Chambers of Commerce, other governmental entities, and local nonprofit agencies and others as partners on common issues.

**6. As a representative of the City of Denton, I will be progressive and receptive to new ideas.**

I will promote intelligent and thoughtful innovation whenever possible. I will be sensitive to the need for compromise, to think creatively, and improve existing models when necessary. I will keep my knowledge of local government current and growing.

**7. As a representative of the City of Denton, I will not be delinquent in paying monies owed the City.**

I will not be in arrears on any city taxes, utility service charges, or other obligations owed the City.

Elected officials and appointed officials, boards and commissions must adhere to the following Texas statutes:

**Civil Statutes**

Open Meetings Act (Tex. Govt. Code. Ann. Ch. 551)

Public Information Act/Open Records Act (Tex. Govt. Code. Ann. Ch. 552)

Conflicts of Interest (Tex. Loc. Govt. Code, Ch. 171, Ch. 212)

Official Misconduct (Tex. Penal Code, Ch. 36, Ch. 39)

Nepotism (Tex. Rev. Civ. Stat. Ann., arts. 5996a & 5996b)

Whistleblower Protection (Tex. Rev. Civ. Stat. Ann., art. 6552-16a)

Competitive Bidding and Procurement (espec. Tex. Loc. Govt. Code, Ch. 252)

**State Penal Laws**

Bribery (Tex. Penal Code, § 36.02)  
Coercion of Public Servant or Voter (Tex. Penal Code, § 36.03)  
Improper Influence (Tex. Penal Code § 36.04)  
Tampering with a Witness (Tex. Penal Code § 36.04)  
Retaliation (Tex. Penal Code § 36.06)  
Gifts to Public Officials (Tex. Penal Code § 36.08)  
Offering Gift to Public Servant (Tex. Penal Code § 36.09)  
Abuse of Office (Chapter 39)  
Official Misconduct (Tex. Penal Code § 39.01)  
Official Oppression (Tex. Penal Code § 39.02)  
Misuse of Official Information (Tex. Penal Code § 39.03)

**City Documents**

In addition, the City of Denton Charter, the City Council Rules of Procedure, House Rules and Code of Election Ethics are applicable.

The Ethics Policy is designed as a positive guide to the behavior and decorum of Council and board members as they represent the citizens of Denton. I will voluntarily accept reprimand from my colleagues if I should act contrary to this policy.

SECTION 2. This resolution shall become effective immediately upon its passage and approval.

PASSED AND APPROVED this the 17th day of January, 2006.

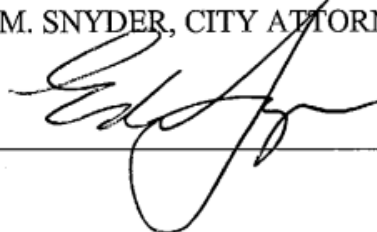
  
EULINE BROCK, MAYOR

ATTEST:

JENNIFER WALTERS, CITY SECRETARY

BY: 

APPROVED AS TO LEGAL FORM:  
EDWIN M. SNYDER, CITY ATTORNEY

BY: 

## **Ethics Ordinance**

The City Council adopted Ordinance No. 18-757 establishing a Code of Ethics, applicable to the City Council, Board of Ethics, Historic Landmark Commission, Planning and Zoning Commission, Public Utilities Board, and Zoning Board of Adjustment. It further outlines ethical standards that all boards/commissions should be aware of. This information is provided by the City Secretary's office at the time of (re)appointment. Annual training is required and coordinated through the City Auditor's office. The most up-to-date Ethics Code can be found at:

[https://library.municode.com/tx/denton/codes/code\\_of\\_ordinances?nodeId=SPA\\_COOR\\_CH2AD\\_ARTXIET](https://library.municode.com/tx/denton/codes/code_of_ordinances?nodeId=SPA_COOR_CH2AD_ARTXIET).

In the event any member of the Board of Ethics, Historic Landmark Commission, Planning and Zoning Commission, Public Utilities Board, and Zoning Board of Adjustment fail to complete the ethics training within the timeframe specified by the City Auditor's office at time of initial appointment or annually thereafter, that failure shall constitute for-cause removal as outlined in City Charter, Article XIV, Section 14.16. At that time, the City Secretary's Office shall send written notification to the member of such failure; and as required under §14.16 of the Charter of the City of Denton, advising the member of his/her upcoming removal for cause at a duly posted meeting if the member fails to remedy within 10 business days as of the date of that notification letter. In the event the member fails to submit all the required appointment forms within those 10 business days, the City Secretary shall place an action item on the next available agenda providing for the removal of the board member. City Council shall reserve the right to consider reappointment of the individual either to the same or a different board, commission or committee. If the Denton City Code specifically provides for additional steps in removal of a member, that process shall be followed by the City Secretary in consultation with the City Attorney.

## **Communication with City Council**

In accordance with Resolution R2012-030, upon consensus of a board or commission, such board may request that staff propose questions regarding public policies or prepare policy statement recommendations regarding a matter that clearly falls within the scope and purpose of the board. Such policy recommendations or questions, once approved by a majority of the board or commission, will be forwarded to the City Council for their response or consideration as the Council determines appropriate.

Boards and commissions may provide an annual or more periodic report to the City Council as appropriate outlining their activities, accomplishments, projects, and initiatives. Content of the report may be customized by each board. Upon approval of a majority of the board, such reports will be provided to the City Secretary's office to be forwarded to the entire City Council.

### **Advisors, Subcommittees, and Ad Hoc Committees**

No City board shall appoint persons outside its membership as advisors or to subcommittees, ad hoc committees, or other accessory entities without prior approval of the City Council.

The following provisions of the handbook are not applicable to Citizen Task Forces, Ad Hoc Boards, Commissions, and Committees:

- a. Service Limitations
- b. Oath of Office
- c. Orientation and Training
- d. Penalties and Remedies for TOMA Violations

### **Additional Guidelines for City Council Committees**

- Committees will generally be formed by resolution which will provide for the committee's membership, election of chair and vice chair, and purpose.
- No more than three Council members shall serve on any committee.
- Council committee meeting agendas will be posted in accordance with the Open Meetings Act, Chapter 551 of the Texas Government Code. The Open Meetings Act requires committee meeting agendas must be publicly posted at least 72 hours in advance of the meeting. Only items posted on the agenda may be discussed and/or action taken during the committee meeting.
- The committee may convene into closed session in compliance with the Open Meetings Act.
- Robert's Rules of Order pertaining to small assemblies may be consulted regarding the conduct of the committee meetings.
- A quorum of the committee members must be present to hold a committee meeting or to take committee action. A quorum is considered to be more than half of the Council committee members unless otherwise stated in the Denton Code of Ordinances.
- Each member of the committee shall have one vote and members must be present to cast a vote.
- A draft of meeting minutes shall be sent to all committee members as part of the upcoming agenda packet. Such draft may be distributed to the City Council upon direction of the City Manager. Minutes will be submitted for approval by the members present at the next meeting with revisions, corrections, or amendments being made at that time. However, the chair may direct the draft minutes be shared with the entire City Council when the information regarding the action of the committee is needed to conduct official business and the draft minutes have not been officially approved by the committee.
- The acts of the majority of the members present at the meeting are the acts of the committee.

## CONFLICTS OF INTEREST

The State's conflict of interest law, Chapter 171 of the Texas Local Government Code, although only applicable to officers of the City, has been made applicable to all board members, whether advisory or governmental, by Denton's Charter. However, the penal provisions of Chapter 171 are not applicable to advisory board members.

Chapter 171 requires a board member with substantial interest in a business entity or real property to file an affidavit with the staff liaison and abstain prior to a vote or decision on any matter involving the business entity or real property if the action on the matter will have a special economic effect on the business entity distinguishable from the effect on the public, if it is foreseeable that the action on the matter will have a special economic effect on the value of the real property, distinguishable from its effect on the public. For example, the Attorney General (AG) has opined that a special economic effect on the value of real property distinguishable from the affect on the public exists when a P&Z board member has an interest in real property located within 200 feet of property being rezoned. However, the AG made it clear that these evaluations are highly fact intensive. Ask yourself the question, will this action before my board affect the value of my real property in a manner that is different from public at large?

- You have a substantial interest in a business entity (non-profit or government entity is not a business entity) if:
  1. You own 10 percent or more of the voting shares of the business entity or own either 10 percent or more or \$15,000 or more of its fair market value; or
  2. You received funds from the business entity exceeding 10 percent of your gross income for the previous year.
- You have a substantial interest in real property if the interest is an equitable or legal ownership with a fair market value of \$2,500 or more.
- You have a substantial interest if your close relative (within the first degree of consanguinity and affinity) has a substantial interest.

A violation of Chapter 171 is a Class A misdemeanor.

If you think you have a Chapter 171 conflict, contact the staff liaison prior to the meeting to make arrangements for the signing of the required affidavit. The affidavit must be signed prior to the item being considered. You should announce that you have a conflict at the meeting and excuse yourself from the room while the item is being considered. You should not participate on the matter, including contacting members of the board or staff concerning the matter. However, if you have any questions whether you have a Chapter 171 conflict, consult the City Attorney's office. The staff liaison is responsible for timely submitting such affidavit(s) to the City Auditor's office.

## **Incompatibility of Office**

The common law doctrine of incompatibility of office prohibits you from holding two conflicting public offices. This only applies to governmental board members. You cannot hold another public office that conflicts with your duties with the board. Because this is very fact sensitive, you should consult with the City Attorney's office if you hold another public office. You should do this prior to being sworn in as a governmental board member, as your acceptance of the governmental board appointment may result in the automatic forfeiture of your other public office.

## **Appearance of Conflict**

There are times you will have a perceived conflict of interest even though it is not a conflict that is prohibited by law or the City Code of Ethics for applicable boards/commissions. In those cases, you should make a judgment call as to whether you should abstain from the matter. The City's Ethics Policy states:

“I will act with integrity and moral courage. I will be absolutely truthful. I will make impartial decisions that are free of bribes, unlawful gifts, narrow political interests and other personal interests that might impair my independence of judgment. I will always decide what is best for the whole city...”

If you think the perceived conflict affects your ability of independent judgment or there is a strong appearance that you lack the ability to divorce yourself from the perceived conflict in making a decision, you should carefully consider whether abstention is appropriate. Often, these are difficult judgment calls for which there are no absolute right answers. In making your decision, you should weigh the harm of participating against your general duty to serve on the board. You have a duty to participate and vote on all matters that come before the board, unless you have a conflict or you lack information to decide the issue. Do not hesitate to contact your staff liaison who will refer the inquiry to the appropriate office for guidance.

## **Chapter 176 Conflicts Disclosure**

Chapter 176 of the Texas Local Government Code requires you to file a Conflicts Disclosure Statement (“CIS”) with the City Secretary if you or your family member (a) has an employment or business relationship with a City contractor or vendor that results in taxable income, or (b) received or accepted one or more gifts from a city Contractor or vendor (excluding gifts of food, lodging, transportation, or entertainment accepted as a guest) with an aggregate value of \$100 in the preceding 12 months. You are required to file the form within seven days after you become aware of the relationship with the City. The CIS is signed under penalty of perjury and it is a Class C misdemeanor to fail to timely file the form. However, it is a defense to prosecution if you file the CIS not later than the seventh day after you receive notice of violation. Therefore, you have two chances to comply.

## **Appearing before City Boards and Commissions**

If you appear before your own board or commission in a private capacity, you must recuse yourself from any deliberation regarding that or any matter which could result in a conflict of interest or give the appearance of a conflict of interest. Further, you must not insinuate you are representing your board or commission in the event you choose to appear before the City Council or other board or commission. You must be clear regarding which capacity you are appearing, either as a board member or a private citizen.

## **TEXAS OPEN MEETINGS ACT**

By City Council rule, all boards must comply with the Texas Open Meetings Act. The Act generally provides that meetings of a governmental body shall be public, although there are a few exceptions whereby a decision-making body may deliberate in a closed meeting. Written notice must be given of dates, times, and locations of all meetings. Minutes of each meeting must be taken and a record of votes and decisions kept as public record. There are criminal penalties for holding an unauthorized closed meeting for boards with decision-making authority. It is important that when more than two members are in any given place where City business is being discussed, the meeting should be posted as a precautionary measure to avoid the accusation of attempting or conspiring to conduct City business in private. It is also very important that the board limit discussion during meetings to only those items listed on the posted agenda. Conversation or action on items not posted on the agenda would also be considered a violation of the Act. The Open Meetings Act does not apply to purely social gatherings, conventions, or workshops such as Texas Municipal League events. Any specific question or issues should be referred to the City Attorney's office, through the staff liaison.

### **Open Meetings Act**

The Open Meetings Act (hereinafter called the "Act") is located in Chapter 551 of the Texas Government Code. The Act generally provides that meetings of a board shall be public. There are exceptions to this general rule, as will be discussed. It also requires that the public be given notice of the time, place, and subject of such meeting. It is important to remember when considering the Act's requirements that compliance with its provisions is mandatory, not discretionary.

### **What Constitutes a Meeting?**

#### **A. Definition of Meeting**

A board becomes subject to the Act when it conducts a meeting. A meeting is "a deliberation between a quorum of a governmental body, or between a quorum of a governmental body and another person, during which public business or public policy over which the governmental body has supervision or control is discussed or considered or during which the governmental body takes formal action." It also includes "a gathering: (i) that is conducted by the governmental body or for which the governmental body is responsible; (ii) at which a quorum of members of the governmental body is present; (iii) that has been called by the governmental body; and (iv) at which the members receive information from, give information to, ask questions of, or receive questions from any third person, including an employee of the governmental body, about the public business or public policy over which the governmental body has supervision or control." The definition specifically includes a session of a board.



The term “deliberation” is important to define what a meeting is under the Act. Deliberation is “a verbal exchange during a meeting between quorums of a governmental body, or between a quorum of a governmental body and another person, concerning an issue within the jurisdiction of the governmental body or any public business.” Included in the meaning of a verbal exchange is written and non-spoken communications.

## **B. Social Gatherings**

The Act specifically excludes informal or social functions from the definition of meeting. However, if a quorum of a board assembles in an informal setting, it will still be subject to the requirements of the Act if the members engage in a verbal exchange about public business or policy. Therefore, it is important for members of a board to be cautious about the topics of conversation at social gatherings where a quorum of the body is present.

## **C. Employee Briefings**

Prior to 1999, the Act permitted a board to have briefings by third parties or employees outside of open session. However, the 76<sup>th</sup> Legislature repealed that provision. The definition of “meeting,” as restated above, was amended to specifically include such briefings. Now, a board will be subject to the Act during briefings, even if no deliberations occur. Further, a board may be subject even during public comment sessions of meetings.

## **D. Telephone and Videoconference Meetings**

Telephone meetings do not comply with the Act. It is considered a secret deliberation, which is not permitted. There are very limited emergency cases whereby it could be conducted. However, any such telephone conferencing should never be conducted without consulting the City Attorney’s office. Videoconferencing is allowed only in limited circumstances, and consultation with the City Attorney’s office should occur before videoconferencing is considered. Videoconferencing, if/when permitted, shall follow regulations established by State law or the City Council Rules of Procedure.

## **Notice**

### **A. Content**

The Act specifically requires that before a meeting of a board is conducted, written notice of the date, hour, place, and subject matter of the meeting must be properly posted. The content of the notice must be sufficient to apprise the general public of the subjects to be considered at the meeting. Compliance with this provision is often very fact specific. Therefore, it is recommended that the board work closely with the staff liaison and either the City Manager’s office or the City Attorney’s office when posting the subject matter of each proposed meeting in order to ensure compliance.

## **B. Place of Posting**

The Act provides for specific places to post the notice of a meeting, depending on the type of governmental body. For municipal governing bodies, notice should be posted on a bulletin board at a place convenient to the public in the City Hall and the City's website. Additionally, the City Council agenda must be posted on the City's website. The City Secretary's office shall ensure proper posting of these notices.

## **C. Time of Posting**

The notice of a meeting of a board must be posted in a place readily accessible to the general public at all times at least **72 hours** before the scheduled time of the meeting. There are very few emergency exceptions to this rule. In cases of emergency or urgent public necessity where there is an imminent threat to public health or a reasonably unforeseeable situation, a one-hour posting is permitted. The notice must clearly identify the emergency or urgent public necessity. A determination that an emergency exists is subject to judicial review. Before any deviation from the "72 Hour Rule," the City Attorney's office should be consulted.

## **D. Recess in a Meeting**

A board may continue a meeting from one day to the next day without reposting on any item(s) noted on the original posting. However, notice must be reposted if a meeting is continued to any day other than the one immediately following the posted meeting day, or any item that must be considered.

## **Open Sessions**

### **A. Convening the Meeting**

A meeting may not convene unless a quorum of the board is present in the meeting room. This rule applies even if the members of the board plan to go into closed meeting after convening the meeting. This applies the general rule that the members of the public are entitled to know what members are present for the closed meeting and if a quorum is present.

### **B. Rights of the Public**

An "open meeting" is one that the public is permitted to attend. However, the Act does not entitle the public to choose items to be discussed.

The public or any of the board members may raise a subject not included in the agenda, but the discussion must be limited to a proposal to include that item on the agenda for the next meeting. Moreover, the public has a right to tape or record any open meeting. However, the board has the right to regulate the placement of equipment and the manner in which the meeting is being recorded.

### **C. Public Comment**

A board may give members of the public an opportunity to speak at a public meeting (known as Open Microphone). If such a public comment period is permitted, the board may set reasonable limits on the number, frequency, and length of the presentations before it. The opportunity to speak under that category should appear at the beginning of the board agenda. However, it cannot unfairly discriminate among speakers for or against a particular point of view. Moreover, many quasi-judicial boards are bound legally to permit certain citizens to speak on specific agenda items that relate to the citizen's property. Because such a period is included in the definition of a meeting, it must be posted in the notice of the meeting. The term "public comment" does provide sufficient notice of one of these periods when no deliberation occurs among the board. However, if any of the members of the board or its employees have prior knowledge of the subject matter to be commented on by the public, the item to be discussed must be specifically posted on the notice.

### **D. Final Actions**

The general rule is that a final action, decision, or vote on a matter deliberated in either an open session or a properly conducted closed meeting (discussed below) may only be made in an open meeting that is held in compliance with the Act. Therefore, a board may not vote with a secret ballot or take action by a written agreement without a meeting. The general rule is that if the board has the authority to make a decision or take an action, the board should act in open session.

## **Closed Meetings**

### **A. Overview**

There are a few exceptions listed within the Act, whereby a board may deliberate in a closed meeting. It is important to remember that pursuant to City policy, if a board of the City of Denton wishes to conduct a closed meeting, the City Attorney's office must be consulted to avoid any violations of the Act. A request for a member from the City Attorney's office should be submitted to that office as soon as possible to provide for legal representation at the closed meeting, if applicable. A certified agenda for that closed meeting must be submitted to the City Secretary's office within 3 working days, unless otherwise stated under Section B below.

Before a closed meeting may be conducted, a quorum of the board must convene in open session, and the presiding officer must announce that a closed meeting will be held and then identify the section(s) of the Act under which the closed meeting will be held. The posted agenda must also state the specific provisions of the Act under which any closed meeting will be held and a general statement as to the topic to be discussed.

### **B. Provisions Authorizing Closed Meetings**

Listed below are the most common exceptions available to boards. It is important to remember that the Act will not permit a closed meeting in cases where the City's Charter or another law requires it to be open.

**1. Section 551.071: Consultations with Attorney**

This section allows a board to consult with its attorney in a closed meeting to seek his or her advice on legal matters. This section is often invoked in order for a board to consult with its attorney regarding pending or contemplated litigation. However, it may be held to discuss other legal matters. A discussion under this exception may relate only to legal proceedings or legal matters. General discussion of policy, unrelated to legal matters, is not permitted under this exception. [A certified agenda for this category is not required for discussions held under this category.]

**2. Section 551.072: Deliberations about Real Property**

This section permits a board to deliberate the purchase, exchange, lease, or value of real property in closed meeting. However, this will only be allowed in closed meeting when public discussion of the subject would have a detrimental effect on the board's negotiation position with respect to a third party. It does not allow the board to make a deal in private, without public input or debate.

**3. Section 551.073: Deliberations about Gifts and Donations**

This section permits a closed meeting to deliberate a negotiated contract for a prospective gift or donation to the governmental body. However, this is only allowed if deliberation in an open meeting would have a detrimental effect on the position of the board with a third party as explained above.

**4. Section 551.074: Personnel Matters**

This section permits a closed meeting to deliberate about officers and employees of the board. It is important to note the primary interest protected by this section is the protection of the reputation of the *individual* officer or employee under consideration. Moreover, this section only permits deliberation in closed meeting on individual officers or employees. Discussion about a *class* of employees must be conducted in open session. Also, the public officer or employee that is the subject of the meeting may request that session occur in a public hearing.

**5. Section 551.075: Deliberation about Security Devices**

This section permits a closed meeting to deliberate the deployment, or specific occasions for implementation of security personnel or devices.

**6. Section 551.086: Competitive Matters of Certain Public Power Utilities**

This section permits certain boards of public power utilities to deliberate, vote, or *take final action* on any competitive matter related to the utility in closed meeting. A competitive matter is defined as: "a utility-related matter that the public power utility governing body in good faith believes is related to the public power utility's competitive

activity, including commercial information, and would, if disclosed, give advantage to competitors or prospective competitors but may not be deemed to include” several categories of information specifically set out in the Act. Further, notice of the subject to be discussed in the session is required to contain no more than a general representation of the subject matter.

#### **7. Section 551.087: Deliberation about Economic Development Negotiations**

This section permits a closed meeting to deliberate commercial or financial information the board has received from a business prospect that it seeks to have locate, stay, or expand in or near the territory of the board and with which it is conducting economic negotiations, or deliberating about an offer of an incentive to such a business prospect.

### **Records of Meetings**

The Act requires that minutes or a tape recording be kept of each open meeting. These shall be considered public information. Moreover, during a closed meeting, either a certified agenda or tape recording of the session must be kept, except as provided under the Texas Local Government Code, section 551.103, which states, in part, “... except for a private consultation permitted under section 551.071...” The records kept for the closed meeting are considered confidential information and may not be released unless ordered by a court.

### **Penalties and Remedies for Violations of the Act**

#### **A. Voidability of a Boards Actions**

If any action by a board violates any provision of the Act, that action is voidable. This means that any interested party may challenge an action of the board in court. If a court finds a violation of the Act occurred, it might declare the particular action by the board is void.

A board that has taken action that violates the Act may meet again and validly authorize that action at a meeting where the public has received adequate notice. However, this action is generally effective only from the date of the new meeting and only if the new meeting complies with the Act.

#### **B. Mandamus, Injunction, or Declaratory Judgment**

The Act provides that any interested person, including a member of the news media, may bring an action by mandamus or injunction to stop, prevent, or reverse a violation or threatened violation of the Act. To enforce provisions of the law, a court may require a public official to perform duties imposed on him by law by issuing a writ of mandamus. A mandamus commands the doing of an act, whereas an injunction is issued to restrain an act. Courts have also allowed

parties to bring a declaratory judgment action. In this type of proceeding, a court would be authorized to determine the rights, status, duties, and other legal regulations of various persons, including the public officers. Thus, a court may determine the validity of a board's actions under the Act in such a proceeding.

Furthermore, the Act provides that a court may award reasonable attorney fees and litigation costs to the party who substantially prevails in an action brought under the Act. This relief is not mandatory, but rather up to the court. Further monetary damage may be awarded against a board that violates the Act if a court finds the action caused direct monetary damage to the aggrieved party.

### **C. Criminal Provisions**

A very important issue to note is that the Act does provide for criminal penalties for violations. A member or group of members of a board commits a criminal offense if they knowingly conspire to circumvent the Act by meeting in numbers less than a quorum for the purpose of secret deliberations.

A member of a board commits an offense if a closed meeting is not permitted by the Act and the member knowingly: (1) calls or aids in calling or organizing the closed meeting, whether it is a special or called closed meeting; (2) closes or aids in closing the meeting to the public, if it is a regular meeting; or (3) participates in the closed meeting, whether it is a regular, special, or called meeting. It is an affirmative defense if the member acted in reasonable reliance on a court order or a written interpretation of the Act contained in an opinion of a court of record, the Attorney General, or the attorney for the board.

Also, a member of a board commits an offense if the member participates in a closed meeting knowing that a certified agenda of the closed meeting is not being kept or a tape recording of the meeting is not being made.

Another offense is committed when any person, corporation, partnership, without lawful authority, knowingly disclosed to the public the certified agenda or tape recording of a lawfully closed meeting.

Penalties for violation of the Act are a misdemeanor offense, punishable by a fine of between \$100 and \$500, one to six months in jail, or both.

### **Open Government Training**

The City of Denton requires all board members to complete open government training through the Texas Attorney General's Office. Training is available online at [www.texasattorneygeneral.gov](http://www.texasattorneygeneral.gov). Upon completion of training, members must submit a completed certificate to the city secretary. Please contact the city secretary or city attorney for specific questions about open meetings requirements.

## PROCEDURES FOR CONDUCTING A MEETING

The City Council has formally adopted rules of procedure that govern the proceeding of City Council, board, and commission meetings, except where these rules are silent. In that case, the most recent edition of *Robert's Rules of Order* shall govern. The rules of procedure also address the code of conduct and participation guidelines for citizens, staff, and board members. The City Council Rules of Procedure can be found at:

[https://library.municode.com/tx/denton/codes/code\\_of\\_ordinances?nodeId=SPAC\\_OOR\\_CH2AD\\_ARTIIADOR\\_S2-29CICORUPR](https://library.municode.com/tx/denton/codes/code_of_ordinances?nodeId=SPAC_OOR_CH2AD_ARTIIADOR_S2-29CICORUPR)

### **Role of the Chairperson**

The function of the chairperson is to provide leadership to the group in the following ways:

1. To maintain order by enforcing the established rules, and
2. To ensure the meeting proceeds smoothly and follows the agenda.

If the group is indecisive, the chairperson should exercise leadership and make suggestions. When debate is concluded, the chairperson should summarize the major points made. In general, the chairperson should maintain order and try to bring the group to a conclusion on matters before it.

To facilitate the chairperson's duties, staff should **always** provide copies of the agenda and corresponding back up material (in either hard copy or electronic form) to all board members before the meeting. Agendas must be made available at the meeting for any members of the public in attendance. The agenda should be prepared by the staff liaison assigned to work with the board.

### **Rules of Thumb**

Here are a few obvious points that should be followed, but are often forgotten:

1. The chairperson should recognize the person or persons who wish to speak and only they should be allowed to speak. Others should hold their comments until they have been recognized by the chairperson.
2. Discuss only one point at a time.
3. If the meeting is a public hearing, the board should hear the public without making comments until questions are allowed by the chairperson.

## **Procedural Rules of Order**

*NOTE:* While this review of parliamentary procedures has been designed to cover the most common situations a board member may encounter during the course of a meeting, these procedures may not always apply. They may be superseded because of legal constraints if the meeting is a public hearing. However, these basic procedures are usually acceptable during most meetings. Answers to complicated procedural questions can be found in *Robert's Rules of Order*.

1. *Making a motion* – Before discussion of an issue by board members, a motion should be made and seconded. The making of a motion normally occurs following a presentation or description of the issue by a staff member or chairperson. After the motion is made and seconded, debate can be conducted. Example of the proper form of a motion is: “Mr./Madam Chairperson, I move the following...”
2. *Amending a motion* – Any motion may be amended as follows: “Mr./Madam Chairperson, I move that we amend the motion by adding, deleting, etc. the following...” The amendment must be seconded before discussion can ensue. When discussion ends, the amendment is voted on first. If the amendment passes, the original motion is then put to vote as amended. If the amendment fails or receives no second, the original motion is put to a vote.
3. *Change by a Substitute Motion* – Another way to change an original motion is by use of the **substitute motion**. A substitute motion is simply an amendment that changes an entire sentence or paragraph. It must be seconded before discussion can take place. It may be amended and differs only from an amendment in that if the substitute motion passes, it eliminates the original motion.
4. *Table a Motion* – This motion is used to lay something aside temporarily to take care of a more urgent matter. It should not be used to prevent debate or to kill a question. To table an item requires a motion and a second. A vote is immediately taken without discussion. Once it has been decided to table an item, such item cannot be brought up again until the board votes to do so by a motion to “Take from the Table”, which must receive an affirmative vote. Once removed from the table, the item can be discussed and voted upon.  
  
A question laid on the table remains there until taken from the table or until the close of the next regular meeting; if not taken up that time, the question dies.
5. *Postpone a Motion* – Another method of delaying a decision on a matter is to postpone to a certain day, or to a certain event with a reasonably definable date, the consideration of a motion. This is accomplished by simply making a motion to postpone consideration of the motion until a definite future date or event and having it seconded. The motion to



postpone is then open for discussion. Following discussion, a vote is taken. A motion to postpone indefinitely is a parliamentary strategy which allows members to dispose of a question without making a decision for or against. This type of motion, if passed, allows the item to return before the board or commission at a later date.

6. Point of Order – Any time a member feels an incorrect procedure is being used, the member can interrupt with a point of order request which requires the chairperson to decide the correct procedure.
7. Suspension of the Rules – Occasionally, board members may want to discuss a business item without the constraints of any rules. Unless the by-laws require otherwise, a two-thirds (2/3) vote of the members is needed to suspend the rules. This motion is not debatable and must be voted on upon being seconded.
8. Tie Votes – With the exception of the Planning and Zoning Commission, matters voted on by boards, commissions, and committees, which end in a tie-vote, regardless of the cause, shall be considered a denial. This provision applies to all task forces, ad hoc committees, or other limited duration groups established by the City Council.

### **What is a Quorum?**

A quorum is the minimum number of members needed to officially conduct business. The quorum may be set by state law, the City Charter, the board's by-laws, or Robert's Rules of Order. Generally, a quorum is a majority of the members of a board or committee unless a different quorum is fixed by by-laws or by rule of the parent body. Approval of an action, except as otherwise provided by law, rule or regulation, requires a majority vote of persons legally entitled to vote, excluding abstentions, at a meeting at which a quorum is present.

### **Public Participation**

The rules of procedure accommodate public comment on agenda items and public hearings. Members of the public may sign up to speak on regular agenda items by signing up with the recording secretary. Members of the public are also able to speak on items posted as a public hearing. Speakers generally have four minutes to address the board regarding the specific item. The agenda should reflect an item specifically designed to allow for such registration and may limit the number of individuals that can register.

## **BOARDS, COMMISSIONS & COUNCIL COMMITTEES**

### **I. JUDICIAL OR QUASI-JUDICIAL BOARDS (Governmental Board Members)**

Boards that use decision-making powers apply particular regulations to specific facts to make judgments or decisions on matters within their jurisdiction. The following six board/commissions are judicial or quasi-judicial boards, those that administer particular ordinances or regulations.

#### **Board of Ethics**

- Established by Ordinance No. 18-757 (§2-277 of the Code of Ordinances)
- Membership: Seven regular members and three alternate members appointed by the City Council. Preference in appointments shall be given to professionals such as attorneys, architects, engineers, doctors, teachers, pastors, mediators, retired jurists, licensed professional counselors, and those with licenses demonstrating high levels of education or master craftsmanship in the building trades. The Board shall be comprised of at least three (3) members who are attorneys or retired jurists.
- Purpose: Implements and enforces the Ethics Ordinance; administers oaths and affirmations, issues and enforces limited subpoenas to compel attendance of witnesses and the production of testimony, evidence, and/or documents as is reasonably relevant to complaints regarding violation of the ethics ordinance.

#### **Civil Service Commission**

- Established by Chapter 143 of the Texas Local Government Code.
- Membership: Three members appointed by City Manager and confirmed by City Council.
- Purpose: Ensures compliance with Chapter 143 of the Texas Local Government Code governing police and fire. The duties of the Commission include approval of eligibility hiring lists and holding hearings, upon appeal, on matters of promotions, performance, reclassifications, and other civil service issues.

#### **Denton Housing Authority Board**

- Established by Chapter 392 of the Texas Local Government Code.
- Membership: Five members appointed by the Mayor.

- Purpose: Prepares, acquires, leases, and operates housing projects. The Board also investigates housing conditions to determine when and where an economically depressed neighborhood exists, identifies revitalization areas, and provides accommodations for persons of low income. **Although appointed by the Mayor, the Housing Authority Board operates independently from the City of Denton.**

### **Health and Building Standards Commission**

- Established by Ordinance No. 2010-133 (§2-261 of the Code of Ordinances).
- Membership: Seven members appointed by the City Council with two alternates
  - One (1) general contractor
  - One (1) architect or engineer
  - One (1) person from the plumbing industry
  - One (1) person from the electrical industry
  - Two (2) individuals who are associated with the construction, development, or real estate industry
  - One (1) additional member

Ex-officio – city building official.

- Purpose: Hears and decides appeals of orders, decisions or determinations made by the Building Official, Code Official, or Fire Marshal relative to the application and interpretation of the requirements of the Denton Code of Ordinances and all other applicable codes of/adopted by the City of Denton.

### **Historic Landmark Commission**

- Established by Ordinance No. 1980-030 (§2.3.6 of the Denton Development Code).
- Membership: Nine members appointed by the City Council, including at least one (1) representative from each of the following organizations or professions:
  - County historical commission
  - County bar association
  - Architect
  - Certified public accountant
  - Owner of real property in the city

Ex-officio – Director of Planning, City Building Official, Chairman of the County Historical Commission.

- Purpose: Recommends to the Planning & Zoning Commission and City Council those buildings, structures, sites, districts, and areas in the city that the Commission has determined should be preserved and designated as historic landmarks. The Commission also regulates design review for designated properties and districts.

### **Planning & Zoning Commission**

- Established by Ordinance Nos. 76-12, 99-057, and 2006-232 (§10.02 of the City Charter); also referenced in §2.3.3 of the Denton Development Code).
- Membership: Seven members appointed by the City Council.
- Purpose: Makes decisions or recommendations to the City Council regarding the Comprehensive Plan, Development Code, zoning regulations, long-range planning, zoning changes, platting, and other development-related policies as required or permitted by State law or Council policy.

### **Zoning Board of Adjustment**

- Established by Ordinance Nos. 69-1, 94-078, and 99-218 (§10.07 of the City Charter; also referenced in §2.3.4 of the Denton Development Code).
- Membership: Seven members and three alternate members appointed by the City Council.
- Purpose: Provides a vehicle for citizens to appeal zoning interpretations and decisions of the Building Official, and request variances from the zoning and sign regulations in the Denton Development Code. The Board may also make final decisions regarding changes, the reestablishment, or termination of nonconforming uses within the city.

## **II. ADVISORY BOARDS**

Advisory boards advise or make recommendations to a person or the City Council and have no final decision-making authority. The following bodies serve in an advisory function:

### **Airport Advisory Board**

- Established by Ordinance No. 97-299; amended by Ordinance No. 2011-055 (§3-109 of the Code of Ordinances) and further referenced in Ordinance No. 20-240.
- Membership: Seven members appointed by the City Council.
- Purpose: Serves in an advisory capacity to the City Council on matters relative to airport safety, flight and ground operations, safety and security issues arising from the creation and development of long-term master plans; tenant/stakeholder outreach; the Airport Business Plan and the Airport Master Plan; airport infrastructure improvement or other major projects impacting the airport; grant funding for the airport; and long term financial planning and budgetary issues affecting the airport.

### **Animal Shelter Advisory Committee**

- Established by Ordinance No. 2000-460; amended by Ordinance No. 2006-330 and §823.005 of the Texas Health & Safety Code (§6-6 of the Code of Ordinances).
- Membership: Seven members appointed by the City Council, composed of at least:
  - One (1) licensed veterinarian who has a principal place of business or a residence in the City of Denton
  - One (1) city official
  - One (1) person who is employed by the City of Denton Animal Shelter
  - One (1) representative of an animal welfare organization
  - Three (3) people who are not involved by occupation or membership in any of the above categories
- Purpose: Assists the City in complying with the provisions of the Animal Shelter Act and makes recommendations to the City Council regarding methods and procedures necessary to ensure compliance with the Act.

### **Committee on Persons with Disabilities**

- Established by Resolution No. 18-1741
- Membership: Eleven citizens appointed by the City Council. Each Council Member shall appoint one citizen who resides in his/her respective district and four committee members will be appointed at-large. In the case of the Mayoral, Place 5 and Place 6 districts, citizens may reside in any district of the City.
- Purpose: Advises the City in those areas of committee interest including but not limited to, disability concerns such as accessibility and accommodations for City project and activities. Some of the specific projects may include the following: (a) construction of new sidewalks, ramps, and crosswalk features; (b) replacing and repairing existing sidewalks, ramps, and crosswalk features; (c) the creation of an ADA Transition Plan; (d) the planning and development of an adaptive/handicap accessible park; (e) provide guidance on incorporating new or enhanced signage at the City facilities; (f) advise on improvements for new and existing city facilities; (g) provide input on parking lot rehabilitation projects; (h) provide input for improving City operations (i) provide input for improving the operation of other entities; and (j) provide input on Parks and Recreation adaptive activities.

### **Community Development Advisory Committee**

- Established by Resolution passed by the City Council on September 19, 1978 (resolutions not numerically numbered at that time).

- Membership: Nine members appointed by the City Council.

Ex-officio – City Manager, or his designee.

- Purpose: Holds public hearings and makes decisions regarding the expenditure of federal Community Development Block Grant and Home Investment Partnership Program monies.

### **Denton Police Department Chief of Police Advisory Board**

- Established by Resolution No. 20-2085 (§23-177 of the Denton Code of Ordinances).
- Membership: Comprised in total of 11 regular members. Seven Citizen Members appointed by the City Council. The remaining members shall be appointed by the City Manager as follows: One officer of the DEPARTMENT at the rank of Assistant Chief or below; One member from the Denton Police Officers Association; One member from the Denton Municipal Police Association; One member from the City Manager's Office.

Ex Officio: The Chief of Police may, at his discretion, appoint up to five (5) non-voting members from other organizations, such as the University of North Texas, Texas Woman's University, and Denton Independent School District.

- Purpose: Assists with review, gathering of community input, and establishing clear findings, conclusions and achievable recommendations that promote the use of best practices in the use-of-force policies and training for the Denton Police Department.

### **Development Code Review Committee**

- Established by Ordinance No. 21-647. NOTE: Replaced the *Ad Hoc* Development Code Review Committee.
- Membership: Six (6) voting members: three (3) City Councilmembers and three (3) Planning and Zoning Commissioners. Members of the Development Code Review Committee must be current members of the Planning and Zoning Commission or current elected City Council members of the City of Denton.
- Purpose: Reviews proposed Denton Development Code amendments and makes recommendations to the Planning and Zoning Commission and the City Council regarding proposed Denton Development Code amendments.

### **Downtown Denton Tax Increment Financing Reinvestment Zone Board**

- Established by Ordinance No. 2010-316 and §311.009 of the Tax Increment Financing Act.
- Membership: Seven members: two are City Council members, two are either property owners of property located within the Tax Increment Reinvestment Zone or residents whose primary residence is located within the Tax Increment Reinvestment Zone, two are either business owners of businesses located within the Tax Increment Reinvestment Zone or members of the Denton Chamber of Commerce Board of Directors, and one a qualified voter of the City of Denton.
- Purpose: Makes recommendations to the City Council concerning the administration of the Zone; prepares and adopts a project plan and Tax Increment Financing Reinvestment Zone financing plan for the Zone and submits the plans to the City Council for approval; prepares, implements and monitors such project and financing plans for the Tax Increment Financing Reinvestment Zone as the City Council considers advisable including the submission of an annual report on the status of the Zone.

### **Economic Development Partnership Board**

- Established by Ordinance No. 2017-203 (repealed Ordinances Nos. 2003-258, 2011-042, 2014-009, 2015-074, and 2015-249) (§2.251 of the Code of Ordinances).
- Membership: Twelve members: (1) two members from City Council at the time of their appointment, who must also serve on the Tax Increment Reinvestment Zone No. 2 Board; (2) two members from the Chamber Board of Directors at the time of their original appointment who reside or work in the city; (3) two members who will be, or must be currently employed by a top 20 City of Denton ad valorem or sales tax payer and who reside or work in the city; (4) the President of UNT or his/her designee who does not have a city residency requirement; (5) the Chancellor and President of TWU or his/her designee who does not have a city residency requirement; (6) a member with knowledge or experience in general aviation-related matters with no financial interest at the Denton Municipal Airport and who resides or works in the city; (7) a citizen of Denton with specific knowledge skills and abilities to assist in the functions of the Economic Development Partnership Board; (8) a member nominated by the Denton Black Chamber Board of Directors who resides or works in the City; (9) a member nominated by the Hispanic Chamber Board of Directors who resides or works in the City. To aid the City Council in making appointments to the Board, the City Council will appoint two City Council members and one Chamber of Commerce member to act as a nominating committee. After evaluating the recommended nominees, the committee will present to the City Council a slate of Board nominees for City Council approval.

Ex-officio – City Manager, or his designee, Chamber President and Superintendent of Denton Independent School District.

- Purpose: Provides economic development policy guidance and makes recommendations to the City Council and Chamber of Commerce; reviews, considers and makes recommendations to the City Council regarding branding and marketing for the Denton Enterprise Airport; reviews, considers and makes recommendations to the City Council regarding Denton Enterprise Airport incentive policies as assigned by the City Council or requested by the City Manager; and acts as a recommending body to the City Council for specific airport economic development incentives as assigned by the City Council or requested by the City Manager and permitted by City and State law.

### **Human Services Advisory Committee**

- Established by Ordinance No. 89-098 (§14-61 of the Code of Ordinances).
- Membership: Eleven members appointed by the City Council.

Ex officio – City Manager, or his designee.

- Purpose: Serves in an advisory capacity to encourage continuous evaluation of the human services delivery system and to recommend actions and funding to the City Council that would provide human services in the city.

### **Library Board**

- Established by Ordinance No. 84-162 (§2-176 of the Code of Ordinances).
- Membership: Seven members appointed by City Council.
- Purpose: Serves in an advisory capacity to the City Council to recommend operating policies, and programs for the operation of the library system.

### **Parks, Recreation and Beautification Board**

- Established by Ordinance Nos. 99-219 and 2000-436 (§11.02 of the City Charter).
- Membership: Seven members appointed by the City Council.
- Purpose: Serves in an advisory capacity to the City Council to make recommendations regarding issues related to community appearance, beautification, and the environment of the City and the entrances into the City. The Board is charged to stimulate public interest in the development and maintenance of parks and playgrounds and a well-rounded community-wide program to promote close cooperation between the City and citizens so that all park and recreational facilities are used to their maximum benefit.



### **Public Art Committee**

- Established by Ordinance No. 2006-105; amended by Ordinance Nos. 2013-207 and 19-1156 (§22-6 of the Code of Ordinances).
- Membership: Nine members appointed by the City Council. Two of the nine members will be nominated by the Greater Denton Arts Council and appointed by the City Council.

Ex-officio – Parks and Recreation Department Director, Economic Development Department Director, and the Greater Denton Arts Council Executive Director.

- Purpose: Makes recommendations to the City Council on the commissioning, placing, and the installing of public art; implementation of funding mechanism(s) for public art; effective and efficient management of public art; ongoing maintenance of public art; and the accessioning, deaccessioning, re-siting of public art; and oversight of cultural districts.

### **Public Utilities Board**

- Established by §12.07 of the City Charter.
- Membership: Seven members appointed by City Council.

Ex-officio – City Manager and Director of Utilities.

- Purpose: Reviews the department of utilities budget and makes recommendations to the City Council in the format required by the City Manager. The Board is authorized to expend funds for information and advertising. All matters relating to utility policies, capital projects, rates, and the sale and issuance of utility bonds are submitted to the Board for review and recommendation prior to Council consideration. The Public Utilities Board makes recommendations for the Capital Improvement Program pursuant to the provisions in the City Charter.

### **Sustainability Framework Advisory Committee**

- Established by Resolution No. 21-2575.
- Membership: Seven members appointed by City Council. Not less than four (4) of the members of the committee shall have academic, professional, occupational, or volunteer knowledge and/or experience in one or more of the following areas set forth in the Sustainability Framework: air quality; water; energy; transportation; resiliency; education; solid waste; and, land use.
- Purpose: Advises the City Council on the implementation of, and matters related to, the City's Sustainability Framework.

### **Tax Increment Reinvestment Zone Number Two Board**

- Established by Ordinance No. 2012-366; amended by Ordinances 2014-039, 2014-274, 2015-370, and 2016-354, and §311.009 of the Tax Increment Financing Act.
- Membership: Fourteen members, twelve (12) of whom shall be appointed by the City Council. The membership consists of the twelve members of the Economic Development Partnership Board (of whom two must be sitting council members), one member appointed by the governing body of Denton County and one member appointed by the “developer”, Rayzor Investments, LLP.
- Purpose: Makes recommendations to the City Council concerning the administration of the Zone. Prepares and adopts a project plan and Tax Increment Reinvestment Zone financing plan for the Zone and submits the plans to the City Council for approval. Prepares, implements and monitors such project plan and financing plan for the Zone as the Council considers advisable, including the submission of an annual report on the status of the Zone.

### **Traffic Safety Commission**

- Re-established by Ordinance No. 2010-317.
- Membership: Seven members appointed by the City Council.
- Purpose: Serves in an advisory capacity to the City Council on matters brought forward to the Commission by the City Manager, or his/her designee, or assigned by the City Council which pertains to traffic safety education and publicity; ways and means of improving traffic conditions and safety for motor vehicles; bicycle and pedestrian safety; implementation of traffic control devices; public parking restrictions; or roadway speed limit designations.

## **III. CITY COUNCIL COMMITTEES**

The Denton City Council has internal advisory committees, as well as representation on local and regional committees. Assignments to the committees are made following the May city council election. Council members submit requests for committee assignments, with committee membership designated following a Council discussion of the requests.

### **Agenda Committee**

- Established by Ordinance No. 2016-197.
- Membership: Mayor, Mayor Pro Tem, City Manager.
- Purpose: Reviews the City Manager’s proposed City Council agendas as to form and agenda content.

### **Audit/Finance Committee**

- Established by Resolution No. R2009-015.
- Membership: Three City Council members.

Ex-officio – City Manager, or his designee.

- Purpose: Assists the City Council in fulfilling its organizational oversight responsibilities relating to the audit function, the investment function and other financial related activities as delegated by the City Council.

### **City Council Airport Committee**

- Established by Resolution No. R2011-009
- Membership: Three City Council members.
- Purpose: Reviews, considers and makes recommendations to the City Council on: the Airport Business Plan and the Airport Master Plan; any airport infrastructure improvement or other major project impacting the airport; the acquisition, review, and consideration of grant funding for the airport; contracts and leases of airport property, including recommending appropriate terms to the City Council; long term financial planning and budgetary issues affecting the airport; and issues raised as a result of interface between citizens, airport tenants, or other interested parties.

### **Committee on Community Engagement**

- Established by Resolution Nos. R2012-026 (Committee on Citizen Engagement) and 20-1873 (name changed to Committee on Community Engagement).
- Membership: Three City Council members appointed by Mayor and approved by City Council.
- Purpose: Advices both the City Council and/or staff regarding the timely distribution of accurate and complete information to Denton citizens and devise methods of engaging Denton Citizens in the various processes of city government.

### **Committee on the Environment**

- Established by Resolution No. R2009-015.
- Membership: Three City Council members.

Ex-officio – City Manager or designee.

- Purpose: Reviews, discusses, deliberates, and considers environmental issues and resources and make recommendations to the City Council. Also deliberates and makes recommendations regarding any other matter delegated to the Committee by the City Council.

#### **Council Appointee Performance Review Committee**

- Established by Resolution No. R2009-015.
- Membership: Three City Council members.

Ex-officio – Director of Human Resources.

- Purpose: Assists the City Council in performance review of the Council appointees and to ensure that the appointees' job descriptions are accurate and properly reflect current job duties in order to make recommendations to the City Council to assist the Council in evaluating the job performance of the Council appointees. Additionally, makes recommendations regarding employment agreements, including renewals, of Council appointee positions.

#### **Council Mobility Committee**

- Established by Resolution No. R2009-015.
- Membership: Three City Council members.

Ex-officio – City Manager, or his designee.

- Purpose: Reviews, considers and makes recommendations to the City Council regarding any changes to the Mobility Plan, local transportation policy, and any items concerning regional transportation policies and activities.

#### **Community Partnership Committee**

- Re-established by Resolution Nos. 18-1710 (Hotel Occupancy Tax and Sponsorship Committee) and 20-1471 (name changed to Community Partnership Committee).
- Membership: Three City Council members, at least two of whom serve on the Convention and Visitors Bureau Advisory Board.

Ex-officio – City Manager, or designee.

- Purpose: Monitors allocation and use of both the hotel occupancy tax and sponsorship funds, ensuring HOT funds are being used to directly enhance and promote tourism and hotel/convention industry, ensuring the sponsorship funds are being used to further a charitable cause, economic or community growth and serve a public purpose in the best interest of the general welfare of the City of Denton, recommend organizations to receive funding to the City Council, and other duties as assigned by the City Council.

### **Ad Hoc Council Committees**

The City Council occasionally creates ad hoc council committees to provide guidance and assistance with short term projects. These committees are dissolved upon the completion of their work.

## **IV. LOCAL AND REGIONAL COMMITTEES**

### **Community Justice Council (Inactive 2018-2021)**

- Established by §76.003 of the Texas Government Code.
- City Membership: One City Council member of the most populous municipality in the county that the facility will serve.
- Purpose: Provides policy guidance and direction for the development of criminal justice plans and community correction facilities and programs.

### **Dallas Regional Mobility Coalition**

- Established by 1997 Interlocal Agreement.
- City Membership: Must be the Mayor or another member of the City Council.
- Purpose: Examines all issues related to transportation and recommends transportation improvements and other related actions for the portion of the Dallas Metropolitan Area served by District 18 of the Texas Department of Transportation (Eastern Subregion).

### **Denton County Behavioral Health Leadership Team**

- Per Denton County Behavioral Health Leadership Team Bylaws
- City Membership: May be elected official, senior staff, executive, or community member.
- Purpose: Convene as a policy making team tasked with improving the planning, coordination, oversight, and implementation required to create systems change, for behavioral health services in Denton County.

### **Denton County Homelessness Leadership Team**

- Per Denton County Homelessness Leadership Team am Bylaws
- City Membership: May be elected official(s), senior staff, executive, or community member.
- Purpose: Convene as a policy making team tasked with improving the planning, coordination, oversight, and implementation required to create systems change, for housing/homelessness initiatives in Denton County.

### **Denton County Transportation Authority**

- Established in January 2002.
- City Membership: May be a representative of the City Council and an alternate. Board members must have professional experience in the field of transportation, business, government, engineering or law.
- Purpose: The Board of Directors is responsible for the management, operation, and control of the Authority and its properties.

### **Denton County Workforce Success Leadership Team**

- Per Denton County Workforce Success Leadership Team Bylaws
- City Membership: May be elected official, senior staff, executive, or community member.
- Purpose: Convene as a policy making team tasked with improving the planning, coordination, oversight, and implementation required to create systems change for workforce/employment initiatives in Denton County.

### **Discover Denton Advisory Board**

- Established by an agreement between Denton Chamber of Commerce and City of Denton; creates an Advisory Board established by the Denton Chamber of Commerce. NOTE: Formerly known as the Convention and Visitors Bureau Advisory Board.
- City Membership: Three City Council members, at least two of whom serve on the Community Partnership Committee.

- Purpose: Provide recommendations to the Denton CVB director, Denton Chamber of Commerce board, and city council; establish goals and priorities for the Denton CVB; monitor expenditures of program funds while complying with State of Texas Tax Code (Title 3, Subtitle D, Chapter 351) and assess effectiveness of CVB programs and initiatives; assist/advise in formulation of budgets for the program; provide recommendations to the Chamber board, city manager and city council; and advocate for the Denton CVB and its mission.

### **Lake Ray Roberts Planning and Zoning Commission**

- Established by §231.107(3) and §231.107(3)(c) of the Local Government Code. In 1994, the Lake Ray Roberts Land Use Ordinance was approved by voters in Denton County and adopted by the Denton County Commissioners Court.
- City Membership: Must be the Mayor from each city included in the Lake Ray Roberts area.
- Purpose: Reviews and approves land use and development proposals for unincorporated county land in the Lake Ray Roberts area.

### **North Texas Commission**

- Established in the early 1970s.
- City Membership: Prefer it be an elected official (historically the Mayor) otherwise a City employee; can appoint a proxy (historically the City Manager)
- Purpose: Public-private partnership dedicated to advancing the vibrancy of the North Texas region.

### **Regional Transportation Council**

- Established - Independent transportation policy body of the Metropolitan Planning Organization.
- City Membership: Representative of the City Council.
- Purpose: Oversees the metropolitan transportation planning process, including guidance regarding the development of multimodal transportation plans and programs and programming federal and state funds for the implementation of transportation improvements.

### **Texas Municipal Power Agency Board of Directors**

- Established by Resolution No. 75-22 providing for a board with eight members, two appointed by the Denton City Council.
- City Membership: Two representatives approved by the City Council who may, but need not necessarily be, members of the City Council and/or the Public Utilities Board. Once appointed by City Council, members may only be removed for cause in accordance with the Denton City Charter, Section 14.16.
- Purpose: Assists in establishing policies, setting regulations, and overseeing the administration and management of the agency as well as approving and auditing the budget.

### **Miscellaneous Boards and Committees:**

From time to time, Council Members are called upon to serve as Denton's representatives on a regional board or committee for a short-term project. Often, the appointments are for the duration of the project and the board is dissolved. The City Secretary maintains a record of these commitments and may be contacted for updated information.



## **APPENDIX A**

### **APPROVAL HISTORY FOR B&C HANDBOOK**

• Adopting:	November 17, 2009	Resolution R2009-032
• Revising:	October 4, 2011	Resolution R2011-036
• Amending:	September 18, 2012	Resolution R2012-030
• Revising:	September 10, 2013	Resolution R2013-027
• Revising:	September 16, 2014	Resolution R2014-037
• Revising:	September 1, 2015	Resolution R2015-023
• Amending:	August 28, 2018	Resolution 18-1377
• Superseding:	July 16, 2019	Resolution 19-1441
• Revising:	March 3, 2020	Resolution 20-466
• Revising:	April 20, 2021	Resolution 21-271



# City of Denton

City Hall  
215 E. McKinney St.  
Denton, Texas 76201  
[www.cityofdenton.com](http://www.cityofdenton.com)

## Legislation Text

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**File #:** ID 24-485, **Version:** 1

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### **AGENDA CAPTION**

Receive a report and hold a discussion on the Denton Police Department Annual Update and 2023 Annual Report.

[Estimated Presentation/Discussion Time: 45 minutes]



# City of Denton

City Hall  
215 E. McKinney Street  
Denton, Texas  
[www.cityofdenton.com](http://www.cityofdenton.com)

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## AGENDA INFORMATION SHEET

**DEPARTMENT:** Police Department

**ACM:** Frank Dixon

**DATE:** April 2, 2024

### **SUBJECT**

Receive a report and hold a discussion on the Denton Police Department Annual Update and 2023 Annual Report.

### **BACKGROUND**

A presentation will be given on the Denton Police Department Annual Update and 2023 Annual Report, to include 2023 accomplishments, Chief of Police Advisory Board, crime data, and 2024 goals.

### **EXHIBITS**

Exhibit 1 – Agenda Information Sheet

Exhibit 2 – Denton Police Department Annual Update

Exhibit 3 – 2023 Denton Police Department Annual Report

Respectfully submitted:  
Bryan Cose  
Acting Chief of Police



# Denton Police Department Annual Update

**April 2, 2024**  
**File ID: 24-485**



# Presentation Overview

- Mission, Vision and Core Values
- Department Structure
- Review of 2023 Accomplishments & Data
- 2024 Goals



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# Mission

The Mission of the Denton Police Department is to make Denton a safe, sustainable and livable city for everyone, by keeping victims safe and holding offenders accountable.

# Vision

The sanctity of human life is the foundation by which the Denton Police Department serves. We are committed to leveraging technology, innovation, collaboration, and imagination to make us trusted and respected by our diverse community.

# Core Values

Professionalism

Respect

Integrity

Dedication

Excellence

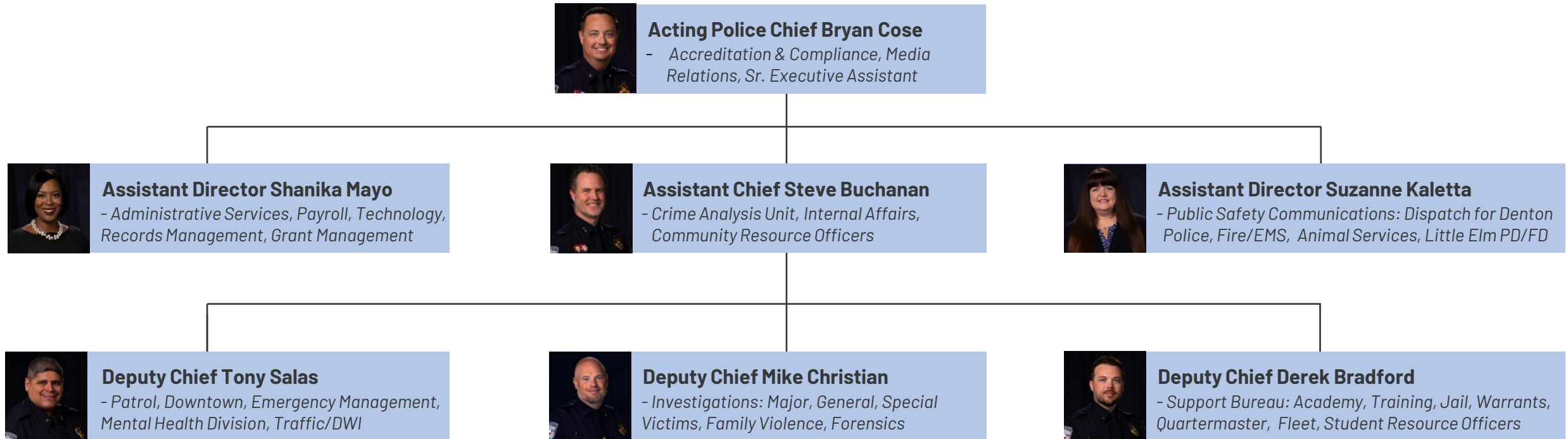


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# Department Structure



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# 2023 in Review



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# 2023 Accomplishments

- Finished all Police facilities projects funded in the 2019 Bond Program
- Concluded year 1 of 4 of the re-accreditation process through the Texas Police Chiefs Association (TPCA) Law Enforcement Accreditation Program
- Completed departmentwide follow-up trainings for Active Bystandership for Law Enforcement (ABLE) Program
- Began review of Computer-Aided Dispatch and Records Management System



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# Chief of Police Advisory Board

- Board met two times in 2023
- Board issued single recommendation regarding three-year staggered terms for Board Members
  - Recommendation was presented to Council on Jan. 23, 2024
- 2024 topics include Public Safety Communications overview and new state laws



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# Top 10 Crimes Reported: 2022 vs. 2023

2022

Rank	Offense	Count
1	THEFT PROP >=\$100<\$750	945
2	ASSAULT CAUSES BODILY INJURY FAMILY MEMBER	638
3	BURGLARY OF VEHICLES	627
4	THEFT UNDER \$100.00	562
5	DRIVING WHILE INTOXICATED (1 <sup>st</sup> offense)	511
6	THEFT PROP >=\$2,500<\$30K	497
7	THEFT PROP >=\$750<\$2,500	476
8	CRIMINAL MISCHIEF >=\$100<\$750	381
9	CRIMINAL TRESPASS	345
10	ALCOHOL PUBLIC INTOXICATION	343

2023

Rank	Offense	Count
1	THEFT PROP >=\$100<\$750	924
2	DRIVING WHILE INTOXICATED (1 <sup>st</sup> offense)	664
3	THEFT UNDER \$100.00	643
4	ASSAULT CAUSES BODILY INJURY FAMILY MEMBER	580
5	BURGLARY OF VEHICLES	542
6	CRIMINAL TRESPASS	468
7	ALCOHOL PUBLIC INTOXICATION	439
8	THEFT PROP >=\$2,500<\$30K	401
9	THEFT PROP >=\$750<\$2,500	343
10	CRIMINAL MISCHIEF >=\$100<\$750	338

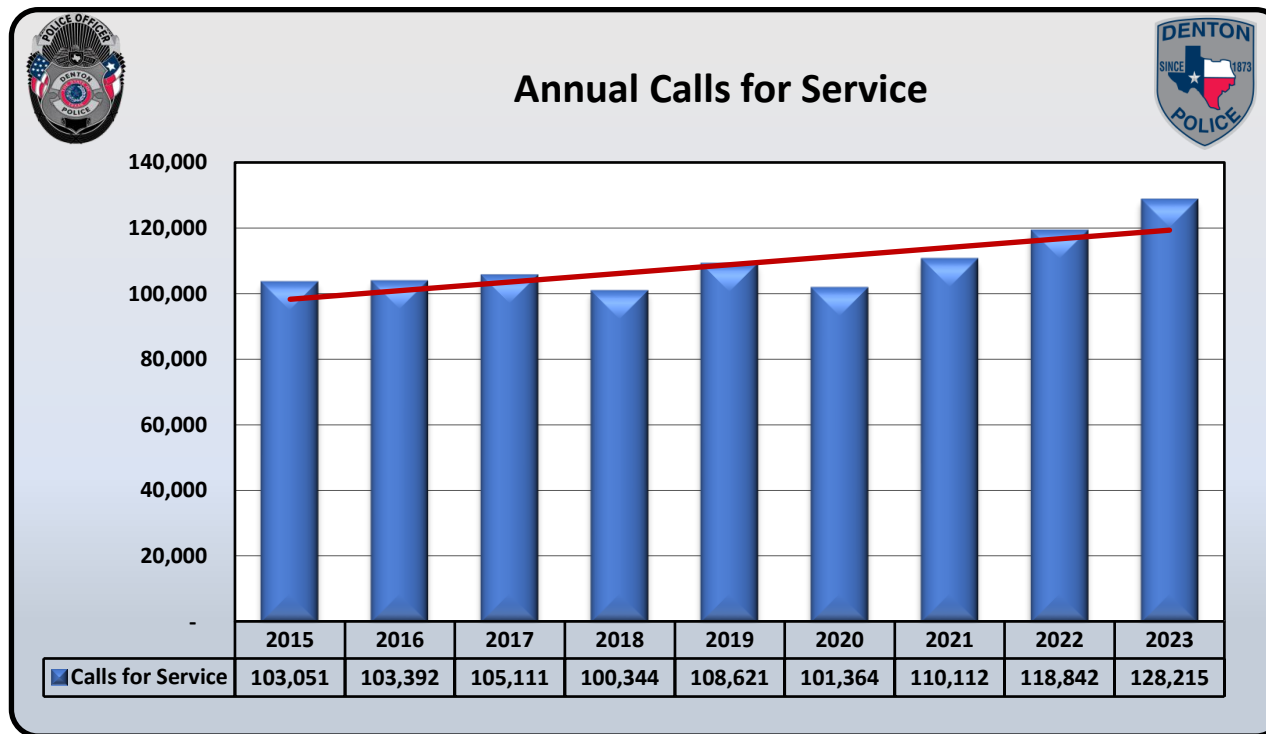


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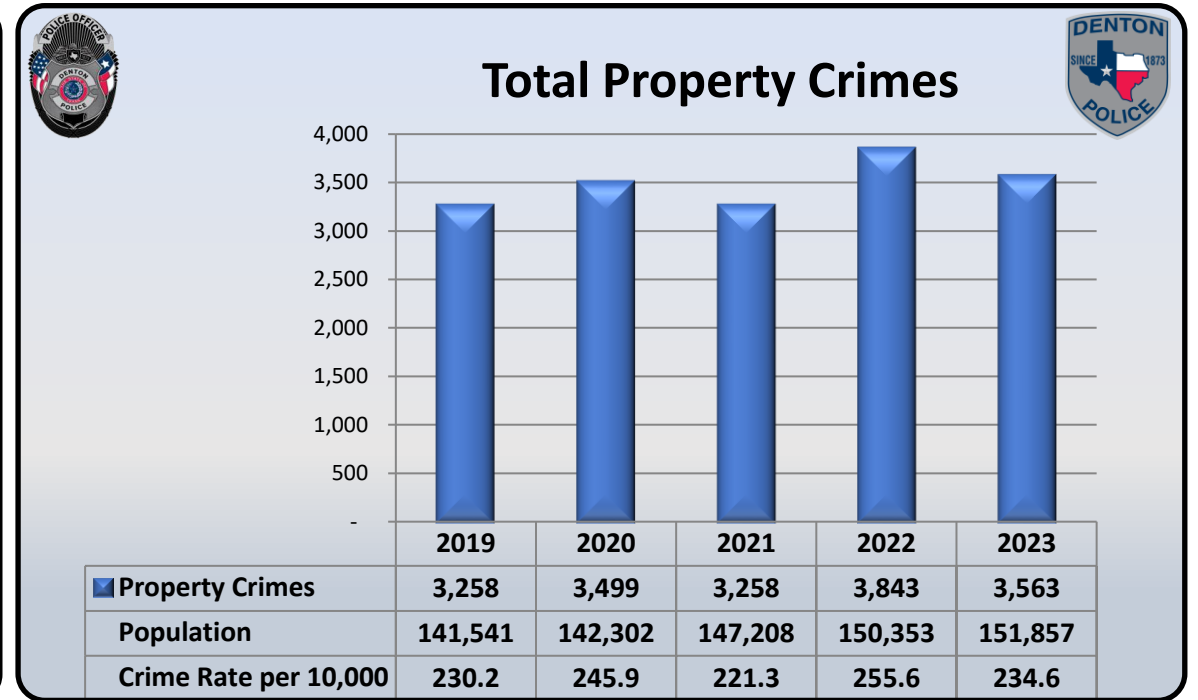
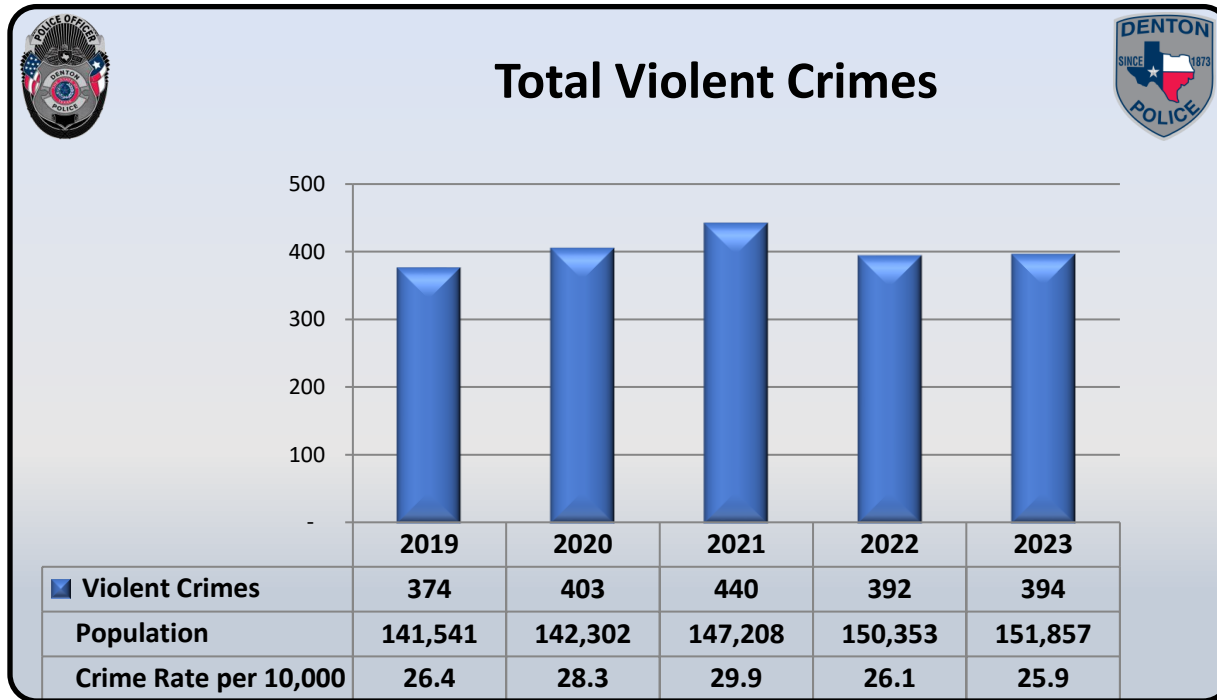
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# Total Calls for Service: 2015-2023



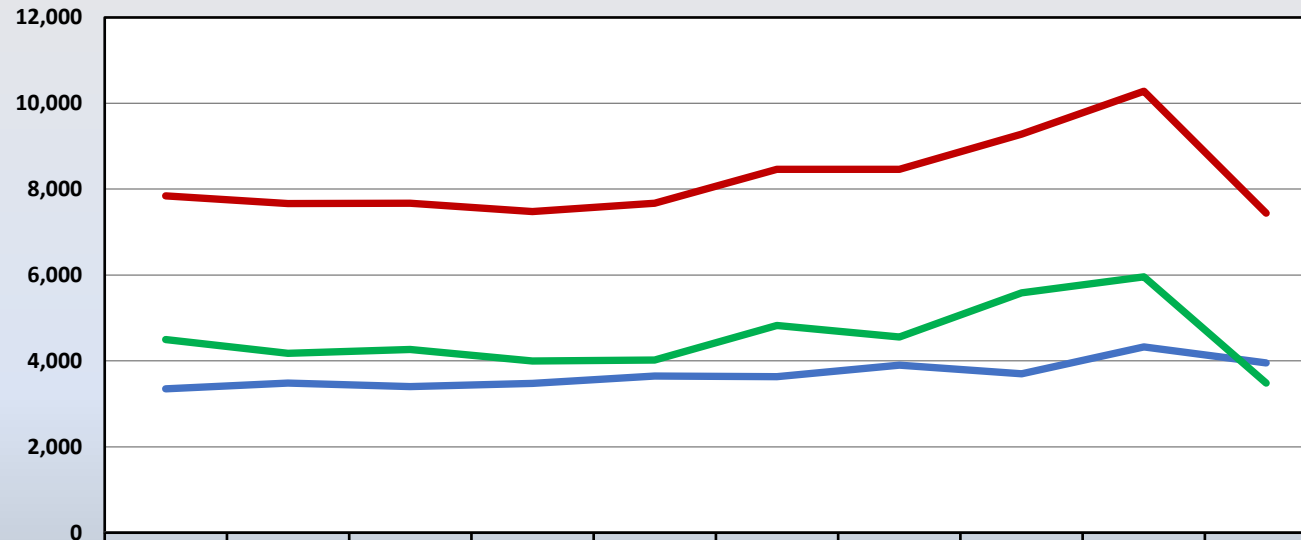
	2022 Calls for Service	2023 Calls for Service
Dispatched	84,098	86,150
Officer- Initiated	34,744	42,065
Total	118,842	128,215

# Violent and Property Crime: 2019-2023





## DENTON POLICE DEPARTMENT 10 YEAR CRIME TREND



	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023
Part I	3,351	3,484	3,405	3,479	3,651	3,632	3,902	3,698	4,325	3,957
Part II	4,494	4,178	4,263	3,999	4,017	4,828	4,556	5,586	5,957	3,483
Total	7,845	7,662	7,668	7,478	7,668	8,460	8,458	9,284	10,282	7,440

The FBI's Uniform Crime Reporting (UCR) Program divides offenses into two groups, Part I and Part II crimes.

- Part I offenses include criminal homicide, robbery, motor vehicle theft, and more.
- Part II offenses include simple assaults, fraud, vandalism, and more.

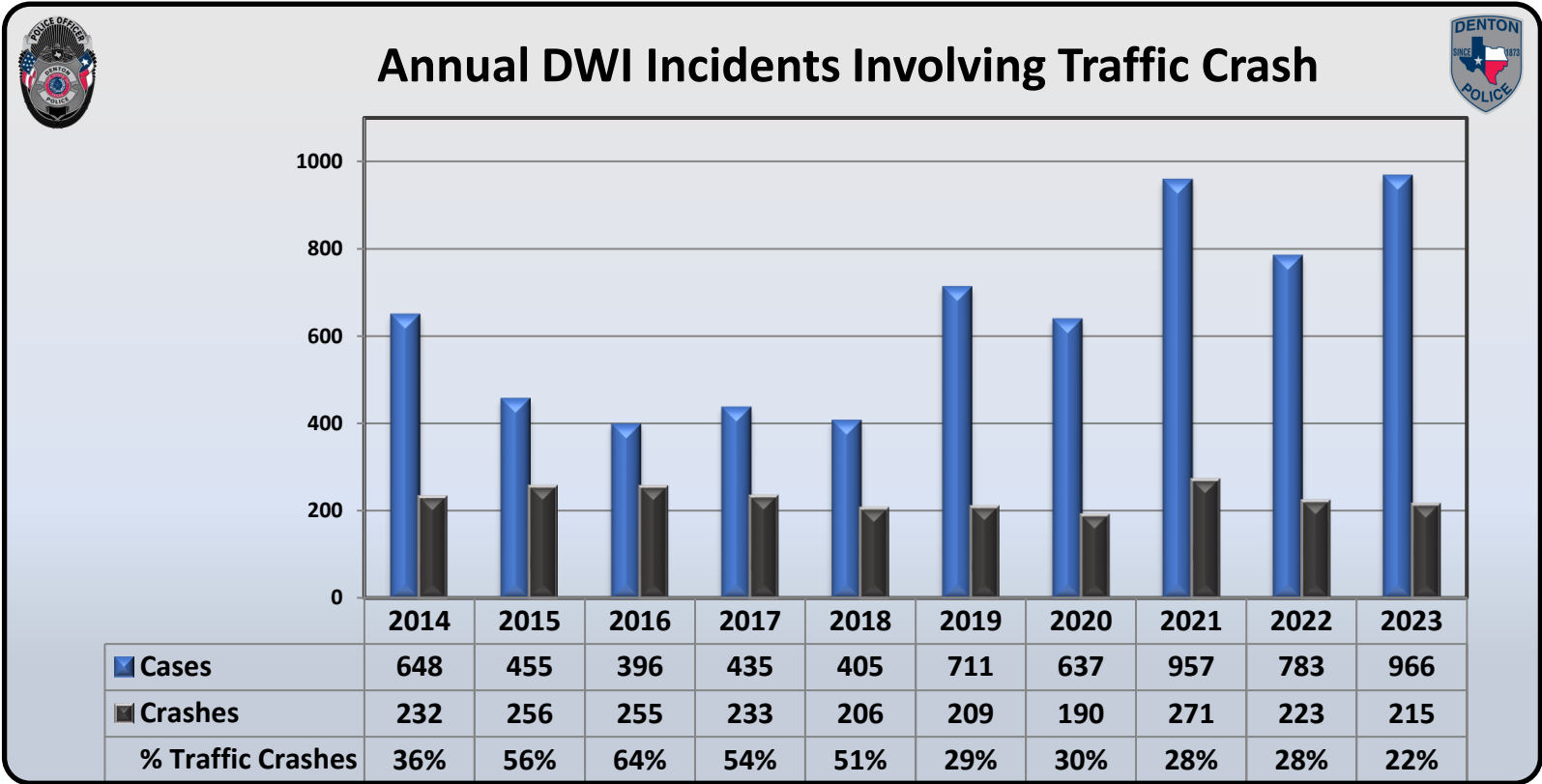


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# Driving While Intoxicated: 2014-2023



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# Marijuana Arrests and Citations

Offenses Charged	Offense Type	2022	2023	% Change
POSS MARIJ <2OZ	Class B Misdemeanor	42	24	-42.9%
POSS MARIJ <2OZ DFZ	Class A Misdemeanor	24	5	-79.2%
POSS MARIJ >2OZ<=4OZ	Class A Misdemeanor	10	2	-80.0%
POSS MARIJ >4OZ<=5LBS	State Jail Felony	13	10	-23.1%
POSS MARIJ >5LBS<=50LBS	Third Degree Felony	6	5	-16.7%
POSS MARIJ >50LBS<=2,000LBS	Second Degree Felony	0	0	-
DEL MARIJ >1/4 OZ<=5LBS	State Jail Felony	2	1	-50.0%
DEL MARIJ >5LBS<=50LBS	Second Degree Felony	1	0	-100.0%
Total		98	47	-52.0%

Marijuana Paraphernalia Citations Since 11-1-2022													
	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
2022											12	19	31
2023	19	20	16	18	18	12	4	11	9	10	10	7	154
Total	19	20	16	18	18	12	4	11	9	10	22	26	185

*Continued next slide*



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# Marijuana Arrests

Of the 47 total arrests in 2023, the following additional charges were associated with each offense type:

MISDEMEANOR CHARGES	COUNT	FELONY CHARGES	COUNT
POSS MARIJ <2OZ (Class B Misdemeanor - No Other Charges)	3	POSS MARIJ >4OZ<=5LBS (State Jail Felony - No Other Charges)	4
POSS MARIJ <4OZ, Misdemeanors with Additional Charges	28	POSS MARIJ >5LBS<=50LBS (3rd Degree Felony - No Other Charges)	1
<b>ADDITIONAL CHARGES:</b>		POSS MARIJ >4OZ<=50LBS, Felonies with Additional Charges	11
CRIMINAL TRESPASS		<b>ADDITIONAL CHARGES:</b>	
DRIVING WHILE INTOXICATED		ASSAULT CAUSES BODILY INJURY FAMILY MEMBER	
DRIVING WHILE INTOXICATED W/CHILD UNDER 15 YOA		ASSAULT FAM/HOUSE MEM IMPEDE BREATH/CIRCULATION	
LEAVING SCENE OF ACCIDENT - PERSONAL INJURY OR DEATH		DEL MARIJ >1/4 OZ<=5LBS	
MANUFACTURE OR DELIVERY CONTROLLED SUBSTANCE: Meth, Cocaine, Crack Cocaine, Oxycodone, Alprazolam, Drug-Free Zone		DRIVING WHILE INTOXICATED 2ND	
POSSESSION CONTROLLED SUBSTANCE		EVADING ARREST DETENTION	
TAMPER/FABRICATE PHYS EVID W/INTENT TO IMPAIR		INTERFERE W/EMERGENCY REQ FOR ASSISTANCE	
THEFT OF FIREARM		MANUFACTURE OR DELIVERY CONTROLLED SUBSTANCE	
UNL CARRYING WEAPON		TAMPER/FABRICATE PHYS EVID W/INTENT TO IMPAIR	
UNL CARRYING WEAPON PROHIBITED PLACES		UNLAWFUL CARRYING WEAPON	
VIOL BOND/PROTECTIVE ORDER 2+ TIMES W/I 12 MO		UNLAWFUL POSS FIREARM BY FELON	
WARRANT SERVICE		<b>Total (Misdemeanors and Felonies)</b>	<b>47</b>



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# 2024 Goals

- Fill all existing sworn officer vacancies by end of 2024
- Increase number of CIRT-trained officers
- Establish Wellness Committee
- Develop training plans for all specialized and promotional positions
- Complete employee development program coaching sessions and conduct department cultural assessment



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# Strategic Initiatives

1. Pursue Police Department Reaccreditation
2. Enhance Police Department Mental Health Division
3. Participate in International Association of Chiefs of Police (IACP) Trust Building Campaign
  - Compliant with 25 of 29 Best Practice standards
4. Develop Approaches to Ensure a Healthy Working Environment in the Police Department
5. Create Police Department Leadership Development and Succession Program
6. Prioritize Police Recruiting and Development of Effective Recruiting and Development Strategies

Visit the [City of Denton Strategic Plan Dashboard](#) for the latest updates.



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# Questions?

**Bryan Cose**

**Acting Chief of Police**

**Denton Police Department**





# 2023 Annual Report







**Ofc. Mark Hill**  
Homeless Outreach Team

# Table of Contents

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*The Denton Police Department Annual Report provides insight into the community-oriented work completed in 2023 by sworn officers and professional staff members.*

*Learn more about the department at [www.dentonpolice.com](http://www.dentonpolice.com).*



# Chief's Message

As we reflect on the past year, I am proud to present the 2023 Police Annual Report on behalf of the men and women serving our community. As Acting Chief of Police, I am honored and privileged to work alongside a team of dedicated officers and staff committed to upholding our department's values of Professionalism, Respect, Integrity, Dedication, and Excellence (P.R.I.D.E.).

Our city's rapid growth continued in 2023, as new neighborhoods and businesses opened, and new residents and visitors discovered all that Denton has to offer. While this growth presents a number of unique opportunities, our team remains committed in our mission to uphold public safety, build community trust, and enhance organizational culture with a compassionate, focused effort.

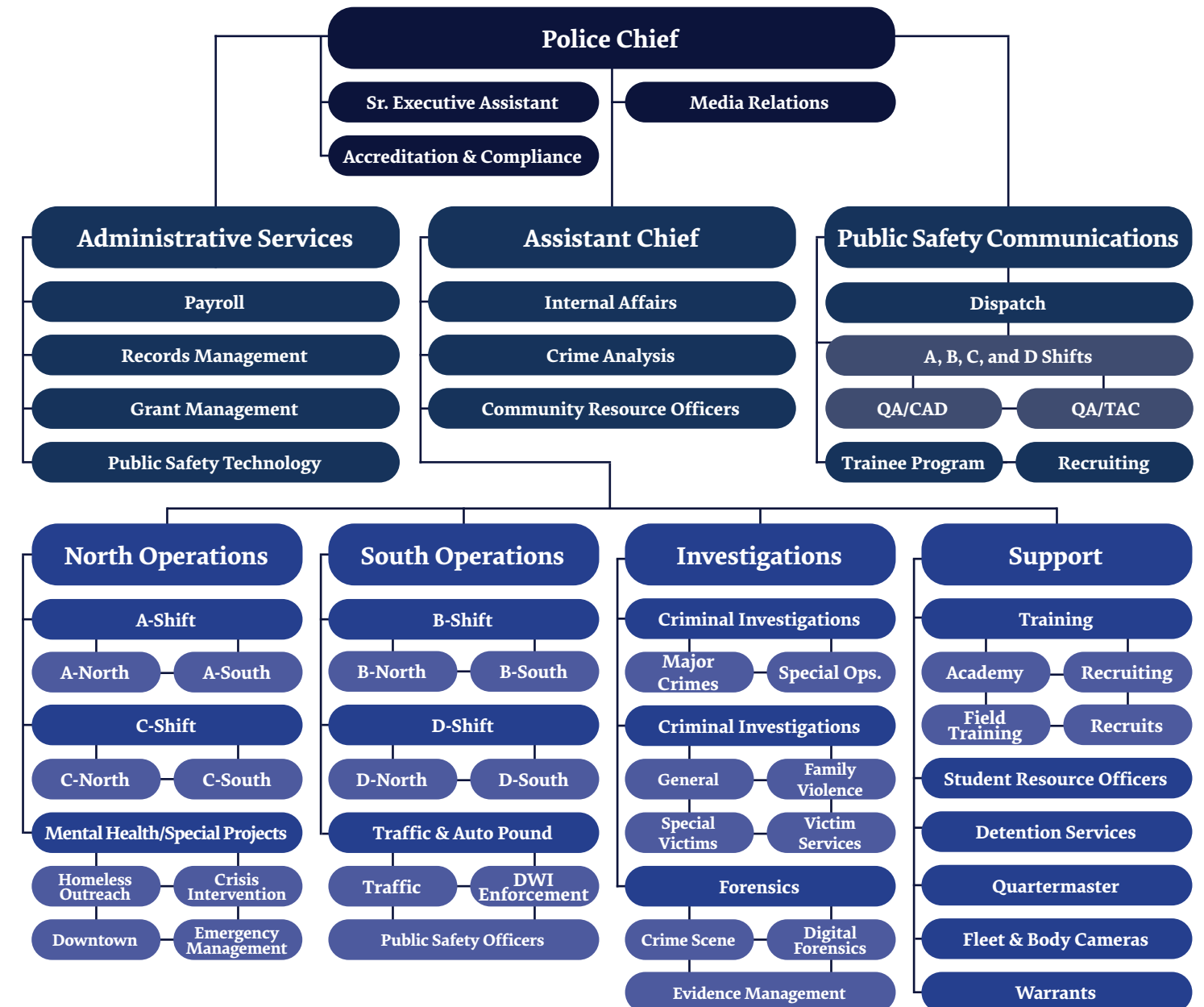
Through proactive enforcement efforts, collaboration with partner agencies, and our community engagement initiatives, I am pleased to share we experienced a 6.56% decrease in Part One offenses last year. Looking ahead, we remain attentive on making additional progress with respect to crime reduction.

In 2023, our department sought out officers' "why" and formulated a strategic plan to make us an "employer department of choice" going into the future. I am happy to report that in 2023, we completed the planning phase for a new initiative to increase our recruiting capacity and provide a more personalized experience for interested candidates. As we enter 2024, a diverse group of 16 auxiliary recruiters were selected to provide this one-on-one support throughout the application process, and we look forward to seeing the impact they will make in our future recruiting efforts.

Additionally, this past year we reaffirmed our commitment to employee wellness. In recognizing that our workforce provides the best services to the community when they, themselves, are supported, we conducted a staff-wide wellness survey to better understand our team's wellness priorities. In 2024, we will establish a Wellness Committee consisting of members representing a cross-section of the department to analyze the survey results and develop programs to address members' physical, mental, emotional, and financial wellness. We do this with the full understanding that the health and happiness of our employees are essential to provide the high standard of service delivery expected and deserved by our community.

Moving forward, we remain steadfast in our commitment to serve the community in a manner that strengthens trust and improves safety. We recognize the importance of collaboration, mutual respect, and partnership with all stakeholders, including community leaders and residents, in our collective efforts to maintain a safe and vibrant Denton.

**Bryan Cose**  
Acting Chief of Police



## Staff Spotlight

Acting Police Chief Bryan Cose began his career with the Denton Police Department as a patrol officer in 2003 while attending the University of North Texas. As the South Patrol Deputy Chief in 2023, he helped lead the Denton Police and Fire Public Safety Unmanned Aircraft Systems (UAS) Team to its first full year of operations. Learn more about the drone program on pg. 9.



# About Us



**Ofc. Whitney Gruben**  
South Patrol

In 2023, the Denton Police Department turned 150. Growing to more than 300 total sworn and professional staff members, the department remains committed to making Denton a safe, sustainable, and livable city for everyone by keeping the community safe and holding offenders accountable. Our dedication to this City has only grown stronger since 1873, and we look forward to serving our community for many years to come.

2023 was a year of growth for the Denton Police Department, with the most visible sign being the completion of three Police facilities. Thanks to the community's support, critical improvements were made to Police services, including a top-tier forensics laboratory and state-of-the-art 9-1-1 dispatch center.

Denton PD also continued to pursue re-accreditation through the Texas Police Chiefs Association (TPCA) Texas Law Enforcement Accreditation Program. The department completed the first of a four-year re-accreditation process in 2023, showcasing the department's lasting commitment to best practices.

Additionally, Denton PD made a commitment to the International Association of Chiefs of Police (IACP) Trust Building Campaign, which seeks to enhance trust and collaboration between communities and police. Denton PD is currently compliant with 25 of 29 best practice standards, and the department looks forward to implementing all of the key policies and practices outlined in the campaign.



**Ofcs. Cameron Schafer & Luis Martinez**  
North Patrol



# Community Focus



With a festival or event scheduled almost every weekend of the year, community gatherings are a major part of Denton's culture. Here are a few memorable moments with the community this year:

- Traffic Ofc. Cory McConnell shows his department motorcycle to a child and mother during the City Block Party and National Night Out Kickoff event on Sept. 28.
- Community Resource Ofc. (CRO) Tony Cunningham waves to a community member at the Juneteenth Parade on June 17.
- During the Denton Police Officers Association's Shop with a Cop event on Dec. 13, a family poses with Student Resource Ofc. (SRO) Sgt. Kris Johnson, SRO Katrie Johnson, Patrol Ofc. Andra Jackson, and CRO Ricky Fenner. Denton PD helped more than 120 children and their families purchase gifts this year.
- Acting Chief Bryan Cose speaks with a volunteer during a National Night Out party at Borman Elementary on Oct. 3.



# Facilities Update

This year, Denton PD and the community celebrated the opening of all three facilities approved by voters in the 2019 Bond Program.

Along Vintage Boulevard, the South Substation opened in April to efficiently deploy officers to calls in the fast-growing southern portion of our city. The Substation also contains a back-up Emergency Operations Center and community meeting space. Next door, the Indoor Firing Range provides state-of-the-art training space for officers while serving as a community safety improvement over the previously used outdoor range.

To end the year, a grand opening was hosted in December for the renovated Police Headquarters at City Hall East. The new-and-improved Headquarters houses the North Operations Bureau, the majority of the Criminal Investigations and Support Bureaus, and administrative staff while also allowing for future department growth.



South Substation: Gym



Firing Range: Break Area



Headquarters: Ribbon Cutting

# Drone Program



Capt. Clint Stephenson & Ofc. Cory McConnell  
Public Safety Unmanned Aircraft System Team

Denton Police and Fire took to the skies this year, with 2023 marking the first full year of operations for the joint Public Safety Unmanned Aircraft System (UAS) Team. UAS, or drones, can be used to improve search and rescue operations, manage disasters, investigate crash and crime scenes, and more.

In 2023, the three pilots making up the UAS Team conducted 20.20 hours of flight operations during 94 separate flights and 29 state-required reporting missions. Some deployment highlights include:

- Aerial overwatch for the Fourth of July Drone Show and the Holiday Lighting Festival.
- Assistance searching for an armed suspect fleeing from a minor crash at the end of a pursuit.
- Assistance searching for a suspect fleeing from a stolen vehicle after crashing.
- Assistance searching for suspects who burglarized two businesses and fled in a stolen vehicle.
- Assistance searching for three critically missing children and one adult.

The team also acquired a new aircraft with improved flight time, better camera sensors, and increased ability to operate during inclement weather. By the end of 2023, additional pilots from both the Police and Fire Departments were selected to join the joint Public Safety UAS Team and will begin their pilot training in 2024.





**Nic Ware**  
Recruiting & Public Education



# Dispatch



In December, Dispatch Supervisor Nichole Figueroa served as the lifeline for a woman who was trapped in an apartment fire along Dallas Drive. She kept the woman calm in a terrifying situation, successfully directing her to make noise so Fire Department crews could quickly find her. And they did – the woman survived the fire, due in no small part to Nichole’s actions.

When someone needs help in our community, Denton Public Safety Communications dispatchers like Nichole are the first of the first responders to provide assistance. Not only do they help callers in Denton, our dispatchers have also answered emergency and non-emergency phone calls for the Town of Little Elm since 2021. This year, the majority of calls into dispatch were routed to Denton PD (118,487), followed by Little Elm Police (84,547), Denton Fire (22,084), Denton Animal Services (6,049), and Little Elm Fire (5,124).

This year, Public Safety Communications also began community outreach efforts to inform the public about 9-1-1 services with the creation of a Recruiting and Public Education Coordinator position. From May through December, staff spoke with approximately 4,500 children and adults at 22 events, teaching them about the importance of 9-1-1 and related best practices.



## Staff Spotlight

Dispatcher Samson Flancbaum helped save a Little Elm resident’s life in February, thanks to his quick actions and calm demeanor. When a 911 caller reported that their loved one had suffered a medical emergency, Samson carefully explained how to give chest compressions. The patient began breathing again and likely would not have survived if not for Samson’s knowledge and care.



# Crime Statistics

## Top 10 Reported Crimes

Offense	2023
Theft of Property >=\$100<\$750	924
Driving While Intoxicated (1st offense)	664
Theft Under \$100	643
Assault Causes Bodily Injury: Family Member	580
Burglary of Vehicles	542
Criminal Trespass	468
Alcohol Public Intoxication	439
Theft of Property >=\$2,500<\$30,000	401
Theft of Property >=\$750<\$2,500	343
Criminal Mischief >=\$100<\$750	338

## Calls for Service

Call Type	2022	2023
Dispatched	82,563	86,150
Officer-Initiated	33,560	42,065
<b>Total Calls</b>	<b>116,123</b>	<b>128,215</b>

## Part I Crimes

Offense	2022	2023
Murder	7	7
Murder Victims	7	7
Sexual Assault	145	113
Robbery	49	59
Aggravated Assault	191	215
<i>Total Violent Crime</i>	392	394
Burglary	395	317
Theft	2,991	2,894
Motor Vehicle Theft	457	352
<i>Total Property Crime</i>	3,843	3,563
<b>Total Part I Crime</b>	<b>4,235</b>	<b>3,957</b>

**Ofcs. MacKenzie Bannister and Arshia Ladha**  
South Patrol & Driving While Intoxicated (DWI) Unit



# Patrol Operations

Patrol officers in the Operations Bureau serve as the uniformed presence for Denton PD. Whether they are responding to a 9-1-1 call for service or conducting a traffic stop, patrol officers are responsible for many of the services that the community expects of their police department.

One of the top community concerns continues to be road safety. In 2023, officers were dispatched to 7,136 crashes. 1,057 of these resulted in some level of injury, with 16 being fatal. As part of the City's Vision Zero mission to decrease severe crashes, Denton PD regularly conducts high-visibility enforcement efforts and will continue to strategically address safety issues.

This year, about 22% of crashes in Denton involved an intoxicated driver. Officers made 966 arrests for Driving While Intoxicated (DWI) offenses in 2023, a record-setting number for our city, to reduce the number of crashes. Day or night, officers from all shifts and assignments routinely investigate potentially intoxicated drivers in a unified effort to achieve our DWI-free Denton mission.

While some call types increased, others went down from 2022. For example, gun-related calls for service decreased. This year, there were 529 total calls reporting a person with a gun, shots heard, or person shot. In 2022, there were 662 total calls. Total Part I crimes, or serious offenses that regularly occur and are likely to be reported to the police, decreased this year to 3,957 from a total of 4,235 offenses in 2022.

Overall property crimes reported decreased from 3,843 in 2022 to 3,563 in 2023. Violent crime went up by just two reports (392 in 2022 to 394 in 2023) despite year-over-year population growth. Denton PD will continue to investigate offenses and take proactive measures to keep Denton a safe place to live, work, and visit.



**Ofcs. Tyler Battaglia, Stephen Balogun, William Hulslander, & Ryan Karnes**  
North Patrol, South Patrol, & Traffic Unit



**Ofc. Shelby Raley**  
North Patrol



**Ofc. Scott Owen**  
Traffic



**Ofc. Josh Geevarghese**  
North Patrol



# Downtown



The Denton Police Department has a unit of officers assigned to serve Downtown Denton, recognizing the importance of maintaining safety and security in the center of our community. During community events like Arts & Jazz Festival, Denton police officers control traffic, respond to calls, rove the area, and more.

In 2023, additional officers and resources were placed Downtown as part of our continued commitment to keep the area safe and vibrant. A public safety resource guide was created for businesses, so new and veteran employees can feel more confident on when to call for emergency or non-emergency assistance.



## Staff Spotlight

Sgt. Lucas Bailey is a familiar face to Downtown visitors, businesses, and residents. After joining the Downtown Unit as a supervisor in 2023, he quickly became a go-to person for any Downtown public safety needs. Denton PD is committed to collaborating with businesses, residents, and other City departments on problem-solving initiatives in the Downtown area.

# Mental Health

The Mental Health Division includes the Homeless Outreach Team (HOT) and the Crisis Intervention Response Team (CIRT). The division's mission is to serve our most vulnerable community members with compassion and steadfastness by connecting those in a serious mental health crisis or experiencing homelessness with help. The division also strives to reduce arrests of people suffering from mental illness while increasing the likelihood they will receive mental health services.

In 2023, the division was expanded to include a lieutenant to oversee mental health efforts. Reporting efficiencies and process flows were improved, and the team completed implementation of Julota, a case management platform. The Mental Health Division also started an internal program to provide focused assistance to mental health consumers who generate high volumes of police calls for service.

Beyond the full-time officers and clinicians assigned to mental health-related calls, the division also oversees the Patrol CIRT program of officers trained to assist with crisis-related calls. Patrol CIRT officers increased to 13 this year. The division also hosted and instructed two Mental Health Officer Training courses, providing valuable knowledge to officers across the region. The department aims to train even more officers in mental health in 2024 and beyond.







# Investigations

**Sgt. Donnie Carr & Det. Seth Reed**  
Criminal Investigations Bureau

The Criminal Investigations Division and the Forensics Division compose the Criminal Investigations Bureau. Detectives and professional staff in this bureau are assigned to one of five units: Major Crimes, General Crimes, Family Violence, Special Victims, and Special Operations.

In addition to following up on cases, the bureau worked to improve processes this year for victims. Financial crime investigations were moved to the General Crimes Unit, allowing for a team approach to these in-depth cases. The bureau also restructured the intake and assignment of certain incident types, such as stalking and harassment, to identify high-risk domestic violence situations for early intervention. Case management procedures were additionally adjusted to decrease case-filing time for violence-related charges.

The bureau also continues to collaborate with area partners and agencies. Special Victims Unit (SVU) Sgt. Trent Jones serves on the Denton County Sexual Assault Response Team and helped develop a countywide response protocol, a comprehensive best practices guide for investigating adult sexual assault crimes. SVU detectives assisted other agencies with difficult investigations involving children while helping secure decades-long prison sentences in their own cases.



## Staff Spotlight

In 2023, Det. Marqui Curtis’ extensive work led to the arrest of a sexual assault suspect in two cold cases from 1993 and 1997. She used new techniques, including genealogy and familial DNA search process, to identify the suspect. Det. Curtis was instrumental in securing an indictment to help achieve long-awaited justice for the sexual assault survivors.

# Forensics

The Forensics Division contains three units of professional staff members: Forensic Services, Digital Forensic, and Evidence Management. Within the Forensic Services Unit, there were 177 requests for service, including 43 scene responses and 134 lab processing assignments. When they were not in the field or the lab, forensic analysts participated in 15 community outreach events and dedicated more than 400 hours to specialized training this year.

In the fall, Forensic Analyst Erin Gonzales became the 10th licensed Latent Print Examiner in the State of Texas. For more than a year, Erin worked on meeting all requirements for licensure through the Texas Forensic Science Commission. Latent print analysis is currently a voluntary license, putting Denton PD ahead of the curve and in a group of just four total agencies statewide with licensed Latent Print Examiners.

Meanwhile, the Evidence Management Unit received 56,253 items of property and evidence. They also oversaw the destruction of 777.40 pounds of surrendered medications and controlled substances. The team also submitted 2,035 evidence items to external laboratories, including 467 pieces of ballistic evidence, 3,239 methamphetamine cases with a total analyzed weight of 1.158 kilograms, and 16 fentanyl cases with a total analyzed weight of 10.75 grams.



**Tiana Bortenstein**  
Evidence Management



# Support Bureau



**Basic Police Officer Course (BPOC) Academy 18**

The Support Bureau is a multifaceted and crucial part of Denton PD. The Training Division (Recruiting, the Basic Police Officer Course (BPOC) or police academy, and the field training academy), Student Resource Officers (SRO) program, Warrants, Fleet, Detention Services, Quartermaster, and Body Cameras are all housed in this bureau.

The Training Division continues to prioritize training with both our basic police academies and internal training. The department celebrated the graduation of BPOC 18 with 18 recruits. BPOC 19 also started in October 2022 with 17 recruits scheduled to graduate in spring 2024. The recruitment team hired a total of 10 new recruits and six lateral recruits from outside agencies. Recruitment and retention have continued to be a focus for the department as a whole. The recruiting unit has worked toward creating a new auxiliary recruitment team of officers who will work with full-time recruiters to find and attract top talent.

In addition to training, the bureau also includes the jail. The Detention Services Division is responsible for those arrested by officers. In 2023, the detention center booked 3,917 inmates and released 3,929 individuals. As part of the headquarters renovation, the jail is looking forward to using the new lobby. This will allow bond companies and families direct access to the jail staff. Inmates will also be released through the lobby, which will place them outside of the secure area on the northwest end of the building.



**Ofcs. Nathan Blake, Je'Ni Scott & Brian Langford**  
Student Resource Officers

The Student Resource Officer (SRO) Unit is composed of nine officers, a sergeant, and a lieutenant. The unit provides safety, presence, mentorship, and law enforcement to students and staff at Denton ISD campuses. The partnership between Denton ISD and Denton PD has existed for over 25 years, with officers serving as an integral part of the measures in place to provide a safe learning environment. The unit works collaboratively with school district leaders to empower lifelong learners and develop them into engaged citizens who positively impact our community.



The work of the SRO unit extends beyond the scheduled school days. SROs host an eight-week summer program designed to mentor and help students understand they are a valuable part of the communities in which they live. The program is committed to showing students the value of teamwork, charitable work, and building self-esteem. Students are selected for the program by the SROs at their campus. In 2023, students in the program worked with the nonprofit Hearts for Homes to provide home rehabilitation for low-income seniors in Denton County. The students also worked with Mt. Calvary Church, in partnership with Project Hope, to serve more than 120 hot meals and produce to community members.



# Looking Ahead

With 150 years of service behind us, Denton PD will continue to move forward in providing the best possible service to the community in the years ahead. As our city grows, there is simply no slowing down. As described throughout this report, Denton PD is planning for the future now through innovative strategies, technology, and resource management to ensure a safer Denton.

As part of this mission, in 2023, the department adopted and began working on the following Fiscal Year 2023-24 Business Plan Initiatives:

- Pursue Police Department Re-Accreditation
- Enhance the Mental Health Division
- Participate in the IACP Trust Building Campaign
- Develop Approaches to Ensure a Healthy Working Environment
- Create Police Department Leadership Development and Succession Program
- Prioritize Police Recruiting and Development of Effective Recruitment and Development Strategies

Of these, Denton PD's focus on officer recruitment may be the most visible to the community at large in the coming years. The department aims to reduce the number of existing sworn vacancies to zero by the end of 2024, which will require the deployment of comprehensive recruitment and retention strategies.

Additionally, Denton PD and other City departments are actively exploring replacement options for the current Computer-Aided Dispatch and Records Management System (CAD/RMS). Following a comprehensive needs assessment and requirements analysis, a new CAD/RMS is essential to the operations of Police, Fire, and Public Safety Communications personnel. The replacement process will continue into 2024 and 2025.

Denton PD will also host numerous exciting training opportunities for department personnel in 2024, including courses through FBI-Law Enforcement Executive Development Association (FBI-LEEDA), Northwestern University, and the Institute for Law Enforcement Administration (ILEA). Denton PD works closely with the City's Emergency Management team and other departments to ensure our city is prepared for any incident the future may hold.



**Ofcs. Brandon Rana & Justin Thomas**  
Training Division & Emergency Management









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# City of Denton

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## Legislation Text

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**File #:** ID 24-317, **Version:** 1

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### **AGENDA CAPTION**

Receive a report, hold a discussion, and give staff direction regarding menstrual products in City facilities.  
[Estimated Presentation/Discussion Time: 30 minutes]



# City of Denton

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## AGENDA INFORMATION SHEET

**DEPARTMENT:** City Manager's Office

**CM:** Sara Hensley

**DATE:** April 2, 2024

**SUBJECT**

Receive a report, hold a discussion, and give staff direction regarding menstrual products in City facilities.

**BACKGROUND**

On December 12, 2023, Council Member McGee presented a two-minute pitch request to enact a policy mandating the availability of menstrual products in all city facility restrooms. Currently, there is no written policy, procedure, or administrative directive in place mandating the availability of menstrual products in city facility restrooms, however, the City Manager has asked that City facilities open to the public have menstrual products available when requested.

**EXHIBITS**

1. Agenda Information Sheet
2. Presentation

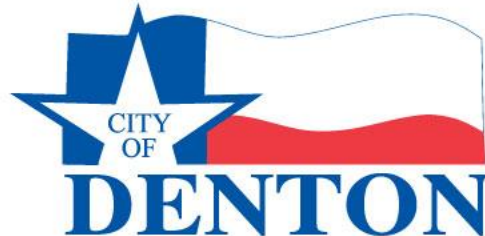
Respectfully submitted:  
Carlotta Cowan  
Assistant to the City Manager

# Menstrual Products in City Facilities

**Carlotta Cowan**  
**Assistant to the City Manager**

**April 2, 2024**

**ID 24-317**





# Background

## Two-minute pitch:

On December 12, 2023, Council Member McGee presented a two-minute pitch request to enact a policy mandating the availability of menstrual products in all city facility restrooms.

# Current Conditions

- The City's organizational policies, procedures, and administrative directives are the framework that guides operations. While they are related, they serve different purposes. Not every policy must have a corresponding procedure, and vice versa.
  - A **policy** is a high-level statement that outlines an organization's overall stance, intent, or direction on a specific issue. Policies provide a framework for decision-making and serve as a guiding principle.
    - Currently, there is no policy in place mandating the availability of menstrual products in city facility restrooms.
    - A policy requires City Council approval.
  - An **administrative procedure or directive** is a written statement to employees establishing rules and regulations concerning internal operational matters of the City.
    - Currently, there is no written procedure or directive in place, however, the City Manager has asked that City facilities open to the public have menstrual products available when requested.
    - An administrative procedure or directive can be issued by the City Manager.

# Current Conditions

- The City has 20 facilities with public access, with a total of 56 restrooms
  - Of the 20 facilities, 15 (highlighted) have received public requests for menstrual products and now have products available upon request.

City Facilities With Public Restrooms
Linda McNatt Animal Shelter
North Branch Library
City Hall
City Hall East
Development Services
Emily Fowler Library
American Legion Hall
Civic Center
Civic Center Pool
Denia Recreation Center
Denton Senior Center
MLK, Jr. Recreation Center
Natatorium
North Lakes Recreation Center
Water Works Park
Airport Terminal
Driving Range
Denton Tennis Center
Goldfield Tennis Center
South Branch Library

# Potential Opportunities

- Add baskets in the City's 20 facilities with public access, a total of 56 restrooms
- Add fixtures in the City's 20 facilities with public access, a total of 56 restrooms, 174 individual stalls



# Option # 1: Baskets

- Free standing
- Monitored and stocked by City staff
- Utilize an existing City contract to purchase supplies
- Pads and tampons



Category	Approx. Cost Box of 50 Products	# of Restrooms	Estimated Monthly Budget	Estimated Annual Budget
Pads	8	56	448	5,376
Tampons	10	56	560	6,720
Signage*				500
Total	\$18		\$1,008	\$12,596

\* Cost includes labor and materials



# Option # 2: Fixtures

- Attached to the stall wall
- Contracted service – restocked monthly
- Pads



Category	# of Fixtures	Estimated One-Time Cost	Estimated Ongoing Cost	Annual Total
Fixtures	174	6,263	-	6,263
Products	174	-	41,760	41,760
Janitorial		-	1,090	1,090
Signage*		-	500	500
Total		\$6,263	\$43,350	\$49,613

\* Cost includes labor and materials

# Summary and Staff Recommendation

## Option # 1

- Add baskets in the City's 20 facilities with public access, a total of 56 restrooms
- FY 24-25 Budget Request of \$12,596 (ongoing)

## Option # 2

- Add fixtures in the City's 20 facilities with public access, a total of 56 restrooms, 174 individual stalls
- FY 24-25 Budget Request of \$49,613 (\$6,263 one-time and \$43,350 ongoing)

## Option # 3

- Do not move forward
- If Council would like to move forward with option 1 or 2, the funding request will be considered during the FY 24-25 Budget Process.
- If approved as a supplemental package during the FY 24-25 Budget Process, staff will draft a policy for Council consideration.

# QUESTIONS?



# City of Denton

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## Legislation Text

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**File #:** ID 24-519, **Version:** 1

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### **AGENDA CAPTION**

Receive a report, hold a discussion, and give staff direction regarding appointments to vacancies on City of Denton boards and commissions.

[Estimated Presentation/Discussion Time: 1 hour]



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## AGENDA INFORMATION SHEET

**DEPARTMENT:** City Secretary's Office

**CM/DCM/ACM:** Sara Hensley

**DATE:** April 2, 2024

### **SUBJECT**

Receive a report, hold a discussion, and give staff direction regarding appointments to vacancies on City of Denton boards and commissions.

### **BACKGROUND**

On Nov. 7, 2023, Council Member McGee gave a 2-minute policy pitch requesting that a timeframe for individual Council member nominations to boards and commissions be established. In his pitch, if individual council member nominations are not made by a specific deadline, any Council member may submit a nomination. The policy pitch received sufficient support to proceed to a work session discussion. Establishing a deadline for individual Council members to make nominations to board and commission seats would require additional staff coordination and time to implement.

On Jan. 9, 2024, the City Council received a report from staff detailing the options available should Council provide direction to move forward with an ordinance. The City Council provided direction to move forward with the following items:

- Deadline for unexpected vacancies should be 90 days from the notice of vacancy.
- After the 90-day deadline has passed, any Council Member may make a nomination.

The City Council did not provide direction regarding several discussion items. Should the City Council provide direction on the options presented, staff will move forward with an ordinance that reflects the City Council's wishes.

### **CONSIDERATIONS**

- Holdovers
- Vacancies due to an empty Council seat
- Notification process
- Time for nominees to provide documentation; vetting
- Multiple nominations
- Unsuccessful nominations
- Maximum number of substitute nominations
- Effective date

### **RECOMMENDATION**

N/A



**PRIOR ACTION/REVIEW (Council, Boards, Commissions)**

Nov. 7, 2022: 2-Minute Policy Pitch  
Jan. 9, 2024: City Council Work Session

**EXHIBITS**

1. Agenda Information Sheet
2. Presentation

Respectfully submitted:  
Kristi Fogle  
Chief of Staff



# Boards & Commissions Vacancies

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**April 2, 2024**

# Background

- November 7, 2023: 2-Minute Pitch from Council Member McGee
  - Establish a deadline for individual Council Member nominations to boards and commissions
  - If nominations are not made by the deadline, any Council Member may submit a substitute nomination
- January 9, 2024: Work Session Presentation & Discussion
  - Council Members will have 90 days from notice of vacancy to make their nomination
  - Several considerations were discussed without direction to move forward



# Council Direction

Staff is requesting Council direction on the items previously discussed by Council on Jan. 9 and other components of the regulation.

Council discussion and direction will encompass the following considerations:

- Holdovers
- Vacancies due to an empty Council seat
- Notification process
- Time for nominees to provide documentation; vetting
- Multiple nominations
- Unsuccessful nominations
- Maximum number of substitute nominations
- Effective date



# Current Conditions

- The City Secretary communicates with Council members by email when a board or commission vacancy occurs.
- Periodic reminders are sent to the member, but this practice is not required by any current ordinance or rule.
- Once a nomination is received, it is placed on the Council agenda for consideration and/or approval.



# Council Direction: Holdovers

- *Unoccupied: the position is vacant, and the prior appointee is no longer able to serve or attend meetings.*
- *Holdover: the position is vacant, but prior appointee continues to serve after term has concluded until the position is filled by a new appointment*
- Are holdovers subject to 90-day substitute nomination?

# Council Direction: Council Vacancies

- Vacancies due to unoccupied Council seat (recall or unoccupied)
- Are substitute vacancies filled while the Council seat is empty?

# Council Direction: Notification Process

- How and when is the Council member notified of the vacancy?
  - Notification starts the 90 days
- How and when is the rest of Council notified when a vacancy is eligible for substitute nominations?

# Council Direction: Time for Nominee to Provide Documents; Vetting

- How much time does the nominee have to submit all required documents to City Secretary (after 90 days)?
- What happens if the nominee is determined to be ineligible to be appointed (after 90 days)?

# Council Direction: Multiple Nominations

- What if multiple substitute nominations are received for the same vacant seat?



# Council Direction: Nominee not appointed

- What happens if the original eligible Council member nominates but Council does not appoint?
  - Do the 90 days start again?

# Council Direction: Maximum Number of Nominations

- Is there a maximum number of substitute nominations a Council member can make?
- Does a substitute nomination that doesn't get appointed count toward the maximum?

# Council Direction: Effective Date

- After Council adopts the regulations, when does the 90-day period begin?
- Retroactive – do regulations and 90-day period apply to vacancies existing before Council adoption of the ordinance?

# Council Direction: Next Steps

- Should staff proceed with drafting ordinance?



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## Legislation Text

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**File #:** ID 24-659, **Version:** 1

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### **AGENDA CAPTION**

Consultation with Attorneys - Under Texas Government Code Section 551.071.

Consult with City attorneys regarding the definition and land use regulations for donation boxes within the City of Denton, Texas, where public discussion of these legal matters would conflict with the duty of the City's attorneys to the City of Denton and the Denton City Council under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas, or otherwise compromise the City's legal position.





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**File #:** ID 24-461, **Version:** 1

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### AGENDA CAPTION

Proclamation: Child Abuse Prevention Month



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## Legislation Text

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**File #:** ID 24-599, **Version:** 1

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### **AGENDA CAPTION**

Proclamation: National Community Development Week



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## Legislation Text

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**File #:** ID 24-720, **Version:** 1

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### **AGENDA CAPTION**

Proclamation: City of Denton Fleet Services ASE Blue Seal of Excellence Award



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## Legislation Text

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**File #:** ID 24-721, **Version:** 1

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### AGENDA CAPTION

Proclamation: 25<sup>th</sup> Annual Women's Symposium



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## Legislation Text

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**File #:** ID 24-661, **Version:** 1

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### **AGENDA CAPTION**

Mr. Stephen Dillenberg regarding "The usurpation of the law by Denton City Council is killing us. Their actions are not compliant with Local, State nor Federal Law, so frequently in fact, I asked why, and one of them actually told me, "We can do whatever we want."





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## Legislation Text

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**File #:** ID 24-662, **Version:** 1

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### AGENDA CAPTION

Ms. Dana Dillenberg regarding "Recovering from A Seriously Debilitating Series of Neurological Issues (3 TIA's) after dose 1 of Pfizer, without support from the people who recommended it, who then congratulated themselves for their successes, without acknowledging the harm done to this community."



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## Legislation Text

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**File #:** ID 24-669, **Version:** 1

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### AGENDA CAPTION

Mr. Jeff Barr regarding ETJ.



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## Legislation Text

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**File #:** ID 24-670, **Version:** 1

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### **AGENDA CAPTION**

Mr. Ed Soph regarding Denton Climate Action and Adaptation Plan.



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## Legislation Text

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**File #:** ID 24-671, **Version:** 1

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### AGENDA CAPTION

Ms. Melinda Preston regarding Israel.



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## Legislation Text

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**File #:** ID 24-672, **Version:** 1

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### AGENDA CAPTION

Mr. Tad Preston regarding Israel.





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## Legislation Text

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**File #:** ID 24-673, **Version:** 1

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### **AGENDA CAPTION**

Ms. Carole Novielli regarding Volunteer Storm Spotters.



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## Legislation Text

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**File #:** ID 24-089, **Version:** 1

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### **AGENDA CAPTION**

Consider approval of the minutes of the March 19, 2024 Regular Meeting.



# City of Denton

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215 E. McKinney Street  
Denton, Texas  
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## AGENDA INFORMATION SHEET

**DEPARTMENT:** City Secretary's Office

**CM:** Sara Hensley

**DATE:** April 2, 2024

### **SUBJECT**

[Meeting Questions, Responses & Handouts](#)

### **BACKGROUND**

City Councilmembers direct questions related to items on the agenda to City staff. The questions are assigned to applicable departments and corresponding responses are compiled to a Question & Answer Report (Q&A) which is placed in a file directory for the applicable meeting. Selecting the link above will gain access to the final version of the Q&A for this meeting, which will be available prior to the start of the meeting.

Periodically during a meeting, handouts are distributed to members of the City council. Any information distributed at this meeting will also be added to the directory by 12:00 p.m. on the business day following the meeting.

### **EXHIBITS**

Exhibit 1 – Agenda Information Sheet

Respectfully submitted:

Jesus Salazar  
City Secretary

CITY OF DENTON CITY COUNCIL MINUTES  
March 19, 2024

After determining that a quorum was present, the City Council of the City of Denton, Texas convened in a Work Session on Tuesday, March 19, 2024, at 2:00 p.m. in the Council Work Session Room at City Hall, 215 E. McKinney Street, Denton, Texas.

PRESENT: Mayor Gerard Hudspeth, Mayor Pro Tem Brian Beck and Council Members Vicki Byrd, Paul Meltzer, Brandon Chase McGee, Joe Holland, and Chris Watts

ABSENT: None

Also present were City Manager Sara Hensley and City Attorney Mack Reinwand.

The posted agenda noted the registration process for public participation at this meeting. However, there were no online registrations or call ins on any items on the agenda.

**WORK SESSION**

**1. Citizen Comments on Consent Agenda Items**

o None

**2. Requests for clarification of agenda items listed on this agenda for public hearing and individual consideration.**

o None

**3. Work Session Reports**

- A. ID 24-258 Receive a report, hold a discussion, and give staff direction regarding the FY 2022-23 Annual Comprehensive Financial Report and annual audit. [Estimated Presentation/Discussion Time: 30 minutes]

The item was presented and discussion followed.

Following discussion, there was no direction provided as the item was for presentation/discussion purposes.

- B. ID 24-302 Receive a report, hold a discussion, and give staff direction on proposed amendments to City of Denton Code of Ordinances Chapter 6 Animals; and receive information on House Bill 870 and Senate Bill 1989 from the 2023 Texas Legislative Session. [Estimated Presentation/Discussion Time: 45 minutes]

The item was presented and discussion followed.

Following discussion, there was no direction provided as the item was for presentation/discussion purposes.

- C. ID 24-110 Receive a report, hold a discussion, and give staff direction regarding potential subject matter to be discussed by a future Charter Election Discussion. [Estimated Presentation/Discussion Time: 45 minutes]

The item was presented and discussion followed.

Following discussion, City Council consensus was to move forward with a Charter Review Committee Charge:

Section 2.01. Number, selection, and term

1. Examine the mix of geographical and at-large council seats.
2. Examine the number of council seats.
3. Examine the term length.

Section 2.02. Qualifications

1. Examine the council stipend.

**Next steps:**

The Council will move forward with the following Work Session schedule:

April 2, 2024	Article XIV. General Provisions,
April 16, 2024	Article IV. Initiative, Referendum and Recall
May 21, 2024	2 Minute Pitch

- D. ID 23-2349 Receive a report, hold a discussion, and give staff direction regarding creating Public Facility Corporations to develop affordable housing in the City of Denton, including a comprehensive analysis of the definition, creation, and administration of Public Facility Corporations. [Estimated Presentation/Discussion Time: 45 minutes]

The item was presented and discussion followed.

Following discussion, City Council directed staff to proceed with the resolution, to accept the formation documents for the DPFC, and authorization to submit the necessary filings to the Secretary of State for City Council approval.

- E. ID 24-080 Receive a report, hold a discussion, and give staff direction on pending City Council requests for: 1) Request for a work session to discuss restoration of the online vote record. 2) Request for Legal staff to research the best resolution(s) to the original IOOF Cemetery deed and contact IOOF representatives for them to participate in the process. [Estimated Presentation/Discussion Time: 30 minutes]

- 1) Request for a work session to discuss restoration of the online vote record.

The item was presented and discussion followed.

Following discussion, City Council consensus was to schedule for future work sessions.

- 2) Request for Legal staff to research the best resolution(s) to the original IOOF Cemetery deed and contact IOOF representatives for them to participate in the process.

The item was presented and discussion followed.

Following discussion, City Council consensus was to schedule for future work sessions.

The work session ended at 4:10 p.m.

### **CLOSED MEETING**

1. The City Council convened into a Closed Meeting at 4:10 p.m. consistent with Chapter 551 of the Texas Government Code, as amended, or as otherwise allowed by law, as follows:

- A. ID 24-634 Consultation with Attorneys - Under Texas Government Code Section 551.071. Consultation with City's attorneys regarding litigation in Cause No. 24-1005-481, styled "State of Texas v. City of Denton, et al." pending in the 481st District Court, Denton County, Texas; where a public discussion of these legal matters would conflict with the duty of the City's attorneys to the City of Denton and the Denton City Council under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas, or jeopardize the City's legal position in pending litigation.

### **DELIBERATED**

The closed meeting started at 4:12 p.m. and ended at 4:33 p.m. No votes or actions were taken during the closed meeting.

### **REGULAR MEETING**

After determining that a quorum was present, the City Council of the City of Denton, Texas convened in a Regular Meeting on Tuesday, March 19, 2024, at 6:30 p.m. in the Council Chambers at City Hall, 215 E. McKinney Street, Denton, Texas.



PRESENT: Mayor Gerard Hudspeth, Mayor Pro Tem Brian Beck and Council Members Vicki Byrd, Joe Holland, Brandon Chase McGee, and Chris Watts

ABSENT: Council Member Paul Meltzer

Also present were City Manager Sara Hensley and City Attorney Mack Reinwand.

The posted agenda noted the registration process for in-person, call-in, and public participation at this meeting. While citizen commentary received via the online registration process was not read, each member for the City Council received each online commentary as it was submitted. In-person, call-in, and online comments received are reflected on the exhibit to the minutes of this meeting.

**1. PLEDGE OF ALLEGIANCE**

A. U.S. Flag B. Texas Flag

**2. PROCLAMATIONS/PRESENTATIONS**

A. ID 24-459 Proclamation: American Red Cross Month  
**PRESENTED**

**3. PRESENTATIONS FROM MEMBERS OF THE PUBLIC**

A. Review of procedures for addressing the City Council.

B. Reports from members of the public shall be received through the following two (2) methods. A total of up to seven (7) speakers are permitted to provide public comment and may include any combination of prior registration and open microphone speakers.

1) Pre-registration. This section of the agenda permits any person who has registered in advance to make a citizen report regarding a public business item he or she wishes to be considered by the City Council. Each speaker is allowed a maximum of four (4) minutes to present their report. At the conclusion of each report, the City Council may pose questions to the speaker or may engage in discussion. If the City Council believes that a speaker's report requires a more detailed review, the City Council will give the City Manager or City Staff direction to place the item on a future work session or regular meeting agenda and advise staff as to the background materials to be desired at such meeting.

a. ID 24-552 Tanner Small regarding e-Waste.  
**PRESENTED**

b. ID 24-574 Max Folmar regarding access transportation.  
**PRESENTED**

- c. ID 24-570 Amira Rasoul regarding Ceasefire for Palestine.

**PRESENTED**

- d. ID 24-571 Erin Taylor regarding Ceasefire Resolution.

**PRESENTED**

- e. ID 24-572 Gaelle Antoine regarding Ceasefire for Palestine.

**PRESENTED**

- f. ID 24-573 Malak Abu-esheh regarding Ceasefire for Palestine.

**NOT PRESENTED**

- g. ID 24-582 Dana Zoltner regarding City Council Responsibilities.

**PRESENTED**

- 2) Open Microphone. This section of the agenda permits any person who has not registered in advance for a citizen report to make comments about public business items not listed on the agenda. Such person(s) shall have registered using the "Virtual White Card" or "By Phone" process outlined by the City on its website or meeting notice.

(2) Additional Citizen Reports (Open Microphone)

Citizen comments received are noted on Exhibit A.

#### **4. CONSENT AGENDA**

The Consent Agenda consisted of Items 4. A – T. During the Work Session held earlier in the day, no items were pulled for Individual Consideration.

Mayor Pro Tem Beck moved to adopt the Consent Agenda as presented. Motion seconded by Council Member Byrd.

Motion carried.

AYES (6): Mayor Hudspeth, Mayor Pro Tem Beck and Council Members Byrd, Holland, McGee, and Watts

NAYS (0): None

ABSENT (1): Council Member Meltzer

- A. ID 24-088 Consider approval of the minutes of the March 5, 2024 Regular Meeting.

**APPROVED**

- B. ID 24-096 Consider nominations/appointments to the City's Boards, Commissions, and Committees: Airport Advisory Board, Denton Police Chief Advisory Board, and Tax Increment Reinvestment Zone Number One Board.

**APPROVED**

**APPOINTMENTS LISTED ON EXHIBIT B**

- C. ID 24-442 Consider approval of a resolution of the City of Denton denying Jeffery Barr and John Barr's petition for removal of property from the extraterritorial jurisdiction of the City of Denton and denying the City's consent to the reduction of the City's extraterritorial jurisdiction; and providing an effective date.

**ASSIGNED RESOLUTION NO. 24-442**

- D. ID 24-622 Consider adoption of an ordinance of the City of Denton prohibiting right turn movement at the signalized intersection where the approaching traffic is facing a red signal light and U-turn where the approaching traffic has no traffic control signs; a repealer clause; providing a savings clause; providing for penalty not to exceed \$200 for violations of this ordinance; providing that violations of this ordinance shall be governed by chapter 18 of the code of ordinances of the City of Denton; and providing for an effective date.

**ASSIGNED ORDINANCE NO. 24-622**

- E. ID 24-360 Consider adoption of an ordinance of the City of Denton providing for the abandonment, relinquishment, and quitclaim of a 1.287 acre Public Utility Easement granted to the City of Denton by Selwyn School, a corporation organized and maintained under the laws of the State of Texas recorded by County Clerk file number 1986-4670, Real Property Records, Denton County, Texas; providing for the quitclaim thereof to DIN1 Land Ltd, a Texas limited partnership; providing for the terms and conditions of the abandonment, relinquishment and quitclaim made herein; providing for the indemnification of the City of Denton against damages arising out of the abandonment herein; providing for the consideration to be paid to the City of Denton; providing for severability and an effective date.

**ASSIGNED ORDINANCE NO. 24-360**

- F. ID 24-361 Consider adoption of an ordinance of the City of Denton providing for the abandonment, relinquishment, and quitclaim of a 0.784 acre portion of an Electric Easement granted to Brazos River Transmission Electric Cooperative, Inc., by County Clerk file number 1949-4017, Deed Records, Denton County, Texas and assigned to the City of Denton by County Clerk file number 1990-9563, Real Property Records, Denton County, Texas; providing for the quitclaim thereof to Mayhill Road Associates, LLC., a Texas limited liability company; providing for the terms and conditions of the abandonment, relinquishment and quitclaim made herein; providing for the indemnification of the City of Denton against damages arising out of the abandonment herein; providing for the

consideration to be paid to the City of Denton; providing for severability and an effective date.

**ASSIGNED ORDINANCE NO. 24-361**

- G. ID 24-362 Consider adoption of an ordinance of the City of Denton providing for the abandonment, relinquishment, and quitclaim of 1) a 0.106 acre tract and a 0.184 tract, both areas being portions of the Public Utility easement granted to the City of Denton by Allegiance Hillview, L.P., a New York limited partnership recorded by County Clerk file number 2008-11630, Real Property Records, Denton county, Texas and 2) a 1.088 acre tract being a portion of the waterline easement granted to the City of Denton by Allegiance Hillview, L.P., a New York limited partnership recorded by County Clerk file number 2008-11630, Real Property Records, Denton County, Texas; providing for the quitclaim thereof to Home Depot U.S.A. Inc., a Delaware corporation; providing for the terms and conditions of the abandonment, relinquishment and quitclaim made herein; providing for the indemnification of the City of Denton against damages arising out of the abandonment herein; providing for the consideration to be paid to the City of Denton; providing for severability and an effective date.

**ASSIGNED ORDINANCE NO. 24-362**

- H. ID 23-749 Consider adoption of an ordinance of the City of Denton authorizing the City Manager, to 1) execute a Letter Agreement for real property purchase and 2) accept the dedication of a fee simple interest in approximately 4.5390 acres of land located in the Robert Beaumont Survey, Abstract No. 31, and being a portion south of that certain tract described as section 1, tract one in the deed to Rayzor Investments, Ltd. Recorded in volume 1796, page 601 in the City and County of Denton, Texas; and providing for severability and an effective date.

**ASSIGNED ORDINANCE NO. 23-749**

- I. ID 24-259 Consider adoption of an ordinance of the City of Denton authorizing the City Manager to execute an Interlocal Agreement between the City of Denton and the University of North Texas, A Higher Education Agency of the State of Texas (UNT), for the improvements and modifications to Union Circle as part of the 2019 Bond: Neighborhoods 2 & 6 Reconstruction Capital Improvement Project.

**ASSIGNED ORDINANCE NO. 24-259**

- J. ID 24-342 Consider adoption of an ordinance of the City of Denton authorizing the City Manager to execute an Interlocal Agreement between the City of Denton and the University of North Texas, A Higher Education Agency of the State of Texas (UNT), regarding the installation of an empty duct bank within the Bonnie Brae Phase 3 Widening and Reconstruction Project.

**ASSIGNED ORDINANCE NO. 24-342**

- K. ID 24-539 Consider 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 Halff Associates, Inc., amending the contract approved by the City Council on November 15, 2022, in the not-to-exceed amount of \$1,144,280.00; said first amendment to provide additional engineering and design services for a Conditional Letter of Map Revision and a Letter of Map Revision in relation to the Westgate Drive Reconstruction Project for the Capital Projects Department; providing for the expenditure of funds therefor; and providing an effective date (RFQ 7599-011 - providing for an additional first amendment expenditure amount not-to-exceed \$62,000.00, with the total contract amount not-to-exceed \$1,206,280.00). The Public Utilities Board recommends approval (5 - 0).

**ASSIGNED ORDINANCE NO. 24-539**

- L. ID 24-540 Consider adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the City Manager to execute a contract with TREG Erosion Control Specialists, LLC., for the Avondale Park Streambank Restoration Project for the Capital Projects Department; providing for the expenditure of funds therefor; and providing an effective date (IFB 8288 - awarded to TREG Erosion Control Specialists, LLC., in the not-to-exceed amount of \$974,148.00). The Public Utilities Board recommends approval (5 - 0).

**ASSIGNED ORDINANCE NO. 24-540**

- M. ID 24-541 Consider adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the City Manager to execute a contract with Tyndale Enterprises, Inc., for the supply of flame-resistant clothing and uniform management for Denton Municipal Electric; providing for the expenditure of funds therefor; and providing an effective date (RFP 8349 - awarded to Tyndale Enterprises, Inc., for one (1) year, with the option for four (4) additional one (1) year extensions, in the total five (5) year not-to-exceed amount of \$1,316,700.00). The Public Utilities Board recommends approval (5 - 0).

**ASSIGNED ORDINANCE NO. 24-541**

- N. ID 24-542 Consider adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the City Manager to execute a contract with Pipe View, LLC dba Pipe View America, as the primary vendor, and Pro-Pipe, Inc., as the secondary vendor, for storm pipe cleaning and inspection services for the Drainage Department; providing for the expenditure of funds therefor; and providing an effective date (RFP 8395 - awarded to Pipe View, LLC dba Pipe View America and Pro-Pipe, Inc. for one (1) year, with the option for four (4) additional one (1) year extensions, in total five (5) year not-to-exceed amount of \$2,500,000.00). The Public Utilities Board recommends approval (5 - 0).

**ASSIGNED ORDINANCE NO. 24-542**

- O. ID 24-543 Consider adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the approval of the first amendment to a contract between the City of Denton and Integrated Computer Systems, Inc., amending the contract approved by City Council on April 9, 2019, in the not-to-exceed amount of \$3,090,863.53, for continued licensing and vendor support for the Computer Aided Dispatch (CAD) System,

the Law Enforcement Records Management System (RMS), and the Mobile Data System (MDS) for the Technology Services Department, said first amendment to extend the term of the contract for one (1) year, with the option for two (2) additional one (1) year extensions; providing for the expenditure of funds therefor; and providing an effective date (RFP 6400 - providing for an additional first amendment expenditure amount not-to-exceed \$772,000.00, with the total contract amount not-to-exceed \$3,862,863.53, and extending the contract with Integrated Computer Systems, Inc., for one (1) year, with the option for two (2) additional one (1) year extensions).

**ASSIGNED ORDINANCE NO. 24-543**

- P. ID 24-544 Consider 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 E Brooke Associates LLC., for professional design services for Audra Oaks Park Master Plan for the Parks and Recreation Department as set forth in the contract; providing for the expenditure of funds therefor; and providing an effective date (RFQ 7850-008 - Professional Services Agreement for professional design services awarded to E Brooke Associates LLC., in the not-to-exceed amount of \$51,465.00).

**ASSIGNED ORDINANCE NO. 24-544**

- Q. ID 24-545 Consider 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 E Brooke Associates LLC, for projects related to site planning and parks and trails design services for the City of Denton for the Parks and Recreation Department as set forth in the contract; providing for the expenditure of funds therefor; and providing an effective date (RFQ 7850-010 - Professional Services Agreement for design services awarded to E Brooke Associates LLC, for one (1) year, with the option for four (4) additional one (1) year extensions, in the total five (5) year not-to-exceed amount of \$1,000,000.00).

**ASSIGNED ORDINANCE NO. 24-545**

- R. ID 24-546 Consider adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the City Manager to execute a contract with BiblioCommons Corp., for software maintenance and licensing from BiblioCommons for the Online Library Catalog Discovery & Overlay Tool for the Denton Public Library, 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; and providing an effective date (File 8448 - awarded to BiblioCommons Corp., in the three (3) year not-to-exceed amount of \$83,000.00).

**ASSIGNED ORDINANCE NO. 24-546**

- S. ID 24-547 Consider adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, ratifying the expenditure of funds by the City Manager for the emergency purchase of Emergency Medical Services/Emergency Medical Technicians Professional Liability insurance coverage for the City of Denton, through the City's sole



broker of record, Lockton Companies, LLC; and providing an effective date (File 8467 - awarded to Admiral Insurance Company, in the three (3) year not-to-exceed amount of \$112,155.00).

**ASSIGNED ORDINANCE NO. 24-547**

- T. ID 24-548 Consider adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the City Manager to execute a contract with Stryker Sales, LLC, through the Sourcewell Cooperative Purchasing Network Contract Number 041823, and through the Savvik Buying Group Contracts 2019-05 and 2021-06, for the purchase of medical equipment for the City of Denton Fire Department; providing for the expenditure of funds therefor; and providing an effective date (File 8482 - awarded to Stryker Sales, LLC, in the five (5) year not-to-exceed amount of \$2,000,000.00).

**ASSIGNED ORDINANCE NO. 24-548**

**5. ITEMS FOR INDIVIDUAL CONSIDERATION**

- A. A23-0003 Consider adoption of an ordinance of the City of Denton, Texas regarding a Municipal Services Agreement, pursuant to Tex. Loc. Gov. Code Sec. 43.0672, between the City of Denton and Lake City Holdings, LLC for the provision of city services to approximately 6.28 acres of land, generally located 224 feet north of E. McKinney Street and 1,140 feet east of Trinity Road; approving a schedule of annexation; authorizing the City Manager to execute the agreement; and providing an effective date. (A23-0003, M. Forrest Annexation, Angie Manglaris)

There were no online registrations or call-ins on the item.

The item was presented and discussion followed.

Following discussion, Mayor Pro Tem Beck moved to adopt the item as presented. Motion seconded by Council Member McGee.

Motion carried.

AYES (6): Mayor Hudspeth, Mayor Pro Tem Beck and Council Members Byrd, Holland, McGee, and Watts

NAYS (0): None

ABSENT (1): Council Member Meltzer

**6. PUBLIC HEARINGS**

- A. A23-0003a Hold a public hearing and consider a petition for voluntary annexation of approximately 6.28 acres of land, generally located 1,176 feet north of East McKinney Street

and east of Trinity Road into the City of Denton, Denton County, Texas. (A23-0003a, M. Forrest Annexation, Angie Manglaris)

There were no online registrations or call-ins on the item.

The item was presented and no discussion followed.

**Note: There was no action taken as the item was only a public hearing.**

- B. Z23-0014a Hold a public hearing and consider adoption of an ordinance of the City of Denton, Texas, regarding a change in zoning district and use classification from a Rural Residential (RR) district to a Light Industrial (LI) district on approximately 13.4 acres of land generally located on the south side of US 380 approximately 2,400 feet west of Masch Branch Road in the City of Denton, Denton County; adopting an amendment to the City's official zoning map; providing for a penalty in the maximum amount of \$2,000.00 for violations thereof; providing a severability clause and an effective date. The Planning and Zoning Commission voted [5-0] to recommend approval of the request. Motion for approval by Commissioner Cole and second by Commissioner Thaggard. (Z23-0014a, RDO Equipment - RR to LI, Ashley Ekstedt)

**ASSIGNED ORDINANCE NO. Z23-0014a**

There were no online registrations or call-ins on the item.

The item was presented and no discussion followed.

The public hearing was opened and citizen comments received are noted on Exhibit A.

With no other callers on queue, the public hearing was closed.

Following discussion, Council Member Watts moved to adopt the item as presented. Motion seconded by Mayor Pro Tem Beck.

Motion carried.

AYES (6): Mayor Hudspeth, Mayor Pro Tem Beck and Council Members Byrd, Holland, McGee, and Watts

NAYS (0): None

ABSENT (1): Council Member Meltzer

**7. ITEMS FOR INDIVIDUAL CONSIDERATION - CONTINUED**

- A. A23-0003b Conduct the first of two readings of an ordinance of the City of Denton, Texas annexing approximately 6.28 acres of land, generally located 1, 176 feet north of E. McKinney Street and east of Trinity Road to the City of Denton, Denton County, Texas; providing for a correction to the city map to include the annexed land; and providing for a savings clause and an effective date. (A23-0003b, M. Forrest Annexation, Angie Manglaris)  
**Note: There was no action taken as the item was only a reading.**

- B. ID 24-463 Consider adoption of an ordinance of the City of Denton, Texas establishing the schedule of rates for electric service; providing for a severability clause; and providing for an effective date. The Public Utilities Board recommends approval (6 - 0).  
**ASSIGNED ORDINANCE NO. 24-463**

There were no online registrations or call-ins on the item.

The item was presented and discussion followed.

Following discussion, Council Member Watts moved to adopt the item as amended. Motion seconded by Mayor Pro Tem Beck.

Motion carried.

AYES (6): Mayor Hudspeth, Mayor Pro Tem Beck and Council Members Byrd, Holland, McGee, and Watts

NAYS (0): None

ABSENT (1): Council Member Meltzer

## **8. CONCLUDING ITEMS**

Council Members expressed items of interest.

With no further business, the meeting was adjourned at 8:16 p.m.

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GERARD HUDSPETH  
MAYOR  
CITY OF DENTON, TEXAS

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JESUS SALAZAR  
CITY SECRETARY  
CITY OF DENTON, TEXAS

MINUTES APPROVED ON: \_\_\_\_\_

March 19, 2024 City Council Regular Meeting - EXHIBIT A							
Name	Last	Address	City	Agenda Item	Position	Method	Comments
Alvaro	Medina	980 N Mill St.	Lewisville	A23-0003a	Oppositio	White Card	
Aimee	Bissett	109 N. Elm	Denton	Z23-0014a	Support	Public Hearing	Applicant
Jaysohn	Thorn	1406 Amherst Dr.	Denton		Support	Open Mic	

## BOARDS & COMMISSIONS - NOMINATIONS LIST

BOARD/COMMITTEE/COMMISSION	COUNCIL PLACE	NOMINATING CCM	NOMINEE	PRESENT TERM	NEW TERM	STATUS & QUALIFICATION OR PREFERENCE, IF ANY
Tax Increment Reinvestment Zone Number One Board (TIRZ1)	N/A	N/A	Suzanne Johnson		UNEXPIRED September 1, 2023 through August 31, 2025	Chairperson
Denton Police Chief Advisory Board	5	Brandon Chase McGee	Sage Thorne		TBD	appointment
Airport Advisory Board	2	Brian Beck	Brownie Stonecipher		UNEXPIRED September 1, 2023 through August 31, 2025	appointment



# City of Denton

City Hall  
215 E. McKinney St.  
Denton, Texas 76201  
[www.cityofdenton.com](http://www.cityofdenton.com)

## Legislation Text

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**File #:** ID 24-248, **Version:** 1

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### **AGENDA CAPTION**

Consider adoption of an ordinance of the City of Denton approving an Airport Land Lease Agreement for a term of twenty-five (25) years between the City of Denton, Texas, and Roanoke Air and Auto, Inc covering property at 904 Aeronca Lane, Denton, Texas at the Denton Enterprise Airport; authorizing the City Manager to execute the Airport Lease Agreement; and providing an effective date. Airport Advisory Board recommends approval (5-0).





# City of Denton

City Hall  
215 E. McKinney Street  
Denton, Texas  
[www.cityofdenton.com](http://www.cityofdenton.com)

## AGENDA INFORMATION SHEET

**DEPARTMENT:** Denton Enterprise Airport

**ACM:** Frank Dixon

**DATE:** April 2, 2024

### **SUBJECT**

Consider adoption of an ordinance of the City of Denton approving an Airport Land Lease Agreement for a term of twenty-five (25) years between the City of Denton, Texas, and Roanoke Air and Auto, Inc covering property at 904 Aeronca Lane, Denton, Texas at the Denton Enterprise Airport; authorizing the City Manager to execute the Airport Lease Agreement; and providing an effective date. Airport Advisory Board recommends approval (5-0).

### **BACKGROUND**

Roanoke Air and Auto, Inc is a current lessee at Denton Enterprise Airport whose lease expired on Jan. 10, 2024. The original lease was approved on January 15, 1989, for a period of twenty-five years, with a lessee option to extend the term of the lease for two (2) additional five (5) year terms. On July 19, 2016, a first amendment was approved by the City Council, Ordinance No. 2016-198, granting the lessee a new, fair market value, 25-year land lease upon the January 10, 2024, expiration of its then-current lease. This guarantee of a new lease was granted in consideration for improvements to the leasehold conducted at the time of the amendment.

The original leasehold included .6171 acres or 26,880.88 square feet of leased land and two (2) buildings approximately 6650 square feet (main building) and 5200 square feet (hangar space) each. The lessee holds an Airport Business Permit for Hangar Leasing Services and subleases a portion of their leasehold to a flight school.

Under the new Airport Land Lease Agreement, Roanoke Air and Auto, Inc. will be adding an additional .8269 acres, or 36,019.76 square feet, of adjacent land for the construction of airside aircraft parking facilities, and landside automobile parking to address the current and future business parking needs.

This addition brings the land under the proposed lease agreement to 1.444 acres or 62,900.64 square feet of leased land and continues to include the two (2) buildings covered under the original leasehold.

### **STAFF RECOMMENDATION**

Airport Staff recommends approval of the Ordinance (**Exhibit 3**).

### **PRIOR ACTION/REVIEW (Council, Boards, Commissions)**

March 20, 2024: Airport Advisory Board recommended approval of Lease Agreement (5-0).

**FISCAL INFORMATION**

The lease for this 1.444-acre parcel will be for twenty-five (25) years beginning at a rate of \$0.38 per square foot annually (\$23,902.24). Beginning with the second anniversary of an approved lease, and every second year thereafter, the lease rate will be adjusted based upon any increase in the US Department of Labor Bureau of Labor Statistics Consumer Price Index (CPI-U) as provided in the lease terms.

**EXHIBITS**

1. Agenda Information Sheet
2. Location Map
3. Ordinance – Roanoke Air and Auto, Inc Lease Agreement
4. Lessee Information


Respectfully submitted:  
Leanne Alexander, A.C.E  
Airport Analyst



# Location Map

904 Aeronca Lane

## Legend

 Roanoke Air and Auto, Inc

1515

Mason Branch Rd

Roanoke Air and Auto, Inc

1515

Aeronca Ln

Google Earth

231

© 2024 Airbus

N

400 ft



ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF DENTON APPROVING AN AIRPORT LAND LEASE AGREEMENT FOR A TERM OF TWENTY-FIVE (25) YEARS BETWEEN THE CITY OF DENTON, TEXAS, AND ROANOKE AIR AND AUTO, INC COVERING PROPERTY AT 904 AERONCA LANE, DENTON, TEXAS AT THE DENTON ENTERPRISE AIRPORT; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AIRPORT LEASE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Roanoke Air and Auto, Inc (“Lessee”) has requested an Airport Land Lease Agreement (“Lease”) from the City of Denton (“Lessor”) for a certain 1.444-acre parcel at the Denton Enterprise Airport (“Airport”); and

WHEREAS, at the March 20, 2024 meeting of the Airport Advisory Board, the Board recommended that the City approve the Airport Land Lease Agreement by a vote of 5 to 0; and

WHEREAS, the City Council deems it in the public interest to enter into an Airport Land Lease Agreement; NOW, THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The findings and recitations contained in the preamble of this ordinance are incorporated herein by reference.

SECTION 2. The Airport Land Lease Agreement in the form attached hereto as Exhibit A is hereby approved and made a part of this ordinance for all purposes.

SECTION 3. The City Manager, or their designee, is hereby authorized to execute the approved Airport Land Lease Agreement.

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 \_\_\_\_\_, 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 \_\_\_\_\_, 2024.

GERARD HUDSPETH, MAYOR

ATTEST:  
JESUS SALAZAR, CITY SECRETARY

BY: \_\_\_\_\_

APPROVED AS TO LEGAL FORM:  
MACK REINWAND, CITY ATTORNEY

BY:

DocuSigned by:

Marcella Lunn

4B070831B4AA438...

## Exhibit A

### **AIRPORT LEASE AGREEMENT**

**between**

**CITY OF DENTON**

**and**

**ROANOKE AIR AND AUTO, INC.**

**dated as of**

\_\_\_\_\_, 2024



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## AIRPORT LEASE AGREEMENT

THIS AIRPORT LEASE AGREEMENT (this "Agreement") effective as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between the CITY OF DENTON, TEXAS, a Texas home-rule municipal corporation ("City"), and Roanoke Air and Auto, Inc., a Texas Corporation (the "Lessee" and, together with City, the "Parties" and each a "Party").

### RECITALS

WHEREAS, City is the owner and operator of the Denton Enterprise Airport in the City of Denton, Texas (the "Airport");

WHEREAS, City has the right, title and interest in and to the real property on the Airport, together with the facilities, easements, rights, licenses, and privileges hereinafter granted, and has full power and authority to enter into this Agreement in respect thereof;

WHEREAS, City owns that certain real property located within the Airport legally described on **Exhibit A** attached hereto and made part hereof which consists of 62,900.64 square feet or 1.444 acres (such real property, together with all rights, privileges, easements and appurtenances benefiting such real property and all Preexisting Improvements, as hereafter defined, are collectively referred to herein as the "Leased Premises");

WHEREAS, City desires to further develop the Leased Premises for exclusively aeronautical purposes, including but not limited to, parking facilities, beneficial to the City and the general public;

WHEREAS, Lessee is qualified, ready, willing and able to undertake such commercial development and/or use; and

WHEREAS, the Parties hereto wish to memorialize their agreement herein and they agree as follows:


### AGREEMENT


NOW, THEREFORE, in consideration of the foregoing Recitals, which by this reference are hereby incorporated into this Agreement, and the mutual covenants contained in this Agreement, the Parties hereto hereby agree as follows:

### ARTICLE I LEASE OF LEASED PREMISES; TERM

#### Section 1.1 Lease of Leased Premises.

A. City hereby leases to Lessee, and Lessee hereby rents from City for its exclusive use the Leased Premises, all herein described rights incident thereto, for and during the Lease Term and upon and subject to the terms, provisions and conditions herein set forth. All improvements existing in, on or under the Leased Premises as of the Commencement Date, as hereafter defined,

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shall be referred to herein as “Preexisting Improvements”. All improvements constructed by or on behalf of City from and after the Commencement Date, as hereafter defined, shall be referred to herein as “City Improvements”. The “Leased Premises” shall be deemed to include the Preexisting Improvements and the City Improvements, as hereafter defined. This Agreement supersedes any previous or current leases for the Leased Premises and any other such agreements shall be considered void and unenforceable.

Section 1.2 Lease Term. The term of this Agreement (the “Lease Term”) shall be for a period of twenty five (25) years commencing on \_\_\_\_\_, 2024 (the “Commencement Date”), and unless sooner terminated pursuant to the provisions of this Agreement, shall terminate on \_\_\_\_\_, 2049. No further extensions shall be granted by City.

Section 1.3 Holding Over; Rights at Expiration.


A. If Lessee retains all or any portion of the Leased Premises after the expiration or termination of the Lease Term by lapse of time or otherwise, such holding over shall constitute the creation of a tenancy at will with respect to such retained portion, terminable by City at any time upon thirty (30) days prior written notice to Lessee. Under such tenancy at will, Lessee agrees to pay to City as liquidated damages, and not as a penalty, 150 percent of the last monthly rental rate under this agreement for each month of holdover. All provisions of this Agreement shall remain in full force and effect during such holdover period.


B. Lessee further agrees that, upon the expiration or termination of the Lease Term, the Leased Premises will be delivered to City in as good a condition as when this Agreement began, reasonable wear and tear and matters covered by insurance excepted and the Improvements, as hereafter defined, will be delivered to City in as good a condition as when such Improvements were constructed, located, installed, placed or erected in, upon or under the Leased Premises, reasonable wear and tear and matters covered by insurance excepted.

C. Except as otherwise expressly set forth elsewhere herein, Lessee shall have no rights with respect to any improvements made to the Leased Premises during the Lease Term that are not otherwise required to be removed by City.

Section 1.4 Inspection of Leased Premises; Access to Books and Records. City, through its duly authorized agents, shall have at any reasonable time the full and unrestricted right to enter the Leased Premises and the Improvements, as hereafter defined, for the purpose of periodic inspection for fire protection, maintenance and to investigate compliance with the terms of this Agreement; provided, however, that except in the case of emergency, such right shall be exercised upon reasonable prior notice to Lessee and with an opportunity for Lessee to have an employee or agent present, and will not interfere with Lessee’s construction or operations. Lessee agrees to provide any documents that may be requested by City to determine compliance with this Agreement within thirty (30) days of such request.

Section 1.5 Ownership of Leased Premises. City and Lessee intend and hereby agree that the Leased Premises shall be and remain the property of City during the entire term of this Agreement and thereafter.

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## ARTICLE II

### RENTAL; SECURITY DEPOSIT

#### Section 2.1 Rent.

A. In consideration for the use of the Leased Premises herein granted, Lessee shall pay to City the following rental amounts (the “Rent”). The monthly rent shall be in the sum of \$ 0.38 per net square foot, as determined and provided in Exhibit A, said sum being stipulated herein as Twenty-Three Thousand, Nine Hundred and Two Dollars and Twenty-Four Cents (\$23,902.24) (sales tax included), payable in twelve equal monthly installments of One Thousand, Nine Hundred and Ninety-One Dollars and Eighty-Five Cents (\$1,991.85). Prior to the Commencement Date, Lessee shall deposit with City, a sum equal to the first and last months’ Rent. All subsequent rental payment will be due in advance on the first of each calendar month thereafter. City will mail a courtesy statement on or about the first of each month. Failure to receive the statement in a timely manner does not absolve Lessee from making rental payment on the first of each month.

B. The Rent for the Leased Premises shall be readjusted at the end of each two (2) year period during the Lease Term, starting on the Commencement Date month and every two (2) years thereafter, on the basis of the proportion that the then current United States Consumer Price Index for all urban consumers (“CPI-U”) for the Dallas-Fort Worth Bureau of Labor Statistics (1982-84 = 100) bears to that of the commencement month.

Section 2.2 Late Charge. There shall be an extra charge of **THIRTY DOLLARS (\$30.00)** on any check returned by the bank for insufficient funds or account not existing. Any rental payment not received within ten (10) days of its due date shall carry an additional charge of one and one-half percent (1.5%) as a late penalty fee.


Section 2.3 Time and Place of Payments. The Rent, as well as all other charges hereunder, shall be payable in equal monthly installments in advance on or before the first business day of each calendar month of the Lease Term at City’s offices of the Customer Service Department of the City of Denton 601 E. Hickory St., Denton, Texas, unless otherwise designated in writing by the City.


Section 2.4 Delinquent Rent. In the event Rent due pursuant to Section 2.1 or any other amounts payable by Lessee hereunder shall not be paid by Lessee on the due date thereof, Lessee shall pay to City as additional Rent, an interest charge of five percent (5%), or the maximum percentage allowed by law, whichever is greater, of the amount due for each full calendar month of delinquency, computed as simple interest. No interest shall be charged until payment is thirty (30) days overdue, but any such interest assessed thereafter shall be computed from the due date.

## ARTICLE III

### OCCUPANCY, USE AND CONDITIONS OF LEASED PREMISES

Section 3.1 Condition of Leased Premises. Lessee accepts the Leased Premises in their present “as is” condition. Lessee releases City and holds City and City’s officers, directors, elected

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
and appointed officials, employees, and agents harmless for any claims arising out of or related to any condition of the Leased Premises.


Construction and Ownership of Improvements.

A. The Parties agree that this Agreement is entered into specifically with the understanding that Lessee will build, construct, complete, and furnish a parking facility at its own expense in accordance to Plans and Specifications, as defined in Section 5.1. Any other buildings, structures, fixtures, appurtenances, site work, site utilities, or other improvements that Lessee contemplates constructing will need to be approved by Lessor according to the then current procedures and City must be notified of any such plans through updated capital improvement plans. Any and all buildings, structures, fixtures, appurtenances, site work, site utilities, or other improvements to be located or constructed on the Leased Property by Lessee during the Lease Term in accordance with the Plans and Specifications shall be known as “Improvements”. “Improvements” shall not include any Preexisting Improvements or City Improvements. Lessee agrees to commence construction of the Improvements within [180] days after the Commencement Date and to complete the construction of the Improvements in accordance with all governmental requirements and the Plans and Specifications. Lessee shall not construct, locate, install, place or erect any improvements, other than the Improvements, at, upon or under the Leased Premises or elsewhere at the Airport without the express prior written consent of City.

B. Lessee will own the Improvements during the Lease Term only. Effective upon the expiration or termination of this Agreement, the Improvements shall become the property of City, without the payment by City of any compensation or other consideration for any Improvements, and title to the Improvements shall merge with the title of, or be otherwise considered and deemed a part of, the real property of City, free and clear of any claim of Lessee and any persons or entities claiming under or through Lessee including, without limitation, the trustee, beneficiary or holder of any mortgage or deed of trust. Any other personal property of Lessee that can be removed by Lessee without material damage to the Leased Premises or to the Improvements may remain the personal property of Lessee and may be removed by Lessee at any time on or before the end of the Lease Term. Lessee shall, in removing any such personal property, repair all damage to the Leased Premises and Improvements caused by such removal.

Access. City agrees that if Lessee is not in breach of this Agreement, Lessee and Lessee’s employees, officers, directors, sublessees (that are approved by City pursuant to this Agreement), contractors, subcontractors, suppliers, agents, invitees, and other representatives (“Lessee’s Associates”) are authorized to ingress and egress across the common areas of the Airport (in the areas designated by City, for the purposes for which they were designed, and as permitted by applicable Laws and Regulations as defined in Section 3.4) on a non-exclusive basis and to the extent reasonably necessary for Lessee’s use, occupancy, and operations at the Leased Premises. Lessee agrees to comply with the [*required driver training program, if applicable*] (“Driver Training Program”). Lessee further agrees to ensure that Lessee’s Associates shall comply with the Driver Training Program. During special events at the Airport, Lessee acknowledges that the standard operation procedure at the Airport may be altered such that egress and ingress to the Leased Premises may be altered by City. City will notify Lessee in writing of any special events or closures that will impede Lessee’s use of the Leased Premises. Lessee’s failure to comply with

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the altered procedure is a default of this Agreement, and City may proceed to terminate this Agreement.


**Section 3.2 Use of Leased Premises and Compliance with all Laws and Regulations.** Lessee agrees that it shall use the Leased Premises and the Improvements only for aeronautical purposes and Lessee and Lessee's Associates shall comply at all times, at Lessee's sole cost, with any and all laws and regulations (as amended or otherwise modified from time to time) that are applicable to Lessee's business and Lessee's construction of the Improvements, including those pertaining to the construction of buildings on public property, and Lessee's use, occupancy, or operations at the Leased Premises, the Improvements or the Airport (the "Laws and Regulations"), which include, but are not limited to, all laws, statutes, ordinances, regulations, rules, orders, writs, judgments, decrees, injunctions, directives, rulings, guidelines, standards, codes, policies, common law, and other pronouncements of any kind having the effect of law that may be applicable at any time during the term of this Agreement including, but not limited to, the Airport Rules and Regulations, Minimum Operating Standards, master plans and zoning codes, and all Laws and Regulations pertaining to the environment (the "Environmental Laws"); any and all plans and programs developed in compliance with such requirements (including, but not limited to, any Airport Security Plan); and all lawful, reasonable, and nondiscriminatory Airport policies and other requirements. Lessee shall provide all required notices under the Laws and Regulations. Upon a written request by City, Lessee will verify, within a reasonable time frame, compliance with any Laws and Regulations. Further, in its use of the Leased Premises and the Improvements, Lessee shall comply with the following:


A. **Address.** Lessee shall file with the Airport Director and keep current its mailing addresses, telephone numbers, and contacts where it can be reached in an emergency.

B. **List of Sublessee and Aircraft.** At least quarterly, Lessee shall file with the Airport Director and keep current a list of its sublessees and a list of all aircraft hangered or tied down on the Leased Premises within the previous four (4) month period.

**Section 3.3 No Unauthorized Use.** Lessee and Lessee's Associates shall use the Leased Premises, the Improvements and the Airport only for purposes that are expressly authorized by this Agreement and shall not engage in any unauthorized use of the same. Unauthorized uses include, but are not limited to, restricting access on any road or other area that Lessee does not lease; placing waste materials on the Airport or disposing of such materials in violation of any Laws and Regulations; any use that would constitute a public or private nuisance or a disturbance or annoyance to other Airport users; driving a motor vehicle in a prohibited Airport location; the use of automobile parking areas in a manner not authorized by City; any use that would interfere with any operation at the Airport or decrease the Airport's effectiveness (as determined by City in its sole discretion); and any use that would be prohibited by or would impair coverage under either Party's insurance policies or would cause an increase in the existing rate of insurance upon the Leased Premise.

**Section 3.4 Permits and Licenses.** Lessee shall obtain and maintain in current status all permits and licenses that are required under any Laws and Regulations in connection with Lessee's construction of Improvements and the use, occupancy, or operations at the Leased Premises, the Improvements or the Airport. Those permits and licenses include, but are not limited to, (i) all

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contractors doing work on the Leased Premises, including work on or for the Improvements, must be licensed by the State of Texas, (ii) prior to commencing construction of any Improvements, a permit must be obtained from the City of Denton and a copy of the permit must be furnished to the Airport Manager, and (iii) if applicable, clearance must be obtained from the responsible health department or other agency. In the event that Lessee receives notice from any governmental entity that Lessee lacks, or is in violation of, any such permit or license, Lessee shall provide City with timely written notice of the same.


**Section 3.5 Payment of Taxes.** Lessee shall pay (before their respective due dates) all taxes, fees, assessments, and levies that relate to Lessee's use, occupancy, or operations at the Leased Premises, the Improvements or the Airport and all other obligations for which a lien may be created relating thereto (including, but not limited to, utility charges and work for any Improvements). Lessee shall be responsible for any and all taxes generated by the Denton County Tax Assessor / Collector.


**Section 3.6 No Liens.** No liens may be placed upon the Leased Premises. Within thirty (30) days, Lessee shall pay all lawful claims made against City and discharge all liens filed or which exist against the Leased Premises or any other portion of the Airport (other than Lessee's trade fixtures or trade equipment) to the extent such claims arise out of or in connection with, whether directly or indirectly, the failure to make payment for work done or materials provided by Lessee its contractors, subcontractors, or materialmen. However, Lessee shall have the right to contest the amount or validity of any such claim or lien without being in default under this Agreement upon furnishing security in form acceptable to City, in an amount equal to one hundred percent (100%) of such claim or lien, which insures that such claim or lien will be properly and fully discharged forthwith in the event that such contest is finally determined against Lessee or City. City shall give timely notice to Lessee of all such claims and liens of which it becomes aware. When contracting for any work in connection with the Leased Premises or the Improvements, Lessee shall include in such contract a provision prohibiting the contractor or any subcontractor or supplier from filing a lien or asserting a claim against City's real property or any interest therein. Lessee is solely responsible for ensuring that all requirements are met such that such lien waivers are effective and enforceable (such as filing such contracts, if necessary). Furthermore, when completed, the Improvements on the Leased Premises shall be free from all construction liens.

**Section 3.7 Compliance with 2252.909 of Texas Government Code.**

A. In connection with Lessee's construction, alteration or repair of the Improvements or any other construction on the Leased Property, Lessee shall require their contractor to:

- (i) execute a payment bond that conforms to Subchapter I, Chapter 53, Property Code; and
- (ii) execute a performance bond in an amount equal to the amount of the contract for the protection of the City and conditioned on the faithful performance of the contractor's work in accordance with the plans, specifications, and contract documents.

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B. Lessee shall provide lessor with a notice of commencement of construction no later than ninety (90) days prior to the commencement of construction, alteration, or repair of any improvement to the Leased Property ("Notice of Commencement"), which will materially conform with the requirements under Texas Local Government Code 2252.909.

C. Notice of Commencement must:

- (i) identify the public property where the work will be performed;
- (ii) described the work to be performed;
- (iii) state the total cost of the work to be performed;
- (iv) include copies of the performance and payment bonds required; and
- (v) include a written acknowledgment signed by the contractor stating that copies of the required performance payment bonds will be provided to all subcontractors not later than the fifth day after the date a subcontract is executed.

## ARTICLE IV

### REPRESENTATIONS AND WARRANTIES

Section 4.1 Representations by City. City represents and warrants that it has the right, power, and legal capacity to enter into and perform its obligations under this Agreement, has duly executed and delivered this Agreement, and that this Agreement constitutes a legal, valid, and binding obligation of City.


Section 4.2 Representations by Lessee. Lessee represents and warrants that it has the right, power, and legal capacity to enter into and perform its obligations under this Agreement, has duly executed and delivered this Agreement, and that this Agreement constitutes a legal, valid, and binding obligation of Lessee.


## ARTICLE V

### OBLIGATIONS OF LESSEE

Section 5.1 Plans and Specifications. With respect to any Improvements, Lessee shall select qualified architects and engineers to prepare, prior to construction or on a phased basis during construction, the architectural, site, structural, mechanical, and/or electrical drawings and specifications for the Improvements in the form and content required by the appropriate local planning and zoning authorities and pursuant to all applicable Laws and Regulations and this Agreement, which shall be approved in writing by City (collectively, the "Plans and Specifications").

Section 5.2 Operations and Maintenance. Lessee shall maintain the Leased Premises and all Improvements in a condition that is clean, free of debris, safe, sanitary, and in good repair and shall not accumulate or permit the accumulation of any trash, refuse, debris, or of anything

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that is unsightly, which creates a fire hazard, nuisance, or causes inconvenience to adjoining properties. Lessee shall at its own expense create, execute, and maintain a comprehensive landscaping and irrigation plan for the Leased Premises in accordance with relevant local landscaping codes. Lessee shall perform all work in accordance with Laws and Regulations and in a good and workmanlike manner. Lessee shall promptly remedy any condition that fails to meet this standard. Without limiting the foregoing obligations, Lessee shall not store on the Leased Premises any inoperable equipment, discarded or unsightly materials, or materials likely to create a hazard; shall not use areas outside of enclosed buildings for storage; and shall store trash in covered metal receptacles. Any substance or material that is regulated by any Environmental Law (“Hazardous Materials”) shall be governed by Section 5.8. In addition, Lessee agrees to comply with all applicable provisions of City’s Texas Pollutant Discharge Elimination Multi-Sector General Permit.

**Section 5.3 Utilities.** Lessor represents that there are water, sewer, and 3-phase electrical lines accessible within the general vicinity of the Leased Premises. Lessee shall be responsible, at Lessee’s sole cost and expense, for obtaining all utility connections at or for the Leased Premises and the Improvements. Further, Lessee shall pay for telecommunications, television, internet, gas, light bulbs, electricity, water, sewer, and garbage and trash removal services provided to or used by Lessee and shall make such deposits as are required to secure service. Lessee shall be responsible for any water or sewer impact fees incurred by their use of the Leased Premises. Any repairs of the utility lines, other than those which are the responsibility of the utility service, are the responsibility of Lessee. If utilities are billed to a common meter, Lessee shall pay to City the pro-rated amount based on square footage leased.

**Section 5.4 Signs.** Lessee shall not place, or cause to be placed, any sign or signs on the Leased Premises or the Improvements unless otherwise agreed to in writing by City.

**Section 5.5 Security.** Lessee is responsible to comply (at Lessee’s sole cost) with all security measures that City, the United States Transportation Security Administration, the United States Department of Homeland Security (“Homeland Security”), the United States Federal Aviation Administration (“FAA”), or any other governmental entity having jurisdiction may require in connection with the Airport, including, but not limited to, any access credential requirements, any decision to remove Lessee’s access credentials, and any civil penalty obligations and other costs arising from a breach of security requirements caused or permitted by Lessee or Lessee’s Associates. Lessee agrees that Airport access credentials are the property of City and may be suspended or revoked by City for security-related reasons in its sole discretion at any time. Lessee shall pay all fees associated with such credentials, and Lessee shall immediately report to the Airport Manager any lost credentials or credentials that Lessee removes from any employee or any of Lessee’s Associates. Lessee shall protect and preserve security at the Airport. Lessee acknowledges that FAA, Homeland Security, or a subdivision of either may enact laws or regulations regarding security at general aviation airports such that City may not be able to comply fully with its obligations under this Agreement, and Lessee agrees that City will not be liable for any damages to Lessee or Lessee’s personal property that may result from said noncompliance.

**Section 5.6 Obstruction Lights.** Lessee shall, at its expense, provide and maintain obstruction lights on any structure on the Leased Premises, including the Improvements, if required

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by City or FAA regulations. Any obstruction lights so required shall comply with the specifications and standards established for such installations by City or FAA.


#### Section 5.7 Hazardous Materials.


A. No Violation of Environmental Laws. Lessee shall not cause or permit any Hazardous Materials to be used, produced, stored, transported, brought upon, or released on, under, or about the Leased Premises or the Airport by Lessee or Lessee's Associates in violation of applicable Environmental Laws. Lessee is responsible for any such violation as provided by Section 7.1.

B. Response to Violations. Lessee agrees that in the event of a release or threat of release of any Hazardous Material by Lessee or Lessee's Associates at the Airport, Lessee shall provide City with prompt notice of the same. Lessee shall respond to any such release or threat of release in accordance with applicable Laws and Regulations. If City has reasonable cause to believe that any such release or threat of release has occurred, City may request, in writing, that Lessee conduct reasonable testing and analysis (using qualified independent experts acceptable to City) to show that Lessee is complying with applicable Environmental Laws. City may conduct the same at Lessee's expense if Lessee fails to respond in a reasonable manner. Lessee shall cease any or all of Lessee's activities as City determines necessary, in its sole and absolute discretion, in connection with any investigation, cure, or remediation. If Lessee or Lessee's Associates violate any Environmental Laws at the Airport (whether due to the release of a Hazardous Material or otherwise), Lessee, at Lessee's sole expense, shall have the following obligations, which shall survive any expiration or termination of this Agreement: (i) promptly remediate such violation in compliance with applicable Environmental Laws; (ii) submit to City a written remediation plan, and City reserves the right to approve such plan (which approval shall not be unreasonably withheld) and to review and inspect all work; (iii) work with City and other governmental authorities having jurisdiction in connection with any violation; and (iv) promptly provide City copies of all documents pertaining to any environmental concern that are not subject to Lessee's attorney-client privilege.

C. Obligations upon Termination and Authorized Transfers. Upon any expiration or termination of this Agreement or any change in possession of the Leased Premises authorized by City, Lessee shall demonstrate to City's reasonable satisfaction that Lessee has removed any Hazardous Materials and is in compliance with applicable Environmental Laws. Such demonstration may include, but is not limited to, independent analysis and testing to the extent that facts and circumstances warrant analysis and testing, such as evidence of past violations or specific uses of the Leased Premises. If the site is contaminated during Lessee's possession, Lessee shall bear all costs and responsibility for the required clean up, and shall hold City, its officers, elected and appointed officials, employees, and agents harmless therefrom. Notwithstanding anything to the contrary, the obligations of this Section 5.8 shall survive any termination of this Agreement.

Section 5.8 Trash, Garbage, and Other Refuse. Lessee shall pick up and provide for a complete and proper arrangement for the adequate sanitary handling and disposal, away from the Airport through the City or any other licensed refuse hauler. Lessee is responsible for contacting the Master Refuse Hauler and arranging for disposal and payment of such services. Lessee shall

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provide and use suitable covered metal receptacles for all such garbage, trash, and other refuse on the Leased Premises. Lessee shall not pile boxes, cartons, barrels, pallets, debris, or similar items in an unattractive or unsafe manner, on or about the Leased Premises.

## ARTICLE VI

### INDEMNIFICATION AND INSURANCE

Section 6.1 Insurance. Lessee agrees to purchase general liability insurance in the amount of \$1,000,000 combined single limit to cover Lessee's operations as described in Section 3.4. Insurance coverage shall include City as additional named insured, providing fifteen (15) days' notice of cancellation. Lessee shall submit Certificate of Insurance to City within ten (10) working days after the effective date of this Agreement, and yearly thereafter.

#### Section 6.2 Lessee's Indemnification and Duty to Pay Damages.

A. **LESSEE SHALL HOLD CITY AND CITY'S OFFICERS, ELECTED AND APPOINTED OFFICIALS, EMPLOYEES, AND AGENTS EXEMPT AND HARMLESS, TO THE EXTENT ALLOWED BY LAW, FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, SUITS, JUDGMENTS, COSTS, AND EXPENSES ASSERTED BY ANY PERSON OR PERSONS (INCLUDING AGENTS OR EMPLOYEES OF CITY, LESSEE, OR SUBLESSEE) BY REASON OF DEATH OR INJURY TO PERSONS OR LOSS OF OR DAMAGE TO PROPERTY RESULTING FROM LESSEE'S OPERATIONS, OR ANYTHING DONE OR OMITTED BY LESSEE UNDER THIS AGREEMENT EXCEPT TO THE EXTENT THAT SUCH CLAIMS, DEMANDS, SUITS, JUDGMENTS, COSTS, AND EXPENSES MAY BE ATTRIBUTED TO THE INTENTIONAL ACTS OR OMISSIONS OF CITY, ITS AGENTS, OR EMPLOYEES.**

B. City shall not be liable to Lessee for any damage by or from any act or negligence of any co-tenant or other occupant of the same building, or by any owner or occupant of adjoining or contiguous property.


C. Lessee agrees to pay for all damages to the Leased Premises, the Improvements, its apparatus, or appurtenances caused by Lessee's misuse or neglect thereof.


D. Lessee shall be responsible and liable for the conduct of Lessee's Associates in, on and around the Leased Premises.

## ARTICLE VII

### DEFAULT AND REMEDIES

Section 7.1 Lessee's Default. The occurrence of any of the following events shall constitute a default by Lessee under this Agreement unless cured within thirty (30) days following written notice of such violation from City: (i) Lessee fails to timely pay any Rent; (ii) Lessee or Lessee's Associates violate any requirement under this Agreement (including, but not limited to, abandonment of the Leased Premises); (iii) Lessee assigns or encumbers any right in this Agreement, delegates any performance hereunder, or subleases any part of the Leased Premises

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(except as expressly permitted in this Agreement); (iv) Lessee files a petition in bankruptcy or has a petition filed against Lessee in bankruptcy, insolvency, or for reorganization or appointment of a receiver or trustee which is not dismissed within sixty (60) days; (v) Lessee petitions for or enters into an arrangement for the benefit of creditors, or suffers this Agreement to become subject to a writ of execution and such writ is not released within thirty (30) days; (vi) Lessee defaults in constructing any Improvements that are required to be constructed under this Agreement; or (vii) Lessee dissolves or dies.

**Section 7.2 Default by City.** City shall not be in default under this Agreement unless City fails to perform an obligation required of City under this Agreement within thirty (30) days after written notice by Lessee to City. If the nature of City's obligation is such that more than thirty (30) days are reasonably required for performance or cure, City shall not be in default if City commences performance within such thirty (30) day period and thereafter diligently prosecutes the same to completion.

**Section 7.3 Remedies for Failure to Pay Rent.** If any Rent required by this Agreement shall not be paid when due, City shall have the option to:

A. Terminate this Agreement, take possession of the Improvements, resume possession of the Leased Premises for its own account, and recover immediately from Lessee the differences between the Rent and the fair rental value of the property for the term, reduced to present worth, or

B. Terminate this Agreement, take possession of the Improvements, resume possession of the Leased Premises, re-lease the Leased Premises for the remainder of the term for the account of Lessee, and recover from Lessee, at the end of the term or at the time each payment of Rent comes due under this Agreement as City may choose, the difference between the Rent and the rent received on the re-leasing or renting.

In either event, City shall also recover all expenses incurred by reason of breach, including reasonable attorney's fees.

**Section 7.4 Remedies for Breach of Agreement.** If Lessee shall fail to perform or breach any provision of this Agreement other than the agreement of Lessee to pay Rent, City shall provide written notice to Lessee specifying the performance required. Thirty (30) days after such notice is provided under this Section 7.4, City may terminate this Agreement or take any such action it is legally entitled to take, including instituting litigation to compel performance of this Agreement. Should litigation be filed by City and it is the prevailing party in that litigation, Lessee shall be liable for all expenses related to such litigation, including City's attorney's fees.

**Section 7.5 Survival.** The provisions of this Article VII and the remedies and rights provided in this Article VII shall survive any expiration or termination of this Agreement.

## ARTICLE VIII

### ASSIGNMENT AND SUBLEASING

**Section 8.1 Assignment by Lessee.**

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A. Lessee shall not assign any of its rights under this Agreement, including, but not limited to, rights in any Improvements, (whether such assignment is voluntarily or involuntarily, by merger, consolidation, dissolution, change in control, or any other manner), and shall not delegate any performance under this Agreement, except with the prior written consent of City to any of the same, in City's sole discretion. As a condition of obtaining such consent, the City reserves the right to require the transferee receiving any such rights from Lessee to execute a new lease agreement provided by City. Regardless of City's consent, Lessee shall not be released from any obligations for matters arising during the time when this Agreement was in effect. Any purported assignment or delegation of rights or delegation of performance in violation of this section is void.

B. Upon the expiration or termination of this Agreement, Lessee hereby assigns, transfers, and conveys to City, without warranty, the following:

(a) The right to the use of the Plans and Specifications to the extent owned by Lessee;

(b) Any copyright interests in the Plans and Specifications held by Lessee; and


(c) The right to enforce, in Lessee's own name as a proper party, (i) any subcontracts related to the Improvements or other maintenance or services contracts in force with respect to the Leased Premises or Improvements and any warranties arising under any of them or in connection with the performance thereof, as the case may be.


Section 8.2 Assignment by City. City shall have the right, in City's sole discretion, to assign any of its rights under this Agreement (and in connection therewith, shall be deemed to have delegated its duties), and upon any such assignment, Lessee agrees that Lessee shall perform its obligations under this Agreement in favor of such assignee.

Section 8.3 Encumbrances. Lessee shall not encumber or permit the encumbrance of any real property at the Airport. Except for a Leasehold Mortgage as defined in Section 8.5, Lessee shall not encumber or permit the encumbrance of any of Lessee's rights under this Agreement without City's prior written consent, in City's sole discretion. Lessee shall not record this Agreement or any document or interest relating thereto. Any purported encumbrance of rights in violation of this Section 8.3 is void.

Section 8.4 Leasehold Mortgage. Absent the prior written consent of City, Lessee shall not have the right to mortgage or collaterally assign its interest in this Agreement, the Leased Premises or the Improvements to a bank or other similar institutional lender.

Section 8.5 Leasehold Mortgage - Non-Exhaustive List of Preconditions. Notwithstanding the above Section 8.4, Lessee may mortgage or collaterally assign its interest in this Agreement to a commercial bank (a "Lender") solely in order to secure financing for the construction of the Improvements, provided that any such leasehold mortgage or collateral assignment shall be subject, subordinate, and inferior at all times to the rights of City hereunder and subject to the prior written consent of the City (a "Leasehold Mortgage"). In connection with a Leasehold Mortgage or City's written consent to any other encumbrance, at a minimum, City shall require the following:

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- i. Lender shall certify in writing to City that it has reviewed this Agreement and accepts the provisions of this Agreement, including but not limited to the provisions of this Section 8.5, and that no loan requirements conflict with or materially erode any provisions of this Agreement.
- ii. Lender agrees that City must approve any encumbrance proposed to be placed upon the Improvements or this Agreement and that in no event shall any encumbrance be placed upon the Leased Premises.
- iii. Lender agrees that City may, in its sole discretion, require the inclusion of certain provisions in lending documents that are defined to protect City and/or comply with federal law, rules, or regulations.
- iv. Lender agrees that its security interest in the Improvements, the Leasehold Mortgage, the related loan agreement, and this Agreement is subordinate to the provisions of any existing or future agreements between City and the United States of America, relative to the operation and maintenance of the Airport, the terms and execution of which have been or may be required as a condition precedent to the expenditure or reimbursement to City of federal funds for the development of the Airport ("Grant Assurances") and that Lender further agrees that in the event that the Leasehold Mortgage, the related loan agreement, or anything in this Agreement, either on its own terms or by any other reason, conflicts with or violates any such Grant Assurances, City has the right to amend, alter, or otherwise modify the terms of this Agreement in order to resolve such conflict or violation.
- v. Lender agrees to maintain current contact information with City and provide City with concurrent copies of any notices or communications regarding a default under the loan agreement or Leasehold Mortgage.
- vi. Lender agrees that in the event of a default under the loan agreement or Leasehold Mortgage, Lender shall promptly inform the City of such default.
- vii. Lender and Lessee agree that any event of a default under the loan agreement or Leasehold Mortgage shall be a default of this Agreement.
- viii. Lender agrees that upon any default under the loan agreement or Leasehold Mortgage, City shall have a lien with first priority on all Lessee-owned property at the Leased Premises.
- ix. Lender agrees that, in the event that Lender takes actual or de facto control of the Improvements and/or Lessee's interests in this Agreement, it shall immediately notify the City of that event ("Lender Control"), Lender will have no more than 180 days to obtain a replacement tenant that is acceptable to the City, in City's sole discretion. In the event that more than 180 days elapses after the beginning of Lender Control, the Lender's security, mortgage, and all other interests in the Improvements, this Agreement or anything else related to the Leased Premises terminates.

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- x. Lender agrees that any use by Lender, assignee, or any other party, will be limited to those uses that have been authorized by City (namely, the hanging of aircraft) and that in no event shall the Improvements be used for a non-aeronautical purpose.
- xi. The Leasehold Mortgage and any other encumbrances shall terminate prior to the expiration or termination of this Agreement and Lender agrees to promptly remove such encumbrance upon the earlier of (1) such termination of the Leasehold Mortgage or other encumbrance, or (2) the date when the obligation that the Leasehold Mortgage or other encumbrance secures has been satisfied.
- xii. **Lender agrees to hold City, its officers, elected and appointed officials, employees, and agents harmless for all claims arising after the date that Lessee was in default under its loan agreement(s) with the Lender.**
- xiii. **Lessee agrees to release and hold City, its officers, elected and appointed officials, employees, and agents harmless for all claims related to City's consent, non-consent, or any other act or omission related to encumbering the Improvements and/or this Agreement.**
- xiv. City shall have no obligation to provide any notices to Lender and City shall have no liability of any kind to Lender or other lienholder.

## ARTICLE IX

### MISCELLANEOUS PROVISIONS


Section 9.1 Waiver of Exemption. Any constitutional or statutory exemption of Lessee of any property usually kept on the Leased Premises, from distress or forced sale, is waived.


Section 9.2 Addresses. All notices given under this Agreement to City shall be sent to the Airport Manager at 5000 Airport Road, Denton, Texas 76207, with a copy to the City Attorney at 215 E. McKinney, Denton, Texas 76201, or such other place as City shall specify in writing. All notices given under this Agreement to Lessee shall be sent to:

Roanoke Air and Auto, Inc  
ATTN: David K. White  
357 Dove Creek Road  
Argyle, TX 76226

All notices given under this Agreement to the Mortgagee shall be sent to the address provided by Mortgagee to City. Any notice properly mailed by registered mail, postage and fee prepaid, shall be deemed delivered when mailed, whether received or not.

Section 9.3 No Waiver. The waiver by City of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, or condition or any subsequent breach of the same or any other term, covenant, or condition herein contained. The subsequent acceptance of rent hereunder by City shall not be deemed to be a waiver of any

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preceding breach by Lessee of any term, covenant, or condition of this Agreement, other than the failure of Lessee to pay the particular rental so accepted, regardless of City's knowledge of such preceding breach at the time of acceptance of such rent.

Section 9.4 Lessee's Subordination. Lessee hereby subordinates and makes this Agreement inferior to all existing and future mortgages, trust indentures or other security interest of City or City's successor in interest. Lessee shall execute and deliver any documents required to evidence and perfect such subordination.

Section 9.5 Additional Charges as Rent. Any charges against Lessee by City for services or for work done on the Leased Premises or the Improvements by order of Lessee or otherwise accruing under this Agreement shall be considered as Rent due.


Section 9.6 Subordination to Grant Assurances. This Agreement shall be subordinate to the Grant Assurances. In the event that this Agreement, either on its own terms or by any other reason, conflicts with or violates any such Grant Assurances, City has the right to amend, alter or otherwise modify the terms of this Agreement in order to resolve such conflict or violation.


Section 9.7 Non-Interference With Operation of the Airport. Lessee expressly agrees for itself, its successors, and assigns that Lessee will not conduct operations in or on the Leased Premises or the Improvements in a manner that in the reasonable judgment of City, (i) interferes or might interfere with the reasonable use by others of common facilities at the Airport, (ii) hinders or might hinder police, fire fighting, or other emergency personnel in the discharge of their duties, (iii) would or would be likely to constitute a hazardous condition at the Airport, (iv) would or would be likely to increase the premiums for insurance policies maintained by City unless such operations are not otherwise prohibited hereunder and Lessee pays the increase in insurance premiums occasioned by such operations, (v) is contrary to any applicable Grant Assurance; (vi) is in contradiction to any rule, regulation, directive, or similar restriction issued by agencies having jurisdiction over the Airport including FAA, Homeland Security, Transportation Security Administration and Customs and Border Patrol, or (vii) would involve any illegal purposes. In the event this covenant is breached, City reserves the right, after prior written notice to Lessee, to enter upon the Leased Premises and the Improvements and cause the abatement of such interference at the expense of Lessee. In the event of a breach in Airport security caused by Lessee, resulting in fine or penalty to City of which Lessee has received prior written notice, such fine or penalty will be charged to Lessee.

Section 9.8 Emergency Closures. During time of war or national emergency, City shall have the right to enter into an agreement with the United States Government for military or naval use of part or all of the landing area, the publicly-owned air navigation facilities and/or other areas or facilities of the Airport. If any such agreement is executed, the provisions of this Agreement, insofar as they are inconsistent with provisions of the agreement with the Government, will be suspended.

Section 9.9 Interpretation.

A. References in the text of this Agreement to articles, sections, or exhibits pertain to articles, sections, or exhibits of this Agreement, unless otherwise specified.

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B. The terms “hereby,” “herein,” “hereof,” “hereto,” “hereunder,” and any similar terms used in this Agreement refer to this Agreement. The term “including” shall not be construed in a limiting nature, but shall be construed to mean “including, without limitation.”

C. Words importing persons shall include firms, associations, partnerships, trusts, corporations, and other legal entities, including public bodies, as well as natural persons.

D. Any headings preceding the text of the articles and sections of this Agreement, and any table of contents or marginal notes appended to copies hereof, shall be solely for convenience of reference and shall not constitute a part of this Agreement, nor shall they affect the meaning, construction or effect of this Agreement.


E. Words importing the singular shall include the plural and vice versa. Words of the masculine gender shall be deemed to include correlative words of the feminine and neuter genders.

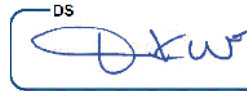
Section 9.10 Force Majeure. No act or event, whether foreseen or unforeseen, shall operate to excuse Lessee from the prompt payment of rent or any other amounts required to be paid under this Agreement. If City (or Lessee in connection with obligations other than payment obligations) is delayed or hindered in any performance under this Agreement by a force majeure event, such performance shall be excused to the extent so delayed or hindered during the time when such force majeure event is in effect, and such performance shall promptly occur or resume thereafter at the expense of the Party so delayed or hindered. A “force majeure event” is an act or event, whether foreseen or unforeseen, that prevents a Party in whole or in part from performing as provided in this Agreement, that is beyond the reasonable control of and not the fault of such Party, and that such Party has been unable to avoid or overcome by exercising due diligence, and may include, but is not limited to, acts of nature, war, riots, strikes, accidents, fire, and changes in law. Lessee hereby releases City and City’s officers, elected and appointed officials, employees, and agents from any and all liability, whether in contract or tort (including strict liability and negligence) for any loss, damage, or injury of any nature whatsoever sustained by Lessee, its employees, agents, or invitees during the Lease Term, including, but not limited to, loss, damage, or injury to the aircraft or other personal property of Lessee that may be located or stored in, on or under the Leased Premises or the Improvements due to a force majeure event.

Section 9.11 Governing Law and Venue. This Agreement has been made in and will be construed in accordance with the laws of the State of Texas. In any action initiated by one Party against the other, exclusive venue and jurisdiction will be in the appropriate state courts in and for Denton County, Texas.

Section 9.12 Amendments and Waivers. No amendment to this Agreement shall be binding on City or Lessee unless reduced to writing and signed by both Parties. No provision of this Agreement may be waived, except pursuant to a writing executed by the Party against whom the waiver is sought to be enforced.

Section 9.13 Severability. If any provision of this Agreement is determined to be invalid, illegal, or unenforceable, the remaining provisions of this Agreement shall remain in full force and effect if both the economic and legal substance of the transactions that this Agreement contemplates are not affected in any manner materially adverse to any Party. If any provision of

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this Agreement is held invalid, illegal, or unenforceable, the Parties shall negotiate in good faith to modify this Agreement to fulfill as closely as possible the original intents and purposes of this Agreement.

Section 9.14 Merger. This Agreement constitutes the final, complete, and exclusive agreement between the Parties on the matters contained in this Agreement. All prior and contemporaneous negotiations and agreements between the Parties on the matters contained in this Agreement are expressly merged into and superseded by this Agreement. In entering into this Agreement, neither Party has relied on any statement, representation, warranty, nor agreement of the other Party except for those expressly contained in this Agreement.

Section 9.15 Relationship of Parties. This Agreement does not create any partnership, joint venture, employment, or agency relationship between the Parties. Nothing in this Agreement shall confer upon any other person or entity any right, benefit, or remedy of any nature.

Section 9.16 Further Assurances. Each Party shall execute any document or take any action that may be necessary or desirable to consummate and make effective a performance that is required under this Agreement.

Section 9.17 Required Federal Clauses. Lessee and Lessee's Associates shall comply with all Laws and Regulations, including all of the required federal clauses in this Section 9.17.

A. During the performance of this contract, Lessee, for itself, its assignees, and successors in interest (hereinafter collectively referred to as the "Lessee") agrees as follows:

1. **Compliance with Regulations:** Lessee will comply with the Title VI List of Pertinent Nondiscrimination Acts And Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this Agreement.
2. **Non-discrimination:** Lessee, with regard to the work performed by it or use of the Leased Premises and the Improvements during the Lease Term, will not discriminate on the grounds of race, color, or national origin in the selection and retention of contractors, including procurements of materials and leases of equipment. Lessee will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.
3. **Solicitations for Contracts, including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by Lessee for work to be performed under a contract, including procurements of materials, or leases of equipment, each potential contractor or supplier will be notified by Lessee of Lessee's obligations under this Agreement and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.


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4. **Information and Reports:** Lessee will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of Lessee is in the exclusive possession of another who fails or refuses to furnish the information, Lessee will so certify to City or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of Lessee's noncompliance with the non-discrimination provisions of this contract, City will impose such sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to cancelling, terminating, or suspending the Lease, in whole or in part.
6. **Incorporation of Provisions:** Lessee will include the provisions of paragraphs one through six of this Section 9.17(A) in every contract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. Lessee will take action with respect to any contract or procurement as City or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if Lessee becomes involved in, or is threatened with litigation by a contractor, or supplier because of such direction, Lessee may request City to enter into any litigation to protect the interests of City. In addition, Lessee may request the United States to enter into the litigation to protect the interests of the United States.

B. Lessee for itself, its heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that in the event facilities are constructed, maintained, or otherwise operated on the property described in this Agreement for a purpose for which a Federal Aviation Administration activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, Lessee will maintain and operate such facilities and services in compliance with all requirements imposed by the Nondiscrimination Acts and Regulations listed in the Pertinent List of Nondiscrimination Authorities (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.

C. Lessee for itself, its heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to

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discrimination, and (3) that Lessee will use the Leased Premises and the Improvements in compliance with all other requirements imposed by or pursuant to the List of discrimination Acts And Authorities.

D. During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “contractor”) agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- i. Title VI of the Civil Rights Act of 1964 (42 USC § 2000d *et seq.*, 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
- ii. 49 CFR part 21 (Non-discrimination in Federally-assisted programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964);
- iii. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- iv. Section 504 of the Rehabilitation Act of 1973 (29 USC § 794 *et seq.*), as amended (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- v. The Age Discrimination Act of 1975, as amended (42 USC § 6101 *et seq.*) (prohibits discrimination on the basis of age);
- vi. Airport and Airway Improvement Act of 1982 (49 USC § 471, Section 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
- vii. The Civil Rights Restoration Act of 1987 (PL 100-209), (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- viii. Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 USC §§ 12131 – 12189) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;
- ix. The Federal Aviation Administration’s Nondiscrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- x. Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures

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nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;


- xi. Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- xii. Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 USC 1681 *et seq.*).


E. Lessee and its transferee agree to comply with pertinent statutes, Executive Orders, and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. This provision obligates Lessee or its sublessee for the period during which Federal assistance is extended to the Airport through the Airport Improvement Program. In cases where Federal assistance provides, or is in the form of personal property; real property or interest therein; structures or improvements thereon, this provision obligates the party or any transferee for the longer of the following periods: (i) the period during which the property is used by the City or any transferee for a purpose for which Federal assistance is extended, or for another purpose involving the provision of similar services or benefits; or (ii) the period during which the airport sponsor or any transferee retains ownership or possession of the property.

F. In the event of breach of any of the above nondiscrimination covenants, City will have the right to terminate this Agreement and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the Agreement had never been made or issued.

G. This Agreement incorporates by reference the provisions of 29 CFR Part 201, the Federal Fair Labor Standards Act ("FLSA"), with the same force and effect as if given in full text. The FLSA sets minimum wage, overtime pay, recordkeeping, and child labor standards for full and part time workers. Lessee has full responsibility to monitor compliance to the referenced statute or regulation. Lessee must address any claims or disputes that arise from this requirement directly with the U.S. Department of Labor – Wage and Hour Division.

H. This Agreement incorporates by reference the requirements of 29 CFR Part 1910 with the same force and effect as if given in full text. Lessee must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. Lessee retains full responsibility to monitor its compliance and any sublessee's compliance with the applicable requirements of the Occupational Safety and Health Act of 1970 (20 CFR Part 1910). Lessee must address any claims or disputes that pertain to a referenced requirement directly with the U.S. Department of Labor – Occupational Safety and Health Administration.

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I. Lessee agrees that it shall insert the above eight provisions (Section 9.17(A) through Section 9.17(H)) in any agreement by which said Lessee grants a right or privilege to any person, firm, or corporation to render accommodations and/or services to the public on the Leased Premises or at the Improvements, herein leased or owned, as applicable.

J. Lessee agrees to furnish service on a fair, equal, and not unjustly discriminatory basis to all users thereof, and to charge fair, reasonable, and not unjustly discriminatory prices for each unit or service; provided that Lessee may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers. (Grant Assurance 22)

K. It is hereby specifically understood and agreed that nothing herein contained shall be construed to grant or authorize the granting of an exclusive right to provide aeronautical services to the public as prohibited by the Grant Assurances, and City reserves the right to grant to others the privilege and right of conducting any one or all activities of an aeronautical nature. (Grant Assurance 23)

L. City reserves the right to further develop or improve the landing area of the Airport as it sees fit, regardless of the desires or view of Lessee, and without interference or hindrance. (FAA Order 5190.6B)


M. City reserves the right, but shall not be obligated to Lessee, to maintain and keep in repair the landing area of the Airport and all publicly-owned facilities of the Airport, together with the right to direct and control all activities of Lessee in this regard. (FAA Order 5190.6B)

N. This Agreement shall be subordinate to the provisions of and requirements of any existing or future agreement between City and the United States, relative to the development, operation, or maintenance of the Airport. (FAA Order 5190.6B)

O. Lessee agrees to comply with the notification and review requirements covered in Part 77 of the Federal Aviation Regulations in the event any future structure or building is planned for the Leased Premises, or in the event of any planned modification or alteration of any present or future building or structure situated on the Leased Premises. (FAA Order 5190.6B)

P. It is clearly understood by Lessee that no right or privilege has been granted which would operate to prevent any person, firm, or corporation operating aircraft on the Airport from performing any services on its own aircraft with its own regular employees (including but not limited to, maintenance and repair) that it may choose to perform. (Grant Assurance 22(f))

[SIGNATURE PAGES FOLLOW]

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IN WITNESS WHEREOF, the Parties have set their hands and seals this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

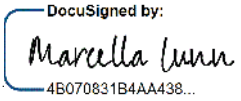
CITY OF DENTON, TEXAS, LESSOR

By: \_\_\_\_\_  
Sara Hensley, City Manager


ATTEST:  
Jesus Salazar, City Secretary

By: \_\_\_\_\_

APPROVED AS TO LEGAL FORM:  
Mack Reinwand, City Attorney

By:  \_\_\_\_\_  
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ROANOKE AIR AND AUTO, INC., LESSEE

By:  \_\_\_\_\_  
DE2CCA16F3A2453...  
DAVID K. WHITE, PRESIDENT



**LEGAL DESCRIPTION**  
904 Aeronca Lane Lease Tract

**BEING** a 1.444 acre tract of land situated in the Thomas Toby Survey, Abstract No. 1285, City of Denton, Denton County, Texas, and being a part of that certain 74.94 acre tract of land described in a Deed to the City of Denton, as recorded in Volume 304, Page 503 of the Deed Records of Denton County, Texas, and being more particularly described as follows:

**COMMENCING** at a 5/8 inch iron rod with cap stamped "TNP" found for an angle point in the East line of the above cited 74.94 acre tract and the West line of a called 6.351 acre tract of land described as Tract 2 in a Deed to US Trinity Holdings LLC, as recorded in Document No. 2020-79711 of the Official Records of Denton County, Texas, and being in the East line of Masch Branch Road, from which a 5/8 inch iron rod with cap stamped "TNP" found for the Southwest corner of said 6.351 acre tract bears South 02°41'11" East a distance of 358.40 feet;

**THENCE** North 23°09'04" West along the East line of said Masch Branch Road, the East line of said 74.94 acre tract and the West line of said 6.351 acre tract, passing a 1/2 inch iron rod found for the Northwest corner of said 6.351 acre tract and the most Westerly Southwest corner of that certain 41.629 acre tract of land described in a Deed to the City of Denton, as recorded in Volume 516, Page 648 of the Deed Records of Denton County, Texas, at a distance of 100.76 feet, and continuing along the East line of said 74.94 acre tract and the West line of said 41.629 acre tract for a total distance of 1013.16 feet to a 5/8 inch iron rod with cap stamped "Gerry Curtis RPLS 1640" found for the Northwest corner of said 41.629 acre tract and the Southwest corner of that certain tract of land described as Section 3, Tract Five in a Deed to Rayzor Investments, Ltd., as recorded in Volume 1796, Page 601 of the Deed Records of Denton County, Texas;

**THENCE** North 23°08'00" West continuing along the East line of said Masch Branch Road, the East line of said 74.94 acre tract, and the West line of said Rayzor Investments tract, for a distance of 214.74 feet to a point;

**THENCE** North 89°46'45" West departing the East line of said Masch Branch Road, the East line of said 74.94 acre tract, and the West line of said Rayzor Investments tract, for a distance of 169.42 feet to a 5/8 inch iron rod with cap stamped "TNP" set for the **POINT OF BEGINNING** for the herein described tract, said point being the Southeast corner of a called 0.6171 acre lease tract described in Ordinance 89-006, from which a 1/2 inch capped iron rod found for reference bears South 08°17'47" West a distance of 652.81 feet;

**THENCE** North 89°46'45" West along the South line of said 0.6171 acre tract, passing 1/2 inch iron rod found for the Southwest corner of same at a distance of 188.24 feet, and continuing for a total distance of 334.74 feet to a 5/8 inch iron rod with cap stamped "TNP" set for corner;


**THENCE** North 00°13'15" East a distance of 220.00 feet to a 5/8 inch iron rod with cap stamped "TNP" set for corner;

**THENCE** South 89°46'45" East a distance of 219.88 feet to a 5/8 inch iron rod with cap stamped "TNP" set for corner;

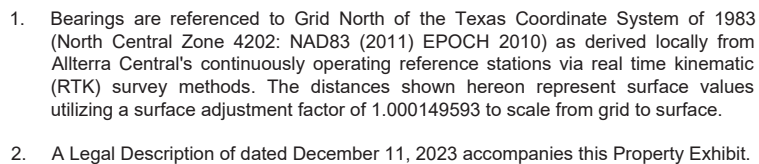
**THENCE** South 45°04'16" East a distance of 49.65 feet to a 5/8 inch iron rod with cap stamped "TNP" set for corner;

**THENCE** South 23°02'46" East a distance of 201.45 feet to the **POINT OF BEGINNING**, and containing 1.444 acres of land, more or less.

**NOTE:** Bearings are referenced to Grid North of the Texas Coordinate System of 1983 (North Central Zone 4202: NAD83 (2011) EPOCH 2010) as derived locally from Allterra Central's continuously operating reference stations via real time kinematic (RTK) survey methods. The distances shown hereon represent surface values utilizing a surface adjustment factor of 1.000149593 to scale from grid to surface.

  
 Todd B. Turner, R.P.L.S. No. 4859  
 Teague Nall & Perkins, Inc.  
 3200 S. Interstate 35E, Suite 1129  
 Denton, Texas 76210  
 940-383-4177  
 Date: December 11, 2023





**PROPERTY EXHIBIT**  
**DENTON ENTERPRISE AIRPORT**  
 BEING 1.444 ACRES OF LAND SITUATED IN THE  
 THOMAS TOBY SURVEY, ABSTRACT NO. 1285  
 CITY OF DENTON, DENTON COUNTY, TEXAS  
*RKA23585* *PAGE 1 OF 1* **260**

**TEXAS SECRETARY of STATE**  
**JANE NELSON**

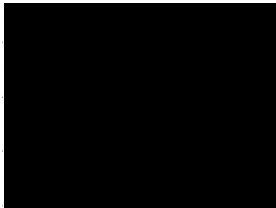
**BUSINESS ORGANIZATIONS INQUIRY - VIEW ENTITY**

**Filing Number:** 801523927  
**Original Date of Filing:** December 19, 2011  
**Formation Date:** N/A  
**Tax ID:** 32046103738  
**Duration:** Perpetual

**Entity Type:** Domestic For-Profit Corporation  
**Entity Status:** In existence

**FEIN:**

**Name:** Roanoke Air and Auto, Inc.  
**Address:** 357 DOVE CREEK ROAD  
ARGYLE, TX 76226 USA

<u>REGISTERED AGENT</u>	<u>FILING HISTORY</u>	<u>NAMES</u>	<u>MANAGEMENT</u>	<u>ASSUMED NAMES</u>	<u>ASSOCIATED ENTITIES</u>	<u>INITIAL ADDRESS</u>
<b>Last Update</b>	<b>Name</b>	<b>Title</b>	<b>Address</b>			
October 9, 2023	DAVID K WHITE	PRESIDENT				
October 9, 2023	DAVID K WHITE	DIRECTOR				
October 9, 2023	MICHELLE M WHITE	S/T				
October 9, 2023	MICHELLE M WHITE	DIRECTOR				



# City of Denton

City Hall  
215 E. McKinney St.  
Denton, Texas 76201  
[www.cityofdenton.com](http://www.cityofdenton.com)

## Legislation Text

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**File #:** ID 24-345, **Version:** 1

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### **AGENDA CAPTION**

Consider adoption of an ordinance of the City of Denton authorizing the City Manager to execute Amendment 1 to the funding agreement between the City and Cumberland Youth and Family Services approved by City Council on April 19, 2022; said first amendment to extend the term of the agreement and to require additional services; and providing an effective date.



## AGENDA INFORMATION SHEET

**DEPARTMENT:** Community Services

**CM/ DCM/ ACM:** Sara Hensley, City Manager

**DATE:** April 2, 2024

### **SUBJECT**

Consider adoption of an ordinance of the City of Denton authorizing the City Manager to execute Amendment 1 to the funding agreement between the City and Cumberland Youth and Family Services approved by City Council on April 19, 2022; said first amendment to extend the term of the agreement and to require additional services; and providing an effective date.

### **STRATEGIC ALIGNMENT**

This action supports Key Focus Area: Foster Economic Opportunity and Affordability.

### **BACKGROUND**

On [April 19, 2022](#), City Council approved Ordinance 22-428 with Cumberland Youth and Family Services to provide American Rescue Plan funds for administrative and program costs for Counseling Services Program Expansion, a counseling/psychotherapy program for low-income youth and family clients

Cumberland Youth and Family Services provides residential care, counseling and supportive services that aim to uplift and empower youth in foster care, and services for young adults aging out of care and families.

Cumberland Youth and Family Services has been expending grant funds at a steady rate and will require an extended grant term to utilize the full grant amount in the service of Denton residents.

Approval of this ordinance would amend the agreement to extend the term from April 30, 2024 to April 30, 2025 and add that Cumberland Youth and Family Services' reporting requirements extend to the new term deadline.

### **OPTIONS**

1. Approve the Cumberland Youth and Family Services ARP Amendment 1.
2. Do not approve the Cumberland Youth and Family Services ARP Amendment 1.

### **RECOMMENDATIONS**

Approve the Cumberland Youth and Family Services ARP Amendment 1.

## **EXHIBITS**

Exhibit 1 – Agenda Information Sheet

Exhibit 2 – Cumberland Youth and Family Services Ordinance-Agreement 1

Exhibit 3 – Ordinance #22-428

Respectfully submitted:

Danielle Shaw

Director of Community Services

Prepared By:

Alaina Graff

Grants Program Coordinator



ORDINANCE NO. 24- 345

AN ORDINANCE OF THE CITY OF DENTON AUTHORIZING THE CITY MANAGER TO EXECUTE AMENDMENT 1 TO THE FUNDING AGREEMENT BETWEEN THE CITY AND CUMBERLAND YOUTH AND FAMILY SERVICES APPROVED BY CITY COUNCIL ON APRIL 19, 2022; SAID FIRST AMENDMENT TO EXTEND THE TERM OF THE AGREEMENT AND TO REQUIRE ADDITIONAL SERVICES; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, pursuant to Ordinance No. 22-428, the City of Denton (the “City”) entered into an agreement on April 19, 2022 (the “Subrecipient”) with Cumberland Youth and Family Services, formerly known as Cumberland Presbyterian Children’s Home (the “Agency”), for administrative and program costs for Counseling Services with an original term of April 30, 2024; and

WHEREAS, the City deems it necessary to amend the Agreement extend the term to April 30, 2025 and to increase the total number of unduplicated City of Denton clients served by the agency from 80 to 300; and

WHEREAS, the City Council of the City hereby finds that amending the Agreement pursuant to Amendment 1 is in the public interest; NOW THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The findings and recitations contained in the preamble of this Ordinance are incorporated herein by reference.

SECTION 2. The City Manager or their designee is hereby authorized to execute Amendment 1 to the Agreement, and to carry out the duties and responsibilities of the City under the Agreement as amended, including extending the term of the Agreement.

SECTION 3. 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 [\_\_\_\_ - \_\_\_\_]:

	<b>Aye</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>
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 \_\_\_\_\_, 2024.

\_\_\_\_\_  
GERARD HUDSPETH, MAYOR

ATTEST:  
JESUS SALAZAR, CITY SECRETARY

BY: \_\_\_\_\_

APPROVED AS TO LEGAL FORM:  
MACK REINWAND, CITY ATTORNEY

BY: \_\_\_\_\_



Scott Bray  
2024.03.20  
16:56:58 -05'00'

**SERVICE AGREEMENT BETWEEN THE  
CITY OF DENTON AND CUMBERLAND YOUTH  
AND FAMILY SERVICES**

**AMENDMENT 1 to Agreement**

This Amendment 1 to Agreement is made by and between the City of Denton (the “City”) and Cumberland Youth and Family Services (“Subrecipient”).

WHEREAS, pursuant to Ordinance No. 22-430, the City of Denton (the “City”) entered into an agreement on April 19, 2022 (the “Subrecipient”) with (the “Agency”), for administrative and program costs for counseling services with an original term ending on April 30, 2024; and

WHEREAS, the Subrecipient was formerly known as Cumberland Presbyterian Children’s Home; and

WHEREAS, the City deems it necessary to amend the Agreement extend the term to April 30, 2025 and to increase the total number of unduplicated City of Denton clients served by the agency from 80 to 300; and

WHEREAS, amending the Agreement to extend the term to allow for the provision of services to more individuals is in the public interest;

NOW THEREFORE, in consideration of good and valuable consideration, the sufficiency and receipt of which is hereby acknowledged, the City and Subrecipient agree as follows:

1. Section 1, “Term”, of the Agreement is hereby amended to extend the term of the Agreement to April 30, 2025.
2. Section 1, “Term”, of the Agreement is hereby amended to add the City shall have the right, but not the obligation, to extend the term of the agreement for one (1) additional one-year period.
3. Exhibit A of the Agreement is hereby stricken in its entirety and replaced with the Exhibit A attached to this Amendment.
4. Throughout the Agreement, all references to “Cumberland Presbyterian Children’s Home” are stricken and replaced with “Cumberland Youth and Family Services f/k/a Cumberland Presbyterian Children’s Home.”
5. All other provisions, terms, covenants, duties, rights, obligations, and agreements contained in the Agreement shall remain in full force and effect.

6. This Amendment 1 to Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument.


IN WITNESS WHEREOF, the parties hereto have executed this Amendment 1 to Agreement as of the \_\_\_\_\_ day of \_\_\_\_\_, 2024.

CITY OF DENTON

BY: \_\_\_\_\_  
SARA HENSLEY  
CITY MANAGER

ATTEST:  
JESUS SALAZAR, CITY SECRETARY

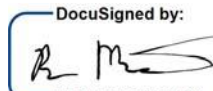
BY: \_\_\_\_\_  
  
APPROVED AS TO LEGAL FORM:  
MACK REINWAND, CITY ATTORNEY

BY:  Scott Bray  
2024.03.20 16:57:42 -05'00'

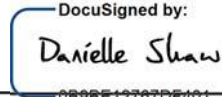
CUMBERLAND YOUTH AND FAMILY SERVICES

BY:  \_\_\_\_\_  
COURTNEY BANATOSKI  
EXECUTIVE DIRECTOR

ATTEST:  
NAME: Brian Martin

BY:  \_\_\_\_\_  
71D5B3997550423...

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

 \_\_\_\_\_  
Signature

Director of Community Services

Title

Community Services

Department

## **Exhibit A**

### **Scope of Services**

The Scope of Services under this Agreement shall be as follows:

#### **SECTION I – SERVICE GOAL**

SUBRECIPIENT assists the City of Denton to meet the public health and economic needs of those impacted by the pandemic, as outlined in the state and Local fiscal Recovery Funds Final Rule.

SUBRECIPIENT shall provide: Cumberland Counseling Services Program Expansion, a counseling/psychotherapy program for low-income youth and family clients. The program will be operated at 909 Greenlee Street, Denton, TX 76201. The program will operate 9 a.m. to 6 p.m., Monday through Friday.

#### **SECTION II – OUTCOMES**

Performance under this Agreement will be measured by the following outcomes:

SUBRECIPIENT provides benefits to the citizens of the City of Denton through these outcomes:

- 300 total unduplicated City of Denton citizens will provided services through the program
- 2,080 total counseling sessions will be provided with grant funding



ORDINANCE NO. 22-428

AN ORDINANCE OF THE CITY OF DENTON AUTHORIZING THE CITY MANAGER TO EXECUTE A FUNDING AGREEMENT BETWEEN THE CITY OF DENTON AND THE CUMBERLAND PRESBYTERIAN CHILDREN'S HOME FOR THE PAYMENT AND USE OF BEHAVIORAL HEALTHCARE SERVICES GRANT FUNDING; PROVIDING FOR THE EXPENDITURE OF FUNDS IN AN AMOUNT NOT TO EXCEED \$155,179; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Denton has received Coronavirus State and Local Fiscal Recovery Funds (SLFRF) under the American Rescue Plan Act to provide support to State territorial, local, and Tribal governments in responding to the economic and public health impacts of COVID-19 and in their efforts to contain impacts on their communities, residents, and businesses; and

WHEREAS, the Coronavirus pandemic has exacerbated behavioral health needs and SLFRF classifies behavioral health care, including services for mental health treatment, substance misuse treatment, and other behavioral health services, as eligible expenses under the program; and

WHEREAS, the City developed the Behavioral Healthcare Service Grant program to support applicants in providing access to services for City of Denton residents in one of three priority areas: youth mental health services, adult mental health services, and substance use treatment services; and

WHEREAS, the Community Services Advisory Committee of the City has reviewed the proposal of services of Cumberland Presbyterian Children's Home and determined that the Agency meets the eligibility and program requirements for the grant; and

WHEREAS, the Community Services Department is designated as the department responsible for the administration of the Agreement and all matters pertaining thereto; and

WHEREAS, the City Council deems it in the public interest to enter into the Agreement in support of much needed services for Denton residents; NOW, THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The City Manager, or their designee, is hereby authorized to execute an agreement between the City of Denton and the Cumberland Presbyterian Children's Home for the payment and use of Behavioral Healthcare Services grant funding, under the terms and conditions contained in the agreement, a copy of which is attached hereto and made a part hereof.

SECTION 2. This Ordinance shall become effective immediately upon its passage and approval.



The motion to approve this Ordinance was made by Jesse Davis and seconded by Brian Beck; the Ordinance was passed and approved by the following vote [7 - 0]:

	<u>Aye</u>	<u>Nay</u>	<u>Abstain</u>	<u>Absent</u>
Gerard Hudspeth, Mayor:	<u>✓</u>	<u>      </u>	<u>      </u>	<u>      </u>
Vicki Byrd, District 1:	<u>✓</u>	<u>      </u>	<u>      </u>	<u>      </u>
Brian Beck, District 2:	<u>✓</u>	<u>      </u>	<u>      </u>	<u>      </u>
Jessie Davis, District 3:	<u>✓</u>	<u>      </u>	<u>      </u>	<u>      </u>
Alison Maguire, District 4:	<u>✓</u>	<u>      </u>	<u>      </u>	<u>      </u>
Deb Armintor, At Large Place 5:	<u>✓</u>	<u>      </u>	<u>      </u>	<u>      </u>
Paul Meltzer, At Large Place 6:	<u>✓</u>	<u>      </u>	<u>      </u>	<u>      </u>

PASSED AND APPROVED this the 19<sup>th</sup> day of April, 2022.

  
GERARD HUDSPETH, MAYOR

ATTEST:  
ROSA RIOS, CITY SECRETARY

BY: 

APPROVED AS TO LEGAL FORM:  
MACK REINWAND, CITY ATTORNEY

BY:  Digitally signed by Scott Bray  
Date: 2022.03.29 12:17:30 -05'00'



**2022-2023 BEHAVIORAL HEALTHCARE SERVICES GRANT SERVICE AGREEMENT  
BETWEEN THE CITY OF DENTON, TEXAS AND  
CUMBERLAND PRESBYTERIAN CHILDREN'S HOME PROVIDING FOR THE PAYMENT AND USE  
OF AMERICAN RESCUE PLAN ACT FUNDING**

This Agreement is hereby entered into by and between the City of Denton, a Texas municipal corporation, acting by and through its City Manager, hereinafter referred to as "CITY," and Cumberland Presbyterian Children's Home, 909 Greenlee Street, Denton, TX 76201, hereinafter referred to as "SUBRECIPIENT."

WHEREAS, the American Rescue Plan Act of 2021, also called the COVID-19 Stimulus Package or American Rescue Plan (ARP), was passed on March 11, 2021, providing \$1.9 trillion with funding objectives to support public health response, replace public sector revenue loss, invest in water and sewer infrastructure, address negative economic impacts, offer premium pay for essential workers, and invest in broadband infrastructure; and

WHEREAS, CITY has received certain funds from the U.S. Department of Treasury under the American Rescue Plan's State and Local Fiscal Recovery Funds (SLFRF); and

WHEREAS, CITY has adopted a budget for such funds and included therein an authorized budget for expenditure of funds; and

WHEREAS, City has determined that a grant program whereby the City provides certain qualified non-profits funds to accomplish the purpose of providing programs and services is in the public interest and in accordance with the American Rescue Plan funding objectives;

WHEREAS, City desires to award qualified non-profits with subawards of SLFRF funds where all compliance requirements for use of SLFRF funds and any and all reporting requirements for expenditures of SLFRF funds apply; and

WHEREAS, CITY has designated the Community Development Division as the division responsible for the administration of this Agreement and all matters pertaining thereto;

NOW, THEREFORE, the parties hereto agree, and by the execution hereof are bound by the mutual obligations and to the performance and accomplishment of the conditions hereinafter described.

**1. TERM**

This Agreement shall commence on May 1, 2022, and shall terminate on April 30, 2024, unless sooner terminated in accordance with Section 25 "Termination."

**2. RESPONSIBILITIES**

SUBRECIPIENT hereby accepts the responsibility for the performance of all services and activities described in the Scope of Services attached hereto as Exhibit A, and incorporated herein by reference, in a satisfactory and efficient manner as determined by CITY, in accordance with the terms herein. CITY will consider SUBRECIPIENT's executive officer to be SUBRECIPIENT's representative responsible for the management of all contractual matters pertaining hereto, unless written notification to the contrary is received from SUBRECIPIENT and approved by CITY.

The CITY's Director of Community Services will be CITY's representative responsible for the administration of this Agreement. Beneficiaries of the activities to be provided hereunder must reside in the City of Denton and SUBRECIPIENT certifies that the activities carried out with these funds shall meet the American Rescue Plan's funding objectives in response to the COVID-19 emergency. SUBRECIPIENT shall provide services and/or programming for City of Denton residents as detailed in Exhibit A Scope of Services.

### **3. REPRESENTATIONS**

- A. SUBRECIPIENT assures and guarantees that it possesses the legal authority, pursuant to any proper, appropriate, and official motion, resolution, or action passed or taken, to enter into this Agreement.
- B. The person or persons signing and executing this Agreement on behalf of SUBRECIPIENT, do hereby warrant and guarantee that he, she, or they have been fully authorized by SUBRECIPIENT to execute this Agreement on behalf of SUBRECIPIENT and to validly and legally bind SUBRECIPIENT to all terms, performances, and provisions herein set forth.
- C. CITY shall have the right, at its option, to either temporarily suspend or permanently terminate this Agreement if there is a dispute as to the legal authority of either SUBRECIPIENT or the person signing the Agreement to enter into this Agreement. SUBRECIPIENT is liable to CITY for any money it has received from CITY for performance of the provisions of this Agreement if CITY has suspended or terminated this Agreement for the reasons enumerated in this Section.
- D. SUBRECIPIENT agrees that the funds and resources provided SUBRECIPIENT under the terms of this Agreement will in no way be substituted for funds and resources from other sources, nor in any way serve to reduce the resources, services, or other benefits which would have been available to, or provided through, SUBRECIPIENT had this Agreement not been executed.

### **4. SUBRECIPIENT'S OBLIGATIONS**

In consideration of the receipt of funds from the CITY, the SUBRECIPIENT agrees to the following terms and conditions:

- A. One Hundred Fifty-Five Thousand One Hundred Seventy-Nine (\$155,179) may be paid to SUBRECIPIENT by CITY, and the only expenditures reimbursed from these funds shall be those in accordance with the Budget, set forth in Exhibit B, for those services described in the Scope of Services, Exhibit A, as provided herein. SUBRECIPIENT shall not utilize these funds for any other purpose.
- B. SUBRECIPIENT shall submit monthly performance and expenditure reports to CITY pursuant to Section 10 of this Agreement. CITY may withhold payment to SUBRECIPIENT for any period for which SUBRECIPIENT has failed to submit the reports required by this Agreement.
- C. SUBRECIPIENT will establish, operate, and maintain an account system for this program that will allow for a tracing of funds and a review of the financial status of the program. The system will be based on generally accepted accounting principles as recognized by the American Institute of Certified Public Accountants.
- D. SUBRECIPIENT will permit authorized officials of CITY to review its books at any time.
- E. SUBRECIPIENT will reduce to writing all of its rules, regulations, and policies and file a copy with CITY's Community Development Office along with any amendments, additions, or revisions upon request.
- F. SUBRECIPIENT will not enter into any contracts that would encumber CITY funds for a period that would extend beyond the term of this Agreement.

- G. SUBRECIPIENT will promptly pay all bills when submitted unless there is a discrepancy in a bill; any errors or discrepancies in bills shall be promptly reported to CITY's Community Development Division for further direction.
- H. SUBRECIPIENT will appoint a representative who will be available to meet with CITY officials when requested.
- I. SUBRECIPIENT will indemnify and hold harmless CITY, its officers, elected and appointed officials, agents, employees, and contractors from any and all claims and suits arising out of the services or activities of SUBRECIPIENT, its employees, and/or contractors.
- J. SUBRECIPIENT will submit to CITY copies of year-end audited financial statements.

#### **5. COMPLIANCE WITH FEDERAL, STATE, AND LOCAL LAWS**

- A. SUBRECIPIENT shall comply with all applicable federal laws, laws of the State of Texas, and ordinances of the City of Denton.
- B. SUBRECIPIENT agrees to abide by the conditions of and comply with the requirements of the Office of Management 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.
- C. SUBRECIPIENT shall give the CITY, US Department of Treasury, the Comptroller General of the United States, and any of the CITY's authorized representatives, access to and the right to reproduce all records belonging to or in use by SUBRECIPIENT pertaining to this Agreement. Such access shall continue as long as SUBRECIPIENT retains the records. SUBRECIPIENT shall maintain such records in an accessible location.
- D. SUBRECIPIENT shall refrain from entering into any subcontract for services without prior approval in writing by CITY of the qualifications of the subcontractor to perform and meet the standards of this Agreement. All subcontracts entered into by the SUBRECIPIENT will be subject to the requirements of this Agreement. The SUBRECIPIENT agrees to be responsible to CITY for the performance of any subcontractor.
- E. SUBRECIPIENT further agrees and certifies that if the regulations and issuances promulgated pursuant to the Act are amended or revised, it shall comply with them, or notify CITY, as provided in Section 23 of this Agreement.

#### **6. PERFORMANCE BY SUBRECIPIENT**

SUBRECIPIENT will provide, oversee, administer, and carry out the activities and services set out in the Scope of Services described in Exhibit A, utilizing the funds described in Exhibit B, deemed by both parties to be necessary and sufficient payment for full and satisfactory performance of the program, as determined solely by CITY and in accordance with all other terms, provisions, and requirements of this Agreement. No modifications or alterations may be made in the Scope of Services or Budget without the prior written approval of the CITY's Director of Community Services.

#### **7. PAYMENTS**

- A. Payments to SUBRECIPIENT. CITY will pay SUBRECIPIENT for expenses pursuant to and in accordance with the Project Budget attached hereto as Exhibit B, and incorporated herein by reference, and the Scope of Services herein attached as Exhibit A and incorporated herein by reference. Notwithstanding any other provision of the Agreement, the total of all payments and other obligations made or incurred by CITY hereunder shall not exceed the sum of One Hundred Fifty-Five Thousand One Hundred Seventy-Nine – \$155,179.
- B. The first payment will be made no later than 30 days from the contract date of execution. Payments will be issued as described in Exhibit B.



- C. Funds are to be used for the sole purpose of providing the services described in the Scope of Services in Exhibit A and based on the Budget in Exhibit B.
- D. Excess Payment. SUBRECIPIENT shall refund to CITY within ten working days of CITY's request, any sum of money which has been paid by CITY and which CITY at any time thereafter determines:
  - (1) has resulted in overpayment to SUBRECIPIENT; or
  - (2) has not been spent strictly in accordance with the terms of this Agreement; or
  - (3) is not supported by adequate documentation to fully justify the expenditure.
- E. Disallowed Costs. Upon termination of this Agreement, should any expense or charge for which payment has been made be subsequently disallowed or disapproved as a result of any auditing or monitoring by CITY or any other Federal agency, SUBRECIPIENT will refund such amount to CITY within ten working days of a written notice to SUBRECIPIENT, which specifies the amount disallowed. Refunds of disallowed costs may not be made from these or any funds received from or through CITY.
- F. Reversion of Assets.
  - (1) SUBRECIPIENT, upon expiration of this Agreement, shall transfer to the CITY any funds on hand at the time of expiration and any accounts receivable attributable to the use of funds.
  - (2) The reversion of these financial assets shall be in addition to any other remedy available to CITY either at law or in equity for breach of this Agreement.
- G. Obligation of Funds.
  - (1) In the event that actual expenditure rates deviate from SUBRECIPIENT's provision of a corresponding level of performance, as specified in Exhibit A, CITY hereby reserves the right to re-appropriate or recapture any such under expended funds.
  - (2) If CITY finds that SUBRECIPIENT is unwilling and/or unable to comply with any of the terms of this Agreement, CITY may require a refund of any and all money expended pursuant to this Agreement by SUBRECIPIENT, as well as any remaining unexpended funds which shall be refunded to CITY within ten working days of a written notice to SUBRECIPIENT to revert these financial assets.
- H. Contract Close Out. SUBRECIPIENT shall submit a final expenditure report, for the time period covered by the last invoice requesting reimbursement of funds under this Agreement, within 15 working days following the close of the Agreement period.
- I. The CITY may withhold payment(s) until the appropriate and required reports are received and approved, which approval shall not be unreasonably withheld.
- J. Measure of Liability.
  - (1) The parties expressly understand and agree that CITY's obligations under this Section are contingent upon the actual receipt of adequate ARP funds to meet CITY's liabilities under this Agreement. If adequate funds are not available to make payments under this Agreement, CITY shall notify SUBRECIPIENT in writing within a reasonable time after such fact has been determined. CITY may, at its option, either reduce the amount of its liability or terminate the Agreement. If funds eligible for use for purposes of this Agreement are reduced, CITY shall not be liable for further payments due to SUBRECIPIENT under this Agreement.
  - (2) It is expressly understood that this Agreement in no way obligates the General Fund or any other monies or credits of the City of Denton.
  - (3) CITY shall not be liable for any cost or portion thereof which:
    - (a) has been paid, reimbursed, or is subject to payment or reimbursement, from any other source;
    - (b) was incurred prior to the beginning date or after the ending date specified in Section 1;
    - (c) is not in strict accordance with the terms of this Agreement, including all exhibits attached hereto;

(d) is not an allowable cost as defined by Section 10 of this Agreement or in the Budget set forth in Exhibit B.

- (4) CITY shall not be liable for any cost or portion thereof which is incurred with respect to any activity of SUBRECIPIENT requiring prior written authorization from CITY, or after CITY has requested that SUBRECIPIENT furnish data concerning such action prior to proceeding further, unless and until CITY advises SUBRECIPIENT to proceed.
- (5) CITY shall not be obligated or liable under this Agreement to any party other than SUBRECIPIENT for payment of any monies or provision of any goods or services.
- (6) Funding not expended within the term of this Agreement will revert to the City of Denton within 15 days from the expiration of the term for use on alternative services or projects.
- (7) Payments may be contingent upon certification of the SUBRECIPIENT's financial management system in accordance with the standards specified in 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

### **8. ALLOWABLE COSTS**

- A. Costs must comply with SLFRF allowable uses and expenditure categories as published in the Compliance and Reporting Guidance by the US Department of Treasury.
- B. Costs shall be considered allowable only if incurred directly and specifically in the performance of and in compliance with this Agreement and in conformance with the standards and provisions of Exhibits A and B.
- C. SUBRECIPIENT may not expend more than 10% of the funds for any administrative costs.
- D. To the extent that SUBRECIPIENT has received funds from another municipal, state, or federal source for any purpose contemplated herein, SUBRECIPIENT shall not expend funds paid under this Agreement in a manner that would be duplicative of the use of such prior funds.
- E. Approval of SUBRECIPIENT's Budget, Exhibit B, does not constitute prior written approval, even though certain items may appear herein. CITY's prior written authorization is required in order for the following to be considered allowable costs:
  - a. CITY shall not be obligated to any third parties, including any subcontractors of SUBRECIPIENT, and CITY funds shall not be used to pay for any contract service extending beyond the expiration of this Agreement.
  - b. Any alterations or relocation of the facilities on and in which the activities specified in Exhibit A are conducted;
  - c. Any alterations, deletions, or additions to the Budget detail incorporated in Exhibit B;
  - d. Costs or fees for temporary employees or services;
  - e. Any fees or payments for consultant services; and
  - f. Fees for attending out of town meetings, seminars, or conferences.
- F. Written requests for prior approval are SUBRECIPIENT's responsibility and shall be made within sufficient time to permit a thorough review by CITY. SUBRECIPIENT must obtain written approval by CITY prior to the commencement of procedures to solicit or purchase services or personal property. Any procurement or purchase which may be approved under the terms of this Agreement must be conducted in its entirety in accordance with the provisions of this Agreement.
- G. The purchase of real property is not an allowable cost under this agreement.



## **9. PROGRAM INCOME**

- A. Generally, program income includes, but is not limited to, income from fees for services performed, the use or rental or real or personal property acquired under Federal awards and principal and interest on loans made with Federal award funds. Program income does not include interest earned on advances of Federal funds, rebates, credits, discounts, or interest on rebates, credits, or discounts. Recipients of SLFRF funds should calculate, document, and record the organization's program income. Additional controls that your organization should implement include written policies that explicitly identify appropriate allocation methods, accounting standards and principles, compliance monitoring checks for program income calculations, and records.
- B. SUBRECIPIENT shall maintain records of the receipt and disposition of Program Income in the same manner as required for other contract funds and reported to CITY in the format prescribed by CITY. CITY and SUBRECIPIENT agree that any fees collected for services performed by SUBRECIPIENT shall be used for payment of costs associated with service provision. Revenue remaining after payment of all program expenses for service provision shall be considered Program Income and shall be subject to all the requirements of this Agreement and the regulations found at 2 CFR 200.307 and any additional guidance regarding program income and the application of 2 CFR 200.307(e)(1), including with respect to lending programs, released by the US Department of Treasury.
- C. SUBRECIPIENT shall include this Section in its entirety in all of its sub-contracts which involve other income-producing services or activities.
- D. It is SUBRECIPIENT's responsibility to obtain from CITY a prior determination as to whether or not income arising directly or indirectly from this Agreement, or the performance thereof, constitutes Program Income. SUBRECIPIENT is responsible to CITY for the repayment of any and all amounts determined by CITY to be Program Income, unless otherwise approved in writing by CITY.

## **10. REPORTS AND INFORMATION**

At such times and in such form as CITY may require, SUBRECIPIENT shall furnish such statements, records, data, and information as CITY may request and deem pertinent to matters covered by this Agreement. SUBRECIPIENT shall submit performance and expenditure reports to CITY no less than once every month. The performance report shall detail client information, including race, ethnicity, income, female head of household, and other statistics required by CITY. The financial report shall include information and data relative to all programmatic and financial reporting as of the commencement date specified in Section 1 of this Agreement. Unless the CITY has granted a written exemption, SUBRECIPIENT shall submit an audit conducted by independent examiners in accordance with Generally Accepted Accounting Principles. If the SUBRECIPIENT expends more than \$750,000 in federal funding, the audit must be conducted in accordance with OMB 2 CFR Part 200, as applicable within thirty days after receipt of such audit.

## **11. MONITORING AND EVALUATION**

SUBRECIPIENT agrees to participate in a monitoring and evaluation system whereby the services can be continuously monitored. CITY shall perform monitoring of the SUBRECIPIENT's performances under this Agreement.

- A. SUBRECIPIENT agrees that CITY may carry out monitoring and evaluation activities to ensure adherence by SUBRECIPIENT to the Scope of Services, Program Goals, and Objectives, which are attached hereto as Exhibit A, as well as other provisions of this Agreement.
- B. SUBRECIPIENT agrees to cooperate fully with CITY and provide data determined by CITY to be necessary for CITY to effectively fulfill its monitoring and evaluation responsibilities.

- C. SUBRECIPIENT agrees to cooperate in such a way so as not to obstruct or delay CITY in such monitoring and to designate one of its staff to coordinate the monitoring process as requested by CITY staff.
- D. SUBRECIPIENT agrees to make available its financial records for review by CITY at CITY's discretion. In addition, SUBRECIPIENT agrees to provide CITY the following data and reports, or copies thereof:
  - (1) All external or internal evaluation reports;
  - (2) Performance and expenditure reports to be submitted in the schedule published by the CITY's Community Services Department. Reports shall include such information as requested by the CITY's Community Services Department including but not limited to: number of persons or households assisted, race, gender, disability status, and household income. Performance and expenditure reports shall be due to CITY within 15 working days after the completion of required reporting period. SUBRECIPIENT agrees to submit a performance report and expenditure report no less than once a month. The expenditure report shall include a profit and loss statement with current and year to date period accounting of all revenues, expenditures, outstanding obligations, and beginning and ending balances.
  - (3) An explanation of any major changes in program services.
- E. After each official monitoring on-site visit, CITY shall provide SUBRECIPIENT with a written report of monitoring findings, documenting findings, and concerns that will require a written response to the CITY. An acceptable response must be received by the CITY within 60 days from the SUBRECIPIENT's receipt of the monitoring report or audit review letter. Future contract payments can be withheld for the SUBRECIPIENT's failure to submit a written response within 60 days.
- F. SUBRECIPIENT shall submit copies of any fiscal, management, or audit reports by any of the SUBRECIPIENT's funding or regulatory bodies to CITY within ten working days of receipt by the SUBRECIPIENT.

## **12. MAINTENANCE OF RECORDS**

- A. SUBRECIPIENT agrees to maintain records that will provide accurate, current, separate, and complete disclosure of the status of the funds received under this Agreement, in compliance with the provisions of Exhibit A and Exhibit B, attached hereto, and with any other applicable Federal and State regulations establishing standards for financial management. SUBRECIPIENT's expenditures of funds made under this Agreement will conform to (2 CFR §200) Uniform Administrative Requirements Cost Principles, and Audit Requirements for Federal Awards as they pertain to costs incurred, audits, program income, administration, and other activities and functions. SUBRECIPIENT's record system shall contain sufficient documentation to provide in detail full support and justification for each expenditure. Nothing in this Section shall be construed to relieve SUBRECIPIENT of fiscal accountability and liability under any other provision of this Agreement or any applicable law. SUBRECIPIENT shall include the substance of this provision in all subcontracts.
- B. SUBRECIPIENT agrees to retain all books, records, documents, reports, and written accounting procedures pertaining to the operation of programs and expenditures of funds under this Agreement for five years after the termination of all activities funded under this agreement.
- C. Nothing in the above subsections shall be construed to relieve SUBRECIPIENT of responsibility for retaining accurate and current records which clearly reflect the level and benefit of services provided under this Agreement.
- D. At any reasonable time and as often as CITY may deem necessary, the SUBRECIPIENT shall make available to CITY or any of their authorized representatives, all of its records and shall permit CITY or any of their authorized representatives to audit, examine, make excerpts and copies of such records, and to conduct audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment, and all other data requested by said representatives.

### 13. DIRECTORS' MEETINGS

During the term of this Agreement, SUBRECIPIENT shall cause to be delivered to CITY copies of all notices of meetings of its Board of Directors, setting forth the time and place thereof. Such notice shall be delivered to CITY in a timely manner to give adequate notice and shall include an agenda and a brief description of the matters to be discussed. SUBRECIPIENT understands and agrees that CITY representatives shall be afforded access to all of the Board of Directors' meetings. Minutes of all meetings of SUBRECIPIENT's governing body shall be available to CITY within ten days after Board approval.

### 14. WARRANTIES

SUBRECIPIENT represents and warrants that:

- A. All information, reports, and data heretofore or hereafter requested by CITY and furnished to CITY, are complete and accurate as of the date shown on the information, data, or report, and, since that date, have not undergone any significant change without written notice to CITY.
- B. Any supporting financial statements heretofore requested by CITY and furnished to CITY, are complete, accurate, and fairly reflect the financial condition of SUBRECIPIENT on the date shown on said report, and the results of the operation for the period covered by the report, and that since said date, there has been no material change, adverse or otherwise, in the financial condition of SUBRECIPIENT.
- C. No litigation or legal proceedings are presently pending or threatened against the SUBRECIPIENT.
- D. None of the provisions herein contravene or are in conflict with the authority under which SUBRECIPIENT is doing business or with the provisions of any existing indenture or agreement of SUBRECIPIENT.
- E. SUBRECIPIENT has the power to enter into this Agreement and accept payments hereunder and has taken all necessary action to authorize such acceptance under the terms and conditions of this Agreement.
- F. None of the assets of SUBRECIPIENT is subject to any lien or encumbrance of any character, except for current taxes not delinquent, except as shown in the financial statements furnished by SUBRECIPIENT to CITY.
- G. Each of these representations and warranties shall be continuing and shall be deemed to have been repeated by the submission of each request for payment.

### 15. COVENANTS

- A. During the period of time that payment may be made hereunder and so long as any payments remain unliquidated, SUBRECIPIENT shall not, without the prior written consent of the Director of Community Services or her authorized representative:
  - (1) Mortgage, pledge, or otherwise encumber or suffer to be encumbered, any of the assets of SUBRECIPIENT now owned or hereafter acquired by it, or permit any pre-existing mortgages, liens, or other encumbrances to remain on, or attached to, any assets of SUBRECIPIENT which are allocated to the performance of this Agreement and with respect to which CITY has ownership hereunder.
  - (2) Sell, assign, pledge, transfer, or otherwise dispose of accounts receivables, notes, or claims for money due or to become due.
  - (3) Sell, convey, or lease all or a substantial part of its assets.
  - (4) Make any advance or loan to, or incur any liability for any other firm, person, entity, or corporation as guarantor, surety, or accommodation endorser.
  - (5) Sell, donate, loan, or transfer any equipment or item of personal property purchased with funds paid to SUBRECIPIENT by CITY, unless CITY authorizes such transfer in writing.



- B. SUBRECIPIENT agrees, upon written request by CITY, to require its employees to attend training sessions sponsored by the Community Development Division.

#### **16. INSURANCE**

- A. SUBRECIPIENT shall observe sound business practices with respect to providing such bonding and insurance as would provide adequate coverage for the services provided pursuant to this Agreement.
- B. The premises on and in which the services and activities described in Exhibit A are conducted, and the employees conducting these services and activities, shall be covered by premise liability insurance, commonly referred to as "Owner/Tenant" coverage, with CITY named as an additional insured. Upon request of SUBRECIPIENT, CITY may, at its sole discretion, approve alternate insurance coverage arrangements.
- C. SUBRECIPIENT will comply with applicable workers' compensation statutes and will obtain employers' liability coverage where available and other appropriate liability coverage for program participants, if applicable.
- D. SUBRECIPIENT will maintain adequate and continuous liability insurance on all vehicles owned, leased, or operated by SUBRECIPIENT. All employees of SUBRECIPIENT who are required to drive a vehicle in the normal scope and course of their employment must possess a valid Texas driver's license and automobile liability insurance. Evidence of the employee's current possession of a valid license and insurance must be maintained on a current basis in SUBRECIPIENT's files.
- E. Actual losses not covered by insurance as required by this Section are not allowable or eligible costs under this Agreement and remain the sole responsibility of SUBRECIPIENT.
- F. The policy or policies of insurance shall contain a clause which requires that CITY and SUBRECIPIENT be notified in writing of any cancellation or change in the policy at least 30 days prior to such change or cancellation.

#### **17. CIVIL RIGHTS / EQUAL OPPORTUNITY**

- A. SUBRECIPIENT shall comply with all applicable equal employment opportunity and affirmative action laws or regulations. The SUBRECIPIENT shall not discriminate against any employee or applicant for employment because of race, color, creed, religion, national origin, gender, age, or disability. The SUBRECIPIENT will take affirmative action to ensure that all employment practices are free from such discrimination. Such employment practices include but are not limited to the following: hiring, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
- B. SUBRECIPIENT shall comply with all applicable equal employment opportunity and affirmative action laws or regulations. The SUBRECIPIENT agrees to comply with Title VI of the Civil Rights Act of 1964 as amended, Title VIII of the Civil Rights Act of 1968 as amended, Section 104(b) and Section 109 of Title 1 of the Housing and Community Development Act of 1974 as amended, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Executive Order 11063 and Executive Order 11246 as amended by Executive Orders 11375 and 12086.
- C. SUBRECIPIENT will furnish all information and reports requested by the CITY, and will permit access to its books, records, and accounts for purposes of investigation to ascertain compliance with local, state, and Federal rules and regulations.
- D. In the event of SUBRECIPIENT's non-compliance with the non-discrimination requirements, CITY may cancel or terminate the Agreement in whole or in part, and SUBRECIPIENT may be barred from further contracts with CITY.

### **18. PERSONNEL POLICIES**

Personnel policies shall be established by SUBRECIPIENT and shall be available for examination. Such personnel policies shall:

- A. Include policies with respect to employment, salary and wage rates, working hours and holidays, fringe benefits, vacation and sick leave privileges, and travel;
- B. Be in writing; and
- C. Be approved by the governing body of SUBRECIPIENT.

### **19. CONFLICT OF INTEREST**

- A. SUBRECIPIENT covenants that neither it nor any member of its governing body presently has any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. SUBRECIPIENT further covenants that in the performance of this Agreement, no person having such interest shall be employed or appointed as a member of its governing body.
- B. SUBRECIPIENT further covenants that no member of its governing body or its staff, subcontractors, or employees shall possess any interest in or use his/her position for a purpose that is or gives the appearance of being motivated by desire for private gain for himself/herself, or others, particularly those with which he/she has family, business, or other ties.
- C. No officer, member, or employee of CITY and no member of its governing body who exercises any function or responsibilities in the review or approval of the undertaking or carrying out of this Agreement shall participate in any decision relating to the Agreement which affects his or her personal interest or the interest in any corporation, partnership, or association in which he or she has a direct or indirect interest.

### **20. NEPOTISM**

SUBRECIPIENT shall not employ in any paid capacity any person who is a member of the immediate family of any person who is currently employed by SUBRECIPIENT or is a member of SUBRECIPIENT's governing board. The term "member of immediate family" includes: wife, husband, son, daughter, mother, father, brother, sister, in-laws, aunt, uncle, nephew, niece, stepparent, stepchild, half-brother, and half-sister.

### **21. POLITICAL OR SECTARIAN ACTIVITY**

- A. Neither the funds advanced pursuant to this Agreement, nor any personnel who may be employed by the SUBRECIPIENT with funds advanced pursuant to this Agreement shall be in any way or to any extent engaged in any conduct or political activity in contravention of Chapter 15 of Title 5 of the United States Code.
- B. The SUBRECIPIENT is prohibited from using funds provided herein or personnel employed in the administration of the program for: political activities; sectarian or religious activities, lobbying, political patronage, or nepotism activities.
- C. The SUBRECIPIENT agrees that none of the funds or services provided directly or indirectly under this Agreement shall be used for any partisan political activity or to further the election or defeat of any candidate for public office, or for publicity, lobbying, and/or propaganda purposes designed to support or defeat pending legislation. Employees of the SUBRECIPIENT connected with any activity that is funded in whole or in part by funds provided to SUBRECIPIENT under this Agreement may not during the term of this Agreement:
  - (1) Use their official position or influence to affect the outcome of an election or nomination;
  - (2) Solicit contributions for political purposes; or
  - (3) Take an active part in political management or in political campaigns.

- D. SUBRECIPIENT hereby agrees to sign a Certification Regarding Lobbying included herein as Exhibit C and if necessary, the Disclosure of Lobbying Activities provided by the CITY.

## 22. PUBLICITY

- A. Where such action is appropriate, SUBRECIPIENT shall publicize the activities conducted by SUBRECIPIENT under this Agreement that the U.S. Department of Treasury American Rescue Plan Act funding through the City of Denton has contributed to make the project possible.
- B. All published material and written reports submitted under this project must be originally developed material unless otherwise specifically provided in this Agreement. When material not originally developed is included in a report, the report shall identify the source in the body of the report or by footnote. This provision is applicable when the material is in a verbatim or extensive paraphrase format.
- C. All published material submitted under this project shall include the following reference on the front cover or title page:  
*This document is prepared in accordance with the City of Denton's American Rescue Plan Act Grant Program, with funding received from the United States Department of Treasury.*
- D. All reports, documents, studies, charts, schedules, or other appended documentation to any proposal, content of basic proposal, or contracts and any responses, inquiries, correspondence and related material submitted by SUBRECIPIENT shall become the property of CITY upon receipt.

## 23. CHANGES AND AMENDMENTS

- A. Any alterations, additions, or deletions to the terms of this Agreement shall be by written amendment executed by both parties, except when the terms of this Agreement expressly provide that another method shall be used.
- B. SUBRECIPIENT may not make transfers between or among approved line items within budget categories set forth in Exhibit B without prior written approval of CITY. SUBRECIPIENT shall request, in writing, the budget revision in a form prescribed by CITY, and such request for revision shall not increase the total monetary obligation of CITY under this Agreement. In addition, budget revisions cannot significantly change the nature, intent, or scope of the program funded under this Agreement.
- C. The City Manager or designate may authorize minor amendments to the approved Scope of Work in Exhibit A and Budget in Exhibit B as necessary to carry out the intent of this Agreement, in a manner consistent with the efficient use of public funds, and in accordance with Federal Law. Such minor amendments may not increase the overall funding set forth in Exhibit B, extend the term, or otherwise alter the performance obligations of SUBRECIPIENT, without approval of the City Council.
- D. It is understood and agreed by the parties hereto that changes in the State, Federal, or local laws or regulations pursuant hereto may occur during the term of this Agreement. Any such modifications are to be automatically incorporated into this Agreement without written amendment hereto and shall become a part of the Agreement on the effective date specified by the law or regulation.
- E. CITY may, from time to time during the term of the Agreement, request changes to the Agreement, which may include an increase or decrease in the amount of SUBRECIPIENT's compensation. Such changes shall be incorporated in a written amendment hereto, as provided in Subsection A of this Section.
- F. SUBRECIPIENT agrees to notify CITY of any proposed change in physical location for work performed under this Agreement at least 30 calendar days in advance of the change.
- G. SUBRECIPIENT shall notify CITY of any changes in personnel or governing board composition.
- H. It is expressly understood that neither the performance of Exhibit A for any program contracted hereunder nor the transfer of funds between or among said programs will be permitted.



## **24. SUSPENSION OF FUNDING**

Upon determination by CITY of SUBRECIPIENT's failure to timely and properly perform each of the requirements, time conditions, and duties provided herein, CITY, without limiting any rights it may otherwise have, may, at its discretion, and upon ten working days written notice to SUBRECIPIENT, withhold further payments to SUBRECIPIENT. Such notice may be given by mail to the Executive Officer and the Board of Directors of SUBRECIPIENT. The notice shall set forth the default or failure alleged, and the action required for cure. The period of such suspension shall be of such duration as is appropriate to accomplish corrective action, but in no event shall it exceed 30 calendar days. At the end of the suspension period, if CITY determines the default or deficiency has been satisfied, SUBRECIPIENT may be restored to full compliance status and paid all eligible funds withheld or impounded during the suspension period. If however, CITY determines that SUBRECIPIENT has not come into compliance, the provisions of Section 25 may be effectuated.

## **25. TERMINATION**

- A. CITY may terminate this Agreement for cause under any of the following reasons or for other reasons not specifically enumerated in this Section:
- (1) SUBRECIPIENT's failure to attain compliance during any prescribed period of suspension as provided in Section 24.
  - (2) SUBRECIPIENT's failure to materially comply with any of the terms of this Agreement.
  - (3) SUBRECIPIENT's violation of covenants, agreements, or guarantees of this Agreement.
  - (4) Termination or reduction of funding by the CITY or US Department of Treasury.
  - (5) Finding by CITY that the SUBRECIPIENT:
    - a. is in such unsatisfactory financial condition as to endanger performance under this Agreement; or
    - b. has allocated inventory to this Agreement substantially exceeding reasonable requirements; or
    - c. is delinquent in payment of taxes or of costs of performance of this Agreement in the ordinary course of business.
  - (6) Appointment of a trustee, receiver, or liquidator for all or substantial part of SUBRECIPIENT's property, or institution of bankruptcy, reorganization, rearrangement of, or liquidation proceedings by or against SUBRECIPIENT.
  - (7) SUBRECIPIENT's inability to conform to changes required by Federal, State, and local laws or regulations as provided in Section 5, and Section 2, of this Agreement.
  - (8) The commission of an act of bankruptcy.
  - (9) SUBRECIPIENT's violation of any law or regulation to which SUBRECIPIENT is bound or shall be bound under the terms of the Agreement.
- B. CITY shall promptly notify SUBRECIPIENT in writing of the decision to terminate and the effective date of termination.
- C. CITY may terminate this Agreement for convenience at any time. If CITY terminates this Agreement for convenience, SUBRECIPIENT will be paid an amount not to exceed the total of accrued expenditures as of the effective date of termination, subject to the requirements of Section 7 and Exhibit B. In no event will this compensation exceed an amount which bears the same ratio to the total compensation as the services actually performed bears to the total services of SUBRECIPIENT covered by the Agreement, less payments previously made.
- D. SUBRECIPIENT may terminate this Agreement in whole or in part by written notice to CITY, if a termination of outside funding occurs upon which SUBRECIPIENT depends for performance hereunder. SUBRECIPIENT may opt, within the limitations of this Agreement, to seek an alternative funding source, with the approval of CITY, provided the termination by the outside funding source was not occasioned by a breach of contract as

defined herein or as defined in a contract between SUBRECIPIENT and the funding source in question. SUBRECIPIENT may terminate this Agreement upon the dissolution of SUBRECIPIENT's organization not occasioned by a breach of this Agreement.

- E. Upon receipt of notice to terminate, SUBRECIPIENT shall cancel, withdraw, or otherwise terminate any outstanding orders or subcontracts, which relate to the performance of this Agreement. CITY shall not be liable to SUBRECIPIENT or SUBRECIPIENT's contractors, subcontractors or creditors for any expenses, encumbrances, or obligations whatsoever incurred after the termination date listed on the notice to terminate referred to in this Section.
- F. SUBRECIPIENT shall provide CITY within 30 days, a full accounting of all expenditures not previously audited by the City and that have occurred since the last required reporting period. SUBRECIPIENT shall return any unused funds, or funds determined to be ineligible or used improperly within 15 days of termination date.
- G. Notwithstanding any exercise by CITY of its right of suspension or termination, SUBRECIPIENT shall not be relieved of liability to CITY for damages sustained by CITY by virtue of any breach of the Agreement by SUBRECIPIENT, and CITY may withhold any reimbursement to SUBRECIPIENT until such time as the exact amount of damages due to CITY from SUBRECIPIENT is agreed upon or otherwise determined.

## **26. NOTIFICATION OF ACTION BROUGHT**

In the event that any claim, demand, suit, or other action or proceeding is made or brought by any person(s), firm, corporation, or other entity against SUBRECIPIENT, SUBRECIPIENT shall give written notice thereof to CITY within five working days after being notified of such claim, demand, suit, or other action or proceeding. Such notice shall state the date and hour of notification of any such claim, demand, suit, or other action or proceeding; the names and addresses of the person(s), firm, corporation, or other entity making such claim, or demand, or that instituted or threatened to institute any type of suit, or other action or proceeding; the basis of such claim, demand, suit, or other action, or proceeding; and the name of any person(s) against whom such claim, demand, suit, or other action or proceeding is being made or threatened. Such written notice shall be delivered either personally or by mail postage paid in accordance with the provisions of Section 29.I.

## **27. INDEMNIFICATION**

- A. It is expressly understood and agreed by both parties hereto that CITY is contracting with SUBRECIPIENT as an independent contractor and that as such, SUBRECIPIENT shall save and hold CITY, its officers, elected and appointed officials, agents, employees, and contractors harmless from all liability of any nature or kind, including costs and expenses for, or on account of, any claims, audit exceptions, demands, suits, or damages of any kind or character whatsoever resulting in whole or in part from the performance, act or omission of any employee, agent, contractor, subcontractor, or representative of SUBRECIPIENT.
- B. SUBRECIPIENT agrees to provide the defense for, and to indemnify and hold harmless CITY, its officers, elected and appointed officials, agents, employees, and contractors from any and all claims, suits, causes of action, demands, damages, losses, attorney fees, expenses, and liability arising out of the use of these contracted funds and program administration and implementation except to the extent caused by the willful act or omission of CITY, its agents, employees, or contractors.

## **28. NON-RELIGIOUS ACTIVITIES**

- A. As stated in 24 CFR Part 5.109, no organization will be prohibited from participating in activities supported by CITY funding including programs that make funds available through contracts, grants, or cooperative agreements. SUBRECIPIENT is prohibited from discriminating against beneficiaries in providing services or carrying

out activities with such assistance based on religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice, while also noting that organizations that participate in programs only funded by indirect CITY or Federal financial assistance need not modify their program or activities to accommodate beneficiaries who choose to expend the indirect aid on those SUBRECIPIENT organizations' programs.

- B. Faith based organizations that carry out programs or activities with direct Federal financial assistance from HUD are required to provide written notice of certain protections to beneficiaries and prospective beneficiaries. Specifically, such organizations are required to give notice to beneficiaries that:
1. The organization may not discriminate against a beneficiary or prospective beneficiary based on religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice;
  2. The organization may not require a beneficiary to attend or participate in any explicitly religious activities that are offered by the organization, and any participation by the beneficiary in such activities must be purely voluntary; and
  3. The organization must separate, in time or location, any privately funded explicitly religious activities from activities supported by direct Federal financial assistance; and
  4. If a beneficiary objects to the religious character of the organization, the organization must undertake reasonable efforts to identify and refer the beneficiary to an alternative provider to which the beneficiary has no such objection;

## **29. MISCELLANEOUS**

- A. SUBRECIPIENT shall not transfer, pledge, or otherwise assign this Agreement or any interest therein, or any claim arising thereunder, to any party or parties, bank, trust company, or other financial institution without the prior written approval of CITY.
- B. If any provision of this Agreement is held to be invalid, illegal, or unenforceable, the remaining provisions shall remain in full force and effect and continue to conform to the original intent of both parties hereto.
- C. All reports, documents, studies, charts, schedules, or other appended documentation to any proposal, content of basic proposal, or contracts and any responses, inquiries, correspondence, and related material submitted by SUBRECIPIENT shall become the property of CITY upon receipt.
- D. Debarment: SUBRECIPIENT certifies that it is not listed on the System for Award Management (SAM), which lists the debarred, suspended, or otherwise excluded from or ineligible for participation in federal assistance programs under Executive Order 12549 and 24 CFR Part 24.
- E. In no event shall any payment to SUBRECIPIENT hereunder, or any other act or failure of CITY to insist in any one or more instances upon the terms and conditions of this Agreement constitute or be construed in any way to be a waiver by CITY of any breach of covenant or default which may then or subsequently be committed by SUBRECIPIENT. Neither shall such payment, act, or omission in any manner impair or prejudice any right, power, privilege, or remedy available to CITY to enforce its rights hereunder, which rights, powers, privileges, or remedies are always specifically preserved. No representative or agent of CITY may waive the effect of this provision.
- F. This Agreement, together with the referenced EXHIBITS, constitutes the entire agreement between the parties hereto, and any prior agreement, assertion, statement, understanding, or other commitment antecedent to this Agreement, whether written or oral, shall have no force or effect whatsoever; nor shall an agreement, assertion, statement, understanding, or other commitment occurring during the term of this Agreement, or subsequent thereto, have any legal force or effect whatsoever, unless properly executed in writing, and if appropriate, recorded as an amendment of this Agreement.



- G. In the event any disagreement or dispute should arise between the parties hereto pertaining to the interpretation or meaning of any part of this Agreement or its governing rules, codes, laws, ordinances, or regulations, CITY as the party ultimately responsible to U.S. DEPARTMENT OF Treasury for matters of compliance, will have the final authority to render or to secure an interpretation.
- H. If SUBRECIPIENT provides services to the homeless it is required to:
- a. Report homeless data to the Homeless Management Information System (HMIS). HMIS is a countywide data management tool designed to facilitate data collection in order to improve human service delivery throughout Denton County. Participation in (HMIS is a requirement per this Agreement. Data entered into HMIS will help our community improve services to individuals experiencing homelessness by providing accurate information on the extent and nature of homelessness in our community and by accounting for our success in helping people move out of homelessness. Participation is also critical to help CITY and Denton County successfully compete for grants for federal funding, such as the U.S. Department of Housing and Urban Development's homeless assistance funds.
  - b. Participate in the Denton County Homeless Leadership Team meetings and any applicable workgroup(s). The Denton County Homeless Leadership Team is a collaborative, cross-sector team that convenes to improve the planning, coordination, oversight, and implementation required to create systems change for housing/homelessness initiatives in Denton County. Further, the SUBRECIPIENT is encouraged to work in partnership with fellow service providers to improve efficiency and effectiveness.
- I. For purposes of this Agreement, all official communications and notices among the parties shall be deemed made if delivered by courier or overnight mail service or if sent U.S. Mail postage paid, in each case to the parties and addresses set forth below:

**TO CITY:**

City Manager  
City of Denton  
215 E. McKinney  
Denton, Texas 76201

**TO SUBRECIPIENT:**

Cumberland Presbyterian Children's Home  
Attn: Executive Director/CEO/Commander  
909 Greenlee Street  
Denton, TX 76201

w/ a copy to:

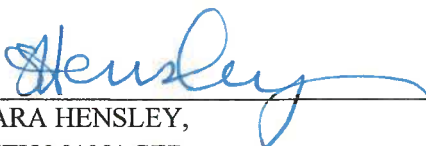
City Attorney  
215 E. McKinney  
Denton, TX 76201

- J. This Agreement shall be interpreted in accordance with the laws of the State of Texas and venue of any litigation concerning this Agreement shall be in a court competent jurisdiction sitting in Denton County, Texas.

*[Signature page follows]*

IN WITNESS OF WHICH this Agreement has been executed as of the \_\_\_\_\_ day of \_\_\_\_\_, 2022.

**CITY OF DENTON:**

BY:   
SARA HENSLEY,  
CITY MANAGER

**ATTEST:**

BY:   
ROSA RIOS,  
CITY SECRETARY

**APPROVED AS TO LEGAL FORM:**

BY:  Digitally signed by Scott Bray  
Date: 2022.03.29 11:31:22  
-05'00'  
MACK REINWAND,  
CITY ATTORNEY

**CUMBERLAND PRESBYTERIAN  
CHILDREN'S HOME:**

BY:   
99230FA273724A5...  
TITLE: President & CEO

**ATTEST:**

BY:   
AE88B878A1A2460...  
SECRETARY



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

  
0608E12767CF403...  
Signature

Director of Community Services

Title

Community Services

Department

Date Signed: 3/30/2022

**Exhibit A**  
**Scope of Services**

The Scope of Services under this Agreement shall be as follows:

**SECTION I – SERVICE GOAL**

SUBRECIPIENT assists the City of Denton to meet the public health and economic needs of those impacted by the pandemic, as outlined in the State and Local Fiscal Recovery Funds Final Rule.

SUBRECIPIENT shall provide: Cumberland Counseling Services Program Expansion, a counseling/psychotherapy program for low-income youth and family clients. The program will be operated at 909 Greenlee Street, Denton, TX 76201. The program will operate 9 a.m. to 6 p.m., Monday through Friday.

**SECTION II – OUTCOMES**

Tracking outcome measures will be a tool by which the CITY and the SUBRECIPIENT can measure services delivered and performance under this agreement.

SUBRECIPIENT provides benefits to the citizens of the City of Denton through these outcomes:

- 80, Total number of unduplicated City of Denton clients served by the grant
- 2,080, Total number of counseling sessions provided by the grant



**Exhibit B**  
**Budget**

SUBRECIPIENT shall provide the services listed in this Agreement within the monetary limits attached hereto and incorporated by reference herein. In no event shall compensation to the SUBRECIPIENT exceed the lesser of the SUBRECIPIENT's costs attributable to the work performed as stated herein, or sum of One Hundred Fifty-Five Thousand One Hundred Seventy-Nine (\$155,179)

<b>Allowable Expenditure</b>	
Administration (10% maximum)	\$15,517.90
Counselor Salary	\$139,661.10
<b>Total</b>	<b>\$ 155,179.00</b>

SUBRECIPIENT will receive payments on the following schedule:

1. First payment will be made no later than 30 days from the contract date of execution and will equal 25% of the fixed contract amount
2. Subsequent payments will be made quarterly contingent upon monthly reporting submitted by the SUBRECIPIENT and will equal 25% of the fixed contract amount:
  1. First Payment: No later than (30 days from contract date of execution)
  2. Subsequent payments made quarterly beginning the second quarter of the grant term.

Expenditure and Performance Reports must include:

1. Client list with unique identifier served by funding including client addresses and verification of income certification.
2. Copy of timesheet signed by staff member and supervisor paid with funding.
3. Copy of paystub with payroll detail for staff member(s) paid with funding. Payroll register accepted if provided by third party vendor.
4. Copy of invoice for purchases made with funding.
5. Proof of payment (copy of check and/or receipt showing paid) for purchases made with funding.

**Exhibit C**  
**Certification Regarding Lobbying**

The undersigned certifies, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-ILL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The undersigned shall require that the language of this Certification be included in the award documents for all subawards at all tiers (including subcontractors, subgrants, and contracts under grants, loans, and cooperative agreements) and that all SUBRECIPIENTS shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of the certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, US Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

**Cumberland Presbyterian Children's Home**

Grantee

DocuSigned by:  
  
 00280FA237372445...

President & CEO

Signature

Title

3/30/2022

Date



# City of Denton

City Hall  
215 E. McKinney St.  
Denton, Texas 76201  
[www.cityofdenton.com](http://www.cityofdenton.com)

## Legislation Text

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**File #:** ID 24-346, **Version:** 1

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### **AGENDA CAPTION**

Consider adoption of an ordinance of the City of Denton authorizing the City Manager to execute Amendment 1 to the funding agreement between the City and Denton County MHMR approved by City Council on April 19, 2022; said first amendment to extend the term of the agreement and to require additional services; and providing an effective date.



## AGENDA INFORMATION SHEET

**DEPARTMENT:** Community Services

**CM/ DCM/ ACM:** Sara Hensley, City Manager

**DATE:** April 2, 2024

### **SUBJECT**

Consider adoption of an ordinance of the City of Denton authorizing the City Manager to execute Amendment 1 to the funding agreement between the City and Denton County MHMR approved by City Council on April 19, 2022; said first amendment to extend the term of the agreement and to require additional services; and providing an effective date.

### **STRATEGIC ALIGNMENT**

This action supports Key Focus Area: Foster Economic Opportunity and Affordability.

### **BACKGROUND**

On [April 19, 2022](#), City Council approved Ordinance 22-430 with the Denton County MHMR to provide American Rescue Plan funds for administrative and program costs for Denton County MHMR's 3D Project (Denton's Dually Diagnosed), a program for individuals dually-diagnosed with mental health and substance use disorder (SUD) challenge.

Denton County MHMR Center provides a wide array of mental health services including Adult & Child Mental Health Services, Intellectual & Development Disabilities Services, Crisis Services, and Substance Use Disorder Services to individuals and families in Denton County.

Denton County MHMR has been expending grant funds at a steady rate and will require an extended grant term to utilize the full grant amount in the service of Denton residents.

Approval of this ordinance would amend the agreement to extend the term from April 30, 2024 to April 30, 2025 and add that Denton County MHMR's reporting requirements extend to the new term deadline.

### **OPTIONS**

1. Approve the Denton County MHMR ARP Amendment 1.
2. Do not approve the Denton County MHMR ARP Amendment 1.

### **RECOMMENDATIONS**

Approve the Denton County MHMR ARP Amendment 1.

## **EXHIBITS**

Exhibit 1 – Agenda Information Sheet

Exhibit 2 – Denton County MHMR Ordinance-Agreement 1

Exhibit 3 – Ordinance #22-430

Respectfully submitted:

Danielle Shaw

Director of Community Services

Prepared By:

Alaina Graff

Grants Program Coordinator

ORDINANCE NO. 24-346

AN ORDINANCE OF THE CITY OF DENTON AUTHORIZING THE CITY MANAGER TO EXECUTE AMENDMENT 1 TO THE FUNDING AGREEMENT BETWEEN THE CITY AND DENTON COUNTY MHMR APPROVED BY CITY COUNCIL ON APRIL 19, 2022; SAID FIRST AMENDMENT TO EXTEND THE TERM OF THE AGREEMENT AND TO REQUIRE ADDITIONAL SERVICES; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, pursuant to Ordinance No. 22-430, the City of Denton (the “City”) entered into an agreement on April 19, 2022 (the “Subrecipient”) with Denton County MHMR (the “Agency”), for administrative and program costs for Denton County MHMR’s 3D Project (Denton’s Dually Diagnosed) with an original term of April 30, 2024; and

WHEREAS, the City deems it necessary to amend the Agreement to extend the term to end on April 30, 2025 to increase the total number of unduplicated City of Denton clients served by the agency from 500 to 530; and

WHEREAS, the City Council of the City hereby finds that amending the Agreement pursuant to Amendment 1 is in the public interest; NOW THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The findings and recitations contained in the preamble of this Ordinance are incorporated herein by reference.

SECTION 2. The City Manager or their designee is hereby authorized to execute Amendment 1 to the Agreement, and to carry out the duties and responsibilities of the City under the Agreement as amended, including extending the term of the Agreement.

SECTION 3. 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 [\_\_\_ - \_\_\_]:



	<b>Aye</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>
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 \_\_\_\_\_, 2024.

\_\_\_\_\_  
GERARD HUDSPETH, MAYOR

ATTEST:  
JESUS SALAZAR, CITY SECRETARY

BY: \_\_\_\_\_

APPROVED AS TO LEGAL FORM:  
MACK REINWAND, CITY ATTORNEY

BY:  \_\_\_\_\_  
Scott Bray  
2024.03.20  
16:59:06 -05'00'

**SERVICE AGREEMENT BETWEEN THE  
CITY OF DENTON AND DENTON COUNTY  
MHMR**

**AMENDMENT 1 to Agreement**

This Amendment 1 to Agreement is made by and between the City of Denton (the “City”) and Denton County MHMR (“Subrecipient”).

WHEREAS, pursuant to Ordinance No. 22-430, the City of Denton (the “City”) entered into an agreement on April 19, 2022 (the “Subrecipient”) with Denton County MHMR (the “Agency”), for administrative and program costs for the 3D Project with an original term of April 30, 2024; and

WHEREAS, the City deems it necessary to amend the Agreement to extend the term to April 30, 2025 and to increase the total number of unduplicated City of Denton clients served by the agency from 500 to 530; and

WHEREAS, amending the Agreement to extend the term to allow for the provision of services to more individuals is in the public interest;

NOW THEREFORE, in consideration of good and valuable consideration, the sufficiency and receipt of which is hereby acknowledged, the City and Subrecipient agree as follows:

1. Section 1, “Term”, of the Agreement is hereby amended to extend the term of the Agreement to April 30, 2025.
2. Section 1, “Term”, of the Agreement is hereby amended to add the City shall have the right, but not the obligation, to extend the term of the agreement for one (1) additional one-year period.
3. Exhibit A of the Agreement is hereby stricken in its entirety and replaced with the Exhibit A attached to this Amendment.
4. All other provisions, terms, covenants, duties, rights, obligations, and agreements contained in the Agreement shall remain in full force and effect.
5. This Amendment 1 to Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment 1 to Agreement as of the \_\_\_\_\_ day of \_\_\_\_\_, 2024.


CITY OF DENTON

BY: \_\_\_\_\_  
SARA HENSLEY  
CITY MANAGER

ATTEST:  
JESUS SALAZAR, CITY SECRETARY

BY: \_\_\_\_\_

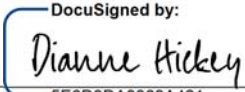
APPROVED AS TO LEGAL FORM:  
MACK REINWAND, CITY ATTORNEY

BY:  Scott Bray  
2024.03.20 16:58:57 -05'00'

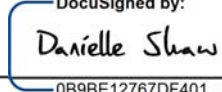
DENTON COUNTY MHMR

BY:  DocuSigned by:  
PAM GUTIERREZ  
EXECUTIVE DIRECTOR

ATTEST:  
NAME: Dianne Hickey

BY:  DocuSigned by:  
Dianne Hickey

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

 DocuSigned by:  
Danielle Shaw  
Signature

Director of Community Services  
Title

Community Services  
Department

## **Exhibit A**

### **Scope of Services**

The Scope of Services under this Agreement shall be as follows:

#### **SECTION I – SERVICE GOAL**

SUBRECIPIENT assists the City of Denton to meet the public health and economic needs of those impacted by the pandemic, as outlined in the state and Local fiscal Recovery Funds Final Rule.

SUBRECIPIENT shall provide: The 3D Project (Denton's Dually Diagnosed), a program for individuals dually-diagnosed with mental health and substance use disorder (SUD) challenges. The program will be operated at 2519 Scripture Street, Denton, TX 76201. The program will operate from 8 a.m. to 5 p.m., Monday through Friday.

#### **SECTION II – OUTCOMES**

Performance under this Agreement will be measured by the following outcomes:

SUBRECIPIENT provides benefits to the citizens of the City of Denton through these outcomes:

- 530, Number of unduplicated City of Denton adult mental health and substance use disorder (dually diagnosed) individuals served
- 100% of individuals served receive improved community connectedness
- 57, Recipients of Sober Living Scholarships or Ambulatory Detoxification services

ORDINANCE NO. 22-430

AN ORDINANCE OF THE CITY OF DENTON AUTHORIZING THE CITY MANAGER TO EXECUTE A FUNDING AGREEMENT BETWEEN THE CITY OF DENTON AND THE DENTON COUNTY MHMR CENTER FOR THE PAYMENT AND USE OF BEHAVIORAL HEALTHCARE SERVICES GRANT FUNDING; PROVIDING FOR THE EXPENDITURE OF FUNDS IN AN AMOUNT NOT TO EXCEED \$347,821; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Denton has received Coronavirus State and Local Fiscal Recovery Funds (SLFRF) under the American Rescue Plan Act to provide support to State territorial, local, and Tribal governments in responding to the economic and public health impacts of COVID-19 and in their efforts to contain impacts on their communities, residents, and businesses; and

WHEREAS, the Coronavirus pandemic has exacerbated behavioral health needs and SLFRF classifies behavioral health care, including services for mental health treatment, substance misuse treatment, and other behavioral health services, as eligible expenses under the program; and

WHEREAS, the City developed the Behavioral Healthcare Service Grant program to support applicants in providing access to services for City of Denton residents in one of three priority areas: youth mental health services, adult mental health services, and substance use treatment services; and

WHEREAS, the Community Services Advisory Committee of the City has reviewed the proposal of services of Denton County MHMR Center and determined that the Agency meets the eligibility and program requirements for the grant; and

WHEREAS, the Community Services Department is designated as the department responsible for the administration of the Agreement and all matters pertaining thereto; and

WHEREAS, the City Council deems it in the public interest to enter into the Agreement in support of much needed services for Denton residents; NOW, THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The City Manager, or their designee, is hereby authorized to execute an agreement between the City of Denton and the Denton County MHMR Center for the payment and use of Behavioral Healthcare Services grant funding, under the terms and conditions contained in the agreement, a copy of which is attached hereto and made a part hereof.

SECTION 2. This Ordinance shall become effective immediately upon its passage and approval.

The motion to approve this Ordinance was made by Jesse Davis and seconded by Brian Beck; the Ordinance was passed and approved by the following vote [7 - 0]:

	<u>Aye</u>	<u>Nay</u>	<u>Abstain</u>	<u>Absent</u>
Gerard Hudspeth, Mayor:	<u>✓</u>	<u>      </u>	<u>      </u>	<u>      </u>
Vicki Byrd, District 1:	<u>✓</u>	<u>      </u>	<u>      </u>	<u>      </u>
Brian Beck, District 2:	<u>✓</u>	<u>      </u>	<u>      </u>	<u>      </u>
Jessie Davis, District 3:	<u>✓</u>	<u>      </u>	<u>      </u>	<u>      </u>
Alison Maguire, District 4:	<u>✓</u>	<u>      </u>	<u>      </u>	<u>      </u>
Deb Armintor, At Large Place 5:	<u>✓</u>	<u>      </u>	<u>      </u>	<u>      </u>
Paul Meltzer, At Large Place 6:	<u>✓</u>	<u>      </u>	<u>      </u>	<u>      </u>

PASSED AND APPROVED this the 19<sup>th</sup> day of April, 2022.

  
GERARD HUDSPETH, MAYOR

ATTEST:  
ROSA RIOS, CITY SECRETARY

BY: Rosa Rios

APPROVED AS TO LEGAL FORM:  
MACK REINWAND, CITY ATTORNEY

BY: Scott Bray

Digitally signed by Scott Bray  
Date: 2022.03.29 12:17:30 -05'00'





**2022-2023 BEHAVIORAL HEALTHCARE SERVICES GRANT SERVICE AGREEMENT  
BETWEEN THE CITY OF DENTON, TEXAS AND  
DENTON COUNTY MHMR CENTER PROVIDING FOR THE PAYMENT AND USE OF AMERICAN  
RESCUE PLAN ACT FUNDING**

This Agreement is hereby entered into by and between the City of Denton, a Texas municipal corporation, acting by and through its City Manager, hereinafter referred to as "CITY," and Denton County MHMR Center, P.O. Box 2346, Denton, Texas 76202, hereinafter referred to as "SUBRECIPIENT."

WHEREAS, the American Rescue Plan Act of 2021, also called the COVID-19 Stimulus Package or American Rescue Plan (ARP), was passed on March 11, 2021, providing \$1.9 trillion with funding objectives to support public health response, replace public sector revenue loss, invest in water and sewer infrastructure, address negative economic impacts, offer premium pay for essential workers, and invest in broadband infrastructure; and

WHEREAS, CITY has received certain funds from the U.S. Department of Treasury under the American Rescue Plan's State and Local Fiscal Recovery Funds (SLFRF); and

WHEREAS, CITY has adopted a budget for such funds and included therein an authorized budget for expenditure of funds; and

WHEREAS, City has determined that a grant program whereby the City provides certain qualified non-profits funds to accomplish the purpose of providing programs and services is in the public interest and in accordance with the American Rescue Plan funding objectives;

WHEREAS, City desires to award qualified non-profits with subawards of SLFRF funds where all compliance requirements for use of SLFRF funds and any and all reporting requirements for expenditures of SLFRF funds apply; and

WHEREAS, CITY has designated the Community Development Division as the division responsible for the administration of this Agreement and all matters pertaining thereto;

NOW, THEREFORE, the parties hereto agree, and by the execution hereof are bound by the mutual obligations and to the performance and accomplishment of the conditions hereinafter described.

**1. TERM**

This Agreement shall commence on May 1, 2022, and shall terminate on April 30, 2024, unless sooner terminated in accordance with Section 25 "Termination."

**2. RESPONSIBILITIES**

SUBRECIPIENT hereby accepts the responsibility for the performance of all services and activities described in the Scope of Services attached hereto as Exhibit A, and incorporated herein by reference, in a satisfactory and efficient manner as determined by CITY, in accordance with the terms herein. CITY will consider SUBRECIPIENT's executive officer to be SUBRECIPIENT's representative responsible for the management of all contractual matters pertaining hereto, unless written notification to the contrary is received from SUBRECIPIENT and approved by CITY.

The CITY's Director of Community Services will be CITY's representative responsible for the administration of this Agreement. Beneficiaries of the activities to be provided hereunder must reside in the City of Denton and SUBRECIPIENT certifies that the activities carried out with these funds shall meet the American Rescue Plan's funding objectives in response to the COVID-19 emergency. SUBRECIPIENT shall provide services and/or programming for City of Denton residents as detailed in Exhibit A Scope of Services.

### **3. REPRESENTATIONS**

- A. SUBRECIPIENT assures and guarantees that it possesses the legal authority, pursuant to any proper, appropriate, and official motion, resolution, or action passed or taken, to enter into this Agreement.
- B. The person or persons signing and executing this Agreement on behalf of SUBRECIPIENT, do hereby warrant and guarantee that he, she, or they have been fully authorized by SUBRECIPIENT to execute this Agreement on behalf of SUBRECIPIENT and to validly and legally bind SUBRECIPIENT to all terms, performances, and provisions herein set forth.
- C. CITY shall have the right, at its option, to either temporarily suspend or permanently terminate this Agreement if there is a dispute as to the legal authority of either SUBRECIPIENT or the person signing the Agreement to enter into this Agreement. SUBRECIPIENT is liable to CITY for any money it has received from CITY for performance of the provisions of this Agreement if CITY has suspended or terminated this Agreement for the reasons enumerated in this Section.
- D. SUBRECIPIENT agrees that the funds and resources provided SUBRECIPIENT under the terms of this Agreement will in no way be substituted for funds and resources from other sources, nor in any way serve to reduce the resources, services, or other benefits which would have been available to, or provided through, SUBRECIPIENT had this Agreement not been executed.

### **4. SUBRECIPIENT'S OBLIGATIONS**

In consideration of the receipt of funds from the CITY, the SUBRECIPIENT agrees to the following terms and conditions:

- A. Three Hundred Forty-Seven Thousand Eight Hundred Twenty-One (\$347,821) may be paid to SUBRECIPIENT by CITY, and the only expenditures reimbursed from these funds shall be those in accordance with the Budget, set forth in Exhibit B, for those services described in the Scope of Services, Exhibit A, as provided herein. SUBRECIPIENT shall not utilize these funds for any other purpose.
- B. SUBRECIPIENT shall submit monthly performance and expenditure reports to CITY pursuant to Section 10 of this Agreement. CITY may withhold payment to SUBRECIPIENT for any period for which SUBRECIPIENT has failed to submit the reports required by this Agreement.
- C. SUBRECIPIENT will establish, operate, and maintain an account system for this program that will allow for a tracing of funds and a review of the financial status of the program. The system will be based on generally accepted accounting principles as recognized by the American Institute of Certified Public Accountants.
- D. SUBRECIPIENT will permit authorized officials of CITY to review its books at any time.
- E. SUBRECIPIENT will reduce to writing all of its rules, regulations, and policies and file a copy with CITY's Community Development Office along with any amendments, additions, or revisions upon request.
- F. SUBRECIPIENT will not enter into any contracts that would encumber CITY funds for a period that would extend beyond the term of this Agreement.

- G. SUBRECIPIENT will promptly pay all bills when submitted unless there is a discrepancy in a bill; any errors or discrepancies in bills shall be promptly reported to CITY's Community Development Division for further direction.
- H. SUBRECIPIENT will appoint a representative who will be available to meet with CITY officials when requested.
- I. SUBRECIPIENT will indemnify and hold harmless CITY, its officers, elected and appointed officials, agents, employees, and contractors from any and all claims and suits arising out of the services or activities of SUBRECIPIENT, its employees, and/or contractors.
- J. SUBRECIPIENT will submit to CITY copies of year-end audited financial statements.

#### **5. COMPLIANCE WITH FEDERAL, STATE, AND LOCAL LAWS**

- A. SUBRECIPIENT shall comply with all applicable federal laws, laws of the State of Texas, and ordinances of the City of Denton.
- B. SUBRECIPIENT agrees to abide by the conditions of and comply with the requirements of the Office of Management 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.
- C. SUBRECIPIENT shall give the CITY, US Department of Treasury, the Comptroller General of the United States, and any of the CITY's authorized representatives, access to and the right to reproduce all records belonging to or in use by SUBRECIPIENT pertaining to this Agreement. Such access shall continue as long as SUBRECIPIENT retains the records. SUBRECIPIENT shall maintain such records in an accessible location.
- D. SUBRECIPIENT shall refrain from entering into any subcontract for services without prior approval in writing by CITY of the qualifications of the subcontractor to perform and meet the standards of this Agreement. All subcontracts entered into by the SUBRECIPIENT will be subject to the requirements of this Agreement. The SUBRECIPIENT agrees to be responsible to CITY for the performance of any subcontractor.
- E. SUBRECIPIENT further agrees and certifies that if the regulations and issuances promulgated pursuant to the Act are amended or revised, it shall comply with them, or notify CITY, as provided in Section 23 of this Agreement.

#### **6. PERFORMANCE BY SUBRECIPIENT**

SUBRECIPIENT will provide, oversee, administer, and carry out the activities and services set out in the Scope of Services described in Exhibit A, utilizing the funds described in Exhibit B, deemed by both parties to be necessary and sufficient payment for full and satisfactory performance of the program, as determined solely by CITY and in accordance with all other terms, provisions, and requirements of this Agreement. No modifications or alterations may be made in the Scope of Services or Budget without the prior written approval of the CITY's Director of Community Services.

#### **7. PAYMENTS**

- A. Payments to SUBRECIPIENT. CITY will pay SUBRECIPIENT for expenses pursuant to and in accordance with the Project Budget attached hereto as Exhibit B, and incorporated herein by reference, and the Scope of Services herein attached as Exhibit A and incorporated herein by reference. Notwithstanding any other provision of the Agreement, the total of all payments and other obligations made or incurred by CITY hereunder shall not exceed the sum of Three Hundred Forty-Seven Thousand Eight Hundred Twenty-One – \$347,821.
- B. The first payment will be made no later than 30 days from the contract date of execution. Payments will be issued as described in Exhibit B.

- C. Funds are to be used for the sole purpose of providing the services described in the Scope of Services in Exhibit A and based on the Budget in Exhibit B.
- D. Excess Payment. SUBRECIPIENT shall refund to CITY within ten working days of CITY's request, any sum of money which has been paid by CITY and which CITY at any time thereafter determines:
  - (1) has resulted in overpayment to SUBRECIPIENT; or
  - (2) has not been spent strictly in accordance with the terms of this Agreement; or
  - (3) is not supported by adequate documentation to fully justify the expenditure.
- E. Disallowed Costs. Upon termination of this Agreement, should any expense or charge for which payment has been made be subsequently disallowed or disapproved as a result of any auditing or monitoring by CITY or any other Federal agency, SUBRECIPIENT will refund such amount to CITY within ten working days of a written notice to SUBRECIPIENT, which specifies the amount disallowed. Refunds of disallowed costs may not be made from these or any funds received from or through CITY.
- F. Reversion of Assets.
  - (1) SUBRECIPIENT, upon expiration of this Agreement, shall transfer to the CITY any funds on hand at the time of expiration and any accounts receivable attributable to the use of funds.
  - (2) The reversion of these financial assets shall be in addition to any other remedy available to CITY either at law or in equity for breach of this Agreement.
- G. Obligation of Funds.
  - (1) In the event that actual expenditure rates deviate from SUBRECIPIENT's provision of a corresponding level of performance, as specified in Exhibit A, CITY hereby reserves the right to re-appropriate or recapture any such under expended funds.
  - (2) If CITY finds that SUBRECIPIENT is unwilling and/or unable to comply with any of the terms of this Agreement, CITY may require a refund of any and all money expended pursuant to this Agreement by SUBRECIPIENT, as well as any remaining unexpended funds which shall be refunded to CITY within ten working days of a written notice to SUBRECIPIENT to revert these financial assets.
- H. Contract Close Out. SUBRECIPIENT shall submit a final expenditure report, for the time period covered by the last invoice requesting reimbursement of funds under this Agreement, within 15 working days following the close of the Agreement period.
- I. The CITY may withhold payment(s) until the appropriate and required reports are received and approved, which approval shall not be unreasonably withheld.
- J. Measure of Liability.
  - (1) The parties expressly understand and agree that CITY's obligations under this Section are contingent upon the actual receipt of adequate ARP funds to meet CITY's liabilities under this Agreement. If adequate funds are not available to make payments under this Agreement, CITY shall notify SUBRECIPIENT in writing within a reasonable time after such fact has been determined. CITY may, at its option, either reduce the amount of its liability or terminate the Agreement. If funds eligible for use for purposes of this Agreement are reduced, CITY shall not be liable for further payments due to SUBRECIPIENT under this Agreement.
  - (2) It is expressly understood that this Agreement in no way obligates the General Fund or any other monies or credits of the City of Denton.
  - (3) CITY shall not be liable for any cost or portion thereof which:
    - (a) has been paid, reimbursed, or is subject to payment or reimbursement, from any other source;
    - (b) was incurred prior to the beginning date or after the ending date specified in Section 1;
    - (c) is not in strict accordance with the terms of this Agreement, including all exhibits attached hereto;

- (d) is not an allowable cost as defined by Section 10 of this Agreement or in the Budget set forth in Exhibit B.
- (4) CITY shall not be liable for any cost or portion thereof which is incurred with respect to any activity of SUBRECIPIENT requiring prior written authorization from CITY, or after CITY has requested that SUBRECIPIENT furnish data concerning such action prior to proceeding further, unless and until CITY advises SUBRECIPIENT to proceed.
  - (5) CITY shall not be obligated or liable under this Agreement to any party other than SUBRECIPIENT for payment of any monies or provision of any goods or services.
  - (6) Funding not expended within the term of this Agreement will revert to the City of Denton within 15 days from the expiration of the term for use on alternative services or projects.
  - (7) Payments may be contingent upon certification of the SUBRECIPIENT's financial management system in accordance with the standards specified in 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

#### **8. ALLOWABLE COSTS**

- A. Costs must comply with SLFRF allowable uses and expenditure categories as published in the Compliance and Reporting Guidance by the US Department of Treasury.
- B. Costs shall be considered allowable only if incurred directly and specifically in the performance of and in compliance with this Agreement and in conformance with the standards and provisions of Exhibits A and B.
- C. SUBRECIPIENT may not expend more than 10% of the funds for any administrative costs.
- D. To the extent that SUBRECIPIENT has received funds from another municipal, state, or federal source for any purpose contemplated herein, SUBRECIPIENT shall not expend funds paid under this Agreement in a manner that would be duplicative of the use of such prior funds.
- E. Approval of SUBRECIPIENT's Budget, Exhibit B, does not constitute prior written approval, even though certain items may appear herein. CITY's prior written authorization is required in order for the following to be considered allowable costs:
  - a. CITY shall not be obligated to any third parties, including any subcontractors of SUBRECIPIENT, and CITY funds shall not be used to pay for any contract service extending beyond the expiration of this Agreement.
  - b. Any alterations or relocation of the facilities on and in which the activities specified in Exhibit A are conducted;
  - c. Any alterations, deletions, or additions to the Budget detail incorporated in Exhibit B;
  - d. Costs or fees for temporary employees or services;
  - e. Any fees or payments for consultant services; and
  - f. Fees for attending out of town meetings, seminars, or conferences.
- F. Written requests for prior approval are SUBRECIPIENT's responsibility and shall be made within sufficient time to permit a thorough review by CITY. SUBRECIPIENT must obtain written approval by CITY prior to the commencement of procedures to solicit or purchase services or personal property. Any procurement or purchase which may be approved under the terms of this Agreement must be conducted in its entirety in accordance with the provisions of this Agreement.
- G. The purchase of real property is not an allowable cost under this agreement.

## **9. PROGRAM INCOME**

- A. Generally, program income includes, but is not limited to, income from fees for services performed, the use or rental or real or personal property acquired under Federal awards and principal and interest on loans made with Federal award funds. Program income does not include interest earned on advances of Federal funds, rebates, credits, discounts, or interest on rebates, credits, or discounts. Recipients of SLFRF funds should calculate, document, and record the organization's program income. Additional controls that your organization should implement include written policies that explicitly identify appropriate allocation methods, accounting standards and principles, compliance monitoring checks for program income calculations, and records.
- B. SUBRECIPIENT shall maintain records of the receipt and disposition of Program Income in the same manner as required for other contract funds and reported to CITY in the format prescribed by CITY. CITY and SUBRECIPIENT agree that any fees collected for services performed by SUBRECIPIENT shall be used for payment of costs associated with service provision. Revenue remaining after payment of all program expenses for service provision shall be considered Program Income and shall be subject to all the requirements of this Agreement and the regulations found at 2 CFR 200.307 and any additional guidance regarding program income and the application of 2 CFR 200.307(e)(1), including with respect to lending programs, released by the US Department of Treasury.
- C. SUBRECIPIENT shall include this Section in its entirety in all of its sub-contracts which involve other income-producing services or activities.
- D. It is SUBRECIPIENT's responsibility to obtain from CITY a prior determination as to whether or not income arising directly or indirectly from this Agreement, or the performance thereof, constitutes Program Income. SUBRECIPIENT is responsible to CITY for the repayment of any and all amounts determined by CITY to be Program Income, unless otherwise approved in writing by CITY.

## **10. REPORTS AND INFORMATION**

At such times and in such form as CITY may require, SUBRECIPIENT shall furnish such statements, records, data, and information as CITY may request and deem pertinent to matters covered by this Agreement. SUBRECIPIENT shall submit performance and expenditure reports to CITY no less than once every month. The performance report shall detail client information, including race, ethnicity, income, female head of household, and other statistics required by CITY. The financial report shall include information and data relative to all programmatic and financial reporting as of the commencement date specified in Section 1 of this Agreement. Unless the CITY has granted a written exemption, SUBRECIPIENT shall submit an audit conducted by independent examiners in accordance with Generally Accepted Accounting Principles. If the SUBRECIPIENT expends more than \$750,000 in federal funding, the audit must be conducted in accordance with OMB 2 CFR Part 200, as applicable within thirty days after receipt of such audit.

## **11. MONITORING AND EVALUATION**

SUBRECIPIENT agrees to participate in a monitoring and evaluation system whereby the services can be continuously monitored. CITY shall perform monitoring of the SUBRECIPIENT's performances under this Agreement.

- A. SUBRECIPIENT agrees that CITY may carry out monitoring and evaluation activities to ensure adherence by SUBRECIPIENT to the Scope of Services, Program Goals, and Objectives, which are attached hereto as Exhibit A, as well as other provisions of this Agreement.
- B. SUBRECIPIENT agrees to cooperate fully with CITY and provide data determined by CITY to be necessary for CITY to effectively fulfill its monitoring and evaluation responsibilities.



- C. SUBRECIPIENT agrees to cooperate in such a way so as not to obstruct or delay CITY in such monitoring and to designate one of its staff to coordinate the monitoring process as requested by CITY staff.
- D. SUBRECIPIENT agrees to make available its financial records for review by CITY at CITY's discretion. In addition, SUBRECIPIENT agrees to provide CITY the following data and reports, or copies thereof:
  - (1) All external or internal evaluation reports;
  - (2) Performance and expenditure reports to be submitted in the schedule published by the CITY's Community Services Department. Reports shall include such information as requested by the CITY's Community Services Department including but not limited to: number of persons or households assisted, race, gender, disability status, and household income. Performance and expenditure reports shall be due to CITY within 15 working days after the completion of required reporting period. SUBRECIPIENT agrees to submit a performance report and expenditure report no less than once a month. The expenditure report shall include a profit and loss statement with current and year to date period accounting of all revenues, expenditures, outstanding obligations, and beginning and ending balances.
  - (3) An explanation of any major changes in program services.
- E. After each official monitoring on-site visit, CITY shall provide SUBRECIPIENT with a written report of monitoring findings, documenting findings, and concerns that will require a written response to the CITY. An acceptable response must be received by the CITY within 60 days from the SUBRECIPIENT's receipt of the monitoring report or audit review letter. Future contract payments can be withheld for the SUBRECIPIENT's failure to submit a written response within 60 days.
- F. SUBRECIPIENT shall submit copies of any fiscal, management, or audit reports by any of the SUBRECIPIENT's funding or regulatory bodies to CITY within ten working days of receipt by the SUBRECIPIENT.

## **12. MAINTENANCE OF RECORDS**

- A. SUBRECIPIENT agrees to maintain records that will provide accurate, current, separate, and complete disclosure of the status of the funds received under this Agreement, in compliance with the provisions of Exhibit A and Exhibit B, attached hereto, and with any other applicable Federal and State regulations establishing standards for financial management. SUBRECIPIENT's expenditures of funds made under this Agreement will conform to (2 CFR §200) Uniform Administrative Requirements Cost Principles, and Audit Requirements for Federal Awards as they pertain to costs incurred, audits, program income, administration, and other activities and functions. SUBRECIPIENT's record system shall contain sufficient documentation to provide in detail full support and justification for each expenditure. Nothing in this Section shall be construed to relieve SUBRECIPIENT of fiscal accountability and liability under any other provision of this Agreement or any applicable law. SUBRECIPIENT shall include the substance of this provision in all subcontracts.
- B. SUBRECIPIENT agrees to retain all books, records, documents, reports, and written accounting procedures pertaining to the operation of programs and expenditures of funds under this Agreement for five years after the termination of all activities funded under this agreement.
- C. Nothing in the above subsections shall be construed to relieve SUBRECIPIENT of responsibility for retaining accurate and current records which clearly reflect the level and benefit of services provided under this Agreement.
- D. At any reasonable time and as often as CITY may deem necessary, the SUBRECIPIENT shall make available to CITY or any of their authorized representatives, all of its records and shall permit CITY or any of their authorized representatives to audit, examine, make excerpts and copies of such records, and to conduct audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment, and all other data requested by said representatives.

### 13. DIRECTORS' MEETINGS

During the term of this Agreement, SUBRECIPIENT shall cause to be delivered to CITY copies of all notices of meetings of its Board of Directors, setting forth the time and place thereof. Such notice shall be delivered to CITY in a timely manner to give adequate notice and shall include an agenda and a brief description of the matters to be discussed. SUBRECIPIENT understands and agrees that CITY representatives shall be afforded access to all of the Board of Directors' meetings. Minutes of all meetings of SUBRECIPIENT's governing body shall be available to CITY within ten days after Board approval.

### 14. WARRANTIES

SUBRECIPIENT represents and warrants that:

- A. All information, reports, and data heretofore or hereafter requested by CITY and furnished to CITY, are complete and accurate as of the date shown on the information, data, or report, and, since that date, have not undergone any significant change without written notice to CITY.
- B. Any supporting financial statements heretofore requested by CITY and furnished to CITY, are complete, accurate, and fairly reflect the financial condition of SUBRECIPIENT on the date shown on said report, and the results of the operation for the period covered by the report, and that since said date, there has been no material change, adverse or otherwise, in the financial condition of SUBRECIPIENT.
- C. No litigation or legal proceedings are presently pending or threatened against the SUBRECIPIENT.
- D. None of the provisions herein contravene or are in conflict with the authority under which SUBRECIPIENT is doing business or with the provisions of any existing indenture or agreement of SUBRECIPIENT.
- E. SUBRECIPIENT has the power to enter into this Agreement and accept payments hereunder and has taken all necessary action to authorize such acceptance under the terms and conditions of this Agreement.
- F. None of the assets of SUBRECIPIENT is subject to any lien or encumbrance of any character, except for current taxes not delinquent, except as shown in the financial statements furnished by SUBRECIPIENT to CITY.
- G. Each of these representations and warranties shall be continuing and shall be deemed to have been repeated by the submission of each request for payment.

### 15. COVENANTS

- A. During the period of time that payment may be made hereunder and so long as any payments remain unliquidated, SUBRECIPIENT shall not, without the prior written consent of the Director of Community Services or her authorized representative:
  - (1) Mortgage, pledge, or otherwise encumber or suffer to be encumbered, any of the assets of SUBRECIPIENT now owned or hereafter acquired by it, or permit any pre-existing mortgages, liens, or other encumbrances to remain on, or attached to, any assets of SUBRECIPIENT which are allocated to the performance of this Agreement and with respect to which CITY has ownership hereunder.
  - (2) Sell, assign, pledge, transfer, or otherwise dispose of accounts receivables, notes, or claims for money due or to become due.
  - (3) Sell, convey, or lease all or a substantial part of its assets.
  - (4) Make any advance or loan to, or incur any liability for any other firm, person, entity, or corporation as guarantor, surety, or accommodation endorser.
  - (5) Sell, donate, loan, or transfer any equipment or item of personal property purchased with funds paid to SUBRECIPIENT by CITY, unless CITY authorizes such transfer in writing.

- B. SUBRECIPIENT agrees, upon written request by CITY, to require its employees to attend training sessions sponsored by the Community Development Division.

#### **16. INSURANCE**

- A. SUBRECIPIENT shall observe sound business practices with respect to providing such bonding and insurance as would provide adequate coverage for the services provided pursuant to this Agreement.
- B. The premises on and in which the services and activities described in Exhibit A are conducted, and the employees conducting these services and activities, shall be covered by premise liability insurance, commonly referred to as "Owner/Tenant" coverage, with CITY named as an additional insured. Upon request of SUBRECIPIENT, CITY may, at its sole discretion, approve alternate insurance coverage arrangements.
- C. SUBRECIPIENT will comply with applicable workers' compensation statutes and will obtain employers' liability coverage where available and other appropriate liability coverage for program participants, if applicable.
- D. SUBRECIPIENT will maintain adequate and continuous liability insurance on all vehicles owned, leased, or operated by SUBRECIPIENT. All employees of SUBRECIPIENT who are required to drive a vehicle in the normal scope and course of their employment must possess a valid Texas driver's license and automobile liability insurance. Evidence of the employee's current possession of a valid license and insurance must be maintained on a current basis in SUBRECIPIENT's files.
- E. Actual losses not covered by insurance as required by this Section are not allowable or eligible costs under this Agreement and remain the sole responsibility of SUBRECIPIENT.
- F. The policy or policies of insurance shall contain a clause which requires that CITY and SUBRECIPIENT be notified in writing of any cancellation or change in the policy at least 30 days prior to such change or cancellation.

#### **17. CIVIL RIGHTS / EQUAL OPPORTUNITY**

- A. SUBRECIPIENT shall comply with all applicable equal employment opportunity and affirmative action laws or regulations. The SUBRECIPIENT shall not discriminate against any employee or applicant for employment because of race, color, creed, religion, national origin, gender, age, or disability. The SUBRECIPIENT will take affirmative action to ensure that all employment practices are free from such discrimination. Such employment practices include but are not limited to the following: hiring, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
- B. SUBRECIPIENT shall comply with all applicable equal employment opportunity and affirmative action laws or regulations. The SUBRECIPIENT agrees to comply with Title VI of the Civil Rights Act of 1964 as amended, Title VIII of the Civil Rights Act of 1968 as amended, Section 104(b) and Section 109 of Title 1 of the Housing and Community Development Act of 1974 as amended, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Executive Order 11063 and Executive Order 11246 as amended by Executive Orders 11375 and 12086.
- C. SUBRECIPIENT will furnish all information and reports requested by the CITY, and will permit access to its books, records, and accounts for purposes of investigation to ascertain compliance with local, state, and Federal rules and regulations.
- D. In the event of SUBRECIPIENT's non-compliance with the non-discrimination requirements, CITY may cancel or terminate the Agreement in whole or in part, and SUBRECIPIENT may be barred from further contracts with CITY.

## **18. PERSONNEL POLICIES**

Personnel policies shall be established by SUBRECIPIENT and shall be available for examination. Such personnel policies shall:

- A. Include policies with respect to employment, salary and wage rates, working hours and holidays, fringe benefits, vacation and sick leave privileges, and travel;
- B. Be in writing; and
- C. Be approved by the governing body of SUBRECIPIENT.

## **19. CONFLICT OF INTEREST**

- A. SUBRECIPIENT covenants that neither it nor any member of its governing body presently has any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. SUBRECIPIENT further covenants that in the performance of this Agreement, no person having such interest shall be employed or appointed as a member of its governing body.
- B. SUBRECIPIENT further covenants that no member of its governing body or its staff, subcontractors, or employees shall possess any interest in or use his/her position for a purpose that is or gives the appearance of being motivated by desire for private gain for himself/herself, or others, particularly those with which he/she has family, business, or other ties.
- C. No officer, member, or employee of CITY and no member of its governing body who exercises any function or responsibilities in the review or approval of the undertaking or carrying out of this Agreement shall participate in any decision relating to the Agreement which affects his or her personal interest or the interest in any corporation, partnership, or association in which he or she has a direct or indirect interest.

## **20. NEPOTISM**

SUBRECIPIENT shall not employ in any paid capacity any person who is a member of the immediate family of any person who is currently employed by SUBRECIPIENT or is a member of SUBRECIPIENT's governing board. The term "member of immediate family" includes: wife, husband, son, daughter, mother, father, brother, sister, in-laws, aunt, uncle, nephew, niece, stepparent, stepchild, half-brother, and half-sister.

## **21. POLITICAL OR SECTARIAN ACTIVITY**

- A. Neither the funds advanced pursuant to this Agreement, nor any personnel who may be employed by the SUBRECIPIENT with funds advanced pursuant to this Agreement shall be in any way or to any extent engaged in any conduct or political activity in contravention of Chapter 15 of Title 5 of the United States Code.
- B. The SUBRECIPIENT is prohibited from using funds provided herein or personnel employed in the administration of the program for: political activities; sectarian or religious activities, lobbying, political patronage, or nepotism activities.
- C. The SUBRECIPIENT agrees that none of the funds or services provided directly or indirectly under this Agreement shall be used for any partisan political activity or to further the election or defeat of any candidate for public office, or for publicity, lobbying, and/or propaganda purposes designed to support or defeat pending legislation. Employees of the SUBRECIPIENT connected with any activity that is funded in whole or in part by funds provided to SUBRECIPIENT under this Agreement may not during the term of this Agreement:
  - (1) Use their official position or influence to affect the outcome of an election or nomination;
  - (2) Solicit contributions for political purposes; or
  - (3) Take an active part in political management or in political campaigns.

- D. SUBRECIPIENT hereby agrees to sign a Certification Regarding Lobbying included herein as Exhibit C and if necessary, the Disclosure of Lobbying Activities provided by the CITY.

## **22. PUBLICITY**

- A. Where such action is appropriate, SUBRECIPIENT shall publicize the activities conducted by SUBRECIPIENT under this Agreement that the U.S. Department of Treasury American Rescue Plan Act funding through the City of Denton has contributed to make the project possible.
- B. All published material and written reports submitted under this project must be originally developed material unless otherwise specifically provided in this Agreement. When material not originally developed is included in a report, the report shall identify the source in the body of the report or by footnote. This provision is applicable when the material is in a verbatim or extensive paraphrase format.
- C. All published material submitted under this project shall include the following reference on the front cover or title page:
- This document is prepared in accordance with the City of Denton's American Rescue Plan Act Grant Program, with funding received from the United States Department of Treasury.*
- D. All reports, documents, studies, charts, schedules, or other appended documentation to any proposal, content of basic proposal, or contracts and any responses, inquiries, correspondence and related material submitted by SUBRECIPIENT shall become the property of CITY upon receipt.

## **23. CHANGES AND AMENDMENTS**

- A. Any alterations, additions, or deletions to the terms of this Agreement shall be by written amendment executed by both parties, except when the terms of this Agreement expressly provide that another method shall be used.
- B. SUBRECIPIENT may not make transfers between or among approved line items within budget categories set forth in Exhibit B without prior written approval of CITY. SUBRECIPIENT shall request, in writing, the budget revision in a form prescribed by CITY, and such request for revision shall not increase the total monetary obligation of CITY under this Agreement. In addition, budget revisions cannot significantly change the nature, intent, or scope of the program funded under this Agreement.
- C. The City Manager or designate may authorize minor amendments to the approved Scope of Work in Exhibit A and Budget in Exhibit B as necessary to carry out the intent of this Agreement, in a manner consistent with the efficient use of public funds, and in accordance with Federal Law. Such minor amendments may not increase the overall funding set forth in Exhibit B, extend the term, or otherwise alter the performance obligations of SUBRECIPIENT, without approval of the City Council.
- D. It is understood and agreed by the parties hereto that changes in the State, Federal, or local laws or regulations pursuant hereto may occur during the term of this Agreement. Any such modifications are to be automatically incorporated into this Agreement without written amendment hereto and shall become a part of the Agreement on the effective date specified by the law or regulation.
- E. CITY may, from time to time during the term of the Agreement, request changes to the Agreement, which may include an increase or decrease in the amount of SUBRECIPIENT's compensation. Such changes shall be incorporated in a written amendment hereto, as provided in Subsection A of this Section.
- F. SUBRECIPIENT agrees to notify CITY of any proposed change in physical location for work performed under this Agreement at least 30 calendar days in advance of the change.
- G. SUBRECIPIENT shall notify CITY of any changes in personnel or governing board composition.
- H. It is expressly understood that neither the performance of Exhibit A for any program contracted hereunder nor the transfer of funds between or among said programs will be permitted.

## **24. SUSPENSION OF FUNDING**

Upon determination by CITY of SUBRECIPIENT's failure to timely and properly perform each of the requirements, time conditions, and duties provided herein, CITY, without limiting any rights it may otherwise have, may, at its discretion, and upon ten working days written notice to SUBRECIPIENT, withhold further payments to SUBRECIPIENT. Such notice may be given by mail to the Executive Officer and the Board of Directors of SUBRECIPIENT. The notice shall set forth the default or failure alleged, and the action required for cure. The period of such suspension shall be of such duration as is appropriate to accomplish corrective action, but in no event shall it exceed 30 calendar days. At the end of the suspension period, if CITY determines the default or deficiency has been satisfied, SUBRECIPIENT may be restored to full compliance status and paid all eligible funds withheld or impounded during the suspension period. If however, CITY determines that SUBRECIPIENT has not come into compliance, the provisions of Section 25 may be effectuated.

## **25. TERMINATION**

- A. CITY may terminate this Agreement for cause under any of the following reasons or for other reasons not specifically enumerated in this Section:
  - (1) SUBRECIPIENT's failure to attain compliance during any prescribed period of suspension as provided in Section 24.
  - (2) SUBRECIPIENT's failure to materially comply with any of the terms of this Agreement.
  - (3) SUBRECIPIENT's violation of covenants, agreements, or guarantees of this Agreement.
  - (4) Termination or reduction of funding by the CITY or US Department of Treasury.
  - (5) Finding by CITY that the SUBRECIPIENT:
    - a. is in such unsatisfactory financial condition as to endanger performance under this Agreement; or
    - b. has allocated inventory to this Agreement substantially exceeding reasonable requirements; or
    - c. is delinquent in payment of taxes or of costs of performance of this Agreement in the ordinary course of business.
  - (6) Appointment of a trustee, receiver, or liquidator for all or substantial part of SUBRECIPIENT's property, or institution of bankruptcy, reorganization, rearrangement of, or liquidation proceedings by or against SUBRECIPIENT.
  - (7) SUBRECIPIENT's inability to conform to changes required by Federal, State, and local laws or regulations as provided in Section 5, and Section 2, of this Agreement.
  - (8) The commission of an act of bankruptcy.
  - (9) SUBRECIPIENT's violation of any law or regulation to which SUBRECIPIENT is bound or shall be bound under the terms of the Agreement.
- B. CITY shall promptly notify SUBRECIPIENT in writing of the decision to terminate and the effective date of termination.
- C. CITY may terminate this Agreement for convenience at any time. If CITY terminates this Agreement for convenience, SUBRECIPIENT will be paid an amount not to exceed the total of accrued expenditures as of the effective date of termination, subject to the requirements of Section 7 and Exhibit B. In no event will this compensation exceed an amount which bears the same ratio to the total compensation as the services actually performed bears to the total services of SUBRECIPIENT covered by the Agreement, less payments previously made.
- D. SUBRECIPIENT may terminate this Agreement in whole or in part by written notice to CITY, if a termination of outside funding occurs upon which SUBRECIPIENT depends for performance hereunder. SUBRECIPIENT may opt, within the limitations of this Agreement, to seek an alternative funding source, with the approval of CITY, provided the termination by the outside funding source was not occasioned by a breach of contract as



defined herein or as defined in a contract between SUBRECIPIENT and the funding source in question. SUBRECIPIENT may terminate this Agreement upon the dissolution of SUBRECIPIENT's organization not occasioned by a breach of this Agreement.

- E. Upon receipt of notice to terminate, SUBRECIPIENT shall cancel, withdraw, or otherwise terminate any outstanding orders or subcontracts, which relate to the performance of this Agreement. CITY shall not be liable to SUBRECIPIENT or SUBRECIPIENT's contractors, subcontractors or creditors for any expenses, encumbrances, or obligations whatsoever incurred after the termination date listed on the notice to terminate referred to in this Section.
- F. SUBRECIPIENT shall provide CITY within 30 days, a full accounting of all expenditures not previously audited by the City and that have occurred since the last required reporting period. SUBRECIPIENT shall return any unused funds, or funds determined to be ineligible or used improperly within 15 days of termination date.
- G. Notwithstanding any exercise by CITY of its right of suspension or termination, SUBRECIPIENT shall not be relieved of liability to CITY for damages sustained by CITY by virtue of any breach of the Agreement by SUBRECIPIENT, and CITY may withhold any reimbursement to SUBRECIPIENT until such time as the exact amount of damages due to CITY from SUBRECIPIENT is agreed upon or otherwise determined.

## **26. NOTIFICATION OF ACTION BROUGHT**

In the event that any claim, demand, suit, or other action or proceeding is made or brought by any person(s), firm, corporation, or other entity against SUBRECIPIENT, SUBRECIPIENT shall give written notice thereof to CITY within five working days after being notified of such claim, demand, suit, or other action or proceeding. Such notice shall state the date and hour of notification of any such claim, demand, suit, or other action or proceeding; the names and addresses of the person(s), firm, corporation, or other entity making such claim, or demand, or that instituted or threatened to institute any type of suit, or other action or proceeding; the basis of such claim, demand, suit, or other action, or proceeding; and the name of any person(s) against whom such claim, demand, suit, or other action or proceeding is being made or threatened. Such written notice shall be delivered either personally or by mail postage paid in accordance with the provisions of Section 29.I.

## **27. INDEMNIFICATION**

- A. It is expressly understood and agreed by both parties hereto that CITY is contracting with SUBRECIPIENT as an independent contractor and that as such, SUBRECIPIENT shall save and hold CITY, its officers, elected and appointed officials, agents, employees, and contractors harmless from all liability of any nature or kind, including costs and expenses for, or on account of, any claims, audit exceptions, demands, suits, or damages of any kind or character whatsoever resulting in whole or in part from the performance, act or omission of any employee, agent, contractor, subcontractor, or representative of SUBRECIPIENT.
- B. SUBRECIPIENT agrees to provide the defense for, and to indemnify and hold harmless CITY, its officers, elected and appointed officials, agents, employees, and contractors from any and all claims, suits, causes of action, demands, damages, losses, attorney fees, expenses, and liability arising out of the use of these contracted funds and program administration and implementation except to the extent caused by the willful act or omission of CITY, its agents, employees, or contractors.

## **28. NON-RELIGIOUS ACTIVITIES**

- A. As stated in 24 CFR Part 5.109, no organization will be prohibited from participating in activities supported by CITY funding including programs that make funds available through contracts, grants, or cooperative agreements. SUBRECIPIENT is prohibited from discriminating against beneficiaries in providing services or carrying

out activities with such assistance based on religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice, while also noting that organizations that participate in programs only funded by indirect CITY or Federal financial assistance need not modify their program or activities to accommodate beneficiaries who choose to expend the indirect aid on those SUBRECIPIENT organizations' programs.

- B. Faith based organizations that carry out programs or activities with direct Federal financial assistance from HUD are required to provide written notice of certain protections to beneficiaries and prospective beneficiaries. Specifically, such organizations are required to give notice to beneficiaries that:
  1. The organization may not discriminate against a beneficiary or prospective beneficiary based on religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice;
  2. The organization may not require a beneficiary to attend or participate in any explicitly religious activities that are offered by the organization, and any participation by the beneficiary in such activities must be purely voluntary; and
  3. The organization must separate, in time or location, any privately funded explicitly religious activities from activities supported by direct Federal financial assistance; and
  4. If a beneficiary objects to the religious character of the organization, the organization must undertake reasonable efforts to identify and refer the beneficiary to an alternative provider to which the beneficiary has no such objection;

## 29. MISCELLANEOUS

- A. SUBRECIPIENT shall not transfer, pledge, or otherwise assign this Agreement or any interest therein, or any claim arising thereunder, to any party or parties, bank, trust company, or other financial institution without the prior written approval of CITY.
- B. If any provision of this Agreement is held to be invalid, illegal, or unenforceable, the remaining provisions shall remain in full force and effect and continue to conform to the original intent of both parties hereto.
- C. All reports, documents, studies, charts, schedules, or other appended documentation to any proposal, content of basic proposal, or contracts and any responses, inquiries, correspondence, and related material submitted by SUBRECIPIENT shall become the property of CITY upon receipt.
- D. Debarment: SUBRECIPIENT certifies that it is not listed on the System for Award Management (SAM), which lists the debarred, suspended, or otherwise excluded from or ineligible for participation in federal assistance programs under Executive Order 12549 and 24 CFR Part 24.
- E. In no event shall any payment to SUBRECIPIENT hereunder, or any other act or failure of CITY to insist in any one or more instances upon the terms and conditions of this Agreement constitute or be construed in any way to be a waiver by CITY of any breach of covenant or default which may then or subsequently be committed by SUBRECIPIENT. Neither shall such payment, act, or omission in any manner impair or prejudice any right, power, privilege, or remedy available to CITY to enforce its rights hereunder, which rights, powers, privileges, or remedies are always specifically preserved. No representative or agent of CITY may waive the effect of this provision.
- F. This Agreement, together with the referenced EXHIBITS, constitutes the entire agreement between the parties hereto, and any prior agreement, assertion, statement, understanding, or other commitment antecedent to this Agreement, whether written or oral, shall have no force or effect whatsoever; nor shall an agreement, assertion, statement, understanding, or other commitment occurring during the term of this Agreement, or subsequent thereto, have any legal force or effect whatsoever, unless properly executed in writing, and if appropriate, recorded as an amendment of this Agreement.

- G. In the event any disagreement or dispute should arise between the parties hereto pertaining to the interpretation or meaning of any part of this Agreement or its governing rules, codes, laws, ordinances, or regulations, CITY as the party ultimately responsible to U.S. DEPARTMENT OF Treasury for matters of compliance, will have the final authority to render or to secure an interpretation.
- H. If SUBRECIPIENT provides services to the homeless it is required to:
- a. Report homeless data to the Homeless Management Information System (HMIS). HMIS is a countywide data management tool designed to facilitate data collection in order to improve human service delivery throughout Denton County. Participation in (HMIS is a requirement per this Agreement. Data entered into HMIS will help our community improve services to individuals experiencing homelessness by providing accurate information on the extent and nature of homelessness in our community and by accounting for our success in helping people move out of homelessness. Participation is also critical to help CITY and Denton County successfully compete for grants for federal funding, such as the U.S. Department of Housing and Urban Development's homeless assistance funds.
  - b. Participate in the Denton County Homeless Leadership Team meetings and any applicable workgroup(s). The Denton County Homeless Leadership Team is a collaborative, cross-sector team that convenes to improve the planning, coordination, oversight, and implementation required to create systems change for housing/homelessness initiatives in Denton County. Further, the SUBRECIPIENT is encouraged to work in partnership with fellow service providers to improve efficiency and effectiveness.
- I. For purposes of this Agreement, all official communications and notices among the parties shall be deemed made if delivered by courier or overnight mail service or if sent U.S. Mail postage paid, in each case to the parties and addresses set forth below:

**TO CITY:**  
City Manager  
City of Denton  
215 E. McKinney  
Denton, Texas 76201

**TO SUBRECIPIENT:**  
Denton County MHMR Center  
Attn: Executive Director/CEO/Commander  
P.O. Box 2346  
Denton, Texas 76202

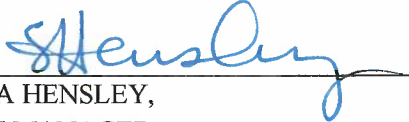
w/ a copy to:  
City Attorney  
215 E. McKinney  
Denton, TX 76201

- J. This Agreement shall be interpreted in accordance with the laws of the State of Texas and venue of any litigation concerning this Agreement shall be in a court competent jurisdiction sitting in Denton County, Texas.

*[Signature page follows]*

IN WITNESS OF WHICH this Agreement has been executed as of the \_\_\_\_\_ day of \_\_\_\_\_, 2022.


**CITY OF DENTON:**

BY:   
SARA HENSLEY,  
CITY MANAGER

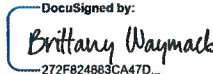
**DENTON COUNTY MHMR CENTER:**

BY:   
TITLE: Executive Director

**ATTEST:**

BY:   
ROSA RIOS,  
CITY SECRETARY

**ATTEST:**

BY:   
SECRETARY

**APPROVED AS TO LEGAL FORM:**

BY:   
MACK REINWAND,  
CITY ATTORNEY

Digitally signed by Scott Bray  
Date: 2022.03.29 11:31:44  
-05'00'

:



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

BY:   
Signature  
Director of Community Services  
Title  
Community Services  
Department  
Date Signed: 3/30/2022

**Exhibit A**  
**Scope of Services**

The Scope of Services under this Agreement shall be as follows:

**SECTION I – SERVICE GOAL**

SUBRECIPIENT assists the City of Denton to meet the public health and economic needs of those impacted by the pandemic, as outlined in the State and Local Fiscal Recovery Funds Final Rule.

SUBRECIPIENT shall provide: The 3D Project (Denton's Dually Diagnosed), a program for individuals dually-diagnosed with mental health and substance use disorder (SUD) challenges. The program will be operate at 2519 Scripture Street, Denton, TX 76201. The program will operate from 8 a.m. to 5 p.m., Monday through Friday.

**SECTION II – OUTCOMES**

Tracking outcome measures will be a tool by which the CITY and the SUBRECIPIENT can measure services delivered and performance under this agreement.

SUBRECIPIENT provides benefits to the citizens of the City of Denton through these outcomes:

- 500, Number of unduplicated City of Denton adult mental health and substance use disorder (dually diagnosed) individuals served
- 100%, Percent of individuals with improved community connectedness
- 57, Recipients of Sober Living Scholarship or Ambulatory Detoxification services

**Exhibit B**  
**Budget**

SUBRECIPIENT shall provide the services listed in this Agreement within the monetary limits attached hereto and incorporated by reference herein. In no event shall compensation to the SUBRECIPIENT exceed the lesser of the SUBRECIPIENT's costs attributable to the work performed as stated herein, or sum of Three Hundred Forty-Seven Thousand Eight Hundred Twenty-One (\$347,821).

<b>Allowable Expenditure</b>	
Administrative costs (10% maximum)	\$34,782.10
Program Staff Salary; Sober Living Scholarships; Program Supplies	\$313,038.90
<b>Total</b>	<b>\$347,821.00</b>

SUBRECIPIENT will receive payments on the following schedule:

1. First payment will be made no later than 30 days from the contract date of execution and will equal 25% of the fixed contract amount
2. Subsequent payments will be made quarterly contingent upon monthly reporting submitted by the SUBRECIPIENT and will equal 25% of the fixed contract amount:
  1. First Payment: No later than (30 days from contract date of execution)
  2. Subsequent payments made quarterly beginning the second quarter of the grant term.

Expenditure and Performance Reports must include:

1. Client list with unique identifier served by funding including client addresses and verification of income certification.
2. Copy of timesheet signed by staff member and supervisor paid with funding.
3. Copy of paystub with payroll detail for staff member(s) paid with funding. Payroll register accepted if provided by third party vendor.
4. Copy of invoice for purchases made with funding.
5. Proof of payment (copy of check and/or receipt showing paid) for purchases made with funding.



**Exhibit C**  
**Certification Regarding Lobbying**

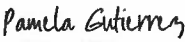
The undersigned certifies, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-ILL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The undersigned shall require that the language of this Certification be included in the award documents for all subawards at all tiers (including subcontractors, subgrants, and contracts under grants, loans, and cooperative agreements) and that all SUBRECIPIENTS shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of the certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, US Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

**Denton County MHMR Center**

Grantee

DocuSigned by:  
  
99538A54139849C

Signature

Executive Director

Title

3/31/2022

Date



# City of Denton

City Hall  
215 E. McKinney St.  
Denton, Texas 76201  
[www.cityofdenton.com](http://www.cityofdenton.com)

## Legislation Text

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**File #:** ID 24-564, **Version:** 1

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### **AGENDA CAPTION**

Consider approval of a resolution of the City of Denton amending Resolution No. 19-2886 relating to the Bond Oversight Committee, to amend the scope of responsibilities of the committee; and provide for an effective date.



# City of Denton

City Hall  
215 E. McKinney Street  
Denton, Texas  
[www.cityofdenton.com](http://www.cityofdenton.com)

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## AGENDA INFORMATION SHEET

**DEPARTMENT:** Finance

**ACM:** Cassey Ogden

**DATE:** April 2, 2024

### **SUBJECT**

Consider approval of a resolution of the City of Denton amending Resolution No. 19-2886 relating to the Bond Oversight Committee, to amend the scope of responsibilities of the committee; and provide for an effective date.

### **BACKGROUND**

On December 17, 2019, City Council approved resolution 19-2286 establishing the Bond Oversight Committee, BOC. The BOC is a seven (7) member committee with the role of monitoring, evaluating, and reporting on the progress of the City's 2019 bond election capital programs.

City Council called and ordered a bond election for November 7, 2023, for the purpose of submitting to the voters of the City certain capital improvements, which bonds were approved as a result of the election.

This resolution's purpose is to amend the scope of the 2019 resolution to provide the BOC with oversight of all voter-approved capital improvement projects and to make recommendations to the City Council when there is a need for potential changes or adjustments to occur to bond projects.

### **RECOMMENDATION**

Staff recommends approval of the resolution.

### **EXHIBITS**

1. Agenda Information Sheet
2. Resolution

Respectfully submitted:  
Vis Bouaphanthavong  
Assistant Direct of Finance

Prepared by:  
Randee Klingele  
Treasury Manager

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION OF THE CITY OF DENTON AMENDING RESOLUTION NO. 19-2886 RELATING TO THE BOND OVERSIGHT COMMITTEE, TO AMEND THE SCOPE OF RESPONSIBILITIES OF THE COMMITTEE; AND PROVIDE FOR AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Denton ("City Council") called and ordered a bond election for November 5, 2019, for the purpose of submitting to the voters of the City of Denton certain capital improvements, which bonds were approved by the voters as a result of the election; and

WHEREAS, on December 17, 2019, the City Council created a Special Citizens Bond Advisory Committee ("Bond Oversight Committee") to monitor, evaluate, and report on the progress of the Six Year Capital Improvement Program approved by the voters at the bond election on November 5, 2019 and all prior bond election capital programs; and

WHEREAS, on July 27, 2021, the City Council approved Ordinance number 21-1507 and amended the manner in which members are appointed to the committee, and

WHEREAS, the City Council called and ordered a bond election for November 7, 2023, for the purpose of submitting to the voters of the City of Denton certain capital improvements, which bonds were approved by the voters as a result of the election; and

WHEREAS, the Bond Oversight Committee provides reports to the City Council regarding the progress of bond election capital programs; and

WHEREAS, the City Council desires to amend the scope of the Bond Oversight Committee to monitor, evaluate, and report on the progress of all voter-approved capital improvement projects approved by the voters at the November 7, 2023 bond election, all prior bonds approved by the voters of the City of Denton, and bonds approved on future dates by the voters of the City of Denton; NOW, THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY RESOLVES:

SECTION 1. Section 1 of Resolution No. 19-2886 is hereby amended in its entirety to read as follows: "The City Council hereby creates a special seven-member oversight committee to monitor, evaluate, and report on the progress of all voter-approved capital improvement projects. The committee shall make recommendations to the City Council when potential changes or adjustments to the bond projects occur."

SECTION 2. Any provision of any prior resolution of the City which is in conflict with any provision of this resolution is hereby repealed to the extent of the conflict, but all other provisions of the resolutions of the city which are not in conflict with the provisions of this resolution shall remain in full force and effect.

SECTION 3. This resolution 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 [\_\_ – \_\_ – \_\_]:

	<b>Aye</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>
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 \_\_\_\_\_, 2024.

\_\_\_\_\_  
GERARD HUDSPETH, MAYOR

ATTEST:  
JESUS SALAZAR, CITY SECRETARY

BY: \_\_\_\_\_

APPROVED AS TO LEGAL FORM:  
MACK REINWAND, CITY ATTORNEY

BY: \_\_\_\_\_



# City of Denton

City Hall  
215 E. McKinney St.  
Denton, Texas 76201  
[www.cityofdenton.com](http://www.cityofdenton.com)

## Legislation Text

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**File #:** ID 24-588, **Version:** 1

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### **AGENDA CAPTION**

Consider adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the City Manager to accept on behalf of the City an offer from the Federal Aviation Administration ("FAA"), administered by the Texas Department of Transportation ("TxDOT") relating to an Infrastructure Investment and Jobs Act ("IIJA") grant of \$763,000.00 for the Airport Master Plan with the City responsible for ten percent of total project costs; requiring the City to provide \$78,864.40 in contributory funds for the Airport Master Plan at the Denton Enterprise Airport with an estimated total project cost of \$788,644.00; and providing an effective date. The Airport Advisory Board recommends (5-0).





# City of Denton

City Hall  
215 E. McKinney Street  
Denton, Texas  
[www.cityofdenton.com](http://www.cityofdenton.com)

## AGENDA INFORMATION SHEET

**DEPARTMENT:** Denton Enterprise Airport

**ACM:** Frank Dixon

**DATE:** April 2, 2024

### **SUBJECT**

Consider adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the City Manager to accept on behalf of the City an offer from the Federal Aviation Administration (“FAA”), administered by the Texas Department of Transportation (“TxDOT”) relating to an Infrastructure Investment and Jobs Act (“IIJA”) grant of \$763,000.00 for the Airport Master Plan with the City responsible for ten percent of total project costs; requiring the City to provide \$78,864.40 in contributory funds for the Airport Master Plan at the Denton Enterprise Airport with an estimated total project cost of \$788,644.00; and providing an effective date. The Airport Advisory Board recommends (5-0).

### **INFORMATION/BACKGROUND**

Denton Enterprise Airport has been issued an grant by the FAA as part of the Infrastructure Investment and Jobs Act of 2021 (IIJA), also known as the Bipartisan Infrastructure Law. Texas, as part of a block state program, issues the grants through TxDOT. The grant funds were approved by the FAA in FY 2022 and the Denton Enterprise Airport Infrastructure Grant allocation for FY 2022 is \$763,000.00. The Airport will receive further allocations for an additional four (4) years (FY 2023 – 2026).

Growth of the Airport in the last ten (10) years has resulted in the Airport being ranked 5<sup>th</sup> in the state and 59<sup>th</sup> in the country for operations (planes that land and planes that take off from the Airport). The Airport master plan will create a 20-year outlook for future airport development, services, and provide City of Denton Leadership with proper guidance for future development which will satisfy aviation demands and be wholly compatible with the environment.

Airport master plan studies are an approved use of IIJA funds. The Denton Enterprise Airport will use this first allocation of IIJA funds for its Airport Master Plan project.

### **PRIOR ACTION/REVIEW (Council, Boards, Commissions)**

March 20, 2024: Airport Advisory Board recommend approval (5-0).

### **RECOMMENDATION**

Approve acceptance of the FY 2022 IIJA grant to conduct an Airport Master Plan.

### **FISCAL INFORMATION**

The total Airport Master Plan cost is \$788,644.00, with available funds in the Airport Enterprise Fund project account 200082565.10100. The FAA IIJA Grant for FY 2022 will reimburse the Airport

\$709,779.60, making the final cost to the Airport \$78,864.40. The funds will not impact the Airport Operating fund balance.

## **EXHIBITS**

Exhibit 1: Agenda Information Sheet

Exhibit 2: Ordinance

Exhibit 3: Airport Master Plan Scope and Project Cost

Exhibit 4: Master Plan Schedule

Exhibit 5: Designation of Sponsor

Exhibit 6: Airport Project Grant Agreement

Respectfully submitted:

Ryan Adams

Director of Airport

## ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF DENTON, A TEXAS HOME-RULE MUNICIPAL CORPORATION, AUTHORIZING THE CITY MANAGER TO ACCEPT ON BEHALF OF THE CITY AN OFFER FROM THE FEDERAL AVIATION ADMINISTRATION (“FAA”), ADMINISTERED BY THE TEXAS DEPARTMENT OF TRANSPORTATION (“TxDOT”) RELATING TO AN INFRASTRUCTURE INVESTMENT AND JOBS ACT (“IIJA”) GRANT OF \$763,000.00 FOR THE AIRPORT MASTER PLAN WITH THE CITY RESPONSIBLE FOR TEN PERCENT OF TOTAL PROJECT COSTS; REQUIRING THE CITY TO PROVIDE \$78,864.40 IN CONTRIBUTORY FUNDS FOR THE AIRPORT MASTER PLAN AT THE DENTON ENTERPRISE AIRPORT WITH AN ESTIMATED TOTAL PROJECT COST OF \$788,644.00; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Denton (“City”) intends to conduct an Airport Master Plan at the Denton Enterprise Airport; and

WHEREAS, the general description of the project is to review current and future uses of land at Denton Enterprise Airport and to incorporate these land uses onto an Airport Master Plan; and

WHEREAS, the City intends to utilize the FY22 IIJA grant funds from the FAA, providing Airport Master Plan financial assistance, employing TxDOT as an intermediary for the distribution of funds; and

WHEREAS, the total project cost is estimated to be \$788,644.00 and the City of Denton will be responsible for 10% of the total project costs currently estimate to be \$78,864.40; and

WHEREAS, the Airport Advisory Board on March 20, 2024, voted to recommend Council approval by a vote of 5 - 0; and

WHEREAS, the City of Denton names TxDOT as its agent for the purposes of applying for, receiving, and disbursing all funds for these improvements; and

WHEREAS, the City Council of the City (“City Council”) hereby directs City Manager, or their designee, to execute on behalf of the City of Denton, at the appropriate time, and with the appropriate authorizations of the City Council, all contracts and agreements with the State of Texas, represented by TxDOT, and such other parties as shall be necessary and appropriate for the implementation of the improvements at Denton Enterprise Airport; NOW, THEREFORE

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The findings and recitals contained in the preamble of this ordinance are

incorporated herein by reference as true and as if fully set forth in the body of this ordinance.

SECTION 2. The City hereby authorizes the City Manager, or their designee, to execute on behalf of the City all contracts and agreements with the State of Texas, represented by TxDOT, for the financial assistance and implementation of the Project at the Denton Enterprise Airport including the Designation of Sponsor form attached hereto.

SECTION 3. The City Manager, or their designee, is further authorized to carry out all duties and responsibilities to be performed by the City under the offer for the completion of the Project, including, but not limited to, the expenditure of funds.

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 \_\_\_\_\_, 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 \_\_\_\_\_, 2024.

\_\_\_\_\_  
GERARD HUDSPETH, MAYOR

ATTEST:  
JESUS SALAZAR, CITY SECRETARY

BY: \_\_\_\_\_

APPROVED AS TO LEGAL FORM:  
MACK REINWAND, CITY ATTORNEY

BY:  \_\_\_\_\_  
4B070831B4AA438...

**EXHIBIT A**  
**AIRPORT MASTER PLAN**  
**SCOPE OF SERVICES**  
**FOR THE**  
**DENTON ENTERPRISE AIRPORT**  
**DENTON, TEXAS**

## INTRODUCTION

This Airport Master Plan Scope of Services for Denton Enterprise Airport (DTO) is being prepared prior to initiation of the study, to establish the goals of the project and framework from which all parties to the project may participate. The objective of the master plan is to provide the Sponsor (City of Denton) with proper guidance for future development which will satisfy aviation demands and be wholly compatible with the environment. Coordination between the Sponsor, the Federal Aviation Administration (FAA), and other parties with an interest in the airport will be essential to bringing together all facts and data relevant to the project and to developing a mutual agreement regarding future development at the airport. A Planning Advisory Committee (PAC), made up of airport stakeholders, state and federal agencies, and city officials will be established for the study to provide proper direction for the development of the master plan recommendations.

The master plan will align with the following FAA Advisory Circulars and Orders where applicable:

- FAA Order 5090.3C, *Field Formulation of the National Plan of Integrated Airport Systems (NPIAS)*
- FAA Order 5190.6B, *Airport Compliance Manual* with Change 1 published November 22, 2021.
- FAA Order 5100.38D, *Airport Improvement Program (AIP) Handbook*
- FAA Order 5280.5D, *Airport Certification Program Handbook*
- FAA Order 2150.3C, *FAA Compliance and Enforcement Program, Change 7*
- FAA Order 1050.1F, *Environmental Impacts and Procedures*
- FAA Order 5050.4B, *National Environmental Policy Act (NEPA) Implementing Instructions for Airport Actions.*
- FAA Order 5090.5 *Formulation of the NPIAS and ACIP*
- FAA AC 150/5070-6B, *Airport Master Plans*
- FAA AC 150/5300-13B, *Airport Design* published March 30, 2022
- FAA AC 150/100-14E, *Architecture, Engineering, and Planning Consultant Services for Airport Grant Projects.*
- FAA AC 150/5190-7, *Minimum Standards for Commercial Aeronautical Activities.*
- FAA AC 150/5100-19D, *Guide for Financial Reports Filed by Airport Sponsors*
- FAA AC 150/5325-4B, *Runway Length Requirements for Airport Design*
- FAA AC 150/5000-17, *Critical Aircraft and Regular Use Determination*
- FAA AC 150/5300-19, *Airport Data and Information Program*



- FAA AC 150/5060-5, *Airport Capacity and Delay*
- FAA AC 120/57A, *Surface Movement Guidance and Control System*
- AC 150/5210-20A, *Ground Vehicle Operations to include Taxiing or Towing an Aircraft on Airports*
- AC 150/5220-20A, *Airport Snow and Ice Control Equipment*
- Draft AC 150/5020-1A, [Noise Control and Compatibility Planning for Airports](#)
- AC 150/5100-19D, *Guide for Financial Reports Filed by Airport Sponsors*
- AC 150/5300-16B, *General Guidance and Specifications for Aeronautical Surveys: Establishment of Geodetic Control and Submission to the National Geodetic Survey*, updated errata Jan. 6, 2021
- AC 150/5300-17C, *Standards for Using Remote Sensing Technologies in Airport Surveys*
- AC 150/5300-18, *General Guidance and Specifications for Submission of Aeronautical Surveys to NGS: Field Data Collection and Geographic Information System (GIS) Standards*.
- AC 150/5210-15, *Airport Rescue and Firefighting Station Building Design*

Coffman Associates, Inc., will serve as the primary master planning consultant. The following subconsultants will contribute to various elements/tasks as noted in the scope of services below:

- **HubPoint Strategic Advisors** (air cargo feasibility and forecasts)
- **Jordan Aviation Strategies & Ambrogio Consulting Services** (financial analysis)
- **Martinez Geospatial** (airport mapping/survey)

Required and generalized master planning objectives in this Scope will include:

- To research factors likely to affect all air transportation demand segments at DTO over the next twenty years including the development of forecasts of potential commercial service, air cargo, general aviation operational and basing demand.
- To determine projected needs of airport users for the next twenty years, taking into consideration recent revisions to FAA design standards and the airport's conformance requirements, global positioning system (GPS) approaches or other new technology, commercial passenger and cargo trends, and the impact of general aviation fleet transitions on design standards.
- To recommend improvements which will enhance the landside area's ability to satisfy future aviation needs taking into consideration the potential for commercial passenger service, air cargo, advanced air mobility (AAM), and general aviation needs.
- To analyze the existing airfield system to determine the existing and ultimate runway lengths required to satisfy the airport's critical aircraft. This analysis will include future improvements necessary to aid in supporting forecast demand.
- To produce accurate base maps of existing and proposed facilities and updated Airport Layout Plan (ALP) drawings consistent with the FAA's Standard Operating Procedure

(SOP) No. 2.0.

- To review future use and zoning of airport property and approaches to each runway for future protection. This will involve the development of new noise exposure contours.
- Landside development options to maximize revenue streams.
- To establish a schedule of development priorities and a program for improvements proposed in the master plan, consistent with the FAA's capital improvement program planning.
- Consider sustainability efforts, specifically waste and recycling improvements as part of FAA's updated standards.

## **ELEMENT 1 - STUDY INITIATION AND ORGANIZATION**

The purpose of this element is to allow for proper time to manage the project including the project website, project updates with the sponsor, team management, and overall QA/QC.

### **Task 1.1 Study Design**

Description: In accordance with Federal Aviation Administration guidelines for the preparation of master plans contained in Advisory Circulars 150/5070-6B, *Airport Master Plans*, and 150/5300-13B, *Airport Design*, prepare an outline of the basic elements of the master planning work effort. Identify respective individual work tasks which will be necessary to meet both the requirements set by the FAA and the sponsor for each element of the master plan work scope. Prepare detailed descriptions of each individual work task which describe the specific work effort involved and identify the result or product of the work effort.

Responsibilities:

Consultant: Prepare work scope and budget.

Sponsor: Review work scope and budget.

Product: Work scope and budget.

### **Task 1.2 Establish Planning Advisory Committee (PAC) and Conduct PAC Kickoff Meeting**

Description: Potential members will be identified and asked to serve on a Planning Advisory Committee (PAC) for the master plan. The PAC will be composed of a) representatives of FAA as well as other local, regional, state, or federal agencies; b) airport board, users, and tenants; and c) local community representatives. The PAC, which is a non-voting body, will advise the Consultant on the content and recommendations of the master plan study through meetings and review of working papers.

Upon appointment by the Sponsor of a PAC, provide fifteen (15) standard three-ring notebooks

for distribution to the PAC for their use during the study. A workbook cover will be designed, and the workbook format will be developed with sections for inserting working papers, notes, and other pertinent information. A glossary and list of abbreviations/acronyms will be developed and included as an appendix in the workbook.

The initial, or kickoff meeting, of the PAC will be undertaken during the initial inventory trip by the Consultant. The consultant will also provide the opportunity to conduct an open house public workshop and/or Airport Advisory Board briefing during the inventory trip.

**Responsibilities:**

**Consultant:** Design and prepare workbooks for the Committee and attend kickoff meeting.  
**Sponsor:** Distribute invitations and initiation materials to PAC and provide meeting room.  
**Product:** Fifteen (15) study workbooks. Conduct PAC kickoff meeting and public coordination as desired by the Sponsor. A virtual component for the PAC meeting and public coordination may be available, as necessary.

**Task 1.3      Develop Project Website**

**Description:** Various project materials will be hosted on a project specific website developed by the Consultant to allow public access to project materials. Materials which would be available on the website could include the presentation boards from the various public information workshops and monthly project status updates. During the planning process, all working draft materials will be available for review on the website. The public will be able to utilize the website to make comments on the contents of the phase reports. All pertinent comments will be included within the Final Master Plan document.

**Responsibilities:**

**Consultant:** Develop project specific website. Host the project materials on a project specific website.  
**Sponsor:** Review and provide comment.  
**Product:** Website access to project materials. Encourage use of the website to comment on the draft materials during the planning process.

**Tasks 1.4      Project Management**

*Description:* The project management task includes work items required to set up and manage contracts, budgets, and invoicing as well as to provide project management and coordination with DTO, the FAA, and sub-consultants. The project timeline and coordination are anticipated to take place over a period of eighteen (18) months. Project coordination in the form of semi-regular project coordination conference calls/online communication is also included. This task does not include on-site meetings (included in other tasks). This task covers the following types of coordination and project management:

- Set up and prepare project scopes, budgets, contracts with airport/city staff and establish

subconsultant contract agreements.

- Perform monthly budget invoicing and contract management.
- Provide general on-going project coordination with airport/city staff. This task does not include any on-site meetings with staff but could include video, phone, or other distance meeting options.
- Provide general on-going project coordination with and project management of sub-consultants.

**Responsibilities:**

**Consultant:** Provide project management for scheduled 18-month schedule.

**Sponsor:** As necessary aid consultant.

**Product:** Project management services.

## **ELEMENT 2 - INVENTORY OF EXISTING CONDITIONS**

The purpose of this study element is to assemble and organize relevant information and data pertaining to the airport and the surrounding area. A series of inventory efforts are necessary to collect and organize a variety of specific historical, technical, legal, financial, and planning data as described in the following tasks.

### **Task 2.1 Inventory Airport Facilities**

**Description:** Perform inventories of physical facilities and existing land uses within the present boundaries of the airport. These inventories will identify and describe existing facilities as to age, type, ownership, and condition, as well as changes to building conditions and uses since the completion of the last master plan, and will include, as a minimum, the following items:

- Airfield: Runways, Taxiways, Aprons, Lighting and Marking, Navigational Aids
- Terminal Area: Terminal building, access and parking
- General Aviation Areas: Square footage of hangars
- Military use areas (as applicable): Ramp, Access and Parking
- FBO/Specialty Operators: Leased Area, Airfield facilities
- Support: Utilities, Fire and Rescue facilities, Fueling facilities, Maintenance areas
- Other areas: Airport tenants including military facilities (as necessary)
- Wildlife Hazards: summarize known wildlife issues
- Additional on-airport and off-airport land uses

In addition, all available plans, specifications, maps, photographs, drawings, and other data, including FAA Master Records (or other records maintained by the FAA), or other reports or studies considered to be relevant, will be obtained for possible use during the study. This task includes an on-site inventory trip to gather data, tour the airport facilities, and to conduct in-

person interviews with airport staff and relevant airport tenants as necessary.

**Responsibilities:**

- Consultant:** Conduct a complete inventory of the airport facilities to accumulate pertinent data including an on-site tour of facilities and in-person interviews with airport staff and airport tenants as necessary.
- Sponsor:** Provide the Consultant access to the airport property and airport records as necessary.
- Product:** Tabulated airport facilities inventory for input to later tasks, highlighting changed conditions since the last master plan was prepared.

**Task 2.2 Inventory Air Traffic Activity and Airspace**

**Description:** A detailed review of available information pertaining to air traffic and passenger/cargo activity at DTO will be performed for the past 20-year period. Data collection will include an inventory count of aircraft based at the airport by aircraft type, enplaning and deplaning passenger data (as available), air cargo (as available) and fuel sales maintained by the airport or fixed base operators. The information will be collected in various formats for forecasting purposes.

Air traffic activity data for the airport will be assembled and organized from various sources such as the FAA's Traffic Flow Management System Count (TFMSC) and GCR's Airport IQ. Relevant data on commercial, air cargo, general aviation (private and corporate), air taxi, and military activity will be collected. Data will be obtained from the Sponsor, the FAA Southwest Region, and Fixed Base Operators (FBOs). The assembled data will include, as available:

- a) Historical operations, including local (touch-and-go) and itinerant operational splits.
- b) Based aircraft by type, as available.
- c) Estimated use (by percentage) of each runway.

Review and perform inventories of airspace and air traffic procedures at the airport. Conduct interviews with airport officials, FAA representatives, pilots, and others as necessary or appropriate to develop a complete description of the existing airspace environment and current airport traffic procedures. Basic inventory items will include:

- a) Airport traffic patterns.
- b) Approach and departure procedures.
- c) Military airspace near the airport.
- d) National parks/wilderness areas.

**Responsibilities:**

- Consultant:** Assemble data.
- Sponsor:** Assist Consultant in obtaining available airport records. Assist as necessary.

Product: Input to subsequent tasks.

### **Task 2.3 Inventory Local Plans, Land Uses, and Demographic Data**

Description: Obtain available information concerning local land use, economic development, and environmental plans, and demographic or economic factors which are likely to have a significant impact on the demand for air transportation in the air trade area as well as those factors that involve potential impact characteristics of the airport environs. Key information will include the area-wide composition, characteristics, distribution, and growth patterns of the following:

- Population
- Economic base (business, income, and employment)
- Present and projected land uses
- Existing and planned surface transportation
- Environmental documentation
- Long range transportation plan
- Zoning ordinance(s)
- Height and hazard ordinance/mitigation measures

Responsibilities:

Consultant: Assemble data based on latest information available.

Sponsor: Assist in collection of data.

Product: Input to later analysis.

### **Task 2.4 Obtain Tabulated Wind Data**

Description: The Consultant will obtain the most current ten years of wind data for DTO, from the National Oceanic and Atmospheric Administration, National Climatic Center and/or on-airport weather reporting aids for use in preparing an updated wind rose for the airport layout plan.

Responsibilities:

Consultant: Obtain tabulated wind data.

Sponsor: Coordinate with the Consultant as necessary.

Product: Tabulated wind data for use in preparing an updated wind rose.

### **Task 2.5 Environmental Inventory**

Description: The purpose of this task is to obtain information regarding environmental sensitivities on or near airport property. Sources of information will include past environmental documents, agency maps, existing literature, and relevant internet sources. Examples of information to be gathered includes wetlands, riparian areas, threatened or endangered species, floodplains, cultural resources, air quality, parks and natural resource areas, and prime farmland. Informal consultation with various federal and state agencies will occur only if needed information is not available through resources listed above. The information obtained in this task



is intended to identify any significant environmental resources prior to the alternatives evaluation process to lessen or eliminate environmental requirements for potential project development.

**Responsibilities:**

Consultant: Assemble data based on latest information available.

Sponsor: Assist in collection of data.

Product: Input into later analysis.

### **ELEMENT 3 – AVIATION DEMAND FORECASTS**

This study element is intended to update the estimate of future levels of air traffic by quantity and by characteristics that will identify the demand that is projected at DTO, and the local socioeconomic characteristics contributed by the local area. The following work tasks will be carried out as part of this element.

#### **Task 3.1 Review Regional Aviation and Socioeconomic Forecasts**

Description: Review and analyze current local and regional socioeconomic forecasts obtained in the inventory element. Similarly review the forecasts and assumptions of the aviation forecasts prepared by the FAA for its *Terminal Area Forecasts*. The forecasts prepared for the last master plan, if available, will also be reviewed and analyzed.

**Responsibilities:**

Consultant: Review all socioeconomic material pertaining to the study and the region.

Sponsor: Assist in identifying potential sources of information and assist Consultant in obtaining identified socioeconomic material.

Product: Forecasts of expected socioeconomic factors and aviation activity at DTO and other regional airports.

#### **Task 3.2 Prepare Aviation Demand Forecasts**

Description: Develop aviation demand forecasts using both simple and more complex methodologies, taking into consideration forecasts from other sources such as the FAA. Historical aviation activity statistics for the airport will be organized to evaluate airport peaking characteristics and fleet mix ratios. The methodology used in this analysis will involve a variety of techniques that will factor in national transportation statistics, local socioeconomic factors, as well as the independent airport data. Correlation analysis techniques will include relatively simple graphical comparison, as well as more complex regression analysis.

The forecasts shall result in estimates of aviation demand for five, ten and twenty years including:

- Potential commercial airline passenger enplanements, fleet mix, and operations

- Potential air cargo operations, tonnage, and fleet mix (**primary responsibility for HubPoint Strategic Advisors**)
- Annual volume and mix of aircraft operations
- Air taxi (related to scheduled or non-scheduled operations having fewer than 60 passenger seats)
- Based aircraft by aggregate and fleet mix
- Aircraft operations by aggregate, itinerant/local
- Other air taxi to include Part 135 and fractional ownership operations

Peaking characteristics will also be established for use in demand capacity evaluations for the following:

- Potential air carrier enplanements/passengers and operations
- General aviation operations
- Total airport operations

Responsibilities:

Consultant: Prepare aviation demand forecasts for the 20-year planning horizon. **Air cargo activity projections will be the primary responsibility of HubPoint Strategic Advisors.**

Sponsor: Assist Consultant in obtaining available airport records.

Product: Complete incremental forecasts for 5, 10, and 20 years from the base year. These forecasts will be coordinated with the FAA (for their approval) to ensure that the study proceeds based on generally supported assumptions.

### **Task 3.3 Identify Existing and Future Airport Design Critical Aircraft**

Description: Utilizing data provided by the airport and that obtained from FAA database resources, identify the current critical and future aircraft for the airport, per FAA AC 150/5000-17, *Critical Aircraft and Regular Use Determination*. The aircraft identified will be the most demanding aircraft, or family of aircraft, conducting a minimum of 500 annual operations. The analysis will include a projection of aircraft operations by runway design code (RDC) and airport reference code (ARC) to determine future planning design standards.

This analysis will outline the RDC for commercial airline, air cargo, general aviation, and military aircraft. Moreover, the analysis will be considered for each of the airport's runways, as applicable, to determine sufficiency in later tasks.

Responsibilities:

Consultant: Determine current critical aircraft and projection of future critical aircraft by RDC and ARC.

Sponsor: Assist the Consultant in obtaining available airport records.

Product: Determination of existing and future critical aircraft for airfield design. This task will be coordinated with the FAA during the forecast review and approval process.

### **Task 3.4 Prepare Phase I Report**

Description: Upon completion of the work tasks in Elements 2 and 3, working papers comprising the Phase I report will be prepared to outline the analysis, methodologies, and findings of the study efforts. Narrative prepared will highlight the history of the airport, the airport setting, and a definition of the airport's role in the state and national airport system, study process, goals and objectives, and methodology as well as an updated aviation demand forecasting chapter. A glossary and list of acronyms/abbreviations will be prepared and summarized in an appendix. Up to fifteen (15) hard copies and electronic (PDF) versions of the report will be submitted for review by the PAC, FAA, and Sponsor officials.

***THIS TASK ALSO INCLUDES TIME REQUIRED TO COORDINATE, MAKE CHANGES, AND/OR MODIFY FINDINGS IN TASKS 3.2 AND/OR 3.3 BASED ON FAA REVIEW, COMMENT, AND APPROVALS.***

Responsibilities:

Consultant: Develop complete narrative and graphics for the Phase I report. Responsible for the distribution of the Phase I report to the PAC, FAA, and Sponsor staff.

Sponsor: Review and comment.

Product: Up to Fifteen (15) hard copies of the Phase I report and electronic (PDF) versions of the report. The chapters comprising Phase I will also be posted to the project website.

### **Task 3.5 Conduct Planning Advisory Committee Meeting No. 2 and Public Workshop No.1**

Description: Prepare graphic display and/or handout information necessary to adequately explain Phase I report which will include:

- Study Introduction
- Inventory (Element 2)
- Aviation Demand Forecasts (Task 3.1-3.4)

Meet with the PAC to review the Phase I report, as well as to review the project schedule, progress, and subsequent work efforts. This task will include holding an open-house style format public information workshop the evening of PAC meeting, if requested and desired by airport/city staff. The workshop will allow for interested public entities to review project materials and interact with the consultant.

Responsibilities:

Consultant: Provide presentation material and necessary graphics for the meeting. Also provide documentation allowing for the sponsor to publish notice of public meeting.

Sponsor: Distribute meeting notices and arrange for meeting room.

Product: Conduct second PAC meeting and first public workshop for master plan study. A virtual component for the PAC meeting and public coordination may be available, as necessary.

### **Task 3.6      Conduct Phase I City Council Meeting**

Description: Provide a project update and presentation of the Phase I materials to City Council. A decision tree will be presented with options to move forward with commercial passenger air service facility requirements and alternatives, as an optional element (**see Element 11**). If City Council chooses not to pursue commercial passenger air service, facility requirements and alternatives for a new passenger terminal facility and its support facilities will be excluded from the remainder of the study.

**Responsibilities:**

Consultant: Provide presentation materials for the City Council meeting.

Sponsor: Coordinate the inclusion of the presentation on the City Council agenda.

Product: Presentation of Phase I materials to City Council.

## **ELEMENT 4 – FACILITY REQUIREMENTS**

The purpose of this study element is to determine available capacities of various facilities at DTO, their conformance or non-conformance with FAA standards, and identify the facilities that will be needed to meet compliance requirements or projected demand over the next twenty years.

### **Task 4.1      Establish Physical Planning Criteria**

Description: Identify physical facility planning criteria for use in assessing the adequacy of various airport facilities to meet forecast demands. These criteria shall be based upon the latest FAA requirements and standards as they apply to the level of activity identified, new technology, and role of the airport. These criteria shall include dimensional standards for safety including runway length, runway separation, height restrictions, etc. In addition, these criteria shall include requirements to maintain airspace/air traffic control including approach and runway protection zones, safety areas, and other general physical area requirements such as apron, terminal/operations, access circulation and parking, hangars and services, administrative, ARFF, and other airport service and support facilities.

**Responsibilities:**

Consultant: Develop physical planning criteria.

Sponsor: Review.

Product: Detailed criteria for airport physical planning.

### **Task 4.2      Determine Airfield Capacity and Delay**

Description: Using the FAA's airfield capacity/delay model, estimate current and future levels of airfield capacity (annual service volume) and delay for DTO. These analyses will be based on the existing airfield configuration, aviation demand forecasts, and an analysis of airspace capacity potentials and constraints, and will involve the investigation of management and operational

procedures to optimize the use of the total airside (runway, taxiway, and apron).

The analysis in this task will determine if aviation demand factors generate a capacity rationale for runway eligibility.

Responsibilities:

Consultant: Estimate airfield capacity and delay utilizing FAA guidance.

Sponsor: Review and comment.

Product: Detailed description the airport annual service volume for the current, 5, 10, and 20-year time frames.

#### **Task 4.3 Prepare Airfield Facility Requirements**

Description: Using the results of the forecasts (Element 3), as well as relevant information from other tasks, determine and prepare a list of facility requirements needed to meet projected demands for the airport for existing, short term (1-5 years), intermediate term (6-10 years), and long term (11-20 years) time frames. These facility requirements will be used in the later comparative evaluations and will be based upon both the airport physical planning criteria and the aviation forecasts.

Facility requirements to meet aviation demand for the airfield will include (but not be limited to) runways, taxiways, lighting, navigational aids, and marking and signage. These facility requirements will be developed in the form of gross areas and basic units and will be compared to those that presently exist to identify the future development items needed to maintain adequate service, function, and operations of the airport. In addition, airfield design standards deficiencies will be identified, and corrective actions evaluated and recommended. In subsequent tasks, the above facility requirements will be translated into alternative plans for further evaluation in relation to established planning criteria.

Specifically, these tasks will be performed:

- Runway 18L-36R pavement length, width, and strength needs based on the established existing and ultimate critical design aircraft
- Runway 18R-36L pavement length, width, and strength needs based on the established existing and ultimate critical design aircraft
- Airfield geometry issue identification(s) to include taxiways and apron direct access issues which may exist.
- Airspace obstruction and/or RPZ incompatibility analyses

Responsibilities:

Consultant: Identify specific airfield facility needs, offer runway pavement minimum justification(s), and outline nonstandard airfield geometry.

Sponsor: Review.

Product: Detailed description of all airfield facilities required to meet aviation demands at

the airport through the 20-year planning period.

#### **Task 4.4 Prepare Landside Facility Requirements**

Description: Using information provided by the aviation planning criteria established under preceding tasks, develop a set of facility requirements addressing the landside facilities necessary to support the airfield and its related activity.

This work effort will outline cargo facility needs, as applicable based on the findings of projected cargo demands at DTO **(with input from HubPoint Strategic Advisors)**.

General aviation requirements will determine best location for the next generation of facilities at DTO. This work effort will outline the general spacing requirements for use in determining long term locations to be conducted in the alternatives chapter.

Requirements for facilities such as fuel/fuel farm areas, ARFF, airport maintenance, and automobile parking lots (public and rental cars) will be developed under this task. **Additionally, an evaluation of the potential for an on-site U.S. Customs facility will be conducted.**

##### **Responsibilities:**

Consultant: Identify specific landside area facility needs.

Sponsor: Review.

Product: Detailed description of facility requirements necessary for landside development to support forecast aviation demand through the 20-year planning period.

### **ELEMENT 5 – AIRPORT DEVELOPMENT ALTERNATIVES**

The purpose of this study element is to develop those airport development alternatives that appear most feasible and evaluate them to determine the most prudent and feasible alternative concept available for the airport.

#### **Task 5.1 Establish Alternative Development Issues**

Description: Based upon the results of the facility requirements necessary to meet projected demand, identify those issues which will impact the development of alternatives for the various functional areas of the airport. This task will provide insights into the potentials for and policies constraining the development of specific land uses within the existing or future airport boundaries, including those areas which are unconstrained and meet current functional potential, thereby requiring no additional development.

##### **Responsibilities:**

Consultant: Establish alternative development issues.

Sponsor: Review and comment.

Product: Alternative development issues.



## **Task 5.2      Evaluate Potential Airside Alternatives**

Description: The airside facility requirements developed in the previous evaluations will be translated into a series of alternative plans for comparative evaluation in relation to the established planning criteria. The analysis will address a maximum of three possible airfield alternatives (in addition to the “do nothing”). The alternatives with greatest potential for meeting airside demand in the most prudent order will be evaluated.

### **Responsibilities:**

Consultant: Development of airside development alternatives.

Sponsor: Review.

Product: A series of development options, each of which will attempt to meet the forecast airfield facility demands as well as FAA airfield criteria.

## **Task 5.3      Identify Potential Landside Alternatives**

Description: Based on the facility requirements determined under the previous element, formulate preliminary development alternatives. These alternatives will be based on concepts for development within or beyond existing airport boundaries which show all necessary development during the planning period and beyond. This task will be conducted simultaneously with other tasks in this element and result in a series of overall development options for the airport.

Specific landside alternative issues to examine will include:

- Commercial air cargo facility development siting options.
- General aviation development opportunities. The analysis of conceptual general aviation building site locations and design considerations at DTO to include specific airside master plan development designs for conformance with industry best practices needs and demand.
- [Siting options for U.S. Customs facility.](#)
- Non-aviation land development options for potential land use release

### **Responsibilities:**

Consultant: Develop up to three (3) landside development options, one being the “no-build” concept alternative.

Sponsor: Review.

Product: A series of landside alternatives which fulfill the facility requirements to meet forecast demand levels.

#### **Task 5.4      Prepare Phase II Report**

Description: Upon completion of the work tasks in Elements 4 and 5, a report will be prepared to outline the analysis, methodologies, and findings of the study efforts. Narrative prepared as part of this Element will include detailed facility requirements and alternative concepts. Up to fifteen (15) hard copies and electronic (PDF) versions of the report will be submitted for review by the PAC, FAA, and Sponsor officials.

**Responsibilities:**

Consultant: Develop complete narrative and graphics for the Phase II report. Responsible for the distribution of the Phase II report to the PAC, FAA, and Sponsor staff.

Sponsor: Review and comment.

Product: Up to Fifteen (15) hard copies of the Phase II report and electronic (PDF) versions of the report.

#### **Task 5.5      Conduct Planning Advisory Committee Meeting No. 3 and Public Workshop No.2**

Description: Prepare graphic display and/or handout information necessary to adequately explain Phase II report. Meet with the PAC to review the Phase II report, as well as to review the project schedule, progress, and subsequent work efforts. This task will include holding an open-house style format public information workshop the evening of PAC meeting. The workshop will allow for interested public entities to review project materials and interact with the consultant.

**Responsibilities:**

Consultant: Provide presentation material and necessary graphics for the meeting. Also provide documentation allowing for the sponsor to publish notice of public meeting.

Sponsor: Distribute meeting notices and arrange for meeting room.

Product: Conduct second PAC meeting for Master Plan study. A virtual component for the PAC meeting and public coordination may be available, as necessary.

### **ELEMENT 6 – RECOMMENDED MASTER PLAN CONCEPT**

The purpose of this study element is to establish a capital implementation program to provide the airport development requirements necessary to meet aviation activity demands during the forecast period.

#### **Task 6.1      Recommended Master Plan Concept**

Description: Based on the information developed in the airport alternatives element as well as comments provided by airport staff, PAC members, and the general public, a single recommended master plan concept for development of the airport facilities will be prepared. The recommendation for the most prudent and feasible master plan concept will become the

basis for the development of airport plans, costs, and scheduling.

**Responsibilities:**

**Consultant:** Develop a refined Master Plan concept for review by the Sponsor, PAC and other interested parties.

**Sponsor:** Review.

**Product:** A recommended master plan concept.

**Task 6.2 Prepare Aircraft Noise Exposure Contours**

**Description:** Compile computer batch files for development of existing and future noise exposure contours using FAA's Airport Environmental Design Tool (AEDT) Provide computer plot of 65 DNL and higher contours, at 5 DNL increments, and areas (in square miles and acres) within each contour. It is envisioned that two computer modeling runs will be developed – one for existing conditions and one for future conditions. The noise contours will be plotted on base maps utilizing aerial photography, if available, and/or best available mapping. No population impact counts will be developed under the task. Information on forecast operations will be obtained from the forecast analysis in the master plan. Information on traffic patterns and runway utilization rates will be reviewed with the airport sponsor. The results of the analysis will be included in the airport plans/land use compatibility working paper. Digital copies of the AEDT analysis can be provided to the sponsor at the conclusion of the analysis, if requested.

**Responsibilities:**

**Consultant:** Develop existing and future noise exposure contours.

**Sponsor:** Review traffic pattern and runway utilization assumptions.

**Product:** Existing and future noise exposure contours for the airport.

**Task 6.3 Land Use Controls and Plans**

**Description:** Review and summarize existing zoning ordinances, subdivision regulations, building codes, and land use and transportation plans, and land use management documentation in the study area. Prepare tables and exhibits of the zoning, future land planning designation, and improvements.

**Responsibilities:**

**Consultant:** Review reports and documents from area planning agencies and prepare summary tables and exhibits.

**Sponsor:** Review.

**Product:** Tables and exhibits for analysis in later tasks.

**Task 6.4 Non-compatible Development Analysis**

**Description:** Based on information collected in Task 6.3, areas with the greatest potential for non-compatible development when compared to updated noise exposure contours and Part 77

approach surfaces will be identified. It is anticipated that this area will not extend beyond one mile from each runway end. Additionally, land use control inconsistencies will be identified. Growth-risk areas will be categorized by type of land use.

**Responsibilities:**

Consultant: Responsible for this task.

Sponsor: Review.

Product: Growth risk analysis including mapping of non-compatible growth areas.

**Task 6.5 Land Use Management Techniques**

Description: Identify various land use management techniques that could be applied in the airport vicinity. These techniques may include, but not necessarily be limited to changes in existing zoning districts, creation of new zoning classifications, modification of other development regulations and building codes, property and easement acquisition, and other mitigation measures.

**Responsibilities:**

Consultant: Responsible for this task.

Sponsor: Review.

Product: A list of recommended land use management techniques that may be effective in promoting land use compatibility.

**Task 6.6 Environmental Overview (NEPA)**

Description: The purpose of this task is to identify potential environmental issues associated with the airport development alternatives and recommended development concept, including mitigation measures that may be needed for proposed projects.

Once a recommended master plan concept has been developed, a preliminary environmental overview will be conducted using the information collected to identify any potential environmental concerns that must be addressed prior to program implementation. This evaluation will be structured in a table format and will include an analysis of potential impacts on environmental resources as defined within FAA's Order 1050.1F and its accompanying Desk Reference. Projects which may require further NEPA analysis (i.e., Environmental Assessment or Environmental Impact Statement) will be identified. This evaluation is not intended to serve as a formal Environmental Assessment under NEPA.

**Responsibilities:**

Consultant: Assemble data based on latest information available.

Sponsor: Assist in collection of data.

Product: Input to later analysis.

## Task 6.7      Recycling Plan

Description: The FAA Modernization and Reform Act of 2012 includes a new requirement for Airport Master Plans to address recycling by:

- Evaluating the feasibility of solid waste recycling,
- Minimizing the generation of waste,
- Identifying operations & maintenance requirements,
- Reviewing of waste management contracts, and
- Identifying the potential for cost savings or revenue generation.

To develop a recycling plan that meets this FAA requirement, the Consultant will align with the following guidance (as applicable):

- Reauthorization Program Guidance Letters (R-PGL) 19-02, *Planning and Project Eligibility*, Section 148(a)(1-2) *Recycling Plans*
- FAA Memorandum *Guidance on Airport Recycling, Reuse, and Waste Reduction Plans*.
- FAA Modernization and Reform Act of 2012 (49 U.S.C. 47102(5) and 47106(a))
- FAA Synthesis Document: Recycling, Reuse, and Waste Reduction Plans at Airports

The Consultant will do the following:

*Collect baseline information on the airport's waste management program.* Meet with DTO staff to understand how waste is managed at the airport and what current education efforts for passengers, employees, contractors, and tenants are already in place. In addition, collect information such as waste collection contracts, monthly waste/recycling invoices, and the waste-related costs for waste and recycling (containers, hauling, disposal, and labor).

*Assess existing waste management program.* To understand the sources, composition, and quantities of waste generated at the airport, conduct a facility walk-through, and an examination of monthly waste/recycling invoices.

*Assess opportunities for expansion of recycling program.* Review current waste collection contracts and conduct research on current market conditions to determine whether there are any logistical limitations to expanding the recycling program.

*Develop recommendations for improving the recycling program.* Based on the above assessment of the airport's waste and recycling program, develop recommendations for improving the airport's recycling program as well as minimizing waste generated at the airport. Recommendations will include identification of potential cost savings or revenue generation.

Responsibilities:

Consultant:    Develop Recycling Plan

Sponsor:      Assist in collection of data

Product: Recycling Plan

## ELEMENT 7 – FINANCIAL MANAGEMENT AND DEVELOPMENT PROGRAM

The purpose of this element is to analyze benefits and costs that may be associated with the recommended plan as well as determine and set out the assumptions, terms, and conditions by which agreed-upon capital improvement programs can be financially implemented for the airport.

### Task 7.1 Prepare Airport Development Schedules and Cost Estimates

Description: Prepare the airport development schedules and cost estimates (in current dollars) for the selected master plan concept for DTO, thereby ensuring that logical staging of improvements are given proper consideration in the development of a financial plan and capital improvement program. Items that are eligible for funding under the Airport Improvement Program will be identified in accordance with FAA Order 5100.38D, *Airport Improvement Program (AIP) Handbook*.

Responsibilities:

Consultant: Prepare an airport development schedule and estimated costs.

Sponsor: Review.

Product: Development schedules and cost for the improvements proposed as a part of the selected master plan concepts.

### Task 7.2 Prepare Capital Program and Financial Plan

Description: Develop a recommended 20-year airport capital improvement program and a condensed financial plan suitable for DTO. The airport capital improvement program will identify individual projects for each year through the first five years of the plan, then prioritize projects through the intermediate (6–10 year) and long term (11–20 year) periods.

*This task will be assisted by Jordan Aviation Strategies and Ambrogio Consulting Services.*

Responsibilities:

Consultant: Develop a detailed capital program.

Sponsor: Provide review and input.

Product: Capital program for the 20-year planning period.

### Task 7.3 Perform Financial Analysis

Description: The financial plan of the master plan presents the financial assumptions which will ultimately impact facility and funding requirements. Initial assumptions and project objectives are revised to reflect changes in activity forecasts and collateral development alternatives. Elements to be refined include the types of facilities to be built or rehabilitated, the total costs of



these facilities, the timing of cash flows associated with the construction of planned facilities, and financing sources and terms.

The estimated demand on operating revenues and the impact on tenant rates and charges will be identified and analyzed and recommended strategies for completing and funding the proposed projects will be presented. The preferred alternative will reflect a financial management structure in combination with a physical plan which accomplishes DTO's objectives for strategic growth, economic development, air and ground transportation services, and environmental mitigation.

The following components of the financial analysis will be conducted:

- Sources and uses of funds analysis – Reviewing design cost and phasing to determine the various sources of funding for the recommendations including any portion that must be financed through bonds.
- Debt service analysis – Determining the par amounts required for construction and or refinancing; calculation of required reserve funds, capitalized interest, and debt service coverage per the bond resolution.
- Revenue forecasting analysis – Projecting amount and timing of additional revenues from increased facilities and from activity forecasts, as well as reviewing concession tenant leases to determine if rates can be increased during the projection period.
- Operating expense projections – Analyzing historical trends and the impact of new facilities on projections.
- Cash flow analysis – Calculating net revenue projections, including the effects of economic and financial constraints on project viability.

***This task will be the primary work effort to be completed by Jordan Aviation Strategies and Ambrogio Consulting Services.***

Responsibilities:

Consultant: Prepare a financial analysis.

Sponsor: Provide information on lease income and review analysis.

Product: Financial analysis to be used in the preparation of the capital improvement program.

#### **Task 7.4      Prepare Phase III Report**

Description: Upon completion of the work tasks in Element 6 and 7, a report will be prepared to outline the analysis, methodologies, and findings of Elements 6 and 7. Up to fifteen (15) hard copies and electronic (PDF) versions of the report will be submitted for review by the PAC, FAA, and Sponsor officials.

**Responsibilities:**

Consultant: Develop complete narrative and graphics for the Phase III report. Responsible for the distribution of the Phase III report to the PAC, FAA, and Sponsor.

Sponsor: Review and comment.

Product: Up to fifteen (15) hard copies of the Phase III report and electronic (PDF) versions of the report. The chapters will be published on the project website.

#### **Task 7.5      Conduct Planning Advisory Committee Meeting No. 4 and Public Information Workshop No. 3**

Description: Prepare graphic display and/or handout information necessary to adequately explain the Phase III report. Meet with the PAC to review the Phase III report, as well as to review the project schedule, progress, and subsequent work efforts. This task will include holding an open-house style format public information workshop the evening of PAC meeting. The workshop will allow for interested public entities to review project materials and interact with the consultant.

**Responsibilities:**

Consultant: Provide presentation and necessary graphics at the meeting.

Sponsor: Distribute meeting notices and arrange for meeting room.

Product: PAC and public workshop meetings for master plan study. A virtual component for the PAC meeting and public coordination may be available, as necessary.

### **ELEMENT 8 – GEOGRAPHICAL INFORMATION SYSTEM (GIS) AND DATA COLLECTION SERVICES**

Data collection for the airport will be conducted to comply with table 2-1 of Advisory Circular 150/5300-18B, column Airport Layout Plan for ADIP submission and used for development of the Airport Layout Plan set defined in Element 10. The process includes collection of high-resolution aerial photography, high precision surveys of safety critical airport data, (runway ends, NAVAIDS, airport elevation, airspace, obstructions and others), and additional feature collection such as pavement areas, paint markings, and fencing used to describe the airport. The objective of this element is for the Consultant to provide the sponsor with a digital dataset of the airport and its surrounding environment in conformance with current Federal Aviation Administration (FAA) standards set forth in the Advisory Circulars 150/5300- 13A, -16B, -17C, and -18B. To provide an updated aerial image, and to conduct airspace analysis for the appropriate 18B and Part 77 surfaces. The data collected in this element will be used for ALP development and submission

into the ADIP portal. This will be a complete data collection of the airport environment.

### **Task 8.1      FAA AIRPORTS-GIS**

**Description:** Table 2-1 of Advisory Circular 150/5300-18B, column Airport Layout Plan will guide the collection of data for the Airports-GIS portion of the project. The dataset is a high precision, digital model of the features of the airport as defined in 18B table 4-1 for Airport Layout Plans. This task includes working with the sponsor to create the project in the ADIP system, submitting and gaining approval of the SOW and all other necessary plans required by ADIP. Next is to collect and format the data, then submit the data and final report to the ADIP site and gain FAA Approval. Compliance with current Federal Aviation Administration (FAA) standards set forth in the Advisory Circulars 150/5300- 16B, -17C, and -18B will be adhered to.

#### **Responsibilities:**

- Consultant: Ensure FAA and airport standards are met for all survey activity on and off airport and aerial photography acquisition. Provide oversight and review as needed.  
*Martinez Geospatial will be responsible for performing the airspace analysis, conducting the ground survey, providing current orthophotography, and assisting in development of a GIS dataset that is acceptable to the FAA.*
- Sponsor: Liaison with survey team to provide access to airport property. Assist in providing any needed information to survey and aerial photography teams. Direct consultants as required to any safety or operational requirements for survey and aerial photography team.
- Product: Approved FAA Airports-GIS Airspace project.

### **Task 8.2 – ALP DATA COLLECTION AND PART 77 AIRSPACE ANALYSES**

**Description:** This task utilizes the safety critical data collected in task 8.1 and adds to it those features required to complete the Airport Layout Plan per the SOP 2.0 checklist. This includes, but is not limited to, additional features such as paint markings, fencing, and pavement boundaries. It also includes obstacle collection so that Part 77 airspace analysis can be conducted on the future condition of the airport as a result of the planning effort.

***If any obstacles are found to penetrate the obstruction standard surfaces or VFR traffic pattern surfaces, and no previous study has been done on the obstacle, then the obstacle will need to be submitted for airspace evaluation (via OEAAA) and the mitigation and aeronautical study number included in the obstacle data tables on this and the inner approach surface drawings.***

***It is assumed that OEAAA will involve up to three days of data entry and follow-up.***

#### **Responsibilities:**

- Consultant: Provide oversight and review as needed. *Martinez Geospatial will be responsible for performing the airspace analysis and providing planimetric data.* Coffman Associates will add to data collection as needed to comply with FAA regulations.

Sponsor: Assist project team in collection of attribution of data. Work with planning team to establish future condition. Review drawings and data.

Product: First phase provides topographic and planimetric data. Second phase provides obstruction analyses.

## **ELEMENT 9 – AIRPORT PLANS**

The purpose of this study element is to prepare a new Airport Layout Plan (ALP) set for DTO. All plans will be prepared in a format which complies with the content contained within FAA's current guidelines for the preparation of an airport layout plan as defined by the FAA Airports ARP SOP 2.00 *Standard Procedure for FAA Review and Approval of Airport Layout Plans (October 1, 2013)*, and which is readily acceptable to the FAA and can be utilized by the Sponsor in carrying out implementation. All plans will be produced digitally using the data collected in element 8 and any additional data the sponsor may have or want to include. Element 8 collects all new airport data. The digital plans and PDF files of each sheet will be a deliverable item to the Sponsor at the completion of this project in CAD or GIS format at the sponsors discretion. The ALP will be included as an appendix in the draft master plan documents. A narrative will also be included in the appendix to better describe the intended functions of the proposed development items.

### **Task 9.1 Airport Layout Plan Drawing**

Description: Following the recommended airport master plan concept developed under the preceding elements and FAA AC 150/5070-6B, an ALP drawing for the airport will be prepared. The ALP will reflect updated physical features, location of airfield facilities (runways, taxiways, navigational aids), and existing landside development. Development of recommended landside and airfield facilities, including runways and taxiways; property and runway protection zone boundaries; and revenue support areas will also be shown. Guidelines for the preparation of an airport layout plan as defined by the FAA Airports ARP SOP 2.00 *Standard Procedure for FAA Review and Approval of Airport Layout Plans (October 1, 2013)* will be followed. A Title Sheet and Airport Data Sheet will also be prepared and included with the full Airport Layout Plan set.

Responsibilities:

Consultant: Prepare a new ALP for the airport.

Sponsor: Review and comment.

Product: A new ALP drawing for the airport which meets federal guidelines.

### **Task 9.2 Terminal Area Drawing(s)**

Description: Prepare Terminal Area Drawing(s) reflecting development resulting from the recommendations of this study. Depending on the future recommended development for the general aviation areas, more than one drawing may be required to adequately reflect the detail of development within the area. The drawing(s) will include detailed planning level information

such as access taxiways, apron areas, hangar layouts, aircraft tie-down areas, customer and employee parking areas, and vehicular circulation and access for the short, intermediate, and long-term planning periods.

**Responsibilities:**

Consultant: Prepare Terminal Area Drawing(s).

Sponsor: Review and comment.

Product: Terminal Area Drawing(s) reflecting the selected development alternative for these facilities at the airport.

**Task 9.3 Part 77, Approach and Inner Approach Surface Plans**

Description: Prepare Part 77, Approach and Inner Approach Surface plans in conformance with FAR Part 77 and FAA Airports ARP SOP 2.00 *Standard Procedure for FAA Review and Approval of Airport Layout Plans (October 1, 2013)*. As necessary, height of potential obstructions will be researched and identified on the drawing along with an obstruction chart/table indicating the obstruction description, their top elevation, affected Part 77 surface, the penetration, and disposition or corrective action to eliminate or mitigate the obstruction.

**Responsibilities:**

Consultant: Prepare a new Part 77, Approach and Inner Approach Surface plans for the airport.

Sponsor: Review and comment.

Product: Part 77, Approach and Inner Approach Surface plans for the airport to meet federal guidelines. Product will include aerial photography of the inner approach surfaces and runway protection zones.

**Task 9.4 Departure Surface Drawings**

Description: Prepare new departure surface drawings in accordance with guidelines as defined by the FAA Airports ARP SOP 2.00 *Standard Procedure for FAA Review and Approval of Airport Layout Plans (October 1, 2013)*. Obstruction information will be obtained from the Part 77 obstruction analysis completed in Task 10.2, approach plans, and the current Airport Obstruction (OC) chart (as available).

**Responsibilities:**

Consultant: Prepare new departure surface drawings for the airport.

Sponsor: Review and comment.

Product: Departure surface drawings for the airport which meet federal guidelines.

**Task 9.5 Exhibit A – Airport Property Inventory Map**

Description: The primary intent of the drawing is to identify and/or delineate all designated airport property owned or to be acquired by the airport owner. The drawing will inventory all parcels, which currently make up the airport, or are proposed for acquisition by the airport

sponsor. In addition, the drawing will also show any property that has been disposed of by the Sponsor in the past. Details will be limited to the depiction of existing and future facilities (i.e., runways, taxiways, runway protection zones, and terminal facilities) which would indicate aeronautical need for airport property. This work effort will utilize information obtained from the current – Exhibit A – Airport Property Inventory Map as well as other sources. The Airport Property Map will be updated in conformance with the guidelines outlined in FAA Airports ARP SOP 3.00 *Standard Operating Procedure (SOP) for FAA Review of Exhibit ‘A’ Airport Property Inventory Maps (October 1, 2013)*. Sponsor will assist Consultant in providing recorded deeds of its property. Additional information requested by the FAA may be added as needed if available and provided by the airport.

**Responsibilities:**

Consultant: Update the Exhibit A – Airport Property Inventory Map for the airport.

Sponsor: Provide appropriate historical data and review Airport Property Map.

Product: Updated Exhibit A – Airport Property Inventory Map for the airport.

**Task 9.6 On-Airport Land Use Plan**

Description: A Land Use Plan for the area within the boundaries of the airport will be developed based on the identified overall development concept. This will include general aviation areas, terminal complex, air cargo complex, ground access and vehicular circulation system service areas, industrial/commercial development areas, and distinctions between aeronautical and non-aeronautical uses. *The drawing will outline any non-aeronautical land use plans so that future revisions to the ALP are not required should a land use release is requested.*

**Responsibilities:**

Consultant: Prepare On-Airport Land Use Plan.

Sponsor: Review and comment.

Product: On-Airport Land Use Plan and Off-Airport Land Use Plan.

**Task 9.7 Preparation of Draft ALP and Draft ALP Drawing Set**

Description: Preparation of up to four (4) copies of the “Draft” ALP drawing set for submission to the Sponsor, and subsequent comprehensive agency review by the FAA. The ALP Drawing Set will be prepared in conformance with FAA Airports ARP SOP 2.00 *Standard Procedure for FAA Review and Approval of Airport Layout Plans (October 1, 2013)*. Drawings will be a minimum size of 24” x 36”. FAA review will be concurrent. Drawings will be submitted with or prior to publication of the Draft Final Master Plan.

***THIS TASK INCLUDES TIME REQUIRED TO MAKE CHANGES DURING SPONSOR AND FAA REVIEW AND APPROVAL PROCESS.***

**Responsibilities:**

Consultant: Provide up to four (4) copies of the full Airport Layout Plan drawing sets, depicting



the sponsor selected Recommended Plan for sponsor and FAA use. Per direction from the FAA, the Consultant will also initiate the submittal of the draft ALP set to Obstruction Evaluation/Airport Airspace Analysis (OE/AAA) for FAA Line of Businesses (LOB) review/comment.

- Sponsor: Provide up to four (4) unsigned copies of ALP drawing set to FAA for review. Include signed transmittal letter indicating the changes from the last approved ALP drawing. Provide two (2) full set of drawings to FAA for review.
- Product: Up to four (4) copies of the full ALP drawing set as well as a completed FAA ALP Checklist.

### **Task 9.8 Preparation of Final ALP and Final ALP Drawing Set**

Description: Revise the Draft Airport Layout Plans and Drawings prepared in the previous task to reflect comments received from the FAA review. Upon approval from the Sponsor, provide four (4) copies of the revised full ALP drawing sets to the Sponsor for their signature. The Sponsor will forward the signed drawings to the FAA for final approval.

Responsibilities:

- Consultant: Provide up to four (4) revised copies of the full Airport Layout Plan drawing sets.
- Sponsor: Review and sign all drawings. Forward all drawings to the FAA for final approval.
- Product: Up to four (4) copies of full ALP drawing set.

## **ELEMENT 10 – FINAL REPORTS**

### **Task 10.1 Prepare Draft Final Master Plan Report**

Description: Following the final review period for the Phase III report of the master plan report, a Draft Final Master Plan Report document will be prepared. This document will incorporate appropriate comments and corrections received during the review period. Up to ten (10) hard copies of the Draft Final Report and an electronic (PDF) version will be provided. The FAA will receive one (1) print copy.

Responsibilities:

- Consultant: Prepare and print up to ten (10) hard copies of the Draft Final Master Plan study and an electronic (PDF) version.
- Sponsor: Review and comment.
- Product: Ten (10) Draft Final Master Plan Reports.

### **Task 10.2 Obtain Master Plan Approvals**

Description: Coordinate final approval of master plan with airport administration. This task will include a presentation to the Airport Advisory Board and/or City Council seeking approval of the master plan. The ALP approval will be coordinated with Sponsor and the FAA.

Responsibilities:

Consultant: Coordination of final master plan approval.

Sponsor: Review and comment on final documents.

Product: Final master plan and airport layout drawing approvals.

### **Task 10.3 Prepare Final Master Plan Report**

Description: Following the final review period for the Draft Final Master Plan Report, a Final Master Plan Report document will be prepared. This document will incorporate appropriate comments and corrections received during the review period. Ten (10) printed copies of the Final Report will be provided, in addition to digital copies of the entire plan (text and graphics) in a PDF format. Two (2) printed copies (and a PDF copy) will be provided to the FAA.

The FAA will also be sent four (4) full sized ALP drawing sets, signed by the sponsor, for signature and circulation. A flash drive containing an electronic (PDF) version of the ALP will also be submitted to the FAA, if requested.

Responsibilities:

Consultant: Prepare and print ten (10) copies of the final report (provide two copies to the FAA). Also develop digital copies of the final report in PDF/Word format for submittal to the sponsor and for the FAA.

Sponsor: Coordinate distribution of the final report.

Product: Ten (10) Final Master Plan Reports and electronic (PDF/Word) copies.

## **ELEMENT 11 – OPTIONAL COMMERCIAL PASSENGER TERMINAL TASKS**

The project scope includes a presentation of the Phase I study materials, including the potential demand for commercial passenger air service, to City Council. If City Council chooses to move forward with an evaluation of commercial passenger air service facility requirements and alternatives in the master plan, this element covers the necessary tasks.

### **Task 11.1 Commercial Passenger Terminal Facility Requirements**

Description: This work effort will consist of a capacity need analysis of a potential passenger service terminal and evaluate potential support (aircraft parking apron, public/employee parking, rental car facilities, administration office, etc.) facility needs based on the new demand forecasts. Facility needs will be based on forecasted potential passenger traffic and peaking characteristics of that traffic. Terminal space modeling will be based on the Airport Cooperative Research Program (ACRP) Report 25, *Airport Passenger Terminal Planning and Design* and FAA AC 150/5360-13A, *Airport Terminal Planning*.

Responsibilities:

Consultant: Development of passenger terminal building development facility requirements.

Sponsor: Review.  
Product: Passenger terminal facility needs broken out by functional area, which will be included within the Phase II report.

### **Task 11.2 Commercial Passenger Terminal Alternatives**

Description: This task will identify potential sites for the development of a new passenger terminal facility and support facilities, including vehicle parking lots, access roads, terminal apron and taxilanes, and rental car services.

#### **Responsibilities:**

Consultant: Development of passenger terminal building development alternatives.  
Sponsor: Review.  
Product: A series of development site options, which will be included within the Phase II report.

**ATTACHMENT 1**  
**SUBCONSULTANT SCOPE**  
**(HubPoint Strategic Advisors)**

## **Denton Enterprise Airport - Air Cargo Market Analysis & Air Cargo Forecasts**

In recent years, the air cargo industry has experienced transformative changes that have impacted supply chains and the way goods are shipped. These include structural changes related to e-commerce and episodic changes due to the pandemic. With these changes, air cargo has taken on a new level of importance and emphasis at airports. The growth in e-commerce has been particularly impactful to the air cargo industry and has led to increasing activity by new and existing operators at U.S. airports of all types. Meanwhile, some smaller airports have proven that they are capable of handling cargo beyond their traditional levels and, therefore, can be viable alternatives to larger airports.

As Denton Enterprise Airport (DTO) considers its development priorities, assessing the feasibility of growing its air cargo business will be important. Airport management must understand how both the internal and external environments influence DTO's air cargo opportunities. An Air Cargo Market Analysis will be designed to assess relevant factors for air cargo at DTO, including the airport's infrastructure, industry trends, the regional market and competitive airports. This analysis will identify any potential air cargo opportunities for DTO and provide advice on the feasibility of growing the airport's air cargo activity from a planning perspective.

Based on the findings and synthesis from the Air Cargo Market Analysis, long-term 20-year air cargo forecasts will be developed for utilization in the Denton Enterprise Airport Master Plan. Given the limited historic air cargo operations at DTO, the consulting team will employ a scenario-based approach for the air cargo forecasts. This approach relies on the definition of specific cargo-related scenarios at airports (including assumptions of operational details and service development over time) and the cargo volumes associated with those scenarios. While this approach can be seen as somewhat prospective, its value from a planning perspective lies in quantifying possible levels of cargo activity should those types of scenarios come to fruition. From this standpoint, it is important to ensure that the scenarios are as realistic as possible, but for planning purposes, also encompass a range of possible air cargo development environments that could be experienced by an airport during the forecast period.

## **PROPOSED SCOPE OF WORK**

1. Overview of air cargo industry trends
2. Review DTO current situation and air cargo capabilities
  - a. DTO historic aviation / air cargo activity and current service providers
  - b. Existing infrastructure (facilities, runways, apron, equipment, road & highway access)
3. Assess regional air cargo market
  - a. Demand drivers and inbound/outbound shipment activity relevant to DTO
  - b. Competitive airport analysis (AFW, DFW, DAL), including cargo capabilities, services and strategies
4. Synthesis and Conclusions
  - a. Summarize key findings and implications for DTO
  - b. SWOT analysis
  - c. Feasibility assessment
5. DTO 20-year air cargo demand forecasts
  - a. Scenario development for potential DTO cargo services
  - b. Annual air cargo tonnage
  - c. Annual all-cargo aircraft operations
6. Planning Considerations and Recommendations



**ATTACHMENT 2**  
**SUBCONSULTANT SCOPE**  
**(Jordan Aviation Strategies & Ambrogio**  
**Consulting Services)**

**Denton Enterprise Airport  
Master Plan Scope of Work  
Jordan Aviation Strategies LLC (JAS) Financial Services**

Jordan Aviation Strategies (JAS) will support Coffman Associates with financing the Preferred Alternative Scenario determined through the planning process and outline the significant capital and operating funds needed to realize the Master Plan's vision.

To complete this task, JAS will take full advantage of all potential sources of funds and minimize financial gaps by identifying all alternative revenue sources available to support the Preferred Alternative Scenario of the master plan. The financial feasibility analysis would also include a forecast of expenses and revenues that can be used to determine whether a baseline level of funds will be available to pay for the local share of the capital development program over the planning period. The initial forecast will determine if the current tenant rents, fees and charges are sufficient to keep pace with inflation and revenues and expenses projected into the future based upon a combination of short historical trends and City policy objectives.

JAS can further assist DTO in their goal to promote aviation growth and development by providing comprehensive financial and strategic business-related airport consulting services that may include:

Strategic Financial and Business Planning – JAS will work with airport management to identify financial metrics that are most relevant for the market that is served by the airport and are achievable given the business structure of key leases and agreements. This task would outline long-term financial trends and potential risk factors that may impact overall financial sustainability, thereby allowing the airport to proactively address these issues. Key components of this task would include:

- Preparation of Financial Feasibility Studies
- Implementing Best Industry Practices
- Generating Peer Airport Comparative Statistics
- Developing A Long-term Financial Plan

Federal Funding Programs - In recent years, the federal funding programs including the Airport Rescue Grants (CARES, CRRSA, ACRGP) and the Bipartisan Infrastructure Law (BIL) programs have offered significant alternative funds to airports who can appropriately justify project funding through stringent grant applications. JAS will work with planners and staff to maximize alternative funding sources including preparation of federal loan and grant applications, and assist in the implementation of processes that are required under federal grant programs.

Commercial Air Service - DTO's desire to explore commercial service aviation which is dependent on the population base and level of economic activity that would generate sufficient passenger demand to make them profitable to air carriers. JAS can assist DTO with key components of the decision-making process including:

- Assist in Airline Discussions
- Developing a Suitable Airline Incentive Program
- Identifying a Rate-Setting Methodology

Cargo and Other Aviation Related Development – JAS can also help DTO explore opportunities for other aviation use services including Cargo and other third-party development. Key components of the task would include:

- Assist DTO with Tenant Negotiations
- Generate Financial Plans with Specific Goals and Key Performance Indicators
- Outline Financial Risk-Sharing Alternatives with Private Parties

## Eric Pfeifer

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**From:** Sylvia Ambrogio <Sambrogio57@outlook.com>  
**Sent:** Monday, January 23, 2023 12:32 PM  
**To:** Mike Dmyterko; Paula Jordan  
**Cc:** Eric Pfeifer  
**Subject:** RE: JAS scope of work for DTO

Below is our estimate for the MP Task budget. Please review and comment.

Task List	Estimated Hours to Complete	Estimated Fees
Airport Data Gathering and Analysis	35	8,750
Develop Financial Forecast Model	10	2,500
Evaluate Alternative Sources of Funding	10	2,500
Draft Master Plan Financial Section	40	10,000
Staff Interview / Strategy Meetings	10	2,500
<b>TOTAL</b>	<b>105</b>	<b>\$ 26,250</b>

*\*Fees at \$250/hour*

-spa

Sent from [Mail](#) for Windows

**ATTACHMENT 3**  
**SUBCONSULTANT SCOPE**  
**(Martinez Geospatial)**



A GEOSPATIAL SERVICE PROVIDER

## Scope and Fee Proposal

Survey, Photogrammetry & Airports-GIS Services

Denton Enterprise Airport (DTO)

01/05/2023

2915 Waters Road Suite 100 Eagan, Minnesota 55121

Tel: 651-686-8424 • [www.mtzgeo.com](http://www.mtzgeo.com)

## PROJECT SUMMARY

<b>CLIENT</b>	Coffman Associates
<b>CLIENT CONTACT</b>	Tim Kahmann
<b>CLIENT ADDRESS</b>	12920 Metcalf Ave, Suite 200 Overland Park, KS 66213
<b>PROJECT LOCATION</b>	Denton Enterprise Airport (DTO)

**Martinez Geospatial, Inc. (MTZ)** will provide **Coffman Associates** with remote-sensing and photogrammetry services in support of a Master Plan/ALP and Obstacle Action Plan at **Denton Enterprise Airport (DTO)**. The main objective of this effort will be to fulfill the geospatial data-collection requirements for supporting the update of the ALP.

This proposal also includes tasks required to comply with FAA Airports-GIS program standards. All survey and photogrammetry work will be accomplished in accordance with the following Advisory Circulars:

<b>AC-150/5300-16B (16B)</b>
<b>AC-150/5300-17C (17C)</b>
<b>AC-150/5300-18B (18B)</b>

The Airports-GIS objective for this project includes the collection/survey of both *Safety-Critical* and *Non-Safety-Critical* Data. The Safety-Critical element of the project includes Runway Ends/Thresholds & Profiles Survey, NAVAID Survey, and Airport Airspace Analysis/Obstruction Survey. The Non-Safety-Critical element of this project includes the generation of a planimetric & topographic GIS basemap of the Airport Environment and the generation of ortho-rectified aerial imagery of the Project Area.

MTZ will fulfill the data collection, formatting, and delivery requirements of the FAA Airports-GIS program. In general, MTZ's approach to fulfilling the GIS requirements will be accomplishing those required tasks as outlined in **Table 2-1 (Survey Requirements Matrix)** of **18B, Column "Airport Layout Plan."**

***MTZ will make maximum use of existing data within the ADIP Portal for DTO, including Obstacle Data with FAA-assigned Identifiers.***

## PROJECT SPECIFICATIONS

<b>STATE</b>	TEXAS
<b>COUNTY</b>	DENTON
<b>PROJECT TYPE</b>	AVIATION (AIRPORTS-GIS INCLUDED)
<b>COORDINATE SYSTEM</b>	TEXAS STATE PLANE – NORTH CENTRAL
<b>HORIZONTAL DATUM</b>	NAD83
<b>VERTICAL DATUM</b>	NAVD88 (GEOID18)
<b>FIELD-SURVEY PROVIDED BY</b>	MARTINEZ GEOSPATIAL
<b>MAPPING SCALE</b>	1"=100' & 2' CONTOURS
<b>MAPPING FORMATS REQUIRED</b>	STANDARD CAD w/ DTM and AIRPORTS-GIS
<b>ORTHO RES &amp; PHOTO FORMAT</b>	0.5' GSD, TIF & SID FORMAT



## PROJECT AREA DEFINITION

The total project area consists of four major components:

<b>AREA A</b>	<b>Planimetric &amp; Topographic Mapping Limit</b> - This area defines the limit for the generation of an AGIS Basemap.
<b>AREA B</b>	<b>Part 77/OCS Airspace Analysis Limits</b> - Horizontal Limits of the applicable Obstruction Identification Surfaces (OIS) as defined by FAR Part 77 and AC-150/5300-13B.
<b>AREA C</b>	<b>Airports-GIS Airspace Analysis Limits</b> - Horizontal Limits of the applicable Obstruction Identification Surfaces (OIS) as defined in AC-150/5300-18B.
<b>AREA D</b>	<b>Raw Obstacle Collection Limit</b> – This area defines the limit for the collection and reporting of all prominent obstacles in support of the Obstacle Action Plan (OAP).

## PROJECT TASKS

### Project Planning/Project Management/FAA Airports-GIS Coordination/Field-Survey Consultation

MTZ will assist Coffman in developing, submitting, and gaining approval of the “Statement of Work” for the project through the **FAA Texas ADO** and the **FAA’s Airport Data Information Portal (ADIP)**. MTZ will develop, submit, and gain approval of the “Aerial Photography Acquisition Report” required by the FAA Airports-GIS Program.

### Aerial Imagery Acquisition

New color aerial imagery will be captured for all areas defined in the **PROJECT AREA DEFINITION** section of this proposal utilizing a high quality digital photogrammetric camera. The aerial imagery acquisition flight mission will be executed in accordance with all guidelines and specifications within FAA AC 150/5300-17C.

The aerial imagery acquisition flight mission will consist of a single “block” of imagery, collected to the following specifications:

<b>IMAGERY RESOLUTION</b>	<b>PURPOSE/USE</b>
10cm	<ul style="list-style-type: none"> <li>- Raw Obstacle Data Collection</li> <li>- Part 77/OCS Obstruction Survey</li> <li>- AGIS Airport Airspace Analysis</li> <li>- Generation of 0.50’ GSD orthophotos</li> <li>- Planimetric/Topographic Mapping</li> </ul>

Upon completion of the flight mission, the imagery will be reviewed through in-house Quality Assurance procedures for photogrammetric acceptability and compliance with AC 150/5300-17C requirements.

### Establish Geodetic Control / Validate Existing PACS & SACS (Field-Survey)

There are one PACS monument and two SACS monuments published by NGS for the airport. This project will validate/utilize these monuments to serve as the project tie to the National Spatial Reference System (NSRS). If the existing PACS/SACS monuments are determined to be damaged or the validation is unsuccessful the surveyors will establish temporary geodetic control points, as required. Geodetic data will be tied to the NSRS using the latest published adjustment (2011).

Following are the specific PACS & SACS locations to be used:

Station Type	Designation	PID	Horizontal Datum	Vertical Datum	GEOID
PACS	DTO D	AB2789	NAD83(2011)	NAVD88	GEOID18
SACS	DTO B	AB5965	NAD83(2011)	NAVD88	GEOID18
SACS	DTO C	AB5964	NAD83(2011)	NAVD88	GEOID18

### Survey Imagery Photo Control (Field-Survey)

Photo-identifiable control points and/or artificial targets will be selected or set/surveyed for use as imagery ground control. Imagery Control will be set, surveyed (properly tied to NSRS), and documented in accordance with AC-150/5300-17C and FAA Airports-GIS requirements. Ground Control data and documentation will be submitted to FAA Airports-GIS along with the AP Acquisition Report. It is anticipated that approximately **28** imagery control points will be required, along with **6** independent OPUS Checkpoints.

### Aero Triangulation

The digital aerial imagery will be imported onto a digital photogrammetric workstation where it will be oriented with field-surveyed ground control. This procedure will establish both horizontal and vertical control for orienting individual photogrammetric models. This orientation will be accomplished using Soft Copy Aerial Triangulation methods.

### Create Digital Ortho Imagery

Digital orthophotos will be produced to meet the requirements of Coffman and the Airport as well as to comply with the requirements of the FAA Airports-GIS Program and AC 150/5300-17C. One set of ortho imagery will be produced, covering the following defined areas and meeting the following specifications:

RESOLUTION	COVERAGE LIMIT
0.50' GSD	AREA C

### Runway Survey (Field-Survey)

Field Surveyors will accomplish survey of both runways at DTO (18R/36L & 18L/36R); survey tasks will include survey of runway-end-points and runway-profiles. For each runway-end-point/threshold a monument will be set (if one is not already present), surveyed, and documented in accordance with AC-150/5300-18B. Runway-centerline profiles will be surveyed utilizing mobile-RTK methodology; final profile data will be extracted at 50-foot stations for FAA Airports-GIS submission. Runway survey data will be utilized for the Obstruction Surveys/Airport Airspace Analysis task. Furthermore, MTZ will identify Airport Reference Point, Airport Elevation, High & Low Elevations of each Runway, and

Touchdown Zone Elevations for each runway utilizing the newly surveyed Runway Data. Runway survey data will be properly formatted by MTZ and reported in the FAA Airports-GIS deliverable.

### NAVAID Survey (Field-Survey)

Surveyors will accomplish field-survey of NAVAIDs serving the DTO airport. Each NAVAID will be surveyed and documented in accordance with AC-150/5300-18B. NAVAID survey data will be properly formatted by MTZ and reported in the FAA Airports-GIS deliverable. The NAVAID Survey will include the following:

<i>Airport Rotating Beacon</i>	<i>18L PAPI</i>
<i>36R PAPI</i>	<i>18L MALSR</i>
<i>18R PAPI</i>	<i>36L PAPI</i>
<i>18L LOC</i>	<i>18L GS</i>
<i>18L OM</i>	<i>PINCK NDB</i>
<i>ASOS</i>	<i>Windcones</i>

### Airport Airspace Analysis/Obstruction Surveys

#### 18B/AGIS

An Airport Airspace Analysis will be performed in accordance with AC 150/5300-18B. This task will be performed in order to comply with the requirements of the FAA Airports-GIS Program for projects involving Airport Layout Plans. All available existing obstacle data for DTO will be obtained & downloaded from ADIP; existing obstacle data (relevant to the AGIS Airspace Analysis) will be validated or updated as necessary and incorporated into this project. Existing obstacle data will be reported back to FAA through ADIP, identifiable by assigned FAA-Obstacle-ID.

The Airport Airspace Analysis will meet the following specifications:

<b>RUNWAY</b>	<b>ANALYSIS TYPE</b>
18L/36R	Runways-With-Vertical-Guidance
18R/36L	Runways-With-Vertical-Guidance

GIS Formatting of final reported 18B/AGIS obstacle data will adhere to the specifications of AC 150/5300-18B, Chapter 5 *Airport Data Features*.

#### Part 77/Obstacle Clearance Surface (OCS)

An FAR Part 77 and an OCS Obstruction Survey will be performed for all runway ends. Utilizing the digital 3D stereo imagery, the prescribed Part 77 & OCS Obstruction-Identification-Surfaces will be examined and analyzed to identify natural and manmade objects penetrating the surfaces. The Part 77 Obstruction Survey will meet the following specifications:

<b>RUNWAY</b>	<b>PART 77 ANALYSIS TYPE</b>
18L	Precision-Instrument-Runway (PIR)
36R	Non-Precision-Instrument-D (NPI-D)
18R	Non-Precision-Instrument-D (NPI-D)
36L	Non-Precision-Instrument-C (NPI-C)

The OCS Obstruction Survey will meet the following specifications (OCS Numbers are taken from AC-13B, Tables 3-2, 3-3, 3-4. and 3-5).

<b>RUNWAY</b>	<b>OCS ANALYSIS TYPE</b>
18L	OCS 5 (< 3/4sm Visibility Minimums)
18L	OCS 6 (Vertical Guidance Surface)
18L	OCS 7 (Departure Surface)
36R	OCS 5 ( $\geq$ 3/4sm Visibility Minimums)
36R	OCS 6 (Vertical Guidance Surface)
36R	OCS 7 (Departure Surface)
18R	OCS 5 ( $\geq$ 3/4sm Visibility Minimums)
18R	OCS 6 (Vertical Guidance Surface)
18R	OCS 7 (Departure Surface)
36L	OCS 5 ( $\geq$ 3/4sm Visibility Minimums)
36L	OCS 6 (Vertical Guidance Surface)
36L	OCS 7 (Departure Surface)

#### **Part 77/OCS Collection Criteria**

The obstruction-identification-surfaces, defined in the previous section, will be digitally referenced with the 3D Stereo Imagery. Utilizing the 3D imagery, trained technicians will visually examine all surfaces and collect X-Y-Z point data for objects meeting collection criteria. Collected data will then be mathematically analyzed against the surfaces using custom processes to produce a final dataset. Multiple Quality-Assurance processes are performed for obstruction data through the project life cycle to ensure accuracy and completeness. Data will be collected to fulfill the following criteria:

- 1) A single X-Y-Z point will be collected / analyzed for any manmade or natural object penetrating a surface. The point will be placed on the highest point of the object. The X-Y location will correspond to the horizontal position of the highest portion of the object, not necessarily the geometric center or middle of the object.
- 2) Occasionally with Obstruction Surveys, large group of trees or terrain (obstruction area) are found to penetrate a surface and it is not feasible or possible to collect each individual penetration. In these cases, the obstruction area will be outlined with a bounding polygon in order to represent the horizontal extents of the area. A grid will then be overlaid on the obstructing area. Within each grid sector, the highest object will be collected. Within the primary surface, the transitional surface, and within the first 5,000 feet of the approach surface, 100-foot grid spacing will be used. Within 10,000 feet of the approach surface, but outside 5,000 feet, 200-foot grid spacing will be used. 200-foot grid spacing will also be used within the horizontal surface. Within the conical surface, 500-foot grid spacing will be used.

#### **Raw Obstacle Collection – AC-18B Vertically-Guided Approach Surface (OPTIONAL TASK)**

In support of an Obstacle Action Plan (OAP), MTZ will complete raw obstacle data collection for each runway, beyond the reporting requirements of AC 150/5300-18B. The horizontal extents of the collection area are based on the dimensions of the AGIS/18B Vertically-Guided Obstruction Surfaces.

Within the AGIS/18B Vertically-Guided Approach Surface and within the Transitional Surfaces, MTZ will collect all prominent manmade and natural objects with no regards to penetration value. For manmade objects, all buildings, utility poles, antennas, towers, and prominent objects will be collected (small objects, such as mailboxes, posts, and utility boxes will be ignored). For vegetation, singular trees/shrubs will be collected to the extent possible/feasible. In large areas of dense vegetation, a bounding polygon will be drawn to show the extents of the area. When necessary to reduce data congestion, a 100-foot grid will be applied and the highest vegetation point within each grid-sector.

#### ***Deliverable Format for Obstacle Data***

<b>DELIVERABLE</b>	<b>DESCRIPTION</b>
Shapefile and CAD File	These files will contain the following pieces of data: <ol style="list-style-type: none"> <li>1) Obstruction Surface Linework</li> <li>2) Obstruction X-Y-Z Points</li> <li>3) Obstruction Area Polygon (if applicable)</li> <li>4) Obstruction Area Grid (if applicable)</li> </ol>
Attributes will be included in the Shapefile as Object Data. For the CAD version, attributes will be provided in Spreadsheet Format and can be cross-referenced with the CAD file by Object Number.	Shapefiles will contain the following pieces of object data: <ul style="list-style-type: none"> <li>• Object type</li> <li>• Northing / Easting / Elevation (MSL)</li> <li>• Latitude/Longitude</li> <li>• AGL Height (as able, for penetrating objects only)</li> <li>• Height-Above-Runway-End</li> <li>• Height-Above-Touchdown-Zone</li> <li>• Height-Above-Airport-Elevation</li> <li>• Distance-to-Runway-End</li> <li>• Distance-From-Runway-Centerline (and direction)</li> <li>• Penetration Value (if applicable)</li> <li>• Surface Affected &amp; Slope (if applicable)</li> </ul>

#### **Planimetric & Topographic Mapping Compilation**

Utilizing the aerotriangulated digital imagery, photographic stereo pairs will be oriented and compiled on digital photogrammetric workstations within **AREA A**. Mapping data will be compiled meeting the following specifications:

<b>PLANIMETRIC DATA SCALE</b>	<b>1"=100' SCALE (CLASS II STANDARDS)</b>
<b>TOPOGRAPHIC DATA SCALE</b>	<b>2' CONTOUR INTERVAL (CLASS II STANDARDS)</b>

<b>MAPPING DELIVERABLE</b>	<b>FORMAT</b>
PLANIMETRIC FILE	AUTOCAD (Other formats available upon request)
CONTOUR FILE	AUTOCAD (Other formats available upon request)
DIGITAL-TERRAIN-MODEL FILE	AUTOCAD (Other formats available upon request)

The CAD products defined above will be delivered directly to **Coffman** for the updating of ALP drawings.

## Mapping Edit and GIS Formatting

In addition to generating mapping data in CAD formats, all collected data will be edited and formatted in the appropriate AGIS format. In terms of GIS-attributes, MTZ will be responsible for populating all geospatial-related and/or critical attributes required for upload. In general terms, the final AGIS file created by MTZ will include both Safety-Critical and Non-Safety-Critical Data. This includes the following:

### 1) SAFETY-CRITICAL

#### a. Airspace

AC-18B Feature	AC-18B Section
Obstacle	5.5.2
Obstruction Area (if applicable)	5.5.3
Obstruction ID Surface	5.5.4

#### b. Runway

AC-18B Feature	AC-18B Section
Runway End	5.4.26
Runway Profile Points	5.8.6
Centerline Perpendicular Points	5.8.3
Touchdown Zone Elevation	5.8.7
Airport Elevation	5.8.2

#### c. NAVAIDs

AC-18B Feature	AC-18B Section
Navigational Aids	All Applicable - Group 5.10

### 2) NON-SAFETY-CRITICAL

#### a. Planimetric

AC-18B Feature	AC-18B Section
Airfield	All Applicable - Group 5.4
Manmade Structures	All Applicable - Group 5.10
Surface Transportation	All Applicable - Group 5.13
Utilities	All Applicable - Group 5.14

#### b. Topographic

AC-18B Feature	AC-18B Section
Elevation Contour	5.8.10



Final GIS data will meet the following specifications:

<b>GIS DATA-MODEL UTILIZED</b>	FAA Airports-GIS ( <i>AC 150/5300-18B, Chapter 5</i> )
<b>GIS DELIVERY FORMAT</b>	ArcGIS Shapefile

#### **Airports-GIS Data Submission and Final Reporting**

All data will be formatted into compliant Airports-GIS format and prepared for submission. Prior to submission, the survey-files will be tested using the FAA's survey-file-test tool in order to ensure acceptability. A "Final Report" will be generated in accordance with Advisory Circular 150/5300-18B and submitted with the final project file. Project close-out will also consist of ensuring receipt and acceptance of the obstruction survey and digital mapping data by Coffman, the FAA and NGS.

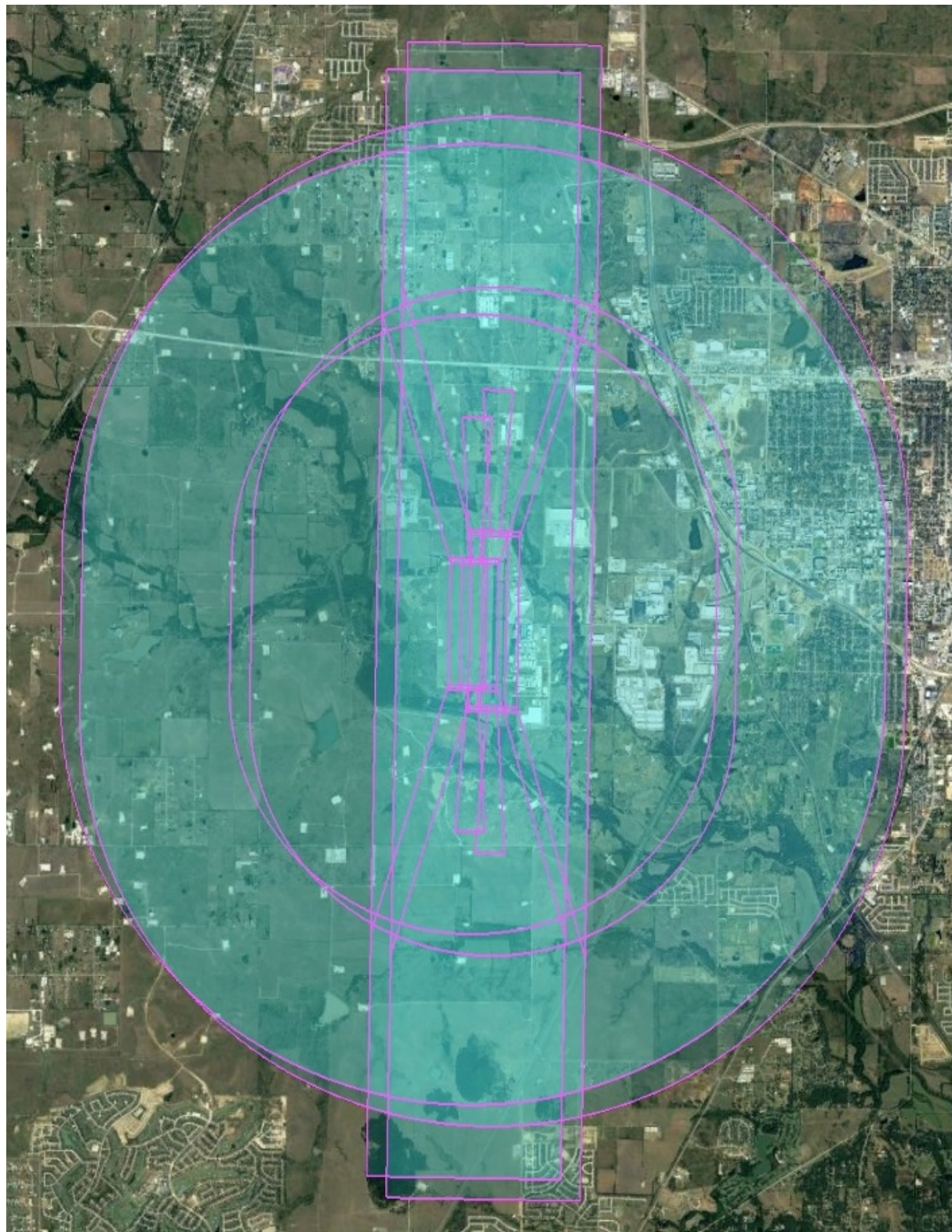
DELIVERABLE SUMMARY
1) Statement of Work Report (for FAA Airports-GIS approval)
2) Aerial Photography Acquisition Report (for FAA Airports-GIS approval)
3) Part 77 & AC-13B Obstacle-Clearance-Surface Obstruction/Penetration Data
4) Raw Obstacle Data <b>(OPTIONAL TASK)</b>
5) Digital Ortho Imagery of AREA C (0.50' Resolution)
6) Comprehensive FAA Airports-GIS Deliverable, consisting of: A) Safety Critical Data (Runway, NAVAID, and Airport Airspace Analysis Data) B) Non-Safety Critical Data (Planimetric & Topographic Mapping)
7) Final Report (for FAA Airports-GIS approval)

## FEE SCHEDULE

It is understood that compensation for this project will be on a **LUMP SUM** basis. MTZ will invoice Coffman Associates monthly based on percent-complete of each work category below. The following is a proposed fee schedule based on major production processes/work category:

WORK CATEGORY	FEE
Project Management	\$ 7,046.72
Production Management	\$ 5,550.53
Imagery Acquisition / Flight Mission	\$ 10,974.00
Imagery Aero-Triangulation	\$ 5,637.95
Ortho Imagery Production (0.50' GSD)	\$ 8,672.50
Planimetric/Topographic Mapping – Airport Property	\$ 25,130.74
Airspace Analysis / Obstruction Survey	\$ 17,567.44
Data Edit / GIS Formatting / FAA Compliance	\$ 13,259.87
Field-Survey Services	\$33,766.30
<b>TOTAL</b>	<b>\$ 127,606.05</b> <b>(Call it \$127,606)</b>
OPTIONAL TASK – Raw Obstacle Collection (in support of Obstacle Action Plan)	\$7,215.69
<b>TOTAL w/Optional Task</b>	<b>\$134,821.74</b> <b>(Call it \$134,821)</b>

# Airports-GIS Airspace Analysis



Magenta Polygons - 18B/Airports-GIS Obstruction Identification Surfaces (VG)  
Cyan Shaded Area - 0.50' GSD Ortho Imagery Coverage



**MTZ | Martinez Geospatial**  
2915 Waters Road Suite 100  
Eagan, Minnesota 55121  
Tel: 651.686.8424 Fax: 651.686.8389





# Planimetric & Topographic Mapping



Red Polygon - Planimetric & Topographic Mapping Limit

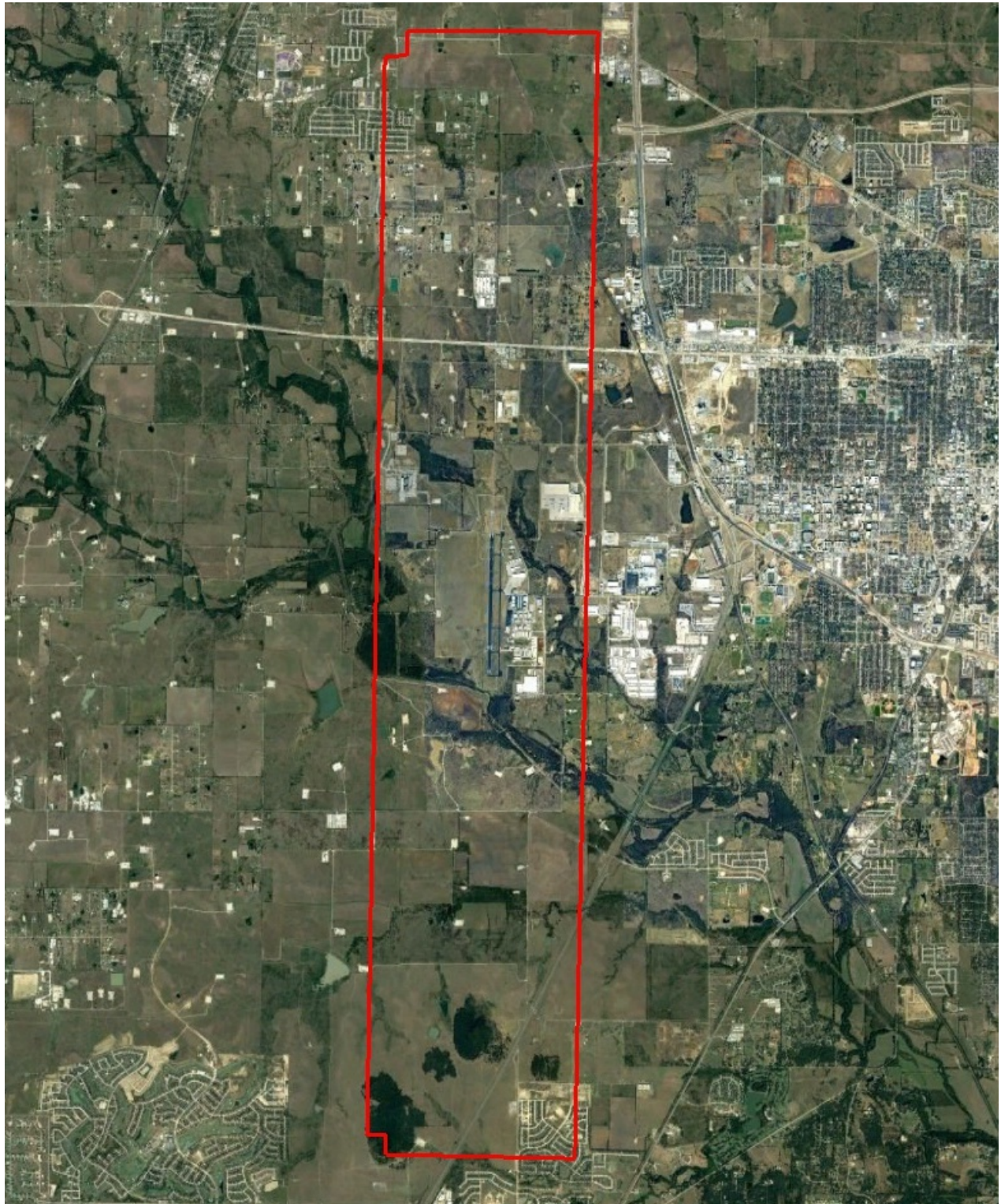


**MTZ | Martinez Geospatial**  
2915 Waters Road Suite 100  
Eagan, Minnesota 55121  
Tel: 651.686.8424 Fax: 651.686.8389





# Raw Obstacle Data Collection



Red Polygon - Raw Obstacle Collection Area



**MTZ | Martinez Geospatial**  
2915 Waters Road Suite 100  
Eagan, Minnesota 55121  
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<b>EXHIBIT B - PROJECT COST</b> <b>Denton Enterprise Airport (DTO)</b> <b>Airport Master Plan</b>							
		Coffman Associates (Hourly Rates)					
		Principal	Senior Professional	Professional	Technical/ Support	Total Labor	Expenses
		\$303	\$279	\$166	\$118		Total
<b>ELEMENT 1 – STUDY INITIATION AND ORGANIZATION</b>							
1.1	Study Design	4	4	8	8	\$4,600	\$0
1.2	Establish Planning Advisory Committee and Kick-Off Meeting	16	16	0	8	\$10,256	\$1,820
1.3	Develop Project Website	0	8	24	36	\$10,464	\$0
1.4	Project Management	16	80	60	12	\$38,544	\$0
<b>Element 1 Subtotal</b>		<b>36</b>	<b>108</b>	<b>92</b>	<b>64</b>	<b>\$63,864</b>	<b>\$1,820</b>
<b>ELEMENT 2 - INVENTORY OF EXISTING CONDITIONS</b>							
2.1	Inventory Airport Facilities (On Site Visit Combined with Kick-off)	0	8	16	12	\$6,304	\$0
2.2	Inventory Air Traffic, and Airspace	0	8	24	12	\$7,632	\$0
2.3	Inventory Local Plans, Land Uses, and Demographic Data	0	8	16	8	\$5,832	\$0
2.4	Obtain Tabulated Wind Data	0	0	0	8	\$944	\$0
2.5	Environmental Inventory	0	0	24	8	\$4,928	\$0
<b>Element 2 Subtotal</b>		<b>0</b>	<b>24</b>	<b>80</b>	<b>48</b>	<b>\$25,640</b>	<b>\$0</b>
<b>ELEMENT 3 - AVIATION DEMAND FORECASTS</b>							
3.1	Review Regional Aviation and Socioeconomic Forecasts	4	8	8	8	\$5,716	\$0
3.2	Prepare Aviation Demand Forecasts	4	16	8	16	\$8,892	\$0
3.3	Identify Existing and Future Airport Design Critical Aircraft	4	16	8	8	\$7,948	\$0
3.4	Prepare Phase I Report (15 Copies with Workbooks)	4	8	8	16	\$6,660	\$1,500
3.5	Conduct PAC Meeting #2 and Public Workshop #1	16	16	0	16	\$11,200	\$4,220
3.6	Conduct Phase I City Council Meeting	16	16	0	8	\$10,256	\$1,820
<b>Element 3 Subtotal</b>		<b>48</b>	<b>80</b>	<b>32</b>	<b>72</b>	<b>\$50,672</b>	<b>\$7,540</b>
<b>ELEMENT 4 - FACILITY REQUIREMENTS</b>							
4.1	Establish Physical Planning Criteria	4	8	0	0	\$3,444	\$0
4.2	Determine Airfield Capacity and Delay	8	24	8	8	\$11,392	\$0
4.3	Prepare Airfield Facility Requirements	8	24	8	8	\$11,392	\$0
4.4	Prepare Landside Facility Requirements	8	24	8	8	\$11,392	\$0
<b>Element 4 Subtotal</b>		<b>28</b>	<b>80</b>	<b>24</b>	<b>24</b>	<b>\$37,620</b>	<b>\$0</b>
<b>ELEMENT 5 - AIRPORT DEVELOPMENT ALTERNATIVES</b>							
5.1	Establish Alternative Development Issues	4	8	8	16	\$6,660	\$0
5.2	Evaluate Potential Airside Alternatives	8	32	8	32	\$16,456	\$0
5.3	Identify Potential Landside Alternatives	8	24	24	24	\$15,936	\$0
5.4	Prepare Phase II Report (15 Copies)	8	32	0	32	\$15,128	\$1,500
5.5	Conduct PAC Meeting #3 and Public Workshop #2	16	16	0	16	\$11,200	\$4,220
<b>Element 5 Subtotal</b>		<b>44</b>	<b>112</b>	<b>40</b>	<b>120</b>	<b>\$65,380</b>	<b>\$5,720</b>
<b>ELEMENT 6 - RECOMMENDED MASTER PLAN CONCEPT</b>							
6.1	Recommended Master Plan Concept	4	24	8	24	\$12,068	\$0
6.2	Prepare Aircraft Noise Exposure Contours	4	16	64	24	\$19,132	\$0
6.3	Land Use Controls and Plans	4	16	8	12	\$8,420	\$0
6.4	Non-compatible Land Use Analysis	4	16	8	16	\$8,892	\$0
6.5	Land Use Management Techniques	4	16	8	12	\$8,420	\$0
6.6	Environmental Overview (NEPA)	4	24	24	16	\$13,780	\$0
6.7	Recycling Plan	0	16	24	16	\$10,336	\$0
<b>Element 6 Subtotal</b>		<b>24</b>	<b>128</b>	<b>144</b>	<b>120</b>	<b>\$81,048</b>	<b>\$0</b>
<b>ELEMENT 7 - FINANCIAL MANAGEMENT AND DEVELOPMENT PROGRAM</b>							
7.1	Prepare Airport Development Schedules and Cost Estimates	4	16	16	16	\$10,220	\$15,000
7.2	Prepare Capital Program and Financial Plan	0	16	8	8	\$6,736	\$0
7.3	Perform Financial Analysis	0	8	0	8	\$3,176	\$0
7.4	Prepare Phase III Report (15 Copies)	4	32	8	32	\$15,244	\$1,500
7.5	Conduct PAC Meeting #4 and Public Workshop #3	16	16	0	16	\$11,200	\$4,220
<b>Element 7 Subtotal</b>		<b>24</b>	<b>88</b>	<b>32</b>	<b>80</b>	<b>\$46,576</b>	<b>\$20,720</b>
<b>ELEMENT 8 - GEOGRAPHICAL INFORMATION SYSTEM (GIS) AND DATA COLLECTION SERVICES</b>							
8.1	FAA Airports-GIS	0	16	24	24	\$11,280	\$0
8.2	ALP Data Collection and Part 77 Airspace Analyses	0	16	24	24	\$11,280	\$0
<b>Element 8 Subtotal</b>		<b>0</b>	<b>32</b>	<b>48</b>	<b>48</b>	<b>\$22,560</b>	<b>\$0</b>
<b>ELEMENT 9 - AIRPORT LAYOUT PLANS</b>							
9.1	Airport Layout Plan Drawing	8	8	16	160	\$26,192	\$0
9.2	Terminal Area Drawing(s)	0	0	8	24	\$4,160	\$0
9.3	Part 77, Approach and Inner Surface Plan Drawings	0	0	8	64	\$8,880	\$0
9.4	Departure Surface Drawings	0	0	8	16	\$3,216	\$0
9.5	Exhibit A - Airport Property Inventory Map (FAA SOP 3.0)	0	0	8	36	\$5,576	\$5,000
9.6	On-Airport Land Use Plan	0	0	8	16	\$3,216	\$0
9.7	Preparation of Draft ALP Drawing Set	0	0	8	24	\$4,160	\$800
9.8	Preparation of Final ALP Drawing Set	0	0	8	24	\$4,160	\$800
<b>Element 9 Subtotal</b>		<b>8</b>	<b>8</b>	<b>72</b>	<b>364</b>	<b>\$59,560</b>	<b>\$6,600</b>
<b>ELEMENT 10 - FINAL REPORTS</b>							
10.1	Prepare Draft Final Master Plan Reports (10 Copies)	4	16	24	32	\$13,436	\$3,000
10.2	Obtain Master Plan Approvals (On-site Presentation)	16	16	0	24	\$12,144	\$1,820
10.3	Prepare Final Master Plan Reports (10 Copies)	4	16	24	24	\$12,492	\$3,000
<b>Element 10 Subtotal</b>		<b>24</b>	<b>48</b>	<b>48</b>	<b>80</b>	<b>\$38,072</b>	<b>\$7,820</b>
<b>ELEMENT 11 - OPTIONAL COMMERCIAL PASSENGER TERMINAL TASKS</b>							
11.1	Commercial Passenger Terminal Facility Requirements	4	8	24	8	\$8,372	\$0
11.2	Commercial Passenger Terminal Alternatives	4	8	16	16	\$7,988	\$0
<b>Element 11 Subtotal</b>		<b>8</b>	<b>16</b>	<b>40</b>	<b>24</b>	<b>\$16,360</b>	<b>\$0</b>
<b>COFFMAN ASSOCIATES PROJECT SUMMARY</b>							
<b>ELEMENT 1 - STUDY DESIGN AND ORGANIZATION</b>		<b>36</b>	<b>108</b>	<b>92</b>	<b>64</b>	<b>\$63,864</b>	<b>\$1,820</b>
<b>ELEMENT 2 - INVENTORY</b>		<b>0</b>	<b>24</b>	<b>80</b>	<b>48</b>	<b>\$25,640</b>	<b>\$0</b>
<b>ELEMENT 3 - FORECASTS</b>		<b>48</b>	<b>80</b>	<b>32</b>	<b>72</b>	<b>\$50,672</b>	<b>\$7,540</b>
<b>ELEMENT 4 - FACILITY REQUIREMENTS</b>		<b>28</b>	<b>80</b>	<b>24</b>	<b>24</b>	<b>\$37,620</b>	<b>\$0</b>
<b>ELEMENT 5 - ALTERNATIVES</b>		<b>44</b>	<b>112</b>	<b>40</b>	<b>120</b>	<b>\$65,380</b>	<b>\$5,720</b>
<b>ELEMENT 6 - RECOMMENDED MASTER PLAN CONCEPT</b>		<b>24</b>	<b>128</b>	<b>144</b>	<b>120</b>	<b>\$81,048</b>	<b>\$0</b>
<b>ELEMENT 7 - FINANCIAL PLAN</b>		<b>24</b>	<b>88</b>	<b>32</b>	<b>80</b>	<b>\$46,576</b>	<b>\$20,720</b>
<b>ELEMENT 8 - AERIAL MAPPING AND OBSTRUCTION DATA</b>		<b>0</b>	<b>32</b>	<b>48</b>	<b>48</b>	<b>\$22,560</b>	<b>\$0</b>
<b>ELEMENT 9 - ALP DRAWINGS</b>		<b>8</b>	<b>8</b>	<b>72</b>	<b>364</b>	<b>\$59,560</b>	<b>\$6,600</b>
<b>ELEMENT 10 - FINAL REPORTS</b>		<b>24</b>	<b>48</b>	<b>48</b>	<b>80</b>	<b>\$38,072</b>	<b>\$7,820</b>
<b>Coffman Associates, Inc. Subtotal</b>		<b>236</b>	<b>708</b>	<b>612</b>	<b>1,020</b>	<b>\$490,992</b>	<b>\$50,220</b>
<b>ELEMENT 11 - OPTIONAL COMMERCIAL PASSENGER TERMINAL TASKS</b>		<b>8</b>	<b>16</b>	<b>40</b>	<b>24</b>	<b>\$16,360</b>	<b>\$0</b>
<b>Coffman Associates, Inc. Total</b>		<b>244</b>	<b>724</b>	<b>652</b>	<b>1,044</b>	<b>\$507,352</b>	<b>\$50,220</b>
<b>ELEMENT 11 - SUBCONSULTANTS</b>							
IAS/ACS Consulting - Tasks 7.2, 7.3							\$26,250
MTZ - Element 8							\$127,606
MTZ - Element 8 (Optional Task)							\$7,216
HubPoint Strategic Advisors - Tasks 3.2, 3.3, 4.4 (Optional Tasks)							\$70,000
<b>Subconsultant Total</b>							<b>\$231,072</b>
<b>PROJECT TEAM TOTAL COSTS - EXCLUDING OPTIONAL TASKS</b>							<b>\$695,068</b>
<b>PROJECT TEAM TOTAL COSTS - WITH OPTIONAL TASKS</b>							<b>\$788,644</b>

**EXHIBIT C  
PROJECT SCHEDULE  
DENTON ENTERPRISE AIRPORT  
AIRPORT MASTER PLAN**

ELEMENT		MONTHS																	
	<i>Notice to Proceed</i>	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18
Initiation																			
Inventory																			
Forecasts																			
Facility Requirements																			
Airport Alternatives																			
Master Plan Concept																			
Financial Plan																			
GIS/Data Collection Services																			
ALP Drawings																			
Final Review/Documentation																			
PAC Meetings		♦			♦				♦				♦						
Public Workshops					♦				♦				♦						
City Council Meetings/Approval					♦										♦				

## DESIGNATION OF SPONSOR'S AUTHORIZED REPRESENTATIVE

I, \_\_\_\_\_, \_\_\_\_\_,  
(Name) (Title)  
with the \_\_\_\_\_ designates \_\_\_\_\_  
(Sponsor Name) (Name, Title)  
as the \_\_\_\_\_ authorized representative for the \_\_\_\_\_ project,  
(Sponsor Name)  
who shall have the authority to make approvals and disapprovals as required on behalf of  
the \_\_\_\_\_.  
(Sponsor Name)  
\_\_\_\_\_, Texas  
(Sponsor)

By: \_\_\_\_\_  
(Signature)

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

Date: \_\_\_\_\_

## DESIGNATED REPRESENTATIVE

Mailing Address: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

\*Physical/Overnight Address: \_\_\_\_\_

\_\_\_\_\_

Telephone Number: \_\_\_\_\_

E-Mail Address: \_\_\_\_\_

**TEXAS DEPARTMENT OF TRANSPORTATION**

**AIRPORT PROJECT GRANT AGREEMENT**

**(Federally Assisted Airport Development Grant)**

TxDOT Project No.:24MPDNTON  
IIJA Funds Applied: FY 22  
Commission Approval: March 28, 2024  
UEI:NAQBJ67VUM95  
ALN: 20.106

**Part I - Identification of the Project**

TO: City of Denton, Texas

FROM: The State of Texas, acting through the Texas Department of Transportation

This Agreement is made and entered into by and between the Texas Department of Transportation, (hereinafter referred to as the "State"), for and on behalf of the State of Texas, and City of Denton, Texas, (hereinafter referred to as the "Sponsor").

The Sponsor desires to sponsor a project for the development of a public aviation facility, known or to be designated as the Airport under the Airport and Airway Improvement Act of 1982, as repealed and recodified in Title 49 United States Code, Section 47101 et seq., (hereinafter referred to as "Title 49 U.S.C."), and Rules, Regulations and Procedures promulgated pursuant; and under V.T.C.A. Transportation Code, Title 3, Chapters 21-22, et seq. (Vernon and Vernon Supp).

The project is described as follows: reimbursement for airport master plan at Denton Enterprise Airport.

The Sponsor applies for a grant for financial assistance for the project described above.

The parties, by this Agreement, do fix their respective responsibilities, with reference to each other, with reference to the accomplishment of the project, and with reference to the United States.

Pursuant to and for the purpose of carrying out the provisions of Title 49 U.S.C., and in consideration of (a) the Sponsor's adoption and ratification of the representations and assurances contained in the Airport Project Participation Agreement and its acceptance of this Offer as provided, and (b) the benefits to accrue to the United States and the public from the accomplishment of the project and compliance with the assurances and conditions as herein provided, **THE TEXAS DEPARTMENT OF TRANSPORTATION, FOR AND ON BEHALF OF THE UNITED STATES, FEDERAL AVIATION ADMINISTRATION (HEREINAFTER REFERRED TO AS THE "FAA"), HEREBY OFFERS AND AGREES** to pay, as the United States share of the allowable costs incurred in accomplishing the project, ninety percentum of all allowable project costs.

This grant is made on and subject to the following terms and conditions:

## **Part II - Offer of Financial Assistance**

1. The allowable costs of the project shall not include any costs determined by the State to be ineligible for consideration as to allowability under Title 49 U.S.C., the V.T.C.A. Transportation Code, Title 3, Chapters 21-22, et seq., (Vernon and Vernon Supp), and the Airport Zoning Act, Tex. Loc. Govt. Code Ann. §§ 241.001 et seq. (Vernon and Vernon Supp).
2. The maximum obligation of the United States payable under this offer shall be \$709,780 (Amount A). Total project is \$788,644. This grant requires a 10% local match of \$78,864. These funds are not sent to the State.

This grant should not be construed as block grant funds for the Sponsor, but as a grant for funding of the scope items as listed on page one of this agreement. It is the intent of the State to provide funding to complete the approved work items of this grant and not to amend the scope of work to include items outside of the current determined needs of this project. Scope of work may be amended as necessary to fulfill the unforeseen needs of this specific development project within the spirit of the approved scope, subject to the availability of state, federal, and/or local funds. Final determination of federal eligibility of total project costs will be determined by the State in accordance with federal guidelines following completion of project.

In the event that federal funds are unavailable, this Agreement shall automatically be voided and become of no force and effect, except that unexpended or unencumbered moneys actually deposited by the Sponsor and held with the State for project purposes shall be returned to the Sponsor. The Sponsor specifically agrees that it shall pay any project costs, which exceed the sum of the federal share (Amount A).

3. The Sponsor is responsible for all 100% of all costs above the federal share.

Payment of the United States share of the allowable project costs will be made pursuant to and in accordance with the provisions of such regulations and procedures as the State and FAA, shall prescribe. Final determination of the United States share will be based upon the final audit of the total amount of allowable project costs and settlement will be made for any upward or downward adjustments to the Federal share of costs.

4. Sponsor, by executing this Agreement certifies, and upon request, shall furnish proof to the State that it has sufficient funds to meet its share of the costs as stated. The Sponsor grants to the State and federal government the right, upon advance written request during reasonable and regular business hours, to audit any books and records of the Sponsor to verify said funds. In addition, the Sponsor shall disclose the source of all funds for the project and its ability to finance and operate the project.

Expenditures for eligible project costs for the above project made by the State or the Sponsor prior to the award of a federal grant for said project, and prior to actual receipt of the authority to expend federal grant funds, shall be made from Sponsor funds.

Monthly grant payments to the Sponsor will be made upon request to the State. Reimbursement payments of the State's share of the allowable project costs will be made in proportion to the amount expended by the Sponsor for the eligible project costs. No more than ninety (90) percent of the total grant will be paid prior to the completion of the project. Reimbursements must include the reimbursement request form, the paid invoices, and proof of payment (cancelled checks, bank statements, ACH) before the State will approve and reimburse the sponsor. All final documents must be submitted to the State before final payment will be approved.

5. Ban on Texting While Driving.

- a. In accordance with Executive Order 13513, Federal Leadership on Reducing Text Messaging While Driving, October 1, 2009, and DOT Order 3902.10, Text Messaging While Driving, December 30, 2009, the Sponsor is encouraged to:
  1. Adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers including policies to ban text messaging while driving when performing any work for, or on behalf of, the Federal government, including work relating to a grant or subgrant.
  2. Conduct workplace safety initiatives in a manner commensurate with the size of the business, such as:
    - a. Establishment of new rules and programs or re-evaluation of existing programs to prohibit text messaging while driving; and
    - b. Education, awareness, and other outreach to employees about the safety risks associated with texting while driving.
- b. The Sponsor must insert the substance of this clause on banning texting while driving in all subgrants, contracts, and subcontracts funded with this Grant.

6. Trafficking in Persons.

- A. The Sponsor, as the recipient, and the Sponsor's your employees, under this award, may not:
  1. Engage in severe forms of trafficking in persons during the period of time that the Grant and applicable conditions are in effect;
  2. Procure a commercial sex act during the period of time that the Grant and applicable conditions are in effect; or
  3. Use forced labor in the performance of the Grant.
- B. The State as the awarding agency, may unilaterally terminate this Grant, without penalty, a Sponsor that is a private entity:



1. Is determined to have violated a prohibition in paragraph (a) of this condition; or
2. Has an employee who is determined by the agency official authorized to terminate the Grant to have violated a prohibition in paragraph (a) of this Condition through conduct that is either –
  - a. Associated with performance under this Grant; or
  - b. Imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR Part 180, OMB Guidelines to Agencies on Government-wide Debarment and Suspension (Nonprocurement), as implemented by our agency at 2 CFR Part 1200.
3. The Sponsor must inform us immediately of any information you receive from any source alleging a violation of a prohibition in paragraph (a) of this Condition.
4. The State's right to terminate unilaterally that is described in paragraph (a) of this Condition:
  - a. Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. § 7104(g)), and
  - b. Is in addition to all other remedies for noncompliance that are available to us under this Grant Agreement.

7. Employee Protection from Reprisal.

- a. Prohibition of Reprisals:
  1. In accordance with 41 U.S.C. § 4712, an employee of a Grantee may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing to a person or body described in sub-paragraph (a)(2), information that the employee reasonably believes is evidence of:
    - i. Gross mismanagement of a Federal grant;
    - ii. Gross waste of Federal funds;
    - iii. An abuse of authority relating to implementation or use of Federal funds;
    - iv. A substantial and specific danger to public health or safety; or
    - v. A violation of law, rule, or regulation related to a Federal grant.
  2. Persons and bodies covered: The persons and bodies to which a disclosure by an employee is covered are as follows:
    - i. A member of Congress or a representative of a committee of Congress;
    - ii. An Inspector General;
    - iii. The Government Accountability Office;
    - iv. A Federal office or employee responsible for oversight of a grant program;
    - v. A court or grand jury;
    - vi. A management office of the State or the Grantee; or
    - vii. A Federal or State regulatory enforcement agency.

- b. Submission of Complaint: A person who believes that they have been subjected to a reprisal prohibited by paragraph A of this grant term may submit a complaint regarding the reprisal to the Office of Inspector General (OIG) for the U.S. Department of Transportation.
  - c. Time Limitation for Submittal of a Complaint: A complaint may not be brought under this subsection more than three years after the date on which the alleged reprisal took place.
  - d. Required Actions of the Inspection General: Actions, limitations and exceptions of the Inspector General's office are established under 41 U.S.C. § 4712(b).
  - e. Assumption of Rights to Civil Remedy: Upon receipt of an explanation of a decision not to conduct or continue an investigation by the Office of Inspector General, the person submitting a complaint assumes the right to a civil remedy under 41 U.S.C. § 4712(c).
8. The Sponsor agree to abide by applicable Executive Orders in effect at the time this Grant Agreement is executed, including Executive Order 14005, Ensuring the Future Is Made in All of America by All of America's Workers.
  9. Buy American. Unless otherwise approved in advance by the FAA, in accordance with 49 U.S.C. § 50101, the Sponsor will not acquire or permit any contractor or subcontractor to acquire any steel or manufactured products produced outside the United States to be used for any project for which funds are provided under this grant. The Sponsor will include a provision implementing Buy American in every contract and subcontract awarded under this Grant.
  10. Build America, Buy America. The sponsor must comply with the requirements under the Build America, Buy America Act (Public Law 117-58).
  11. Suspension or Debarment. When entering into a "covered transaction" as defined by 2 CFR § 180.200, the Sponsor must and keep documentation of the following:
    - a. Verify the non-Federal entity is eligible to participate in this Federal program by:
      1. Checking the excluded parties list system (EPLS) as maintained within the System for Award Management (SAM) to determine if the non-Federal entity is excluded or disqualified; or
      2. Collecting a certification statement from the non-Federal entity attesting they are not excluded or disqualified from participating; or
      3. Adding a clause or condition to covered transactions attesting the individual or firm are not excluded or disqualified from participating.
    - b. Require prime contractors to comply with 2 CFR § 180.330 when entering into lower-tier transactions (e.g., Sub-contracts).
    - c. Immediately disclose in writing to the FAA whenever (1) the Sponsor learns they have entered into a covered transaction with an ineligible entity or (2) the Public Sponsor suspends or debars a contractor, person, or entity.

12. The period of performance shall commence on the date the State executes this agreement. The end date of the period of performance is four years from the date of execution of the state.
13. Air and Water Quality. The Sponsor is required to comply with all applicable air and water quality standards for all projects in this grant. If the State and Sponsor fail to comply with this requirement, the State may suspend, cancel, or terminate this Agreement.
14. Prohibited Telecommunications and Video Surveillance Services and Equipment. The Sponsor agrees to comply with mandatory standards and policies relating to use and procurement of certain telecommunications and video surveillance services or equipment in compliance with the National Defense Authorization Act [Public Law 115-232 § 889(f)(1)] and 2 CFR § 200.216.
15. Title VI of the Civil Rights Act. As a condition of a grant award, the State and Sponsor, as applicable, shall demonstrate that it complies with the provisions of Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d et seq) and implementing regulations (49 CFR part 21), the Airport and Airway Improvement Act of 1982 (49 U.S.C. § 47123), the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794 et seq.), the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101, et seq.), U.S. Department of Transportation and Federal Aviation Administration (FAA) Assurances, and other relevant civil rights statutes, regulations, or authorities. This may include, as applicable, providing a current Title VI Program Plan and a Community Participation Plan (alternatively may be called a Public Participation Plan) to the FAA for approval, in the format and according to the timeline required by the FAA, and other information about the communities that will be benefited and impacted by the project. A completed FAA Title VI Pre-Grant Award Checklist is also required for every grant application, unless excused by the FAA. The State and Sponsor, if applicable, shall affirmatively ensure that when carrying out any project supported by this grant that it complies with all federal nondiscrimination and civil rights laws based on race, color, national origin (including limited English proficiency), sex (including sexual orientation and gender identity), creed, age, disability, genetic information, or environmental justice in consideration for federal financial assistance. The State and Sponsor, if applicable, who have not sufficiently demonstrated the conditions of compliance with civil rights requirements will be required to do so before receiving funds. The Department's and FAA's Office of Civil Rights may provide resources and technical assistance to recipients to ensure full and sustainable compliance with Federal civil rights requirements. Failure to comply with civil rights requirements will be considered a violation of the agreement or contract and be subject to any enforcement action as authorized by law.

### **PART III - Sponsor Responsibilities**

1. In accepting the Agreement, the Sponsor guarantees that:
  - a. it will comply with the Attachment A, Certification of Airport Fund, attached and

made a part of this Agreement; and

- b. it will comply with the Attachment B, Certification of Single Audit Requirements, attached and made a part of this Agreement; and
- c. it will comply with the Attachment D, Certification and Disclosure Regarding Potential Conflicts of Interests attached and made a part of this Agreement; and
- d. it will comply with the Attachment E, Airport Assurances (5/2022), attached and made a part of this Agreement; and
- e. it will, in the operation of the facility, comply with all applicable state and federal laws, rules, regulations, procedures, covenants and assurances required by the State of Texas or the FAA in connection with the federal grant; and
- f. the Airport or navigational facility which is the subject of this Agreement shall be controlled for a period of at least 20 years, and improvements made or acquired under this project shall be operated, repaired, and maintained in a safe and serviceable manner for the useful life of the improvements, not to exceed 20 years; and
- g. consistent with safety and security requirements, it shall make the airport or air navigational facility available to all types, kinds, and classes of aeronautical use without unjust discrimination between such types, kinds and classes and shall provide adequate public access during the term of this Agreement; and
- h. it shall not grant or permit anyone to exercise an exclusive right for the conduct of aeronautical activity on or about an airport landing area. Aeronautical activities include, but are not limited to scheduled airline flights, charter flights, flight instruction, aircraft sales, rental and repair, sale of aviation petroleum products and aerial applications. The landing area consists of runways or landing strips, taxiways, parking aprons, roads, airport lighting and navigational aids; and
- i. it shall not permit non-aeronautical use of airport facilities, unless noted on an approved Airport Layout Plan, without prior approval of the State/FAA. This includes but is not limited to the process of land disposal, any changes to the aeronautical or non-aeronautical land uses of the airport, land's deeded use from non-aeronautical to aeronautical, requests of concurrent use of land, interim use of land, approval of a release from obligations from the State/FAA, any of which will require 18 months, or longer; and
- j. it will not permit or enter any arrangement that results in permission for the owner or tenant of a property used as a residence, or zoned for residential use, to taxi an aircraft between that property and any location on airport; and
- k. it will acquire all property interests identified as needed for the purposes of this project and comply with all applicable state and federal laws, rules, regulations, procedures,

covenants and assurances required by the State of Texas or the FAA in connection with the federal grant in the acquisition of such property interests; and that airport property identified within the scope of this project and Attorney's Certificate of Airport Property Interests shall be pledged to airport use and shall not be removed from such use without prior written approval of the State; and

- l. the Sponsor shall submit to the State annual statements of airport revenues and expenses as requested; and
- m. all fees collected for the use of an airport or navigational facility constructed with funds provided under the program shall be reasonable and nondiscriminatory. The proceeds of such fees shall be used solely for the development, operation, and maintenance of the Sponsor's system of airport(s) or navigational facility(ites).
- n. an Airport Fund shall be established by resolution, order, or ordinance in the treasury of the Sponsor, or evidence of the prior creation of an existing airport fund or a properly executed copy of the resolution, order, or ordinance creating such a fund shall be submitted to the State. Such fund may be an account within another fund but must be accounted for in such a manner that all revenues, expenses, retained earnings, and balances in the account are discernible from other types of moneys identified in the fund as a whole. All fees, charges, rents, and money from any source derived from airport operations must be deposited in said Airport Fund and shall not be diverted to the general revenue fund or any other revenue fund of the Sponsor. All expenditures from the Airport Fund shall be solely for airport or airport system purposes. Sponsor shall be ineligible for a subsequent grant or loan by the State unless, prior to such subsequent approval of a grant or loan, Sponsor has complied with the requirements of this subparagraph; and
- o. for federally funded projects any revenue from airport property mineral rights be identified as airport revenue; deposited to the airport fund and used for airport operations; and
- p. the Sponsor must operate and maintain the lighting system during the useful life of the system in accordance with applicable FAA standards; and
- q. insofar as it is reasonable and within its power, Sponsor shall adopt and enforce zoning regulations to restrict the height of structures and use of land adjacent to or in the immediate vicinity of the airport to heights and activities compatible with normal airport operations as provided in Tex. Loc. Govt. Code Ann. §§ 241.001 et seq. (Vernon and Vernon Supp.). Sponsor shall also acquire and retain aviation easements or other property interests in or rights to use of land or airspace unless Sponsor can show that acquisition and retention of such interests will be impractical or will result in undue hardship to Sponsor. Sponsor shall be ineligible for a subsequent grant or loan by the State unless Sponsor has, prior to such subsequent approval of a grant or loan, adopted and passed an airport hazard zoning ordinance or order approved by the

State; and

- r. it will provide upon request of the State, the engineering or planning consultant, and the FAA copies of any maps, plans, or reports of the project site, applicable to or affecting the above project; and
  - s. after reasonable notice, it will permit the State, the FAA, and any consultants and contractors associated with this project, access to the project site, and will obtain permission for the State, the FAA, and consultants and contractors associated with this project, to enter private property for purposes necessary to this project; and
  - t. all development of an airport constructed with program funds shall be consistent with the Airport Layout Plan approved by the State and maintained by the Sponsor. A reproducible copy of such plan, and all subsequent modifications, shall be filed with the State for approval; and
  - u. it shall take all steps, including litigation, if necessary, to recover funds spent fraudulently, wastefully, or in violation of Federal antitrust statutes, or misused in any other manner in any project upon which Federal and State funds have been expended. For the purposes of this grant agreement, the term "funds" means funds, however used, or disbursed by the Sponsor or Agent that were originally paid pursuant to this or any other grant agreement. It shall obtain the approval of the State as to any determination of the amount of such funds. It shall return the recovered share, including funds recovered by settlement, order, or judgment, to the State. It shall furnish to the State, upon request, all documents and records pertaining to the determination of the amount of the funds or to any settlement, litigation, negotiation, or other efforts taken to recover such funds. All settlements or other final positions of the Sponsor, in court or otherwise, involving the recovery of such funds shall be approved in advance by the State.
2. The Sponsor certifies to the State that it will have acquired clear title in fee simple to all property upon which construction work is to be performed, or have acquired a leasehold on such property for a term of not less than 20 years, prior to the advertisement for bids for such construction or procurement of facilities that are part of the above project, and within the time frame of the project, a sufficient interest (easement or otherwise) in any other property which may be affected by the project.
3. The Sponsor, to the extent of its legal authority to do so, shall save harmless the State, the State's agents, employees or contractors from all claims and liability due to activities of the Sponsor, the Sponsor's agents or employees performed under this agreement. The Sponsor, to the extent of its legal authority to do so, shall also save harmless the State, the State's agents, employees, or contractors from any and all expenses, including attorney fees which might be incurred by the State in litigation or otherwise resisting said claim or liabilities which might be imposed on the State as the result of such activities by the Sponsor, the Sponsor's agents, or employees.



4. The Sponsor's acceptance of this Offer and ratification and adoption of the Agreement incorporated shall be evidenced by execution of this instrument by the Sponsor, as provided, and said Agreement shall comprise a contract, constituting the obligations and rights of the State of Texas and the Sponsor with respect to the accomplishment of the project and the operation and maintenance of the airport. Such Agreement shall become effective upon execution of this instrument and shall remain in full force and effect for a period of at least 20 years.
5. The Sponsor and not the State shall, for all purposes, be the "Sponsor" of the project identified above as defined in Title 49 U.S.C. Sponsor agrees to assume responsibility for operation of the facility in compliance with all applicable state and federal requirements including any statutes, rules, regulations, assurances, procedures, or any other directives before, during and after the completion of this project.
6. The Sponsor agrees to assume the responsibility to assure that all aspects of the grant and project are done in compliance with all applicable state and federal requirements including any statutes, rules, regulations, assurances, procedures, or any other directives, except as otherwise specifically provided herein.
7. Unless otherwise approved by the FAA, the Sponsor will not acquire or permit any contractor or subcontractor to acquire any steel or manufactured products produced outside the United States to be used for any project for airport development or noise compatibility for which funds are provided under this grant. The sponsor will include in every contract a provision implementing this special condition. The Sponsor agree to abide by applicable Executive Orders in effect at the time this Grant Agreement is executed, including Executive Order 14005, Ensuring the Future Is Made in All of America by All of America's Workers.
8. The Sponsor shall have on file with the State:
  - a. A current and approved Attorney's Certificate of Airport Property Interests and Exhibit A property map; and
  - b. Attachment C, Certification Regarding Drug-Free Workplace Requirements, attached and made a part of this agreement.
9. The Sponsor shall submit the following certifications, as appropriate, for compliance with statutory and administrative requirements of the federal grant:
  - a. Sponsor Certification for Selection of Consultants;
  - b. Sponsor Certification for Project Plans and Specifications;
  - c. Sponsor Certification for Equipment/Construction Contracts;

- d. Sponsor Certification for Construction Project Final Acceptance;
  - e. Sponsor Certification for Real Property Acquisition;
  - f. Sponsor Certification and Disclosure Regarding Potential Conflicts of Interest.
10. The Sponsor shall administer Disadvantage Business Enterprises (DBE) Program in accordance with federal regulations. They shall report the amount of participation to the State for the period ending September 30 of each year the grant is open no later than October 15 of each year the grant is open. In addition, semi-annual reports must be submitted for the period October 1 – March 31 and April 1 – September 30. Submission shall be made using Department of Transportation (DOT) Form 4630 “Report of DBE Goal Accomplishments” and a Report of Certified DBE Contractors Used on FAA Assisted Contracts.”
- Additionally, the Sponsor shall submit with each reimbursement or payment request form, the amount of DBE participation during the period of that request on TxDOT form “Subcontractor Monitoring System” and when appropriate “DBE Prime Contractor Payments to Non-DBE Subcontractors.”
11. The Sponsor shall retain in their files until the project is closed plus four years the following and submit to the state if requested:
- a. documentation of official designation of the consultant selection committee, evaluation criteria, scoring matrix and consultant ranking; and
  - b. if property acquisition is funded under this grant, documentation of the professional service contracts (e.g., surveyor and appraisal), and negotiation and settlement agreements; and
  - c. if reimbursement is sought for professional services contract: copies of the independent engineering fee analysis and negotiation summary, consultant contract; and
  - d. preliminary plans and final documents.
12. The Sponsor shall provide the State the following:
- a. consultant and project scope of work; and
  - b. advance notification of the all project meetings; and
  - c. acceptance of project.
13. Airport Layout Plan: The Sponsor understand and agree to update the Airport Layout Plan to reflect the construction to standards satisfactory to the FAA and submit it in final form to the

State or the FAA, as applicable. It is further mutually agreed that the reasonable cost of developing said Airport Layout Plan Map is an allowable cost within the scope of a project funded under this Grant Agreement. Airport Sponsor Grant Assurance 29 further addresses the Sponsor's statutory obligations to maintain an airport layout plan in accordance with 49 U.S.C. § 47107(a)(16).

14. Master Plan Coordination. The Sponsor agrees to coordinate this master planning study with metropolitan planning organizations, other local planning agencies, and with the State Airport System Plan prepared by the State's Department of Transportation and consider any pertinent information, data, projections, and forecasts which are currently available or as will become available. The Sponsor agrees to consider any State Clearinghouse comments and to furnish a copy of the final report to the State.
15. Consultant Contract and Cost Analysis. The Sponsor understands and agrees that no reimbursement will be made on the consultant contract portion of this Grant until the State has received the consultant contract, the Sponsor's analysis of costs, and the independent fee estimate.
16. Preliminary Scope of Work. This Grant is made and accepted upon the basis of a preliminary scope of work. The parties agree that within 30 days from the date of acceptance of this Grant, the Sponsor will furnish a final scope of work to the State and that no work will commence, nor will there be any contract signed for accomplishment of such work, until the final scope of work has been approved by the State. The Sponsor and the State further agree that any reference to the scope of work made in this Grant or in the project application is in respect to the final scope of work.
17. Airport Layout Plan (ALP) Coordination. The State or Sponsor has made available to (or will make available to) and has provided (or will provide) upon request to the metropolitan planning organization, if any, in the area in which the airport is located, a copy of the proposed ALP or ALP amendment to depict the project and a copy of any airport master plan in which the project is described or depicted.
18. Airports Geographic Information System (GIS) Survey. If the Airport's GIS survey is not reflected in the Airports Data Information Portal (ADIP) meeting FAA requirements within four (4) years from the date of grant execution, then the State or Sponsor may be required to repay that portion of this Grant related to survey work.
19. Usable Unit of Development. The FAA and the Sponsor agree this Grant only funds a portion of the overall project. The FAA makes no commitment of funding beyond what is provided herein. In accepting this award, the airport Sponsor understands and agrees that the work described in this Grant Agreement must be incorporated into a safe, useful, and usable unit of development completed within a reasonable timeframe [49 USC § 47106(a)(4)]. This

safe, useful, usable unit of development must be completed regardless of whether the Sponsor receives any additional federal funding.

#### **Part IV- Responsibilities of the State**

1. The Sponsor designates the State as the party to apply for, receive and disburse all funds used, or to be used, in payment of the costs of said project, or in reimbursement to either of the parties for costs incurred.
2. Responsibility of the State shall include, if appropriate, but not be limited to:
  - a. review project scope; and
  - a. verification of consultant selection process; and
  - b. review and concurrence with property acquisition procedures; and
  - c. review of planning documents and contracts.
  - d. receive, review, approve and process Sponsor's reimbursement requests for approved project costs.

#### **PART V - Recitals**

1. The Sponsor shall obtain an audit as required by federal or state regulations; and procure and forward to the State and FAA such specific project documentation as is necessary to complete all aspects of this project.
2. The Sponsor, and not the State, shall be the contractual party to all construction and professional service contracts entered into for the accomplishment of this project. The power of attorney, as granted by the Sponsor to the State in Part IV - Nomination of Agent, is a limited power to perform acts in connection with airport improvements as specified in or necessitated by this Agreement.
3. The Sponsor agrees to pursue and enforce contract items, which are required by federal and/or state regulations, laws and orders to insure satisfactory performance of contract vendors. Such items include, but are not limited to, bid bonds, payment bonds, and performance bonds. Pursuit and enforcement of contract items may require litigation and other remedies of law.
4. The United States and the State of Texas shall not be responsible or liable for damage to property or injury to persons, which may arise from, or be incident to, compliance with this

grant agreement.

5. This Agreement is executed for the sole benefit of the contracting parties and is not intended or executed for the direct or incidental benefit of any third party. Furthermore, the State shall not be a party to any other contract or commitment, which the Sponsor may enter into or assume, or have entered into or have assumed, in regard to the above project.
6. If the Sponsor fails to comply with the conditions of the grant, the State may, by written notice to the Sponsor, suspend the grant in whole or in part. The notice of suspension shall contain the following:
  - a. The reasons for the suspension and the corrective action necessary to lift the suspension;
  - b. A date by which the corrective action must be taken;
  - c. Notification that consideration will be given to terminating the grant after the corrective action date.

In the case of suspension or termination, the Sponsor may request the State to reconsider the suspension or termination. Such request for reconsideration shall be made within 45 days after receipt of the notice of suspension or termination.

7. This Agreement is subject to the applicable provisions of Title 49 U.S.C., the V.T.C.A. Transportation Code, Title 3, Chapters 21- 22, et seq., (Vernon and Vernon Supp.), and the Airport Zoning Act, Tex. Loc. Govt. Code Ann. §§ 241.001 et seq. (Vernon and Vernon Supp.). Failure to comply with the terms of this Agreement or with the aforementioned rules and statutes shall be considered a breach of this contract and will allow the State to pursue the remedies for breach as stated below.
  - a. Of primary importance to the State is compliance with the terms and conditions of this Agreement. If, however, after all reasonable attempts to require compliance have failed, the State finds that Sponsor is unwilling and/or unable to comply with any of the terms and conditions of this Agreement, the State may pursue any of the following remedies: (1) require a refund of any money expended pursuant to the Agreement herein, (2) deny Sponsor's future requests for aid, (3) request the Attorney General to bring suit seeking reimbursement of any money expended on the project pursuant to the Agreement herein, provided however, these remedies shall not limit the State's authority to enforce its rules, regulations or orders as otherwise provided by law, (4) declare this Agreement null and void, or (5) any other remedy available at law or in equity.
  - b. Venue for resolution by a court of competent jurisdiction of any dispute arising under the terms of this Agreement, or for enforcement of any of the provisions of this Agreement, is specifically set by Agreement of the parties in Travis County, Texas.

8. The State reserves the right to amend or withdraw this Agreement at any time prior to acceptance by the Sponsor. The acceptance period cannot be greater than 30 days after issuance unless extended by the State, which extension shall not be unreasonably denied or delayed.
9. This Agreement constitutes the full and total understanding of the parties concerning their rights and responsibilities in regard to this project and shall not be modified, amended, rescinded or revoked unless such modification, amendment, rescission or revocation is agreed to by both parties in writing and executed by both parties.
10. All commitments by the Sponsor and the State are subject to constitutional and statutory limitations and restrictions binding upon the Sponsor and the State (including §§ 5 and 7 of Article 11 of the Texas Constitution, if applicable) and to the availability of funds which lawfully may be applied.
11. The Sponsor's acceptance of this Agreement and ratification and adoption of the Airport Project Participation Agreement incorporated shall be evidenced by execution of this instrument by the Sponsor, as provided, and this Offer and Acceptance shall comprise a Grant Agreement, as provided by the Title 49 U.S.C., constituting the contractual obligations and rights of the United States, the State of Texas and the Sponsor with respect to the accomplishment of the Project and compliance with the assurances and conditions as provided herein. Such Grant Agreement shall become effective upon the State's written Notice to Proceed issued following execution of this agreement.
12. The state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under the contract or indirectly through a subcontract under the contract. Acceptance of funds directly under the contract or indirectly through a subcontract under this contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. An entity that is the subject of an audit or investigation must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.
13. Termination  
This agreement may be terminated in the following manner:
  - ◆ by mutual written agreement and consent of both parties;
  - ◆ by either party upon the failure of the other party to fulfill the obligations set forth herein;
  - ◆ by the State if it determines that the performance of the Project is not in the best interest of the State.

If the contract is terminated in accordance with the above provisions, the Sponsor will be responsible for the payment of Project costs incurred by the State on behalf of the Sponsor up to the time of termination.



- A. In the event the State determines that additional funding is required by the Sponsor at any time during the development of the Project, the State will notify the Sponsor in writing. The Sponsor will make payment to the State within thirty (30) days from receipt of the State's written notification.
- B. Upon completion of the Project, the State will perform an audit of the Project costs. Any funds due to the Sponsor, the State, or the Federal Government will be promptly paid by the owing party.
- C. In the event the Project is not completed, the State may seek reimbursement from the Sponsor of the expended funds. The Sponsor will remit the required funds to the State within sixty (60) days from receipt of the State's notification.
- D. The State will not pay interest on any funds provided by the Sponsor.
- E. The State will not execute the contract for the construction of the Project until the required funding has been made available by the Sponsor in accordance with this Agreement.

## **Part VI - Acceptance of the Sponsor**

City of Denton, Texas, does ratify and adopt all statements, representations, warranties, covenants and agreements constituting the described project and incorporated materials referred to in the Agreement, and does accept the Offer, and agrees to all of the terms and conditions of the Agreement.

City of Denton, Texas  
Sponsor

\_\_\_\_\_  
Sponsor Signature

\_\_\_\_\_  
Sponsor Title

\_\_\_\_\_  
Date

## **Certificate of Sponsor's Attorney**

I, \_\_\_\_\_, acting as attorney for \_\_\_\_\_, Texas, do certify that I have fully examined the Agreement and the proceedings taken by the Sponsor relating, and find that the manner of acceptance and execution, of the Agreement by the Sponsor, is in accordance with the laws of the State of Texas.

\_\_\_\_\_  
Attorney Signature

\_\_\_\_\_  
Date

## **Part VII - Acceptance of the State**

Executed by and approved for the Texas Transportation Commission for the purpose and effect of activating and/or carrying out the orders, established policies or work programs and grants heretofore approved and authorized by the Texas Transportation Commission.

STATE OF TEXAS  
TEXAS DEPARTMENT OF TRANSPORTATION

By: \_\_\_\_\_

Title: Director, Aviation Division

Date: \_\_\_\_\_

ATTACHMENT A

**CERTIFICATION OF AIRPORT FUND**

The Sponsor does certify that an Airport Fund has been established for the Sponsor, and that all fees, charges, rents, and money from any source derived from airport operations will be deposited for the benefit of the Airport Fund and will not be diverted for other general revenue fund expenditures or any other special fund of the Sponsor and that all expenditures from the Fund will be solely for airport purposes. Such fund may be an account as part of another fund, but must be accounted for in such a manner that all revenues, expenses, retained earnings, and balances in the account are discernible from other types of moneys identified in the fund as a whole.

City of Denton, Texas  
(Sponsor)

By: \_\_\_\_\_

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

Date: \_\_\_\_\_

ATTACHMENT B

**Certification of Single Audit Requirements**

City of Denton will comply with all requirements of the 2 CFR 200 Super Circular if the City of Denton spends more than \$750,000 in any funding sources during this fiscal year. And in following those requirements the City of Denton will submit the report to the audit division of the Texas Department of Transportation. If your entity did not meet the threshold of \$750,000.00 in expenditures, please submit a letter indicating that your entity is not required to have an audit performed for FY \_\_\_\_.

\_\_\_\_\_  
Signature of Designated Representative

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

ATTACHMENT C

**CERTIFICATION REGARDING DRUG-FREE WORKPLACE REQUIREMENTS**

- A. The grantee certifies that it will or will continue to provide a drug-free workplace by:
- (a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;
  - (b) Establishing an ongoing drug-free awareness program to inform employees about-
    - (1) The dangers of drug abuse in the workplace;
    - (2) The grantee's policy of maintaining a drug-free workplace;
    - (3) Any available drug counseling, rehabilitation, and employee assistance programs; and
    - (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
  - (c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);
  - (d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will-
    - (1) Abide by the terms of the statement; and
    - (2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;
  - (e) Notifying the agency in writing, within ten calendar days after receiving notice under paragraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notices shall include the identification number(s) of each affected grant;
  - (f) Taking one of the following actions, within 30 calendar days of receiving notice under paragraph (d)(2), with respect to any employee who is so convicted-
    - (1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or
    - (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;
  - (g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f),

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

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Check \_\_\_\_ if there are workplaces on file that are not identified here.

Signed: \_\_\_\_\_ Dated: \_\_\_\_\_

\_\_\_\_\_  
Title of Sponsor Representative



## Attachment D

### Certification and Disclosure Regarding Potential Conflicts of Interest Certification Form

A sponsor must disclose in writing any potential conflict of interest to the Texas Department of Transportation. No employee, officer or agent of the sponsor shall participate in selection, or in the award or administration of a contract supported by federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

1. The employee, officer or agent,
2. Any member of his immediate family,
3. His or her partner, or
4. An organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award. The sponsor's officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subagreements.

Sponsor may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by state or local law or regulations, such standards or conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the grantee's and subgrant recipient's officers, employees, or agents, or by contractors or their agents.

The sponsor must maintain a written code of standards of conduct governing the performance of their employees engaged in the award and administration of contracts.

1. By checking "Yes," the sponsor certifies that it does not have any potential conflict of interest or Significant Financial Interests. By checking "No," the sponsor discloses that it does have a potential conflict of interest, which is further explained below.

☐ Yes ☐ No

2. The sponsor maintains a written code of standards of conduct governing the performance of their employees engaged in the award and administration of contracts. By checking "No", the sponsor discloses that it does not have a written policy, which is further explained below.

☐ Yes ☐ No

3. Explanation of items marked "no":

#### Sponsor's Certification

I certify, for the project identified herein, responses to the forgoing items are accurate as marked and have the explanation for any item marked "no" is correct and complete.

I declare under penalty of perjury that the foregoing is true and correct. I understand that knowingly and willfully providing false information to the federal government is a violation of 18 USC § 1001 (False Statements) and could subject me to fines, imprisonment, or both.

**Signature** of Sponsor's Designated Official Representative: \_\_\_\_\_

**Date:** \_\_\_\_\_

**ASSURANCES**  
**AIRPORT SPONSORS**  
**5/2022**

**A. General.**

1. These assurances shall be complied with in the performance of grant agreements for airport development, airport planning, and noise compatibility program grants for airport sponsors.
2. These assurances are required to be submitted as part of the project application by sponsors requesting funds under the provisions of Public Law 117-58, Division J, Title VIII, as amended. As used herein, the term "public agency sponsor" means a public agency with control of a public-use airport; the term "private sponsor" means a private owner of a public-use airport; and the term "sponsor" includes both public agency sponsors and private sponsors.
3. Upon acceptance of this grant offer by the sponsor, these assurances are incorporated in and become part of this Grant Agreement.

**B. Duration and Applicability.**

1. **Airport development or Noise Compatibility Program Projects Undertaken by a Public Agency Sponsor.**

The terms, conditions and assurances of this Grant Agreement shall remain in full force and effect throughout the useful life of the facilities developed or equipment acquired for an airport development or noise compatibility program project, or throughout the useful life of the project items installed within a facility under a noise compatibility program project, but in any event not to exceed twenty (20) years from the date of acceptance of a grant offer of Federal funds for the project. However, there shall be no limit on the duration of the assurances regarding Exclusive Rights and Airport Revenue so long as the airport is used as an airport. There shall be no limit on the duration of the terms, conditions, and assurances with respect to real property acquired with federal funds. Furthermore, the duration of the Civil Rights assurance shall be specified in the assurances.

2. **Airport Development or Noise Compatibility Projects Undertaken by a Private Sponsor.**

The preceding paragraph (1) also applies to a private sponsor except that the useful life of project items installed within a facility or the useful life of the facilities developed or equipment acquired under an airport development or noise compatibility program project shall be no less than ten (10) years from the date of acceptance of Federal aid for the project.

3. **Airport Planning Undertaken by a Sponsor.**

Unless otherwise specified in this Grant Agreement, only Assurances 1, 2, 3, 5, 6, 13, 18, 23, 25, 30, 32, 33, 34, and 37 in Section C apply to planning projects. The terms, conditions, and assurances of this Grant Agreement shall remain in full

force and effect during the life of the project; there shall be no limit on the duration of the assurances regarding Exclusive Rights and Airport Revenue so long as the airport is used as an airport.

**C. Sponsor Certification.**

The sponsor hereby assures and certifies, with respect to this grant that:

**1. General Federal Requirements**

It will comply with all applicable Federal laws, regulations, executive orders, policies, guidelines, and requirements as they relate to the application, acceptance, and use of Federal funds for this Grant including but not limited to the following:

**FEDERAL LEGISLATION**

- a. 49 U.S.C. subtitle VII, as amended.
- b. Davis-Bacon Act, as amended — 40 U.S.C. §§ 3141-3144, 3146, and 3147, et seq.<sup>1</sup>
- c. Federal Fair Labor Standards Act - 29 U.S.C. § 201, et seq.
- d. Hatch Act – 5 U.S.C. § 1501, et seq.<sup>2</sup>
- e. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. § 4601, et seq.<sup>1, 2</sup>
- f. National Historic Preservation Act of 1966 – Section 106 - 54 U.S.C. § 306108.<sup>1</sup>
- g. Archeological and Historic Preservation Act of 1974 - 54 U.S.C. § 312501, et seq.<sup>1</sup>
- h. Native Americans Grave Repatriation Act - 25 U.S.C. Section § 3001, et seq.
- i. Clean Air Act, P.L. 90-148, as amended - 42 U.S.C. § 7401, et seq.
- j. Coastal Zone Management Act, P.L. 92-583, as amended - 16 U.S.C. § 1451, et seq.
- k. Flood Disaster Protection Act of 1973 – Section 102(a) - 42 U.S.C. § 4012a.<sup>1</sup>
- l. 49 U.S.C. § 303, (formerly known as Section 4(f))
- m. Rehabilitation Act of 1973 - 29 U.S.C. § 794.
- n. Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
- o. Americans with Disabilities Act of 1990, as amended, (42 U.S.C. § 12101 et seq.) (prohibits discrimination on the basis of disability).
- p. Age Discrimination Act of 1975 - 42 U.S.C. § 6101, et seq.
- q. American Indian Religious Freedom Act, P.L. 95-341, as amended.
- r. Architectural Barriers Act of 1968, as amended - 42 U.S.C. § 4151, et seq.<sup>1</sup>
- s. Powerplant and Industrial Fuel Use Act of 1978 – Section 403 - 42 U.S.C. § 8373.<sup>1</sup>
- t. Contract Work Hours and Safety Standards Act - 40 U.S.C. § 3701, et seq.<sup>1</sup>
- u. Copeland Anti-kickback Act - 18 U.S.C. § 874.<sup>1</sup>
- v. National Environmental Policy Act of 1969 - 42 U.S.C. § 4321, et seq.<sup>1</sup>

- w. Wild and Scenic Rivers Act, P.L. 90-542, as amended – 16 U.S.C. § 1271, et seq.
- x. Single Audit Act of 1984 - 31 U.S.C. § 7501, et seq.<sup>2</sup>
- y. Drug-Free Workplace Act of 1988 - 41 U.S.C. §§ 8101 through 8105.
- z. The Federal Funding Accountability and Transparency Act of 2006, as amended (Pub.L. 109-282, as amended by section 6202 of P.L. 110-252).
- aa. Civil Rights Restoration Act of 1987, P.L. 100-259.
- bb. Build America, Buy America Act, P.L. 117-58, Title IX.

#### **EXECUTIVE ORDERS**

- a. Executive Order 11246 – Equal Employment Opportunity<sup>1</sup>
- b. Executive Order 11990 – Protection of Wetlands
- c. Executive Order 11998 – Flood Plain Management
- d. Executive Order 12372 – Intergovernmental Review of Federal Programs
- e. Executive Order 12699 – Seismic Safety of Federal and Federally Assisted New Building Construction<sup>1</sup>
- f. Executive Order 12898 – Environmental Justice
- g. Executive Order 13166 – Improving Access to Services for Persons with Limited English Proficiency
- h. Executive Order 13985 – Executive Order on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government
- i. Executive Order 13988 – Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation
- j. Executive Order 14005 – Ensuring the Future is Made in all of America by All of America’s Workers
- k. Executive Order 14008 – Tackling the Climate Crisis at Home and Abroad

#### **FEDERAL REGULATIONS**

- a. 2 CFR Part 180 – OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement).
- b. 2 CFR Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.<sup>4, 5</sup>
- c. 2 CFR Part 1200 – Nonprocurement Suspension and Debarment.
- d. 14 CFR Part 13 – Investigative and Enforcement Procedures.
- e. 14 CFR Part 16 – Rules of Practice for Federally-Assisted Airport Enforcement Proceedings.
- f. 14 CFR Part 150 – Airport Noise Compatibility Planning.
- g. 28 CFR Part 35 – Nondiscrimination on the Basis of Disability in State and Local Government Services.
- h. 28 CFR § 50.3 – U.S. Department of Justice Guidelines for the Enforcement of Title VI of the Civil Rights Act of 1964.
- i. 29 CFR Part 1 – Procedures for Predetermination of Wage Rates.<sup>1</sup>

- j. 29 CFR Part 3 – Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States.<sup>1</sup>
- k. 29 CFR Part 5 – Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (Also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act).<sup>1</sup>
- l. 41 CFR Part 60 – Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor (Federal and Federally-assisted contracting requirements).<sup>1</sup>
- m. 49 CFR Part 20 – New Restrictions on Lobbying.
- n. 49 CFR Part 21 – Nondiscrimination in Federally-Assisted Programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964.
- o. 49 CFR Part 23 – Participation by Disadvantage Business Enterprise in Airport Concessions.
- p. 49 CFR Part 24 – Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally-Assisted Programs.<sup>1, 2</sup>
- q. 49 CFR Part 26 – Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs.
- r. 49 CFR Part 27 – Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance.<sup>1</sup>
- s. 49 CFR Part 28 – Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the Department of Transportation.
- t. 49 CFR Part 30 – Denial of Public Works Contracts to Suppliers of Goods and Services of Countries That Deny Procurement Market Access to U.S. Contractors.
- u. 49 CFR Part 32 – Governmentwide Requirements for Drug-Free Workplace (Financial Assistance).
- v. 49 CFR Part 37 – Transportation Services for Individuals with Disabilities (ADA).
- w. 49 CFR Part 38 – Americans with Disabilities Act (ADA) Accessibility Specifications for Transportation Vehicles.
- x. 49 CFR Part 41 – Seismic Safety.

#### **FOOTNOTES TO ASSURANCE (C)(1)**

<sup>1</sup> These laws do not apply to airport planning sponsors.

<sup>2</sup> These laws do not apply to private sponsors.

<sup>3</sup> 2 CFR Part 200 contains requirements for State and Local Governments receiving Federal assistance. Any requirement levied upon State and Local Governments by this regulation shall apply where applicable to private sponsors receiving Federal assistance under Title 49, United States Code.

<sup>4</sup> Cost principles established in 2 CFR part 200 subpart E must be used as guidelines for determining the eligibility of specific types of expenses.

<sup>5</sup> Audit requirements established in 2 CFR part 200 subpart F are the guidelines for audits.

#### **SPECIFIC ASSURANCES**

Specific assurances required to be included in grant agreements by any of the above laws, regulations or circulars are incorporated by reference in this Grant Agreement.

## **2. Responsibility and Authority of the Sponsor.**

### **a. Public Agency Sponsor:**

It has legal authority to apply for this Grant, and to finance and carry out the proposed project; that a resolution, motion or similar action has been duly adopted or passed as an official act of the applicant's governing body authorizing the filing of the application, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the applicant to act in connection with the application and to provide such additional information as may be required.

### **b. Private Sponsor:**

It has legal authority to apply for this Grant and to finance and carry out the proposed project and comply with all terms, conditions, and assurances of this Grant Agreement. It shall designate an official representative and shall in writing direct and authorize that person to file this application, including all understandings and assurances contained therein; to act in connection with this application; and to provide such additional information as may be required.

## **3. Sponsor Fund Availability.**

It has sufficient funds available for that portion of the project costs which are not to be paid by the United States. It has sufficient funds available to assure operation and maintenance of items funded under this Grant Agreement which it will own or control.

## **4. Good Title.**

- a. It, a public agency or the Federal government, holds good title, satisfactory to the Secretary, to the landing area of the airport or site thereof, or will give assurance satisfactory to the Secretary that good title will be acquired.
- b. For noise compatibility program projects to be carried out on the property of the sponsor, it holds good title satisfactory to the Secretary to that portion of the property upon which Federal funds will be expended or will give assurance to the Secretary that good title will be obtained.

## **5. Preserving Rights and Powers.**

- a. It will not take or permit any action which would operate to deprive it of any of the rights and powers necessary to perform any or all of the terms, conditions, and assurances in this Grant Agreement without the written approval of the Secretary, and will act promptly to acquire, extinguish or modify any outstanding rights or claims of right of others which would interfere with such performance by the sponsor. This shall be done in a manner acceptable to the Secretary.
- b. Subject to the FAA Act of 2018, Public Law 115-254, Section 163, it will not sell, lease, encumber, or otherwise transfer or dispose of any part of its title or other interests in the property shown on Exhibit A to this application or, for a noise compatibility program project, that portion of the property upon which Federal funds have been expended, for the duration of the terms, conditions, and assurances in this Grant Agreement without approval by the Secretary. If the



transferee is found by the Secretary to be eligible under Title 49, United States Code, to assume the obligations of this Grant Agreement and to have the power, authority, and financial resources to carry out all such obligations, the sponsor shall insert in the contract or document transferring or disposing of the sponsor's interest, and make binding upon the transferee all of the terms, conditions, and assurances contained in this Grant Agreement.

- c. For all noise compatibility program projects which are to be carried out by another unit of local government or are on property owned by a unit of local government other than the sponsor, it will enter into an agreement with that government. Except as otherwise specified by the Secretary, that agreement shall obligate that government to the same terms, conditions, and assurances that would be applicable to it if it applied directly to the FAA for a grant to undertake the noise compatibility program project. That agreement and changes thereto must be satisfactory to the Secretary. It will take steps to enforce this agreement against the local government if there is substantial non-compliance with the terms of the agreement.
- d. For noise compatibility program projects to be carried out on privately owned property, it will enter into an agreement with the owner of that property which includes provisions specified by the Secretary. It will take steps to enforce this agreement against the property owner whenever there is substantial non-compliance with the terms of the agreement.
- e. If the sponsor is a private sponsor, it will take steps satisfactory to the Secretary to ensure that the airport will continue to function as a public-use airport in accordance with these assurances for the duration of these assurances.
- f. If an arrangement is made for management and operation of the airport by any agency or person other than the sponsor or an employee of the sponsor, the sponsor will reserve sufficient rights and authority to ensure that the airport will be operated and maintained in accordance with Title 49, United States Code, the regulations and the terms, conditions and assurances in this Grant Agreement and shall ensure that such arrangement also requires compliance therewith.
- g. Sponsors of commercial service airports will not permit or enter into any arrangement that results in permission for the owner or tenant of a property used as a residence, or zoned for residential use, to taxi an aircraft between that property and any location on airport. Sponsors of general aviation airports entering into any arrangement that results in permission for the owner of residential real property adjacent to or near the airport must comply with the requirements of 49 U.S.C. § 47107(s) and the sponsor assurances.

#### **6. Consistency with Local Plans.**

The project is reasonably consistent with plans (existing at the time of submission of this application) of public agencies that are authorized by the State in which the project is located to plan for the development of the area surrounding the airport.

**7. Consideration of Local Interest.**

It has given fair consideration to the interest of communities in or near where the project may be located.

**8. Consultation with Users.**

In making a decision to undertake any airport development project under Title 49, United States Code, it has undertaken reasonable consultations with affected parties using the airport at which project is proposed.

**9. Public Hearings.**

In projects involving the location of an airport, an airport runway, or a major runway extension, it has afforded the opportunity for public hearings for the purpose of considering the economic, social, and environmental effects of the airport or runway location and its consistency with goals and objectives of such planning as has been carried out by the community and it shall, when requested by the Secretary, submit a copy of the transcript of such hearings to the Secretary. Further, for such projects, it has on its management board either voting representation from the communities where the project is located or has advised the communities that they have the right to petition the Secretary concerning a proposed project.

**10. Metropolitan Planning Organization.**

In projects involving the location of an airport, an airport runway, or a major runway extension at a medium or large hub airport, the sponsor has made available to and has provided upon request to the metropolitan planning organization in the area in which the airport is located, if any, a copy of the proposed amendment to the airport layout plan to depict the project and a copy of any airport master plan in which the project is described or depicted.

**11. Pavement Preventive Maintenance.**

With respect to a project approved after January 1, 1995, for the replacement or reconstruction of pavement at the airport, it assures or certifies that it has implemented an effective airport pavement maintenance-management program and it assures that it will use such program for the useful life of any pavement constructed, reconstructed or repaired with Federal financial assistance at the airport. It will provide such reports on pavement condition and pavement management programs as the Secretary determines may be useful.

**12. Terminal Development Prerequisites.**

For projects which include terminal development at a public use airport, as defined in Title 49, it has, on the date of submittal of the project grant application, all the safety equipment required for certification of such airport under 49 U.S.C. § 44706, and all the security equipment required by rule or regulation, and has provided for access to the passenger enplaning and deplaning area of such airport to passengers enplaning and deplaning from aircraft other than air carrier aircraft.

**13. Accounting System, Audit, and Record Keeping Requirements.**

- a. It shall keep all project accounts and records which fully disclose the amount and disposition by the recipient of the proceeds of this Grant, the total cost of the project in connection with which this Grant is given or used, and the amount or

nature of that portion of the cost of the project supplied by other sources, and such other financial records pertinent to the project. The accounts and records shall be kept in accordance with an accounting system that will facilitate an effective audit in accordance with the Single Audit Act of 1984.

- b. It shall make available to the Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, for the purpose of audit and examination, any books, documents, papers, and records of the recipient that are pertinent to this Grant. The Secretary may require that an appropriate audit be conducted by a recipient. In any case in which an independent audit is made of the accounts of a sponsor relating to the disposition of the proceeds of a grant or relating to the project in connection with which this Grant was given or used, it shall file a certified copy of such audit with the Comptroller General of the United States not later than six (6) months following the close of the fiscal year for which the audit was made.

#### **14. Minimum Wage Rates.**

It shall include, in all contracts in excess of \$2,000 for work on any projects funded under this Grant Agreement which involve labor, provisions establishing minimum rates of wages, to be predetermined by the Secretary of Labor under 40 U.S.C. §§ 3141-3144, 3146, and 3147, Public Building, Property, and Works), which contractors shall pay to skilled and unskilled labor, and such minimum rates shall be stated in the invitation for bids and shall be included in proposals or bids for the work.

#### **15. Veteran's Preference.**

It shall include in all contracts for work on any project funded under this Grant Agreement which involve labor, such provisions as are necessary to insure that, in the employment of labor (except in executive, administrative, and supervisory positions), preference shall be given to Vietnam era veterans, Persian Gulf veterans, Afghanistan-Iraq war veterans, disabled veterans, and small business concerns owned and controlled by disabled veterans as defined in 49 U.S.C. § 47112. However, this preference shall apply only where the individuals are available and qualified to perform the work to which the employment relates.

#### **16. Conformity to Plans and Specifications.**

It will execute the project subject to plans, specifications, and schedules approved by the Secretary. Such plans, specifications, and schedules shall be submitted to the Secretary prior to commencement of site preparation, construction, or other performance under this Grant Agreement, and, upon approval of the Secretary, shall be incorporated into this Grant Agreement. Any modification to the approved plans, specifications, and schedules shall also be subject to approval of the Secretary, and incorporated into this Grant Agreement.

#### **17. Construction Inspection and Approval.**

It will provide and maintain competent technical supervision at the construction site throughout the project to assure that the work conforms to the plans, specifications, and schedules approved by the Secretary for the project. It shall subject the construction work on any project contained in an approved project application to inspection and approval by the Secretary and such work shall be in accordance with regulations and procedures prescribed by

the Secretary. Such regulations and procedures shall require such cost and progress reporting by the sponsor or sponsors of such project as the Secretary shall deem necessary.

#### **18. Planning Projects.**

In carrying out planning projects:

- a. It will execute the project in accordance with the approved program narrative contained in the project application or with the modifications similarly approved.
- b. It will furnish the Secretary with such periodic reports as required pertaining to the planning project and planning work activities.
- c. It will include in all published material prepared in connection with the planning project a notice that the material was prepared under a grant provided by the United States.
- d. It will make such material available for examination by the public, and agrees that no material prepared with funds under this project shall be subject to copyright in the United States or any other country.
- e. It will give the Secretary unrestricted authority to publish, disclose, distribute, and otherwise use any of the material prepared in connection with this grant.
- f. It will grant the Secretary the right to disapprove the sponsor's employment of specific consultants and their subcontractors to do all or any part of this project as well as the right to disapprove the proposed scope and cost of professional services.
- g. It will grant the Secretary the right to disapprove the use of the sponsor's employees to do all or any part of the project.
- h. It understands and agrees that the Secretary's approval of this project grant or the Secretary's approval of any planning material developed as part of this grant does not constitute or imply any assurance or commitment on the part of the Secretary to approve any pending or future application for a Federal airport grant.

#### **19. Operation and Maintenance.**

- a. The airport and all facilities which are necessary to serve the aeronautical users of the airport, other than facilities owned or controlled by the United States, shall be operated at all times in a safe and serviceable condition and in accordance with the minimum standards as may be required or prescribed by applicable Federal, State and local agencies for maintenance and operation. It will not cause or permit any activity or action thereon which would interfere with its use for airport purposes. It will suitably operate and maintain the airport and all facilities thereon or connected therewith, with due regard to climatic and flood conditions. Any proposal to temporarily close the airport for non-aeronautical purposes must first be approved by the Secretary. In furtherance of this assurance, the sponsor will have in effect arrangements for:
  1. Operating the airport's aeronautical facilities whenever required;
  2. Promptly marking and lighting hazards resulting from airport conditions, including temporary conditions; and

3. Promptly notifying aviators of any condition affecting aeronautical use of the airport. Nothing contained herein shall be construed to require that the airport be operated for aeronautical use during temporary periods when snow, flood, or other climatic conditions interfere with such operation and maintenance. Further, nothing herein shall be construed as requiring the maintenance, repair, restoration, or replacement of any structure or facility which is substantially damaged or destroyed due to an act of God or other condition or circumstance beyond the control of the sponsor.
- b. It will suitably operate and maintain noise compatibility program items that it owns or controls upon which Federal funds have been expended.

#### **20. Hazard Removal and Mitigation.**

It will take appropriate action to assure that such terminal airspace as is required to protect instrument and visual operations to the airport (including established minimum flight altitudes) will be adequately cleared and protected by removing, lowering, relocating, marking, or lighting or otherwise mitigating existing airport hazards and by preventing the establishment or creation of future airport hazards.

#### **21. Compatible Land Use.**

It will take appropriate action, to the extent reasonable, including the adoption of zoning laws, to restrict the use of land adjacent to or in the immediate vicinity of the airport to activities and purposes compatible with normal airport operations, including landing and takeoff of aircraft. In addition, if the project is for noise compatibility program implementation, it will not cause or permit any change in land use, within its jurisdiction, that will reduce its compatibility, with respect to the airport, of the noise compatibility program measures upon which Federal funds have been expended.

#### **22. Economic Nondiscrimination.**

- a. It will make the airport available as an airport for public use on reasonable terms and without unjust discrimination to all types, kinds and classes of aeronautical activities, including commercial aeronautical activities offering services to the public at the airport.
- b. In any agreement, contract, lease, or other arrangement under which a right or privilege at the airport is granted to any person, firm, or corporation to conduct or to engage in any aeronautical activity for furnishing services to the public at the airport, the sponsor will insert and enforce provisions requiring the contractor to:
  1. Furnish said services on a reasonable, and not unjustly discriminatory, basis to all users thereof, and
  2. Charge reasonable, and not unjustly discriminatory, prices for each unit or service, provided that the contractor may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers.
- c. Each fixed-based operator at the airport shall be subject to the same rates, fees, rentals, and other charges as are uniformly applicable to all other fixed-based

operators making the same or similar uses of such airport and utilizing the same or similar facilities.

- d. Each air carrier using such airport shall have the right to service itself or to use any fixed-based operator that is authorized or permitted by the airport to serve any air carrier at such airport.
- e. Each air carrier using such airport (whether as a tenant, non-tenant, or subtenant of another air carrier tenant) shall be subject to such nondiscriminatory and substantially comparable rules, regulations, conditions, rates, fees, rentals, and other charges with respect to facilities directly and substantially related to providing air transportation as are applicable to all such air carriers which make similar use of such airport and utilize similar facilities, subject to reasonable classifications such as tenants or non-tenants and signatory carriers and non-signatory carriers. Classification or status as tenant or signatory shall not be unreasonably withheld by any airport provided an air carrier assumes obligations substantially similar to those already imposed on air carriers in such classification or status.
- f. It will not exercise or grant any right or privilege which operates to prevent any person, firm, or corporation operating aircraft on the airport from performing any services on its own aircraft with its own employees (including, but not limited to maintenance, repair, and fueling) that it may choose to perform.
- g. In the event the sponsor itself exercises any of the rights and privileges referred to in this assurance, the services involved will be provided on the same conditions as would apply to the furnishing of such services by commercial aeronautical service providers authorized by the sponsor under these provisions.
- h. The sponsor may establish such reasonable, and not unjustly discriminatory, conditions to be met by all users of the airport as may be necessary for the safe and efficient operation of the airport.
- i. The sponsor may prohibit or limit any given type, kind or class of aeronautical use of the airport if such action is necessary for the safe operation of the airport or necessary to serve the civil aviation needs of the public.

### **23. Exclusive Rights.**

It will permit no exclusive right for the use of the airport by any person providing, or intending to provide, aeronautical services to the public. For purposes of this paragraph, the providing of the services at an airport by a single fixed-based operator shall not be construed as an exclusive right if both of the following apply:

- a. It would be unreasonably costly, burdensome, or impractical for more than one fixed-based operator to provide such services, and
- b. If allowing more than one fixed-based operator to provide such services would require the reduction of space leased pursuant to an existing agreement between such single fixed-based operator and such airport. It further agrees that it will not, either directly or indirectly, grant or permit any person, firm, or corporation, the exclusive right at the airport to conduct any aeronautical activities, including, but

not limited to charter flights, pilot training, aircraft rental and sightseeing, aerial photography, crop dusting, aerial advertising and surveying, air carrier operations, aircraft sales and services, sale of aviation petroleum products whether or not conducted in conjunction with other aeronautical activity, repair and maintenance of aircraft, sale of aircraft parts, and any other activities which because of their direct relationship to the operation of aircraft can be regarded as an aeronautical activity, and that it will terminate any exclusive right to conduct an aeronautical activity now existing at such an airport before the grant of any assistance under Title 49, United States Code.

#### **24. Fee and Rental Structure.**

It will maintain a fee and rental structure for the facilities and services at the airport which will make the airport as self-sustaining as possible under the circumstances existing at the particular airport, taking into account such factors as the volume of traffic and economy of collection. No part of the Federal share of an airport development, airport planning or noise compatibility project for which a Grant is made under Title 49, United States Code, the Airport and Airway Improvement Act of 1982, the Federal Airport Act or the Airport and Airway Development Act of 1970 shall be included in the rate basis in establishing fees, rates, and charges for users of that airport.

#### **25. Airport Revenues.**

- a. All revenues generated by the airport and any local taxes on aviation fuel established after December 30, 1987, will be expended by it for the capital or operating costs of the airport; the local airport system; or other local facilities which are owned or operated by the owner or operator of the airport and which are directly and substantially related to the actual air transportation of passengers or property; or for noise mitigation purposes on or off the airport. The following exceptions apply to this paragraph:
  1. If covenants or assurances in debt obligations issued before September 3, 1982, by the owner or operator of the airport, or provisions enacted before September 3, 1982, in governing statutes controlling the owner or operator's financing, provide for the use of the revenues from any of the airport owner or operator's facilities, including the airport, to support not only the airport but also the airport owner or operator's general debt obligations or other facilities, then this limitation on the use of all revenues generated by the airport (and, in the case of a public airport, local taxes on aviation fuel) shall not apply.
  2. If the Secretary approves the sale of a privately owned airport to a public sponsor and provides funding for any portion of the public sponsor's acquisition of land, this limitation on the use of all revenues generated by the sale shall not apply to certain proceeds from the sale. This is conditioned on repayment to the Secretary by the private owner of an amount equal to the remaining unamortized portion (amortized over a 20-year period) of any airport improvement grant made to the private owner for any purpose other than land



acquisition on or after October 1, 1996, plus an amount equal to the federal share of the current fair market value of any land acquired with an airport improvement grant made to that airport on or after October 1, 1996.

3. Certain revenue derived from or generated by mineral extraction, production, lease, or other means at a general aviation airport (as defined at 49 U.S.C. § 47102), if the FAA determines the airport sponsor meets the requirements set forth in Section 813 of Public Law 112-95.
- b. As part of the annual audit required under the Single Audit Act of 1984, the sponsor will direct that the audit will review, and the resulting audit report will provide an opinion concerning, the use of airport revenue and taxes in paragraph (a), and indicating whether funds paid or transferred to the owner or operator are paid or transferred in a manner consistent with Title 49, United States Code and any other applicable provision of law, including any regulation promulgated by the Secretary or Administrator.
- c. Any civil penalties or other sanctions will be imposed for violation of this assurance in accordance with the provisions of 49 U.S.C. § 47107.

## **26. Reports and Inspections.**

It will:

- a. submit to the Secretary such annual or special financial and operations reports as the Secretary may reasonably request and make such reports available to the public; make available to the public at reasonable times and places a report of the airport budget in a format prescribed by the Secretary;
- b. for airport development projects, make the airport and all airport records and documents affecting the airport, including deeds, leases, operation and use agreements, regulations and other instruments, available for inspection by any duly authorized agent of the Secretary upon reasonable request;
- c. for noise compatibility program projects, make records and documents relating to the project and continued compliance with the terms, conditions, and assurances of this Grant Agreement including deeds, leases, agreements, regulations, and other instruments, available for inspection by any duly authorized agent of the Secretary upon reasonable request; and
- d. in a format and time prescribed by the Secretary, provide to the Secretary and make available to the public following each of its fiscal years, an annual report listing in detail:
  1. all amounts paid by the airport to any other unit of government and the purposes for which each such payment was made; and
  2. all services and property provided by the airport to other units of government and the amount of compensation received for provision of each such service and property.

## **27. Use by Government Aircraft.**

It will make available all of the facilities of the airport developed with Federal financial assistance and all those usable for landing and takeoff of aircraft to the United States for use by Government aircraft in common with other aircraft at all times without charge, except, if the use by Government aircraft is substantial, charge may be made for a reasonable share, proportional to such use, for the cost of operating and maintaining the facilities used. Unless otherwise determined by the Secretary, or otherwise agreed to by the sponsor and the using agency, substantial use of an airport by Government aircraft will be considered to exist when operations of such aircraft are in excess of those which, in the opinion of the Secretary, would unduly interfere with use of the landing areas by other authorized aircraft, or during any calendar month that:

- a. Five (5) or more Government aircraft are regularly based at the airport or on land adjacent thereto; or
- b. The total number of movements (counting each landing as a movement) of Government aircraft is 300 or more, or the gross accumulative weight of Government aircraft using the airport (the total movement of Government aircraft multiplied by gross weights of such aircraft) is in excess of five million pounds.

## **28. Land for Federal Facilities.**

It will furnish without cost to the Federal Government for use in connection with any air traffic control or air navigation activities, or weather-reporting and communication activities related to air traffic control, any areas of land or water, or estate therein as the Secretary considers necessary or desirable for construction, operation, and maintenance at Federal expense of space or facilities for such purposes. Such areas or any portion thereof will be made available as provided herein within four months after receipt of a written request from the Secretary.

## **29. Airport Layout Plan.**

- a. Subject to the FAA Reauthorization Act of 2018, Public Law 115-254, Section 163, it will keep up to date at all times an airport layout plan of the airport showing:
  1. boundaries of the airport and all proposed additions thereto, together with the boundaries of all offsite areas owned or controlled by the sponsor for airport purposes and proposed additions thereto;
  2. the location and nature of all existing and proposed airport facilities and structures (such as runways, taxiways, aprons, terminal buildings, hangars and roads), including all proposed extensions and reductions of existing airport facilities;
  3. the location of all existing and proposed non-aviation areas and of all existing improvements thereon; and
  4. all proposed and existing access points used to taxi aircraft across the airport's property boundary.

Such airport layout plans and each amendment, revision, or modification thereof, shall be subject to the approval of the Secretary which approval shall be evidenced by the signature of a duly authorized representative of the Secretary on the face

of the airport layout plan. The sponsor will not make or permit any changes or alterations in the airport or any of its facilities which are not in conformity with the airport layout plan as approved by the Secretary and which might, in the opinion of the Secretary, adversely affect the safety, utility or efficiency of the airport.

- b. Subject to the FAA Reauthorization Act of 2018, Public Law 115-254, Section 163, if a change or alteration in the airport or the facilities is made which the Secretary determines adversely affects the safety, utility, or efficiency of any federally owned, leased, or funded property on or off the airport and which is not in conformity with the airport layout plan as approved by the Secretary, the owner or operator will, if requested, by the Secretary:
  - 1. eliminate such adverse effect in a manner approved by the Secretary; or
  - 2. bear all costs of relocating such property (or replacement thereof) to a site acceptable to the Secretary and all costs of restoring such property (or replacement thereof) to the level of safety, utility, efficiency, and cost of operation existing before the unapproved change in the airport or its facilities except in the case of a relocation or replacement of an existing airport facility due to a change in the Secretary's design standards beyond the control of the airport sponsor.

### **30. Civil Rights.**

It will promptly take any measures necessary to ensure that no person in the United States shall, on the grounds of race, color, and national origin (including limited English proficiency) in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4); creed and sex (including sexual orientation and gender identity) per 49 U.S.C. § 47123 and related requirements; age per the Age Discrimination Act of 1975 and related requirements; or disability per the Americans with Disabilities Act of 1990 and related requirements, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination in any program and activity conducted with, or benefiting from, funds received from this Grant.

- a. Using the definitions of activity, facility, and program as found and defined in 49 CFR §§ 21.23(b) and 21.23(e), the sponsor will facilitate all programs, operate all facilities, or conduct all programs in compliance with all non-discrimination requirements imposed by or pursuant to these assurances.
- b. Applicability
  - 1. Programs and Activities. If the sponsor has received a grant (or other federal assistance) for any of the sponsor's program or activities, these requirements extend to all of the sponsor's programs and activities.
  - 2. Facilities. Where it receives a grant or other federal financial assistance to construct, expand, renovate, remodel, alter, or acquire a

facility, or part of a facility, the assurance extends to the entire facility and facilities operated in connection therewith.

3. Real Property. Where the sponsor receives a grant or other Federal financial assistance in the form of, or for the acquisition of real property or an interest in real property, the assurance will extend to rights to space on, over, or under such property.

c. Duration.

The sponsor agrees that it is obligated to this assurance for the period during which Federal financial assistance is extended to the program, except where the Federal financial assistance is to provide, or is in the form of, personal property, or real property, or interest therein, or structures or improvements thereon, in which case the assurance obligates the sponsor, or any transferee for the longer of the following periods:

1. So long as the airport is used as an airport, or for another purpose involving the provision of similar services or benefits; or
2. So long as the sponsor retains ownership or possession of the property.

d. Required Solicitation Language. It will include the following notification in all solicitations for bids, Requests For Proposals for work, or material under this Grant Agreement and in all proposals for agreements, including airport concessions, regardless of funding source:

“The (**Name of Sponsor**), in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders or offerors that it will affirmatively ensure that for any contract entered into pursuant to this advertisement, [select businesses, or disadvantaged business enterprises or airport concession disadvantaged business enterprises] will be afforded full and fair opportunity to submit bids in response to this invitation and no businesses will be discriminated against on the grounds of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability in consideration for an award.”

e. Required Contract Provisions.

1. It will insert the non-discrimination contract clauses requiring compliance with the acts and regulations relative to non-discrimination in Federally-assisted programs of the Department of Transportation (DOT), and incorporating the acts and regulations into the contracts by reference in every contract or agreement subject to the non-discrimination in Federally-assisted programs of the DOT acts and regulations.
2. It will include a list of the pertinent non-discrimination authorities in every contract that is subject to the non-discrimination acts and regulations.

3. It will insert non-discrimination contract clauses as a covenant running with the land, in any deed from the United States effecting or recording a transfer of real property, structures, use, or improvements thereon or interest therein to a sponsor.
4. It will insert non-discrimination contract clauses prohibiting discrimination on the basis of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability as a covenant running with the land, in any future deeds, leases, license, permits, or similar instruments entered into by the sponsor with other parties:
  - a. For the subsequent transfer of real property acquired or improved under the applicable activity, project, or program; and
  - b. For the construction or use of, or access to, space on, over, or under real property acquired or improved under the applicable activity, project, or program.
- f. It will provide for such methods of administration for the program as are found by the Secretary to give reasonable guarantee that it, other recipients, sub-recipients, sub-grantees, contractors, subcontractors, consultants, transferees, successors in interest, and other participants of Federal financial assistance under such program will comply with all requirements imposed or pursuant to the acts, the regulations, and this assurance.
- g. It agrees that the United States has a right to seek judicial enforcement with regard to any matter arising under the acts, the regulations, and this assurance.

### **31. Disposal of Land.**

- a. For land purchased under a grant for airport noise compatibility purposes, including land serving as a noise buffer, it will dispose of the land, when the land is no longer needed for such purposes, at fair market value, at the earliest practicable time. That portion of the proceeds of such disposition which is proportionate to the United States' share of acquisition of such land will be, at the discretion of the Secretary, (1) reinvested in another project at the airport, or (2) transferred to another eligible airport as prescribed by the Secretary. The Secretary shall give preference to the following, in descending order:
  1. Reinvestment in an approved noise compatibility project;
  2. Reinvestment in an approved project that is eligible for grant funding under 49 U.S.C. § 47117(e);
  3. Reinvestment in an approved airport development project that is eligible for grant funding under 49 U.S.C. § 47114, 47115, or 47117, or under Public Law 117-58, Division J, Title VIII; or
  4. Transfer to an eligible sponsor of another public airport to be reinvested in an approved noise compatibility project at that airport.

If land acquired under a grant for noise compatibility purposes is leased at fair market value and consistent with noise buffering purposes, the lease will not be considered a disposal of the land. Revenues derived from such a lease may be used for an approved airport development project that would otherwise be eligible for grant funding or any permitted use of airport revenue.

- b. For land purchased under a grant for airport development purposes (other than noise compatibility), it will, when the land is no longer needed for airport purposes, dispose of such land at fair market value or make available to the Secretary an amount equal to the United States' proportionate share of the fair market value of the land. That portion of the proceeds of such disposition which is proportionate to the United States' share of the cost of acquisition of such land will, upon application to the Secretary, be reinvested or transferred to another eligible airport as prescribed by the Secretary. The Secretary shall give preference to the following, in descending order:
  - 1. Reinvestment in an approved noise compatibility project;
  - 2. Reinvestment in an approved project that is eligible for grant funding under 49 U.S.C. § 47117(e);
  - 3. Reinvestment in an approved airport development project that is eligible for grant funding under 49 U.S.C. §§ 47114, 47115, or 47117, or under Public Law 117-58, Division J, Title VIII; or
  - 4. Transfer to an eligible sponsor of another public airport to be reinvested in an approved noise compatibility project at that airport.
- c. Land shall be considered to be needed for airport purposes under this assurance if (1) it may be needed for aeronautical purposes (including runway protection zones) or serve as noise buffer land, and (2) the revenue from interim uses of such land contributes to the financial self-sufficiency of the airport. Further, land purchased with a grant received by an airport operator or owner before December 31, 1987, will be considered to be needed for airport purposes if the Secretary or Federal agency making such grant before December 31, 1987, was notified by the operator or owner of the uses of such land, did not object to such use, and the land continues to be used for that purpose, such use having commenced no later than December 15, 1989.
- d. Disposition of such land under (a), (b), or (c) will be subject to the retention or reservation of any interest or right therein necessary to ensure that such land will only be used for purposes which are compatible with noise levels associated with operation of the airport.

### **32. Engineering and Design Services.**

If any phase of such project has received Federal funds under Chapter 471 subchapter 1 of Title 49 U.S.C., or Public Law 117-58, Division J, Title VIII it will award each contract, or sub-contract for program management, construction management, planning studies, feasibility studies, architectural services, preliminary engineering, design, engineering, surveying, mapping or related services in the same manner as a contract for architectural and engineering services is

negotiated under Chapter 11 of Title 40 U.S.C., or an equivalent qualifications-based requirement prescribed for or by the sponsor of the airport.

**33. Foreign Market Restrictions.**

It will not allow funds provided under this Grant to be used to fund any project which uses any product or service of a foreign country during the period in which such foreign country is listed by the United States Trade Representative as denying fair and equitable market opportunities for products and suppliers of the United States in procurement and construction.

**34. Policies, Standards, and Specifications.**

It will carry out any project funded under Bipartisan Infrastructure Law grant in accordance with policies, standards, and specifications approved by the Secretary including, but not limited to, current FAA Advisory Circulars ([https://www.faa.gov/airports/aip/aip\\_pfc\\_checklist](https://www.faa.gov/airports/aip/aip_pfc_checklist)) for BIL projects as of [Application Date].

**35. Relocation and Real Property Acquisition.**

- a. It will be guided in acquiring real property, to the greatest extent practicable under State law, by the land acquisition policies in Subpart B of 49 CFR Part 24 and will pay or reimburse property owners for necessary expenses as specified in Subpart B.
- b. It will provide a relocation assistance program offering the services described in Subpart C of 49 CFR Part 24 and fair and reasonable relocation payments and assistance to displaced persons as required in Subpart D and E of 49 CFR Part 24.
- c. It will make available within a reasonable period of time prior to displacement, comparable replacement dwellings to displaced persons in accordance with Subpart E of 49 CFR Part 24.

**36. Access By Intercity Buses.**

The airport owner or operator will permit, to the maximum extent practicable, intercity buses or other modes of transportation to have access to the airport; however, it has no obligation to fund special facilities for intercity buses or for other modes of transportation.

**37. Disadvantaged Business Enterprises.**

The sponsor shall not discriminate on the basis of race, color, national origin, sex, in the award and performance of any DOT-assisted contract covered by 49 CFR Part 26, or in the award and performance of any concession activity contract covered by 49 CFR Part 23. In addition, the sponsor shall not discriminate on the basis of race, color, national origin or sex in the administration of its Disadvantaged Business Enterprise (DBE) and Airport Concessions Disadvantaged Business Enterprise (ACDBE) programs or the requirements of 49 CFR Parts 23 and 26. The sponsor shall take all necessary and reasonable steps under 49 CFR Parts 23 and 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts, and/or concession contracts. The sponsor's DBE and ACDBE programs, as required by 49 CFR Parts 26 and 23, and as approved by DOT, are incorporated by reference in this agreement. Implementation of these programs is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the sponsor of its failure to carry out its approved program, the Department may impose sanctions as provided for under



Parts 26 and 23 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. § 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. §§ 3801-3809, 3812).

**38. Hangar Construction.**

If the airport owner or operator and a person who owns an aircraft agree that a hangar is to be constructed at the airport for the aircraft at the aircraft owner's expense, the airport owner or operator will grant to the aircraft owner for the hangar a long term lease that is subject to such terms and conditions on the hangar as the airport owner or operator may impose.

**39. Competitive Access.**

- a. If the airport owner or operator of a medium or large hub airport (as defined in 49 U.S.C. § 47102) has been unable to accommodate one or more requests by an air carrier for access to gates or other facilities at that airport in order to allow the air carrier to provide service to the airport or to expand service at the airport, the airport owner or operator shall transmit a report to the Secretary that:
  1. Describes the requests;
  2. Provides an explanation as to why the requests could not be accommodated; and
  3. Provides a time frame within which, if any, the airport will be able to accommodate the requests.
- b. Such report shall be due on either February 1 or August 1 of each year if the airport has been unable to accommodate the request(s) in the six month period prior to the applicable due date.

**View the most current Series 150 Advisory Circulars (ACs) for Airport Projects:**

[http://www.faa.gov/airports/resources/advisory\\_circulars](http://www.faa.gov/airports/resources/advisory_circulars) and

[http://www.faa.gov/regulations\\_policies/advisory\\_circulars](http://www.faa.gov/regulations_policies/advisory_circulars)

I have read and agree to follow the attached FAA Grant Assurances.

City of Denton, Texas  
(Sponsor)

By: \_\_\_\_\_

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

Date: \_\_\_\_\_

For more information, please consult the AIP handbook.

[https://www.faa.gov/airports/aip/aip\\_handbook/](https://www.faa.gov/airports/aip/aip_handbook/)

**Table 2-5 Duration and Applicability of Grant Assurances (Airport Sponsors)**

Assurances that...	Include (by assurance # if applicable)...
d. Apply for the useful life of the project (not to exceed 20 years from the grant acceptance date) except in the case of a land acquisition grant, for which the useful life is indefinite and the assurance obligations do not expire.	<p>#5 Preserving Rights and Powers</p> <p>#11 Pavement Preventive Maintenance (This applies to all of the airfield pavement on the airport, not just the specific pavement in the grant.)</p> <p>#19 Operations and Maintenance</p> <p>#20 Hazard Removal and Mitigation</p> <p>#21 Compatible Land Use</p> <p>#22 Economic Nondiscrimination</p> <p>#24 Fee and Rental Structure</p> <p>#27 Use by Government Aircraft</p> <p>#28 Land for Federal Facilities</p> <p>#29 Airport Layout Plan</p> <p>#36 Access by Intercity Buses</p> <p>#37 Disadvantaged Business Enterprises (See 49 CFR parts 23 and 26, since certain program requirements may extend the obligation beyond the 20 year period, while the DBE requirements for the project apply until the project is closed.)</p> <p>#38 Hangar Construction</p> <p>#39 Competitive Access</p>
e. Last for as long as the airport is owned and operated as an airport	<p>#23 Exclusive Rights</p> <p>#25 Airport Revenue</p> <p>#30 Civil Rights</p> <p>#31 Disposal of Land</p>

**Table 3-7 Minimum Useful Life**

<b>Project Type</b>	<b>Useful Life</b>
a. All construction projects (unless listed separately below)	20 years
b. All equipment and vehicles (unless listed separately below)	10 years
c. Pavement rehabilitation (not reconstruction, which is 20 years)	10 years
d. Asphalt seal coat, slurry seal, and joint sealing	3 years
e. Concrete joint replacement	7 years
f. Airfield lighting and signage	10 years
g. ARFF vehicles	15 years
h. ARFF structural gear (firefighting suits), which has less heat insulation than proximity gear (per the National Fire Protection Association 1971 Standard on Protective Ensembles for Structural Firefighting and Proximity Firefighting)	7 years
i. ARFF proximity gear (firefighting suits), which is also referred to as slicks, bunker, or turn out gear (per the National Fire Protection Association 1971 Standard on Protective Ensembles for Structural Firefighting and Proximity Firefighting)	5 years
j. NAVAIDs and Weather Reporting Equipment	15 years
k. Buildings	40 years
l. Land	Unlimited
m. Loading Bridges	20 years
n. Fencing	20 years



# City of Denton

City Hall  
215 E. McKinney St.  
Denton, Texas 76201  
[www.cityofdenton.com](http://www.cityofdenton.com)

## Legislation Text

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**File #:** ID 24-604, **Version:** 1

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### **AGENDA CAPTION**

Consider adoption of an ordinance of the City of Denton authorizing the City Manager to execute a temporary utility service contract by and between the City of Denton and the Kansas City Southern Railroad Company D/B/A CPKC ("KCSRR") relating to the construction of Hickory Creek Road within the railroad right-of-way located at KCSRR Milepost MM99.54, within the County and City of Denton, Texas; providing for the expenditure of funds not to exceed the amount of \$22,470.86 for the temporary utility service line installation (the City will receive a final invoice upon completion of the work); and providing an effective date.



# City of Denton

City Hall  
215 E. McKinney Street  
Denton, Texas  
[www.cityofdenton.com](http://www.cityofdenton.com)

## AGENDA INFORMATION SHEET

**DEPARTMENT:** Capital Projects/Engineering/Public Works

**ACM:** Cassandra Ogden

**DATE:** April 2, 2024

### **SUBJECT**

Consider adoption of an ordinance of the City of Denton authorizing the City Manager to execute a temporary utility service contract by and between the City of Denton and the Kansas City Southern Railroad Company D/B/A CPKC (“KCSRR”) relating to the construction of Hickory Creek Road within the railroad right-of-way located at KCSRR Milepost MM99.54, within the County and City of Denton, Texas; providing for the expenditure of funds not to exceed the amount of \$22,470.86 for the temporary utility service line installation (the City will receive a final invoice upon completion of the work); and providing an effective date.

### **BACKGROUND**

On May 5, 2020, the City Manager approved an agreement with Kansas City Southern Railroad, for a preliminary engineering agreement for the Hickory Creek Road Phase 3 project; which involves the realignment of the Hickory Creek Road from Riverpass Drive to FM 1830. The KCSRR track crosses Hickory Creek Road approximately 1,400 feet west of the Riverpass Drive intersection. As part of the Hickory Creek Road Phase 3 Project, the at-grade crossing will be eliminated and replaced with a grade-separated roadway segment, roadway bridge over the railroad.

The proposed Temporary Utility Service Contract Agreement with Kansas City Southern Railroad is to install temporary electric utility service to the railroad crossing devices while the project is being constructed. This agreement is necessary for the construction of the project since the current electrical service conflicts with the construction of the bridge. It is also a railroad requirement that if the current railroad crossing is to be utilized during the construction, the devices remain active. Without the crossing remaining viable for use during construction, the project would lose the ability to cross the tracks, hindering the project greatly.

### **PRIOR ACTION/REVIEW (COUNCIL, BOARDS, COMMISSIONS)**

On May 5, 2020, City Council approved the original agreement with KCSRR - Ordinance No. 20-882.

### **RECOMMENDATION**

Staff recommends approval of the ordinance.

### **PRINCIPAL PLACE OF BUSINESS**

Kansas City Southern Railway Company D/B/A CPKC  
Kansas City, Missouri

### **ESTIMATED SCHEDULE OF PROJECT**

This project is currently under construction and upon approval of the agreement the utility installation will begin within a week.

### **FISCAL INFORMATION**

The Temporary Utility Service Contract Agreement will be funded from the 2019 Bond Funds account 250120473.1365.40100

### **EXHIBITS**

Exhibit 1 - Agenda Information Sheet

Exhibit 2 - Ordinance

Exhibit 3 - Contract

Respectfully submitted:  
Trevor Crain, PMP  
Director of Capital Projects

For information concerning this agreement contact: Dustin Draper, PMP, at 940-349-7104.

Legal point of contact: Benjamin Samples, at 940-349-8312.



ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF DENTON AUTHORIZING THE CITY MANAGER TO EXECUTE A TEMPORARY UTILITY SERVICE CONTRACT BY AND BETWEEN THE CITY OF DENTON AND THE KANSAS CITY SOUTHERN RAILROAD COMPANY D/B/A CPKC ("KCSRR") RELATING TO THE CONSTRUCTION OF HICKORY CREEK ROAD WITHIN THE RAILROAD RIGHT-OF-WAY LOCATED AT KCSRR MILEPOST MM99.54, WITHIN THE COUNTY AND CITY OF DENTON, TEXAS; PROVIDING FOR THE EXPENDITURE OF FUNDS NOT TO EXCEED THE AMOUNT OF \$22,470.86 FOR THE TEMPORARY UTILITY SERVICE LINE INSTALLATION (THE CITY WILL RECEIVE A FINAL INVOICE UPON COMPLETION OF THE WORK); AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the CITY has laid out and proposes to construct a section of that certain public roadway which has been designated as Hickory Creek Road, which as proposed, will pass over the track and across the right of way of the RAILROAD at a point designated as Railroad Mile Post MM99.54 on the RAILROAD's Alliance Subdivision, which point is the intersection of the proposed centerline of Hickory Creek Road with the centerline of the RAILROAD's track, near Denton, Texas, herein referenced to as "PROJECT"; and

WHEREAS, the CITY is currently reconstructing Hickory Creek Road outside the RAILROAD's right of way which requires existing utilities to be removed which will impact the RAILROAD's existing grade crossing warning devices, herein referenced to as "SIGNALS"; and

WHEREAS, the parties hereto deem it necessary to keep the SIGNALS operational during the PROJECT; and

WHEREAS, the parties hereto deem it necessary for the Railroad to temporarily relocate utility services for a portion of the PROJECT that affects the Railroad; and

WHEREAS, the City Council having considered the importance of the Project to the citizens of Denton and finding that it is in the public's health and safety interest, is of the opinion that it should approve the Agreement; NOW, THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The recitals contained in the preamble of this ordinance are hereby incorporated into the body of this ordinance are true and correct.

SECTION 2. The City Manager, or their designee, is hereby authorized to execute on behalf of the City the Temporary Utility Service Contract with KCSRR, a copy of which is attached hereto as Exhibit " A " and made a part hereof for all purposes.

SECTION 3. The City Manager, or their designee, is further authorized to carry out all obligations and duties of the City as set forth in the Agreement, including but not limited to the expenditure of funds.

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

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

	Aye	Nay	Abstain	Absent
Gerard Hudspeth, Mayor:	_____	_____	_____	_____
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 \_\_\_\_\_, 2024.

\_\_\_\_\_  
GERARD HUDSPETH, MAYOR

ATTEST:  
JESUS SALAZAR, CITY SECRETARY

By: \_\_\_\_\_

APPROVED AS TO LEGAL FORM:  
MACK REINWAND, CITY ATTORNEY

By: \_\_\_\_\_

**TEMPORARY UTILITY SERVICE CONTRACT**

**HICKORY CREEK ROAD REALIGNMENT, RAILROAD GRADE SEPARATION  
PROJECT NUMBER \_\_\_\_\_  
DENTON COUNTY, TEXAS**

STATE OF TEXAS

COUNTY OF DENTON

This CONTRACT is made and entered into by and between the CITY OF DENTON, a political subdivision of State of Texas (the "**CITY**"), acting by and through the City Council, and The Kansas City Southern Railway Company d/b/a CPKC, (the "**RAILROAD**"), duly registered to do business in the State of Missouri, whose address for mailing is 427 West 12<sup>th</sup> Street, Kansas City, MO 64105, sometimes both referred to herein as "Parties", effective as of the date of latest execution below.

WITNESSETH:

WHEREAS, the CITY has laid out and proposes to construct a section of that certain public roadway which has been designated as Hickory Creek Road, which as proposed, will pass over the track and across the right of way of the RAILROAD at a point designated as Railroad Mile Post MM99.54 on the RAILROAD's Alliance Subdivision, which point is the intersection of the proposed centerline of Hickory Creek Road with the centerline of the RAILROAD's track, near Denton, Texas, herein referenced to as "**PROJECT**"; and,

WHEREAS, the CITY is currently reconstructing Hickory Creek Road outside the RAILROAD's right of way which requires existing utilities to be removed which will impact the RAILROAD's existing grade crossing warning devices, herein referenced to as "**SIGNALS**";

WHEREAS, the parties hereto deem it necessary to keep the SIGNALS operational during the PROJECT;

WHEREAS, the parties hereto deem it necessary for the Railroad to temporarily relocate utility services for a portion of the PROJECT that affects the Railroad.

NOW, THEREFORE, in consideration of the premises and of the covenants and agreements of the parties hereto contained, to be kept and performed by the parties hereto, it is hereby agreed as follows:

A. The CITY has requested that the RAILROAD proceed with certain necessary temporary utility relocation services for the PROJECT to facilitate the parties' considerations of the PROJECT and shall be undertaken by the parties hereto upon and in accordance with the following terms, conditions and provisions.

1. The work to be done by the RAILROAD under this Contract shall consist of:

- i. Review and approval of preliminary and final engineering and design plans, specifications, drawings, contracts and other documents pertaining to the temporary utility relocation,
  - ii. Preparation of cost estimates for the RAILROAD's work in connection with the temporary utility relocation,
2. Nothing contained in this Contract shall be deemed to constitute the RAILROAD's approval of or consent to the construction of the PROJECT, which approval or consent may be withheld for any reason directly or indirectly related to safety of the RAILROAD's operations, property, or facilities. The PROJECT, if constructed, is to be constructed, under a separate Crossing Contract to be executed by the Parties at a future date.
4. The estimated cost of work to be performed by the RAILROAD for engineering services for the account of the CITY is **\$22,470.86**, as shown on the attached estimate attached hereto as **Exhibit A** and made a part hereof. It is clearly understood by the parties hereto that this is an estimate only; the CITY agrees to pay for all reimbursable charges necessitated by its work in the vicinity of the track and the RAILROAD agrees to furnish the services required. Approval of charges will require supporting documents verifying hours charged from the RAILROAD. The supporting documents must be in the form of approved time sheets or time reports. Documentation for expense charges will include signed copies of the expense accounts showing the days worked, charges for meals, accommodations and miles traveled.
5. For all items of work and expense authorized by this Contract, the RAILROAD shall invoice the CITY in care of:

Trevor Crain Project Manager  
Capital Projects Dept.  
City of Denton  
901-A Texas St.  
Denton, TX 76209  
Via email: [Trevor.Crain@CityofDenton.com](mailto:Trevor.Crain@CityofDenton.com)

B. It is understood that the PROJECT herein contemplated is to be financed from funds appropriated by the CITY; that all plans, estimates of cost, specifications, awards of contracts, acceptance of work and procedure in general are subject at all times to all laws, rules, regulations, orders and approvals applying to it; and that the CITY shall reimburse the RAILROAD for only such items of work and expense as are properly authorized, and in such amounts and forms as are proper and eligible for payment.

C. This Contract may be revoked by either party upon written notice to the other until such time as the PROJECT is advertised for bids by the CITY.

D. The parties hereto represent each to the other that they have the legal authority to enter into this Contract as evidenced by the appropriate CITY order, ordinance, corporate resolution and/or power of attorney, as identified below, certified copies of which will be provided upon request.

Witness this my signature in execution hereof, this the \_\_\_\_\_ day of \_\_\_\_\_, 2024.

**CITY OF DENTON, TEXAS**

\_\_\_\_\_  
Sara Hensley, City Manager

Witness this my signature in execution hereof, this the \_\_\_\_\_ day of \_\_\_\_\_, 2024

**THE KANSAS CITY SOUTHERN RAILWAY COMPANY d/b/a CPKC**

BY: \_\_\_\_\_  
Bentley Tomlin, Public, Utility, and Industrial Project Manager

DATE: \_\_\_\_\_

**RAILROAD FORCE ACCOUNT**

PROJECT NUMBER \_\_\_\_\_  
DENTON COUNTY, TEXAS

**EXHIBIT A**

**Railroad Cost:**

	Amount
Project	
Administration	\$2,000

**Oncor Relocation**

	Amount
Relocation of meter service for	
Hickory Creek Road	\$20,470.86

<b>RAILROAD FORCE ACCOUNT - TOTAL</b>	<b>\$22,470.86</b>
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**TEMPORARY UTILITY SERVICE CONTRACT**

**HICKORY CREEK ROAD REALIGNMENT, RAILROAD GRADE SEPARATION  
PROJECT NUMBER \_\_\_\_\_  
DENTON COUNTY, TEXAS**

STATE OF TEXAS

COUNTY OF DENTON

This CONTRACT is made and entered into by and between the CITY OF DENTON, a political subdivision of State of Texas (the "**CITY**"), acting by and through the City Council, and The Kansas City Southern Railway Company d/b/a CPKC, (the "**RAILROAD**"), duly registered to do business in the State of Missouri, whose address for mailing is 427 West 12<sup>th</sup> Street, Kansas City, MO 64105, sometimes both referred to herein as "Parties", effective as of the date of latest execution below.

WITNESSETH:

WHEREAS, the CITY has laid out and proposes to construct a section of that certain public roadway which has been designated as Hickory Creek Road, which as proposed, will pass over the track and across the right of way of the RAILROAD at a point designated as Railroad Mile Post MM99.54 on the RAILROAD's Alliance Subdivision, which point is the intersection of the proposed centerline of Hickory Creek Road with the centerline of the RAILROAD's track, near Denton, Texas, herein referenced to as "**PROJECT**"; and,

WHEREAS, the CITY is currently reconstructing Hickory Creek Road outside the RAILROAD's right of way which requires existing utilities to be removed which will impact the RAILROAD's existing grade crossing warning devices, herein referenced to as "**SIGNALS**";

WHEREAS, the parties hereto deem it necessary to keep the SIGNALS operational during the PROJECT;

WHEREAS, the parties hereto deem it necessary for the Railroad to temporarily relocate utility services for a portion of the PROJECT that affects the Railroad.

NOW, THEREFORE, in consideration of the premises and of the covenants and agreements of the parties hereto contained, to be kept and performed by the parties hereto, it is hereby agreed as follows:

A. The CITY has requested that the RAILROAD proceed with certain necessary temporary utility relocation services for the PROJECT to facilitate the parties' considerations of the PROJECT and shall be undertaken by the parties hereto upon and in accordance with the following terms, conditions and provisions.

1. The work to be done by the RAILROAD under this Contract shall consist of:



- i. Review and approval of preliminary and final engineering and design plans, specifications, drawings, contracts and other documents pertaining to the temporary utility relocation,
  - ii. Preparation of cost estimates for the RAILROAD's work in connection with the temporary utility relocation,
2. Nothing contained in this Contract shall be deemed to constitute the RAILROAD's approval of or consent to the construction of the PROJECT, which approval or consent may be withheld for any reason directly or indirectly related to safety of the RAILROAD's operations, property, or facilities. The PROJECT, if constructed, is to be constructed, under a separate Crossing Contract to be executed by the Parties at a future date.
4. The estimated cost of work to be performed by the RAILROAD for engineering services for the account of the CITY is **\$22,470.86**, as shown on the attached estimate attached hereto as **Exhibit A** and made a part hereof. It is clearly understood by the parties hereto that this is an estimate only; the CITY agrees to pay for all reimbursable charges necessitated by its work in the vicinity of the track and the RAILROAD agrees to furnish the services required. Approval of charges will require supporting documents verifying hours charged from the RAILROAD. The supporting documents must be in the form of approved time sheets or time reports. Documentation for expense charges will include signed copies of the expense accounts showing the days worked, charges for meals, accommodations and miles traveled.
5. For all items of work and expense authorized by this Contract, the RAILROAD shall invoice the CITY in care of:
- Trevor Crain Project Manager  
Capital Projects Dept.  
City of Denton  
901-A Texas St.  
Denton, TX 76209  
Via email: [Trevor.Crain@CityofDenton.com](mailto:Trevor.Crain@CityofDenton.com)
- B. It is understood that the PROJECT herein contemplated is to be financed from funds appropriated by the CITY; that all plans, estimates of cost, specifications, awards of contracts, acceptance of work and procedure in general are subject at all times to all laws, rules, regulations, orders and approvals applying to it; and that the CITY shall reimburse the RAILROAD for only such items of work and expense as are properly authorized, and in such amounts and forms as are proper and eligible for payment.
- C. This Contract may be revoked by either party upon written notice to the other until such time as the PROJECT is advertised for bids by the CITY.
- D. The parties hereto represent each to the other that they have the legal authority to enter into this Contract as evidenced by the appropriate CITY order, ordinance, corporate resolution and/or power of attorney, as identified below, certified copies of which will be provided upon request.

Witness this my signature in execution hereof, this the \_\_\_\_\_ day of \_\_\_\_\_, 2024.

**CITY OF DENTON, TEXAS**

\_\_\_\_\_  
Sara Hensley, City Manager

Witness this my signature in execution hereof, this the \_\_\_\_\_ day of \_\_\_\_\_, 2024

**THE KANSAS CITY SOUTHERN RAILWAY COMPANY d/b/a CPKC**

BY: \_\_\_\_\_  
Bentley Tomlin, Public, Utility, and Industrial Project Manager

DATE: \_\_\_\_\_

**RAILROAD FORCE ACCOUNT**

PROJECT NUMBER \_\_\_\_\_  
DENTON COUNTY, TEXAS

**EXHIBIT A**

**Railroad Cost:**

	Amount
Project	
Administration	\$2,000

**Oncor Relocation**

	Amount
Relocation of meter service for	
Hickory Creek Road	\$20,470.86

<b>RAILROAD FORCE ACCOUNT - TOTAL</b>	<b>\$22,470.86</b>
---------------------------------------	--------------------



# City of Denton

City Hall  
215 E. McKinney St.  
Denton, Texas 76201  
[www.cityofdenton.com](http://www.cityofdenton.com)

## Legislation Text

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**File #:** ID 24-349, **Version:** 1

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### **AGENDA CAPTION**

Consider adoption of an ordinance of the City of Denton, Texas, authorizing the City Manager to execute a supplement to the agreement for street lighting service by and between Oncor Electric Delivery Company LLC and the City of Denton for Townsend Green Phase 2 - McKinney Street and Trinity Road authorizing the expenditure of funds; and providing for an effective date.



## AGENDA INFORMATION SHEET

**DEPARTMENT:** Capital Projects/Engineering/Public Works

**ACM:** Cassandra Ogden

**DATE:** April 2, 2024

### **SUBJECT**

Consider adoption of an ordinance of the City of Denton, Texas, authorizing the City Manager to execute a supplement to the agreement for street lighting service by and between Oncor Electric Delivery Company LLC and the City of Denton for Townsend Green Phase 2 – McKinney Street and Trinity Road authorizing the expenditure of funds; and providing for an effective date.

### **BACKGROUND**

While the majority of the City of Denton receives electric service from Denton Municipal Electric, some of the more recently annexed areas of the community receive service from Oncor Electric Delivery Company LLC (Oncor). In the Denton areas receiving Oncor service, Oncor owns and is responsible for providing power to streetlights.

When new developments are constructed, Oncor installs and constructs its baseline wooden pole streetlights. If a developer or other customer is interested in a different type of streetlight fixture, the developer is required to make a contribution to Oncor in aid of construction. Each contribution-in-aid-of-construction arrangement requires a supplemental agreement to the Master Streetlight Agreement. The City of Denton acts as the primary “customer” to Oncor and pays for those enhanced streetlight facilities through its annual street lighting budget. Monthly invoices are sent to the City, where the amounts are verified and paid out of the general fund. This budget is calculated yearly based on the number of streetlights in service and the estimated amount that will be placed in service for the given year.

The Master Streetlight Agreement outlines the general conditions for Oncor’s provision of streetlight services to City residents and other customers that reside in areas serviced by Oncor with an initial term of ten years. The Master Streetlight Agreement was approved by the City Council on Dec. 14, 2021 (Ordinance No. 21-2574). Each individual development will require a supplement to the Master Streetlight agreement. Each supplement will be brought forward to the City Council for individual consideration and will govern specific changes necessary for each development. The first supplement to the Master Streetlight agreement was for Country Club Terrace, and was approved by City Council on Dec. 14, 2021 (Ordinance No. 21-2570).

This proposed supplement to the Master Streetlight Agreement is for Townsend Green – McKinney Street and Trinity Road (“Townsend Green”) provides additional data specific to the named residential development. Specifically, the types of lighting, quantity, wattage, lamp type, rate schedule, and location of each streetlight.

## **RECOMMENDATION**

Staff recommends approval of the ordinance.

## **ESTIMATED SCHEDULE OF PROJECT**

This supplemental agreement will have the same term as the Master Streetlight Agreement. The Master Streetlight Agreement shall remain in effect for an initial term of 10 years and from year to year thereafter until canceled by either party consistent with the terms of the agreement. After the expiration of the initial 10-year term, the Agreement may be terminated by either party upon 90 days written notice to the other party. Unless specifically amended in the supplement language, each supplement will resort to the effectual time frames laid out in the Master Street Light Agreement.

## **OPERATIONAL IMPACT**

This supplemental agreement is required when new developments within City limits are located in the Oncor service area and the desired installation of streetlight fixtures that are different than the baseline wooden pole streetlights.

## **EXHIBITS**

Exhibit 1 – Agenda Information Sheet

Exhibit 2 – Ordinance and Agreement

Respectfully submitted:  
Trevor Crain, PMP  
Director of Capital Projects

For information concerning this agreement, contact Wesley M. McBride, CPII, at 940-349-8906.

Legal point of contact: Benjamin Samples, at 940-349-8312.

**ORDINANCE NO. 23-\_\_\_\_\_**

**AN ORDINANCE OF THE CITY OF DENTON, TEXAS, AUTHORIZING THE CITY MANAGER TO EXECUTE A SUPPLEMENT TO THE AGREEMENT FOR STREET LIGHTING SERVICE BY AND BETWEEN ONCOR ELECTRIC DELIVERY COMPANY LLC AND THE CITY OF DENTON FOR TOWNSEND GREEN PHASE 2 – MCKINNEY STREET AND TRINITY ROAD AUTHORIZING THE EXPENDITURE OF FUNDS; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the City of Denton ("City") has approved an Agreement for Street Lighting Service (the "Master Streetlight Agreement") with Oncor Electric Delivery Company LLC (ONCOR) to outline ONCOR's provision of streetlight services to the portions of Denton receiving electric service from ONCOR; and.

**WHEREAS**, the Master Streetlight Agreement requires that all requests for installation or construction of Facilities to be served by ONCOR pursuant to the Master Streetlight Agreement would come to Council for approval as a supplement to the Agreement as shown in Exhibit A; and

**WHEREAS**, on December 14, 2021, City Council authorized Supplemental Agreement No. 1 for the Country Club Terrace Phases 1 and 2; and

**WHEREAS**, February 15, 2022, City Council authorized Supplemental Agreement No. 2 for Townsend Green Phase 1 – McKinney Street and Trinity Road; and

**WHEREAS**, Townsend Green Phase 2 – McKinney Street and Trinity Road ("Townsend Green") is currently in development and would be served by ONCOR pursuant to the Master Streetlight Agreement and

**WHEREAS**, ONCOR has provided the Supplemental Agreement No. 3 to the Master Streetlight Agreement it requires (the "Supplement"), which is attached hereto as Exhibit A, and

**WHEREAS**, after careful review and consideration, City staff recommend the adoption of the Supplement to clearly outline service delivery standards and options for enhanced streetlight facilities provided by ONCOR to Townsend Green; and

**WHEREAS**, the City Council finds it is in the public interest to approve the Supplement to the Master Streetlight Agreement;

**NOW, THEREFORE,**

**THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:**

**SECTION 1.** The findings and recitals in the preamble of this Ordinance are true and correct and are incorporated into the body of this Ordinance as if set out fully herein.



**SECTION 2.** The City Council finds that the Supplemental Agreement No. 3 to the Master Streetlight Agreement is necessary to establish specific agreements for the Townsend Green residential development.

**SECTION 3.** The City Manager, or designee, is authorized to execute the Supplemental Agreement No. 3 to the Master Streetlight Agreement, attached hereto as Exhibit A.

**SECTION 4.** The City Manager is further authorized to carry out all obligations and duties of the City as set forth in the Supplement, including but not limited to the expenditure of funds.

**SECTION 5.** This ordinance will 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 [\_\_\_ - \_\_\_]:

	<b>Aye</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>
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 \_\_\_\_\_, 2024.

\_\_\_\_\_  
GERARD HUDSPETH, MAYOR

ATTEST:

JESUS SALAZAR, CITY SECRETARY

BY: \_\_\_\_\_

APPROVED AS TO LEGAL FORM:

MACK REINWAND, CITY ATTORNEY

BY: \_\_\_\_\_

Benjamin P. Samples, Notary Public  
Digitally signed by Benjamin Samples  
DN: cn=Benjamin Samples, o=City of Madison, ou=City of Madison  
Government, ou=Legal, cn=Benjamin Samples, email=Benjamin.Samples@cityofmadison.com  
Date: 2024.03.27 11:53:01 -0400



EXHIBIT "A" – Registered

WR #: WO 22455795 Project Name: Townsend Green Ph. 2

SUPPLEMENT TO THE AGREEMENT FOR STREET LIGHTING SERVICE BY AND BETWEEN ONCOR ELECTRIC DELIVERY COMPANY AND City of Denton

This Supplement ("Supplement") to the Agreement for Street Lighting Service dated 1/7/2020 ("Agreement"), is made and entered into this day of , 2024, by Oncor Electric Delivery Company LLC, a Delaware limited liability company ("Company") and City of Denton ("Customer") both hereinafter referred to as the "Parties." In consideration of the mutual promises and undertakings herein set forth, the Parties hereby agree to amend the Agreement as follows:

1. The following Request for Street Lighting Service is hereby added to the Agreement:

Request for Street Lighting Service dated , attached hereto.

- 2. This Supplement shall become effective upon execution by the Parties.
3. This Supplement is subject to the terms and conditions of the Agreement.
4. If Customer has arranged for its designated agent or representative ("Customer's Agent") to pay to Company the contribution-in-aid-of-construction ("CIAC") referenced in the Agreement, then Customer's Agent shall execute this Amendment for the sole purpose of establishing such agent's agreement to pay such CIAC.
5. Except as otherwise provided herein, the Agreement shall continue in full force and effect in accordance with its terms.

IN WITNESS HEREOF, the Parties have caused this Supplement to be executed in several counterparts, each of which shall be deemed an original but all shall constitute one and the same instrument.

ONCOR ELECTRIC DELIVERY COMPANY

City of Denton

[Signature of Joe Rice]

Signature - Oncor Representative

Joe Rice

Printed Name - Oncor Representative

New Construction Management Supervisor

Title - Oncor Representative

1/4/2024

Date Signed - Oncor Representative

Signature - Customer Representative

Printed Name - Customer Representative

Title - Customer Representative

Date Signed - Customer Representative

\*\*For CIAC purposes only pursuant to Section (4) above\*\*

N/A - No CIAC

Signature - Customer's Agent

N/A - No CIAC

Title - Customer's Agent

N/A - No CIAC

Printed Name - Customer's Agent

N/A - No CIAC

Date Signed - Customer's Agent

**AGREEMENT FOR STREET LIGHTING SERVICE SUPPLEMENT**  
**(for Cities with No Current Master Street Light Agreement)**  
**WR NUMBER 3574896 WO 22455795**

City of CITY OF DENTON, Texas ("City") and Oncor Electric Delivery ("Company")

City requests and authorizes Company to provide street lighting as follows below and on sketch(s) attached hereto and made a part hereof.

Actions: Addition 7 Removal 0

Action	Quantity	Wattage	Light Source	Rate Schedule/ Group	Luminaire Style	Identifying Luminaire/Pole Type	Location Address, etc.) (See Attached Sketch)
<i>A</i>	<i>1</i>	<i>55</i>	<i>LC</i>	<i>A</i>	<i>CH</i>	<i>LEDCH55 SLPR30</i>	<i>001- 33.19073/-97.06095 Structure ID: 3319073- 09706095</i>
<i>A</i>	<i>1</i>	<i>55</i>	<i>LC</i>	<i>A</i>	<i>CH</i>	<i>LEDCH55 SLPR30 COMPANY</i>	<i>002- 33.18983/-97.06092 Structure ID: 3318983- 09706092</i>
<i>A</i>	<i>1</i>	<i>55</i>	<i>LC</i>	<i>A</i>	<i>CH</i>	<i>LEDCH55 SLPR30 COMPANY</i>	<i>003-33.18972/-97.0619 Structure ID: 3318972- 09706190</i>
<i>A</i>	<i>1</i>	<i>55</i>	<i>LC</i>	<i>A</i>	<i>CH</i>	<i>LEDCH55 SLPR30 COMPANY</i>	<i>004- 33.18942/-97.06282 Structure ID: 3318942- 09706282</i>
<i>A</i>	<i>1</i>	<i>55</i>	<i>LC</i>	<i>A</i>	<i>CH</i>	<i>LEDCH55 SLPR30 COMPANY</i>	<i>005-33.1882/-97.06327 Structure ID: 3318820- 09706327</i>
<i>A</i>	<i>1</i>	<i>55</i>	<i>LC</i>	<i>A</i>	<i>CH</i>	<i>LEDCH55 SLPR30 COMPANY</i>	<i>006- 33.19076/-97.06283 Structure ID: 3319076- 09706283</i>
<i>A</i>	<i>1</i>	<i>55</i>	<i>LC</i>	<i>A</i>	<i>CH</i>	<i>LEDCH55 SLPR30 COMPANY</i>	<i>007-33.1906/-97.06188 Structure ID: 3319060- 09706188</i>

Under these additional conditions (if any)

**EXHIBIT A**

1. City agrees to pay Company \$0.00 in consideration of Company's agreement to install said street lights and understands that no construction work will begin until after Company has received full payment.
2. Company agrees to install, own, operate and maintain said street lights in accordance with its street lighting tariff. However, if City or Developer fails to pay, on demand, the amount indicated above, this supplemental agreement is automatically terminated.
3. All parties agree that Company will retain for its use and benefit the payment received hereunder in consideration of its obligation to install said street lights and that Company at all times has title to, and complete ownership and control of, said street lights.
4. Company is not liable for loss or injury caused by delay or failure to install the electric facilities necessary to

reasonably beyond control of the Company.If Company is prevented from installing such electric facilities by any of the above causes, Company agrees to return to City or Developer, without interest, the entire amount of City or Developer's payment, thereby terminating this supplement and Company's obligation to provide the electric facilities described herein.

ACCEPTED BY COMPANY	ACCEPTED BY CITY	ACCEPTED BY DEVELOPER (if applicable)
SIGNATURE	SIGNATURE	SIGNATURE
TITLE	TITLE	TITLE
DATE SIGNED	DATE SIGNED	DATE SIGNED

WR #3574896

<b>Engineering</b>	<b>Service Center</b>	<b>Distribution Services</b>
PREPARED BY	COMPLETED BY	APPROVED FOR BILLING BY
DATE	DATE	DATE

DESIGN CONTACT INFO:  
BRANDON ALLEN  
TEL: 817-685-2629  
CELL: 469-875-0792  
BVALLEN@PIKE.COM

ALTERNATE CONTACT:  
CODY BUSH  
TEL: 817-685-2618  
CLBUSH@PIKE.COM

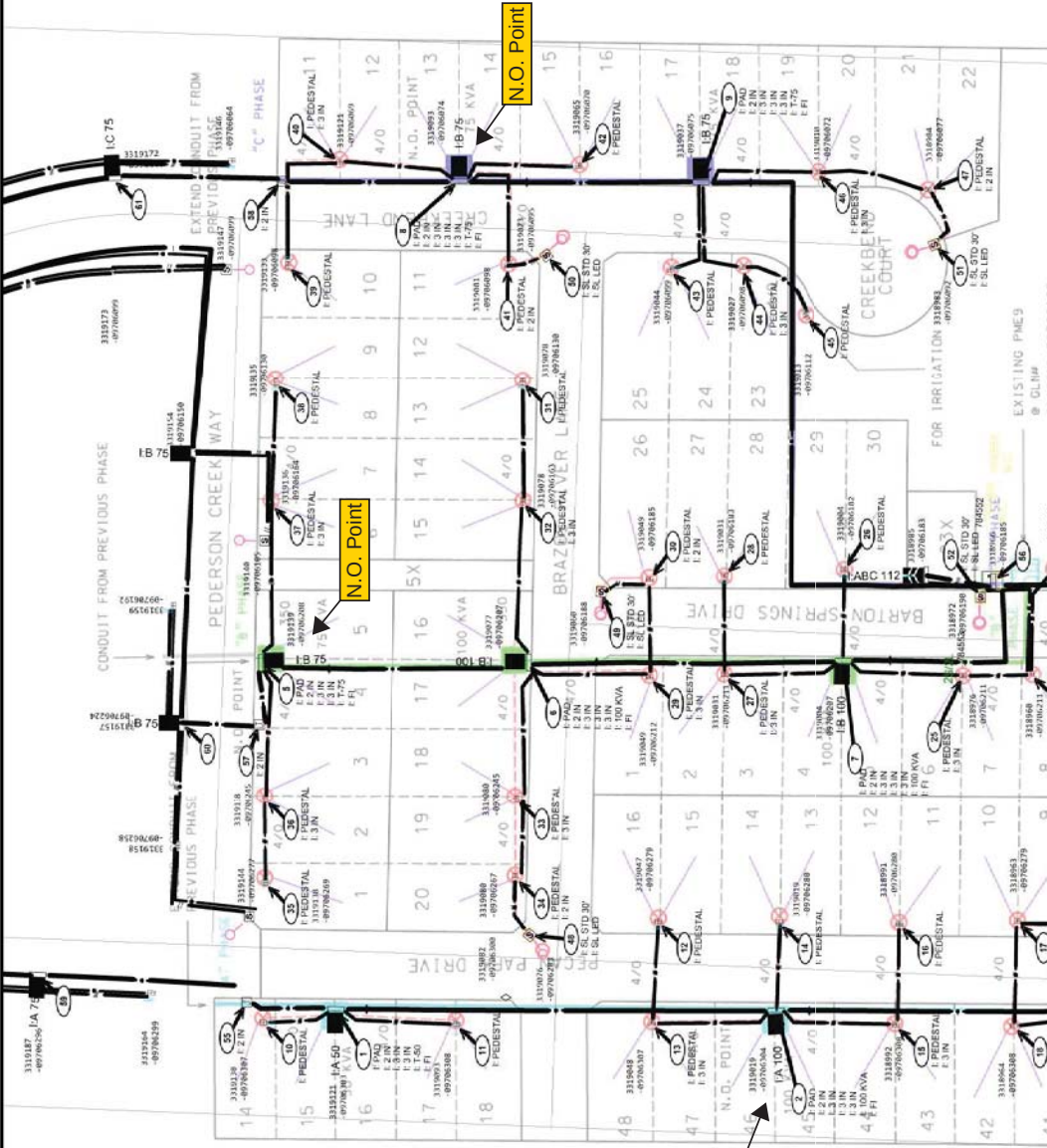
FEEDER I.D.:  
BLAGG3912

PROTECTIVE DEVICE  
IS THE RECLOSER @  
2133558-5832

PRIMARY VOLTAGE  
7.2/12.5 kV

DESIGNER: COLE RODGERS 817-685-2673  
SUPERVISOR: BRANDON ALLEN 817-685-2629

ALL PRIMARY WIRE IS 1/0 UG AL.  
ALL SECONDARY CONDUCTOR IS 4/0  
UNLESS SPECIFIED.  
ALL SERVICES ARE 1/0 UG AL



# ELECTRIC CONSTRUCTION PRINT

WR Name: FWNLDOWNSEND GREEN PHASE 2H  
Date: 2022/07/27  
Scale: 1"=40'

Customer:  
Address: 7117 PEDERSON CRK WY, DENTON, TX 76208  
Location:

Job Status: Design  
Svc Ctr / Office: LAKE DALLAS

Designer: COLE RODGERS, U968  
Project Mgr: JOSPEH RICE, U915

NO 100% MARKING OF  
CONSTRUCTION  
STATUS FOR THIS WR  
ONLY MARK 99% &  
ELECTRIC IN SERVICE

911 ADDRESS:  
7117 PEDERSON  
CRK WY, DENTON,  
TX 76208



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DESIGN CONTACT INFO:

BRANDON ALLEN

TEL: 817-685-2629

CELL: 469-875-0792

BWALLEN@PIKE.COM

ALL PRIMARY WIRE IS 1/0 UG AL.

ALL SECONDARY CONDUCTOR IS 4/0 UNLESS SPECIFIED.

ALL SERVICES ARE 1/0 UG AL

PROTECTIVE DEVICE IS THE RECLOSER @ 2133558-5832

PRIMARY VOLTAGE 7.2/12.5 KV

ALTERNATE CONTACT:

CODY BUSH

TEL: 817-685-2618

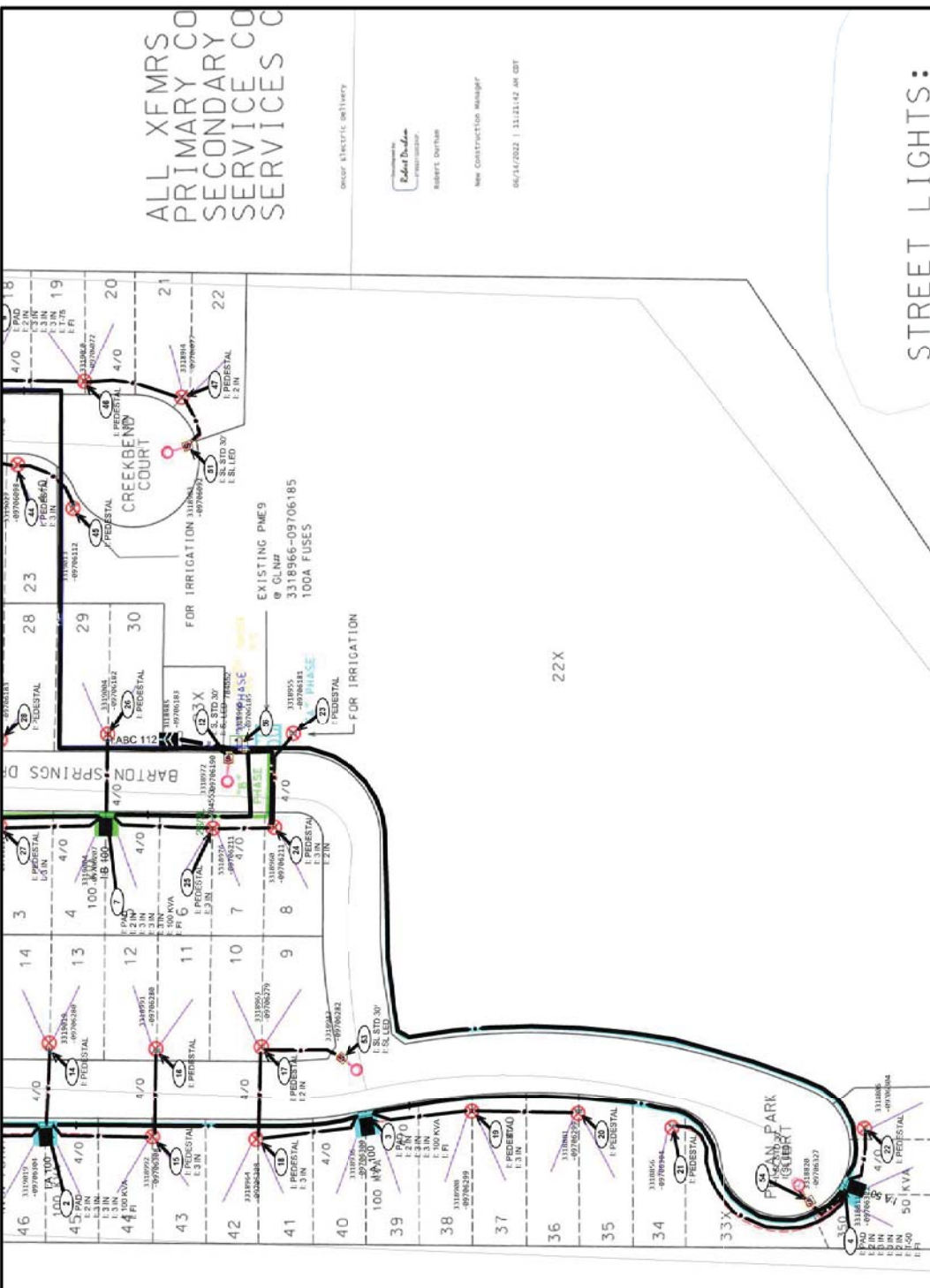
CLBUSH@PIKE.COM

DESIGNER: COLE RODGERS 817-685-2673

SUPERVISOR: BRANDON ALLEN 817-685-2629

FEEDER I.D.

BLAGG3912



**ELECTRIC CONSTRUCTION PRINT**

WR Number: 3574896    Date: 2022/07/27    WR Name: FWNLDTOWNSEND GREEN PHASE 2H

Sheet: 2 of 2    Scale: 1"=40'    Customer:

Job Status: Design    Svc Ctr / Office: LAKE DALLAS    Address: 7117 PEDERSON CRK WY, DENTON, TX 76208

Designer: COLE RODGERS, U968    Location:

Project Mgr: JOSPEH RICE, U915

911 ADDRESS:  
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CRK WY, DENTON,  
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# City of Denton

City Hall  
215 E. McKinney St.  
Denton, Texas 76201  
[www.cityofdenton.com](http://www.cityofdenton.com)

## Legislation Text

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**File #:** ID 24-417, **Version:** 1

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### **AGENDA CAPTION**

Consider approval of a resolution of the City Council of the City of Denton, approving the 2022/2023 Tax Increment Reinvestment Zone Number Two (Westpark TIRZ) annual report; and declaring an effective date. The TIRZ Number Two Board recommends approval (11-0).





# City of Denton

City Hall  
215 E. McKinney Street  
Denton, Texas  
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## AGENDA INFORMATION SHEET

**DEPARTMENT:** Economic Development

**ACM:** Christine Taylor, Assistant City Manager

**DATE:** April 2, 2024

### **SUBJECT**

Consider approval of a resolution of the City Council of the City of Denton, approving the 2022/2023 Tax Increment Reinvestment Zone Number Two (Westpark TIRZ) annual report; and declaring an effective date. The TIRZ Number Two Board recommends approval (11-0).

### **BACKGROUND**

A Tax Increment Reinvestment Zone (TIRZ) is a tool used to fund public improvements, stimulate development or redevelopment, and enhance infrastructure within a defined area. A TIRZ operates by capturing increases in tax revenue from the defined area and using the revenue on projects within the same area. When a TIRZ is created, a base taxable value of the property in the zone is established. In following years, the increment of increased valuation between the base year and the following years goes to the TIRZ fund for use in the development district. Chapter 311 of the Texas Tax Code statute, the section of state law that regulates TIRZ creation and operation, is also known as the Tax Increment Financing Act.

On December 17, 2012, the City Council adopted an Ordinance No. 2012-366 designating and describing the boundaries of Tax Increment Reinvestment Zone Number Two (Westpark TIRZ) to provide the public infrastructure necessary to encourage development in the largest industrially zoned area in the City.

By statute, an annual report is required to be submitted to the State Comptroller of Public Accounts, detailing the previous year's TIRZ activities. According to 311.016 of the Texas Tax Code, the report is required to include: the base and appraised value; revenue in the Tax Increment Fund from all participating taxing entities; purpose of expenditures; and any outstanding bonded indebtedness interest due. Staff has drafted a report (attached) for consideration by City Council.

### **FISCAL INFORMATION**

This is the eleventh year of the Westpark TIRZ. The report period includes October 1, 2022 through September 30, 2023 (FY 2022-23). During FY 2022-23, \$606,140 was collected for the City's portion based on the last supplemental valuation of the calendar year from the Denton Central Appraisal District (DCAD). The City's and County's contribution in the TIRZ fund for FY 2022-23 was \$606,140 and \$235,181, respectively. An additional \$62,123 in interest was earned for the period, bringing the total FY 2022-23 contribution to \$903,444. This is a \$270,269,188 increase from the 2012 base value of \$119,458. The valuation and contribution into the TIRZ fund is illustrated in the tables that follow.

**Table 1: City Certified and Supplemental TIRZ Two Valuation Summary**

Tax Year	Certified TIRZ Tax Value	Supplemental TIRZ Tax Value*	Incremental Increase (Decrease)	Contribution	Adjusted Incremental Value	Annual TIRZ Ad Valorem Revenue
2013	119,458	119,458	N/A	N/A	N/A	N/A
2014	566,436	555,807	436,349	40%	174,540	1,204
2015	120,538	120,538	1,080	40%	432	3
2016	2,401,349	2,401,349	2,281,891	40%	912,756	6,237
2017	63,108,366	63,108,366	62,988,908	40%	25,195,563	160,711
2018	68,549,662	72,165,650	72,046,192	40%	28,818,477	178,812
2019	110,654,075	119,113,120	118,993,662	40%	47,597,465	281,041
2020	175,546,028	175,546,028	175,426,570	40%	70,170,628	414,325
2021	226,991,678	226,957,789	226,838,331	40%	90,735,332	513,401
2022	270,388,646	270,388,646	270,269,188	40%	108,107,675	606,140
<b>Totals</b>						<b>\$2,161,874</b>

**Table 2: County Certified and Supplemental TIRZ Two Valuation Summary**

Tax Year	Certified Tax Value	Supplemental Tax Value*	Incremental Increase (Decrease)	Contribution	Adjusted Incremental Value	Annual TIRZ Ad Valorem Revenue
2013	119,458	119,458	N/A	N/A	N/A	N/A
2014	566,436	241,101	121,643	40%	48,657	132
2015	120,538	120,538	1,080	40%	432	1
2016	2,401,349	2,401,349	2,281,891	40%	912,756	2,267
2017	63,108,366	63,108,366	62,988,908	40%	25,195,563	59,918
2018	68,549,662	72,165,650	72,046,192	40%	28,818,477	65,007
2019	110,654,075	119,113,120	118,993,662	40%	47,597,465	107,227
2020	175,546,028	175,546,028	175,426,570	40%	70,170,628	157,873
2021	226,991,678	226,957,789	226,838,331	40%	90,735,332	211,491
2022	270,388,646	270,388,646	270,269,188	40%	108,107,675	235,181
<b>Totals</b>						<b>\$839,097</b>

**Table 3: TIRZ Two Total Certified and Supplement Summary**

Tax Year	Certified Tax Value	Supplemental Tax Value	Incremental Increase (Decrease)	Contribution	Adjusted Incremental Value	Annual TIRZ Ad Valorem Revenue	Interest Income**	Total Expenditures	Total Revenue
2013	119,458	119,458	N/A	N/A	N/A	N/A	N/A	N/A	N/A
2014	566,436	555,807	436,349	40%	174,540	1,336	7	0	1,343
2015	120,538	120,538	1,080	40%	432	4	10	0	14
2016	2,401,349	2,401,349	2,281,891	40%	912,756	8,505	81	0	8,586
2017	63,108,366	63,108,366	62,988,908	40%	25,195,563	220,629	2,534	0	223,163
2018	68,549,662	72,165,650	72,046,192	40%	28,818,477	243,819	8,885	198,991	53,713
2019	110,654,075	119,113,120	118,993,662	40%	47,597,465	388,268	7,713	195,734	200,247
2020	175,546,028	175,546,028	175,426,570	40%	70,170,628	572,199	4,995	197,336	379,858
2021	226,991,678	226,957,789	226,838,331	40%	90,735,332	724,893	10,947	197,203	538,637
2022	270,388,646	270,388,646	270,269,188	40%	108,107,675	841,321	62,123	862,709	40,735
<b>Total City and County Contributions</b>						<b>3,000,974</b>	<b>97,295</b>	<b>1,651,973</b>	<b>1,446,296</b>

\* Tax Year 2014 - City uses Supplement #18 dated 12/23/14 and County uses Supplement #20 dated 1/30/2015.

\*\* Tax Year 2016 includes interest earned through 12/31.

Total Fund Balance at 9/30/23 is \$1,446,296.

### **PRIOR ACTION REVIEW**

**February 14, 2024** - The TIRZ Number Two Board recommended City Council approve the 2022/2023 Annual Report for Tax Increment Reinvestment Zone Number Two (11-0).

### **EXHIBITS**

Exhibit 1 – Agenda Information Sheet

Exhibit 2 – Resolution and TIRZ Two 2022-23 Annual Report

Exhibit 3 – Form 50-806

Respectfully submitted:

Erica Sullivan

Economic Development Program Administrator

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DENTON, APPROVING THE 2022/2023 TAX INCREMENT REINVESTMENT ZONE NUMBER TWO (WESTPARK TIRZ) ANNUAL REPORT; AND DECLARING AN EFFECTIVE DATE.

WHEREAS, the City of Denton recognizes the importance of its role in local economic development initiatives and programs; and

WHEREAS, the City has established Tax Increment Reinvestment Zone Number Two (Westpark TIRZ) and established a Board of Directors for the District to promote development or redevelopment in the industrial area pursuant to Ordinance No. 2012-366, authorized by the City Council on December 18, 2012, as provided by the Tax Increment Financing Act, Chapter 311 of the Texas Tax Code, as amended; and

WHEREAS, on February 5, 2013, the City Council adopted Ordinance 2013-033 accepting an Agreement with Denton County to participate in TIRZ Number Two; and

WHEREAS, the Tax Increment Financing Act specifies that the governing body of a city shall submit an annual report on the financial status of the district to the Chief Executive Officer of each taxing unit that levies taxes on real property in a reinvestment zone, and a copy of the report shall be forwarded to the State Comptroller; and

WHEREAS, on February 14, 2024, the Westpark TIRZ District Board reviewed and recommended approval of the 2022/2023 Annual Report for Tax Increment Reinvestment Zone Number two to the City Council; NOW, THEREFORE,

THE CITY COUNCIL OF THE CITY OF DENTON HEREBY RESOLVES:

SECTION 1. That the 2022/2023 Annual Report for Tax Increment Reinvestment Zone Number Two (Westpark TIRZ), City of Denton, Texas, a copy of which is attached here to as Exhibit A, is hereby accepted.

SECTION 2. That the City Manager or their designee is hereby authorized to submit the 2022/2023 Annual Report for Tax Increment Reinvestment Zone Number Two to the Chief Executive Officer of each taxing jurisdiction that levies tax on real property in the District, and to the State Comptroller, as required by state law.

SECTION 3. This resolution shall take effect immediately from and after its passage in accordance with the provisions of the Charter of the City of Denton, and it is accordingly so resolved.

The motion to approve this resolution was made by \_\_\_\_\_ and seconded by \_\_\_\_\_, the resolution 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 \_\_\_\_\_, 2024.

\_\_\_\_\_  
GERARD HUDSPETH, MAYOR

ATTEST:  
JESUS SALAZAR, CITY SECRETARY

BY: \_\_\_\_\_

APPROVED AS TO LEGAL FORM:  
MACK REINWAND, CITY ATTORNEY

BY:  Scott Bray  
2024.03.22  
14:22:58 -05'00'

**Tax Increment Reinvestment Zone Number Two  
(Westpark TIRZ)  
2022/2023 Annual Report**



**City of Denton  
Economic Development Department  
401 N. Elm Street  
Denton, Texas 76201  
940-349-7776  
[www.dentonedp.com](http://www.dentonedp.com)**

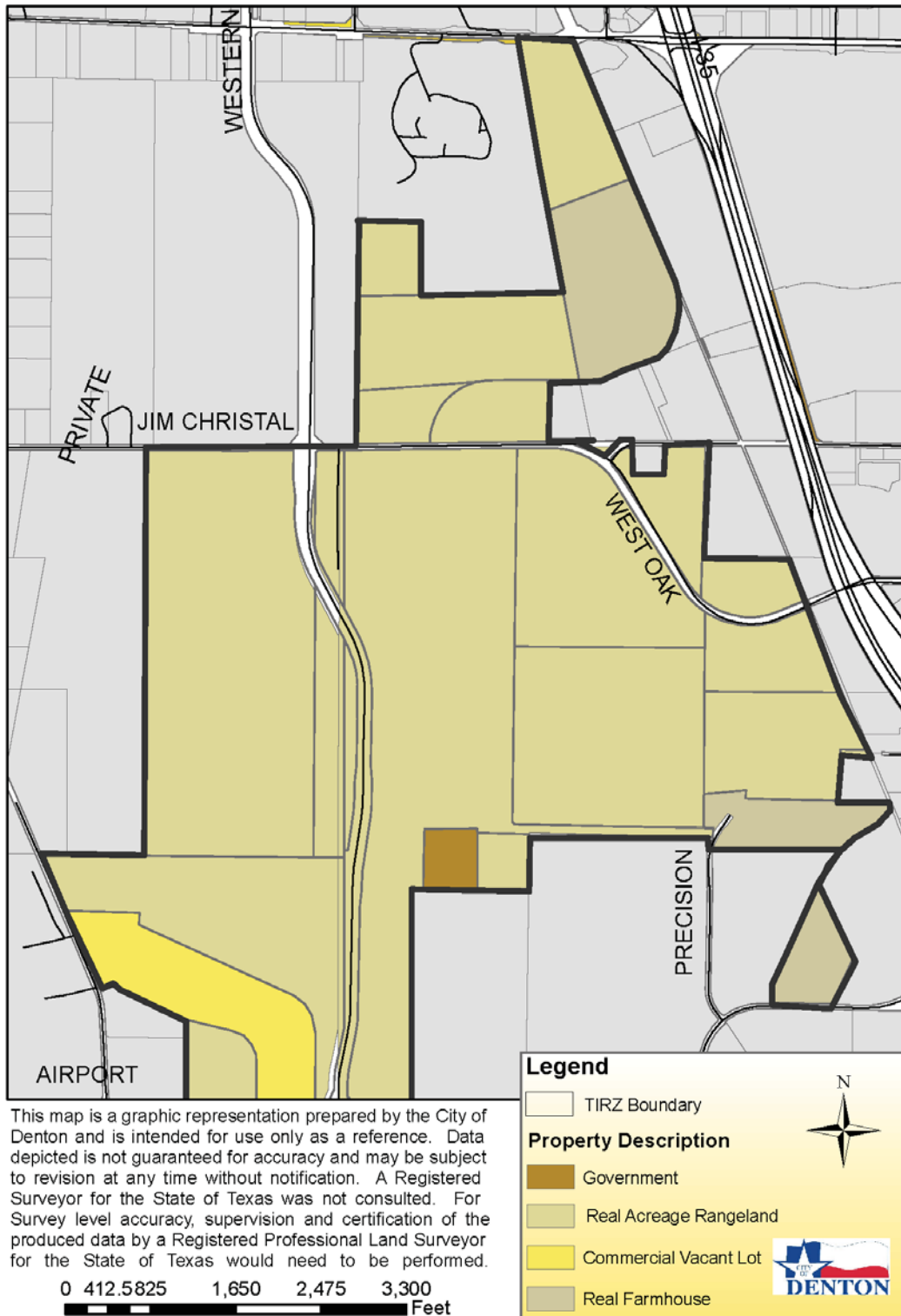
**October 1, 2022 to September 30, 2023**

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## Tax Increment Reinvestment Zone Number Two



## **Mission Statement**

The mission of the Tax Increment Reinvestment Zone (TIRZ) Number Two is to provide a source of funding for public infrastructure improvements to encourage and accelerate necessary development within the largest industrially zoned area within the City.

## **Background and Purpose**

Tax increment financing originated as a tool for governments to publicly finance needed improvements and enhance infrastructure within a defined area in order to stimulate private development and redevelopment. A TIRZ is a defined area where public infrastructure improvements are deemed necessary to promote development. The costs of the improvements to the area are repaid by the contribution of future tax revenues. Specifically, each taxing entity may choose to dedicate all, a portion, or none of the tax revenue that is attributable to the increase in property values. The additional tax revenue that is received from the affected properties is referred to as the tax increment. An ad valorem valuation base is established the first year, and the revenue from the increased valuation from subsequent years is allocated into a TIRZ fund to support development projects.

On December 17, 2012, the City Council adopted Ordinance No. 2012-366 designating and describing the boundaries of Tax Increment Reinvestment Zone Number Two (Westpark TIRZ) for an industrial district of Denton, Texas; establishing the duration of the Zone; establishing a Tax Increment Fund; and establishing a Board of Directors for the Tax Increment Reinvestment Zone. The City's second TIRZ consists of approximately 800 acres and is located north of Airport Road. This industrial area (Westpark) lacks the public infrastructure necessary to encourage development.

The Westpark TIRZ took effect on January 1, 2013, and will terminate on December 31, 2036, or the date when all project costs are paid and any debt is retired, whichever comes first. It is estimated that the TIRZ would generate approximately \$14.3 million over a 25-year period for infrastructure improvements. The City and Denton County will contribute \$10 million and \$4.2 million into the TIRZ fund, respectively. According to the Finance Plan, the City would retain \$43.9 million and the County would retain \$18.8 million of real and business personal property revenue over the life of the TIRZ.

## Participating Jurisdictions

**Table 1: TIRZ Two Participating Jurisdictions**

Jurisdiction	Years	2022/23 Tax Rate \$/\$100 Value	Percent of Tax Rate
City of Denton	1-10	0.560682*	40
	11-25	0.560682**	40
Denton County	1-10	0.217543*	40
	11-25	0.233086**	40

*\*Inception rate was 0.68975 for the City and .282867 for the County*

*\*\*Denotes estimate*

The TIRZ board is comprised of fourteen members. The City Council is responsible for appointing twelve members and designating the board Chair. The governing body of Denton County, which levies taxes on real property in the Westpark TIRZ, appoints one board member. Westray Group L.P, the developer, also appoints a single board representative.

## District History and Accomplishments

This is the eleventh year of the Westpark TIRZ. The report period includes October 1, 2022 through September 30, 2023 (FY 2022-23). During FY 2022-23, \$601,681 was collected for the City's portion based on the last supplemental valuation of the calendar year from the Denton Central Appraisal District (DCAD). The City's and County's contribution in the TIRZ fund for FY 2022-23 was \$606,140 and \$235,181, respectively. An additional \$62,123 in interest was earned for the period, bringing the total FY 2022-23 contribution to \$903,444.

The Denton City Council adopted an ordinance accepting an agreement with Denton County to participate in the Westpark TIRZ and authorizing the City Manager to execute the agreement on February 5, 2013. On February 12, 2013, the board for the Westpark TIRZ was appointed by City Council. Economic Development staff coordinated with multiple City departments, the developer, and legal counsel to develop a reimbursement/developer agreement with the developer. The agreement was approved by the Denton City Council on May 13, 2014, through Ordinance No. 2014-142.

On August 23, 2016, the Denton City Council approved the addition of a seat to the Economic Development Partnership (EDP) Board for the Texas Woman's University President and Chancellor. The adoption of Ordinance No. 2016-249 brought the EDP Board membership to twelve total.

On November 8, 2016, the following changes were made to the Westpark TIRZ board Ordinance Nos. 2012-366, 2014-039 and 2015-370, through Ordinance 2016-354, to establish a TIRZ Number Two board composition that incorporates the current EDP Board:

The Board of Directors shall consist of fourteen (14) members, twelve (12) of whom shall be appointed by the City Council of the City. All members appointed to the board shall meet the eligibility requirements set forth in the Act. Board membership shall consist of the following:

- The twelve members of the Economic Development Partnership Board;
- One member shall be appointed by the governing body of Denton County; and
- One member shall be appointed by the “Developer,” Rayzor Investments, LLP.

On April 16, 2019, Denton City Council adopted Ordinance 19-635 revising the Bylaws of the Westpark TIRZ to ensure that the Bylaws were in accordance with the adopted TIRZ and EDP ordinances and to clarify the amendment to the Bylaws process.

On March 3, 2020, Denton City Council adopted two ordinances. Ordinance 20-440 revised the Bylaws of the Westpark TIRZ to address developer terms and appointment of the chair. Ordinance 20-441 amended Ordinance No. 2012-366, as amended by ordinances 2014-039, 2014-274, 2015-370, and 2016-354 relating to the Westpark TIRZ, to amend the number of terms the developer representative may serve on the board of directors.

The terms of the board members shall be two-year terms; the twelve (12) members appointed by City Council will serve terms concurrent with their EDP terms. A board member may serve no more than three consecutive terms, except the Developer appointee may serve unlimited terms but must be re-nominated upon expiration of each term. The City Council shall designate a member of the board to serve as chairman of the board of directors, and the board shall elect from its members a vice chairman and other officers as it sees fit.

### **Summary of TIRZ Two Board Meetings**

The Westpark TIRZ Board recommended approval of the 2021/2022 Annual Report on March 8, 2023. The Board also received a report and gave staff direction on the reimbursement request for Westray Group, LP for improvements in the TIRZ.

The Board member attendance is presented below.

**Table 2: Board Member Attendance**

Member	Company/Affiliation	Present 3/8/23
Alex Payne	Denton County	X
Tony Clark	Independent Bank	X
Gerard Hudspeth	City of Denton Council Member	
Bob Eames	Eames Law Group	
Jimmy Mejia	La Azteca	X
Jesse Davis	City of Denton Council Member	X
Todd Wells	Peterbilt	X
Kerry Gorre	Black Chamber of Commerce	
Steve Edgar	Medical City Denton	X
Jill Jester	Minor and Jeter, P.C.	X
Lee Ramsey	Denton Chamber of Commerce	
Carine Feyten/Jason Tomlinson*	Texas Woman's University	X
Neal Smatresk/Susan Holmes	University of North Texas	X
Selwyn Rayzor	Rayzor Investments	X

Ex-Officio Member	Company/Affiliation	Present 3/8/23
Sara Hensley	City Manager of Denton	
Erin Carter	Denton Chamber of Commerce	X
Jamie Wilson	Denton Independent School District	

*\*Indicates Proxy*

In June 2022, one position on the EDPB and Westpark TIRZ No. Two boards vacated with the resignation of Tina Albert. Todd Wells replaced Tina Albert as a top 20 City of Denton ad valorem or sales tax taxpayer.

At the October 18, 2022 City Council meeting, Council confirmed the following EDPB members as Westpark TIRZ members: Jason Tomlinson, Jesse Davis, Lee Ramsey, Steve Edgar, Todd Wells and Tony Clark. Jill Jester was also appointed as Board Chair.

During FY 2021-22, the TIRZ Board received reports and took action on the following items:

1. Elected a vice chair for TIRZ Number Two Board of Directors.
2. Approved the minutes of the May 11, 2022 meeting.

3. Receive a report, hold a discussion, and give staff direction regarding the meeting dates and times for calendar year 2024.
4. Recommended approval of the 2021/2022 Annual Report for TIRZ Number Two to City Council.
5. Receive a report, hold a discussion, and verify a reimbursement request for Westray Group, LP for improvements in the TIRZ Number Two.

## Budget and Project Status

The Westpark TIRZ district has established in its Project and Finance Plans a budget for public improvement expenditures necessary to support public infrastructure and private investment in the district. Table 3, which follows, provides the TIRZ projects and estimated costs.

**Table 3: TIRZ Projects Costs**

PROJECT	ESTIMATED COST, \$M
Street Improvements	\$8,000,000
Utilities and Drainage	\$5,000,000
Industrial Projects	\$1,275,430
<b>TOTAL</b>	<b>\$14,275,430</b>

## Project Definitions

Street Improvements: includes the construction and reconstruction of paving improvements capable of handling heavy truck traffic and that provide common turning radius for semi trailers and may consist of, but are not limited to, primary and secondary major arterial thoroughfares and collector streets that will provide improved access within the industrial park, to State highways, and Interstate 35.

Utilities and Drainage: includes the extension of water and wastewater lines along the right-of-way of the streets within the District. Water and wastewater lines will be built to adequately accommodate the District at build-out and its anticipated industrial users.

A number of properties in the district are situated in the floodplain. Adequate stormwater drainage will be built to accommodate the maximum use of the land and comply with the drainage standards in the Denton Development Code.

Industrial Projects: may include grants, loans and services for public and private development. Eligible TIRZ project costs are not limited to public uses and may also include projects that stimulate economic development. Chapter 380 of the Local Government Code grants municipalities in Texas the authority to offer grants and loans of public funds to stimulate economic development.

## Revenues

According to Denton Central Appraisal District (DCAD) supplemental valuation figures, the FY 2022-23 total appraised valuation of taxable real property in the Westpark TIRZ was \$270,388,646. This is a \$270,269,188 increase from the 2012 base value of \$119,458. The valuation and contribution into the TIRZ fund is illustrated in the tables below.

**Table 4: City Certified and Supplemental TIRZ Two Valuation Summary**

Tax Year	Certified TIRZ Tax Value	Supplemental TIRZ Tax Value*	Incremental Increase (Decrease)	Contribution	Adjusted Incremental Value	Annual TIRZ Ad Valorem Revenue
2013	119,458	119,458	N/A	N/A	N/A	N/A
2014	566,436	555,807	436,349	40%	174,540	1,204
2015	120,538	120,538	1,080	40%	432	3
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2022	270,388,646	270,388,646	270,269,188	40%	108,107,675	606,140
<b>Totals</b>						<b>\$2,161,874</b>

**Table 5: County Certified and Supplemental TIRZ Two Valuation Summary**

Tax Year	Certified Tax Value	Supplemental Tax Value*	Incremental Increase (Decrease)	Contribution	Adjusted Incremental Value	Annual TIRZ Ad Valorem Revenue
2013	119,458	119,458	N/A	N/A	N/A	N/A
2014	566,436	241,101	121,643	40%	48,657	132
2015	120,538	120,538	1,080	40%	432	1
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2022	270,388,646	270,388,646	270,269,188	40%	108,107,675	235,181
<b>Totals</b>						<b>\$839,097</b>



**Table 6: TIRZ Two Total Certified and Supplement Summary**

Tax Year	Certified Tax Value	Supplemental Tax Value	Incremental Increase (Decrease)	Contribution	Adjusted Incremental Value	Annual TIRZ Ad Valorem Revenue	Interest Income**	Total Expenditures	Total Revenue
2013	119,458	119,458	N/A	N/A	N/A	N/A	N/A	N/A	N/A
2014	566,436	555,807	436,349	40%	174,540	1,336	7	0	1,343
2015	120,538	120,538	1,080	40%	432	4	10	0	14
2016	2,401,349	2,401,349	2,281,891	40%	912,756	8,505	81	0	8,586
2017	63,108,366	63,108,366	62,988,908	40%	25,195,563	220,629	2,534	0	223,163
2018	68,549,662	72,165,650	72,046,192	40%	28,818,477	243,819	8,885	198,991	53,713
2019	110,654,075	119,113,120	118,993,662	40%	47,597,465	388,268	7,713	195,734	200,247
2020	175,546,028	175,546,028	175,426,570	40%	70,170,628	572,199	4,995	197,336	379,858
2021	226,991,678	226,957,789	226,838,331	40%	90,735,332	724,893	10,947	197,203	538,637
2022	270,388,646	270,388,646	270,269,188	40%	108,107,675	841,321	62,123	862,709	40,735
<b>Total City and County Contributions</b>						<b>3,000,974</b>	<b>97,295</b>	<b>1,651,973</b>	<b>1,446,296</b>

\* Tax Year 2014 - City uses Supplement #18 dated 12/23/14 and County uses Supplement #20 dated 1/30/2015.

\*\* Tax Year 2016 includes interest earned through 12/31.

Total Fund Balance at 9/30/23 is \$1,446,296.

The 800-acre Westpark TIRZ is adjacent to the Denton Airport Business Park. Currently, a portion of the land within the TIRZ boundary has an agricultural exemption. While the net taxable value, after the agricultural exemption, is \$270,388,646 the market value of the district is \$289,608,400. Once the property is sold and developed, the exemption will be removed and the valuation will more accurately reflect the market value of the land.

## Expenditures

TIRZ expenditures in FY 2022-23 amounted to a total of \$862,709 for WinCo Foods ad valorem TIRZ Grant and a reimbursement request for Westray Group, LP for improvements in the TIRZ Number Two. WinCo received 197,669 and Westray Group, LP, the developer, received \$665,040.

This is the fifth year of the agreement for WinCo Foods. Under the Chapter 380 Agreement, WinCo Foods will pay 100% of the property taxes owed to the City and County and will receive a grant equal to 40% of the contribution of the City and County into the Tax Increment Fund (land



and improvements) from the distribution center. Both entities participate in the Westpark TIRZ at a rate of 40%. Business personal property (equipment) is not included in the TIRZ contribution.

WinCo will receive 40% of the ad valorem tax contribution (land and improvements) into the Tax Increment Fund from the City and Denton County, 60% of the City's portion of the ad valorem by the project (excluding land, inventory, vehicles and supplies) until the

construction costs for Phase I public improvements have been reimbursed.



The Agreement thresholds require a minimum valuation of \$50 million in real property improvements and business personal property value. Since WinCo Foods met their threshold requirements, they received ad valorem grant payments equal to:

- 40% of the ad valorem tax contribution (land and improvements) into the Tax Increment Fund from the City and Denton County in the amount of \$197,669, and
- 60% of the eligible amount of the real and personal property ad valorem taxes paid to the City (excluding land, inventory, vehicles and supplies) into the General Fund in the amount of \$220,338.

The first reimbursement for Westray Group, LP included pre-development costs, drainage improvement costs and the cost associated with traffic signals for a total of \$665,040. Pre-development costs included engineering; construction and management; and traffic analysis services. Drainage improvements involved the vertical relocation of an 8" pipeline and drainage work for the Rayzor Channel along Western Boulevard. Traffic signal costs included a construction participation payment for the signals at Western Boulevard and Highway 380. The traffic signals were the only improvements retained by the developer in Phase I of the Reimbursement Agreement.

## 2022/2023 Work Program

The First Amendment to the Reimbursement Agreement was made in order to accommodate WinCo Foods, a company that acquired approximately 77 acres in the Westpark Tax Increment Reinvestment Zone Number Two.

WinCo Foods agreed to execute Phase I of the Reimbursement Agreement and was awarded an economic incentive to reimburse the improvements. The 800,000 square foot distribution facility is located on the west side of Western Boulevard, north of Airport Road. WinCo Foods is a regional retailer with multiple distribution facilities across the United States. The project received a Certificate of Occupancy in January 2017 and has created 165 jobs.

The terms of the grant agreement end when full reimbursement has occurred, and include the following forms of reimbursement: up to \$1 million for water lines, utilizing the City's Water Development Plan Line Fund; up to \$865,000 in reimbursement for the sewer lines, utilizing the City's Wastewater Development Plan Line Fund; 100% of the Sales and Use Tax for construction materials, furniture, fixtures, and equipment for the construction of the project; 100% of the tax increment collected in the Westpark TIRZ fund associated directly with the project, until full reimbursement occurs. The contribution includes the City's 40% contribution to the TIRZ fund annually. The City's remaining 60% of ad valorem revenue will also be utilized until full reimbursement occurs. It is anticipated that full reimbursement will occur in approximately eight to ten years. The first year after full reimbursement, the second term of the grant agreement shall commence, and will include the following: a 60% rebate of the City's ad valorem revenue for a period of four years.

Reimbursements for the utility Development Plan Line Fund and sales and use tax grant for construction have been processed. WinCo foods received a Certificate of Occupancy (CO) on January 18, 2017. The ad valorem and TIRZ grants commenced the first year following receipt by grantee of a CO in 2018.

On February 2, 2018, United States Cold Storage (USCS) closed on a 40-acre site on Jim Christal Road east of Western Boulevard in the Westpark Tax Increment Reinvestment Zone (TIRZ). USCS plans to offer storage, re-pack, and case pick, distribution and transportation solutions for production facilities in the United States and Mexico. Preliminary plans provide for rail service, export services to Mexico, cooler and freezer storage, and on-site customer offices.

USCS received a Certificate of Occupancy on April 14, 2020. The company invested approximately \$34 million in the project, which will create \$33.2 million in new ad valorem value, for the 2019 tax year, in Denton. The estimated electric demand is 1.5 megawatts annually, which will make USCS a Top 25 customer for DME. The company plans to create 67 new jobs by Year 3 of operations with an average salary of \$36,074.

The location of this project necessitated Phase II of the Westpark TIRZ improvements, which generally consisted of water and wastewater line extensions and improvements, drainage improvements, and road reconstruction, all along Jim Christal Road and West Oak Street.

In 2019, Tyson Sales and Distribution received an abatement of 25% of their business personal property only (which does not go into the TIRZ) for 6 years. The Company provides refrigerated warehousing and distribution services to the Tyson Foods, Inc. companies. Tyson had \$38 billion in sales in FY 2017 and employs 122,000. The company will construct 350,000+ square foot highly automated refrigerated distribution center next to USCS. The facility will contain automated storage and retrieval systems, including stacker cranes, gantry robots for layer picking, pallet conveyors and transfer cars, and a monorail. It is expected to ship 700 million pounds of product annually from the facility. The facility will have about a 2 megawatt annual electric demand which will add another Top 25 customers for DME. It will employ 100 on a full-time basis with hourly wages ranging from \$20 to \$45. The grantee is required to create 95 jobs with an average hourly wage of \$23.58. A \$25.5 million business personal property valuation threshold is required in year one. The business personal property valuation thresholds are tiered based on the Denton Central Appraisal District's depreciation schedule. This project has been put on hold as the company reexamines and prioritizes their expansions. They do not have plans to sell the property.

A number of industrial projects, which will total over three million square feet, are currently underway in the zone and industrial area. The Retreat at Denton II, a multi-family development, has been constructed. The project includes 193 units on 21.9 acres in the southern section of the zone.

Ironwood Realty Partners and Scannell Properties have partnered on an industrial project, Denton Crossing @ I-35, which will house approximately 1.2 million square feet of industrial speculative space along Western Boulevard. There will be a total of four buildings upon completion. Building 4 has been constructed and has 126,890 square feet. Buildings 1 and 2 will have just under 709,000 square feet. Building 2 has completed construction. Elite Materials Logistics plans to occupy a building in Phase II of the development. Building 3 is currently under construction and will comprise up to 398,000 square feet of warehouse space.

Cowboy Distribution, a warehouse/distribution center facility on 10 acres north of Jim Christal Road and east of N. Western Boulevard, is in the platting stage.

Exeter has completed a building (Exeter Westpark I) comprising 649,000 square feet, where W. Oak Street and Jim Christal meet, that is the newest distribution center for Lowe's Home Improvement. Exeter is also constructing three buildings adjacent to the TIRZ boundary at the northwest corner of Western Boulevard and Jim Christal Road. The square footage of these

buildings are 324,000 square feet, 421,000 square feet, and 1,076,000 square feet. Construction has been completed for Building 3.

Hunt Southwest is constructing a 227,420 square foot building on a 17-acre site on S. Western Boulevard and Jim Christal at the I-35 Convergence. To the north, property owners plan to build a 250,080 SF warehouse.

Denton Point is comprised of two buildings totaling 242,320 square feet. Building 2 is a 130,000 SF facility located along Western Boulevard. Denton Point is a rail-served development ideal for manufacturing and supply chain use. Westcore, based in San Diego, purchased Denton Point for \$32 million. Denton 1 is occupied by a shipping and logistics operation, DHL.

Westpark Industrial is located in a 16-acre parcel on S. Western Boulevard, south of the Tyson plat, that is divided into two sites that each have speculative buildings totaling 242,378 square feet.

The Cold Creek Solutions and ARCO National Construction industrial project is a cold storage facility that is under construction along I-35 and North Elm on 20.3 acres.

**Appendix A:**  
**TIRZ Two (Westpark)**  
**Balance Sheet**

CITY OF DENTON  
TAX INCREMENT FINANCING REINVESTMENT ZONE (TIRZ) NUMBER TWO WESTPARK  
ACTUAL REVENUE

City of Denton

Tax Year	Certified Tax Value	Fiscal Year as of 9/30	Supplemental Tax Value*	Incremental Increase (Decrease)	Contribution	Adjusted Incremental Value	Tax Rate	Annual TIRZ Ad Valorem Revenue
2013	\$ 119,458	2013-2014	\$ 119,458	N/A	N/A	N/A		N/A
2014	566,436	2014-2015	555,807	436,349	40%	174,540	0.68975%	1,204
2015	120,538	2015-2016	120,538	1,080	40%	432	0.68975%	3
2016	2,401,349	2016-2017	2,401,349	2,281,891	40%	912,756	0.68334%	6,237
2017	63,108,366	2017-2018	63,108,366	62,988,908	40%	25,195,563	0.637856%	160,711
2018	68,549,662	2018-2019	72,165,650	72,046,192	40%	28,818,477	0.620477%	178,812
2019	110,654,075	2019-2020	119,113,120	118,993,662	40%	47,597,465	0.590454%	281,041
2020	175,546,028	2020-2021	175,546,028	175,426,570	40%	70,170,628	0.590454%	414,325
2021	226,991,678	2021-2022	226,957,789	226,838,331	40%	90,735,332	0.565823%	513,401
2022	270,388,646	2022-2023	270,388,646	270,269,188	40%	108,107,675	0.560682%	606,140
Totals								\$ 2,161,874

Denton County

Tax Year	Certified Tax Value	Fiscal Year as of 9/30	Supplemental Tax Value*	Incremental Increase (Decrease)	Contribution	Adjusted Incremental Value	Tax Rate	Annual TIRZ Ad Valorem Revenue
2013	\$ 119,458	2013-2014	\$ 119,458	N/A	N/A	N/A		N/A
2014	566,436	2014-2015	241,101	121,643	40%	48,657	0.27220%	132
2015	120,538	2015-2016	120,538	1,080	40%	432	0.26200%	1
2016	2,401,349	2016-2017	2,401,349	2,281,891	40%	912,756	0.24841%	2,267
2017	63,108,366	2017-2018	63,108,366	62,988,908	40%	25,195,563	0.23781%	59,918
2018	68,549,662	2018-2019	72,165,650	72,046,192	40%	28,818,477	0.22557%	65,007
2019	110,654,075	2019-2020	119,113,120	118,993,662	40%	47,597,465	0.22528%	107,227
2020	175,546,028	2020-2021	175,546,028	175,426,570	40%	70,170,628	0.22499%	157,873
2021	226,991,678	2021-2022	226,957,789	226,838,331	40%	90,735,332	0.23309%	211,491
2022	270,388,646	2022-2023	270,388,646	270,269,188	40%	108,107,675	0.21754%	235,181
Totals								\$ 839,097

Total

Tax Year	Certified Tax Value	Fiscal Year as of 9/30	Supplemental Tax Value	Incremental Increase (Decrease)	Contribution	Adjusted Incremental Value	Combined Tax Rate	Annual TIRZ Ad Valorem Revenue
2013	\$ 119,458	2013-2014	\$ 119,458	N/A	N/A	N/A		N/A
2014	566,436	2014-2015	555,807	436,349	40%	174,540	0.961950%	1,336
2015	120,538	2015-2016	120,538	1,080	40%	432	0.951750%	4
2016	2,401,349	2016-2017	2,401,349	2,281,891	40%	912,756	0.931749%	8,505
2017	63,108,366	2017-2018	63,108,366	62,988,908	40%	25,195,563	0.875668%	220,629
2018	68,549,662	2018-2019	72,165,650	72,046,192	40%	28,818,477	0.846051%	243,819
2019	110,654,075	2019-2020	119,113,120	118,993,662	40%	47,597,465	0.815732%	388,268
2020	175,546,028	2020-2021	175,546,028	175,426,570	40%	70,170,628	0.815439%	572,199
2021	226,991,678	2021-2022	226,957,789	226,838,331	40%	90,735,332	0.798909%	724,893
2022	270,388,646	2022-2023	270,388,646	270,269,188	40%	108,107,675	0.778225%	841,321
Totals								\$ 3,000,974

Interest Income***	Total Revenue	Total Expenditures	Fund Balance**
N/A	N/A	N/A	N/A
7	1,343	-	1,343
10	14	-	14
81	8,586	-	8,586
2,534	223,163	-	223,163
8,885	252,704	198,991	53,713
7,713	395,981	195,734	200,247
4,995	577,194	197,336	379,858
10,947	735,840	197,203	538,637
62,123	903,444	862,709	40,735
\$ 97,295	\$ 3,098,269	\$ 1,651,973	\$ 1,446,296

\*Tasv Year 2014 - City uses Supplement #18 dated 12/23/14 and County uses Supplement #20 dated 1/30/2015.  
nd Balance as of September 30, 2023 is \$1,446,296, which includes the WinCo and Westray expenses of \$862,709.00



# Tax Increment Finance (TIF) Registry

## Annual Report by Municipality or County

PLEASE PRINT OR TYPE, DO NOT WRITE IN SHADED AREAS.

Please fill out the complete form and attach other documentation (See Instructions on page 2.)

### STEP 1: Contact Information

City of Denton

☒ City ☐ County

Name of designating taxing unit

Erica Sullivan

Economic Development Program Administrator

Contact Person

Title

401 N. Elm Street

Current Mailing Address (number and street)

Denton

Denton

76201

City

County

ZIP Code

940-349-7731

erica.sullivan@cityofdenton.com

Phone (xxx-xxx-xxxx)

Fax Number (xxx-xxx-xxxx)

Email Address

### STEP 2: Tax Increment Reinvestment Zone Information

1. TIF Reinvestment zone name: TIRZ Number Two: Westpark TIRZ
- DO NOT USE ORDINANCE OR RESOLUTION NUMBERS FOR ZONE NAME (See instructions for "Proper Zone Naming Standards")**
2. Report for fiscal year beginning (YYYY) 10/1/2022 and ending (YYYY) 9/30/2023.
3. Is the required documentation attached (check mark required to acknowledge): ☒ Annual Report
4. Has the termination date of the TIRZ been modified? (If "No" skip to question 5.) ☐ Yes ☒ No
- a. Original Termination Date (MM/DD/YYYY): \_\_\_\_\_ b. Modified Termination Date (MM/DD/YYYY): \_\_\_\_\_
- c. Attachment must include: ☐ Modified Ordinance d. Attachment must include: ☐ Modified Project Plan and Finance Plan
5. Size of the TIF reinvestment zone in acres: ..... 831.6
6. Has the size of the zone increased or decreased since creation?: ☐ Yes ☒ No
7. If you answered "Yes" in question #6, please indicate which? ☐ Increased ☐ Decreased
8. Property types (select one only): ☐ Residential ☒ Commercial/Industrial ☐ Both (commercial/industrial and residential)
9. Have one or more abatements been given to business(es) to locate in the TIRZ (if "No" then skip to question #10)?: ☐ Yes ☒ No
10. What are the individual account numbers assigned to each active abated property that is located in the TIRZ? Use a separate box for each abated property account number.
- |  |  |
|--|--|
|  |  |
|  |  |
|  |  |
|  |  |
11. Types of improvement projects (check all that are in progress or have been completed):
- Public Projects
- ☒ Public Buildings and Facilities ☒ Roadwork
- ☒ Water/Sewer and Drainage ☐ Parks ☒ Other Infrastructure: water, wastewater
- Other Projects
- ☐ Facade Renovation ☐ Parking ☐ Historical Preservation
- ☐ Transit ☐ Affordable Housing ☒ Economic Development ☒ Other: industrial facilities, 1 multi family development

For Q.12-Q.15 round to the nearest dollar. CANNOT leave any line blank for Q.12-Q.15, MUST provide at least a \$0 for each line.

12. TIF fund balance (end of year):	\$	1,446,296
13. List of fund revenues:		
Total tax increments received	\$	3,000,974
Sales tax increments	\$	
Loans	\$	
Sale of bonds	\$	
Sale of property	\$	
Other	\$	
TOTAL ANNUAL REVENUES		\$ 3,000,974
14. List of fund expenditures:		
Administrative	\$	
Property purchased	\$	
Public improvements	\$	545,040
Facade renovations	\$	
Parking	\$	
Historic preservation	\$	
Transit	\$	
Affordable housing	\$	
Economic development programs	\$	197,669
Other	\$	120,000
TOTAL ANNUAL EXPENDITURES		\$ 862,709
15. Bonded indebtedness:		
Principal due	\$	
Interest due	\$	
TOTAL DEBT		\$ 0

Fill out the three lines below if the TIRZ IS NOT divided into multiple sub-zones in the "lead taxing unit." If the zone has increased in size since it's creation and is divided into multiple sub-zones: (a) identify the name of each sub-zone/section and (b) identify the TIRZ values, tax increment base and captured appraised value within that zone's sub-zone. DO NOT INCLUDE numbers from "participating taxing units."

16. Reinvestment zone values:		
Tax increment base	\$	119,458
Current captured appraised value	\$	270,388,646
Total appraised value (add above 2 lines together)	\$	270,508,104
Name of the subdivision 1 (if applicable)		

(Fill out section below only if the TIRZ has expanded. Each new property/area that is incorporated into the TIRZ is considered as a "sub-zone")

Tax increment base .....	\$ _____
Current captured appraised value .....	\$ _____
Total appraised value (add above 2 lines together) .....	\$ <b>0</b> _____
Name of the sub-zone 2 (Use this field if zone has expanded) .....	_____
Tax increment base .....	\$ _____
Current captured appraised value .....	\$ _____
Total appraised value (add above 2 lines together) .....	\$ <b>0</b> _____
Name of the sub-zone 3 (Use this field if zone has expanded) .....	_____
Tax increment base .....	\$ _____
Current captured appraised value .....	\$ _____
Total appraised value (add above 2 lines together) .....	\$ _____
Name of the sub-zone 4 (Use this field if zone has expanded) .....	_____

**STEP 3: Authorized Name of Person Completing Form**

By typing my name below, I certify under penalty of perjury that I am authorized to execute this instrument and the information provided herein is true and correct to the best of my knowledge and belief.

**Erica Sullivan**

Authorized User Name

Economic Development Program Administrator

Title

Date

## Instructions

State Law (Section Sec. 311.016, Tax Code) requires the governing body of a municipality or county, on or before the 150th day following the end of its fiscal year, to submit a report on the status of a reinvestment zone created by the municipality or county to the chief executive officer of each taxing unit that levies property taxes on real property in the zone. A copy of this annual report along with this form must be submitted to the Texas Comptroller of Public Accounts at the address below:

Comptroller of Public Accounts  
Data Analysis and Transparency Division  
Post Office Box 13528  
Austin, Texas 78711-3528

For assistance or to request additional forms, call toll free, 1-844-519-5672. You may also obtain additional forms at [comptroller.texas.gov/economy/local/ch311/reporting.php](http://comptroller.texas.gov/economy/local/ch311/reporting.php). From a Telecommunication Device for the Deaf (TDD), call 1-800-248-4099 or 512-463-4621.

**Step 1: Contact information**

This information provides the Comptroller information on the entity initiating the tax increment reinvestment zone and a contact person for the annual report.

**Step 2: Tax Increment Reinvestment Zone Information**

Q.1 - Please include the reinvestment zone name listed in the ordinance or resolution creating the zone. TIRZ name MUST be formatted in this manner: City Name, TIRZ Name & Number such as City of Levelland TIRZ #1, City of Weimar Sunset TIRZ.

Q.11 - Indicate all improvement projects in progress or completed within the zone.

Q.12-Q.15 - List the TIF fund balance at the end of the fiscal year, all revenues received by the fund during the fiscal year, and all expenditures made by the fund during the fiscal year. List principal and interest due on bonded indebtedness, the tax increment base at the creation of the zone and the current captured appraised value (the increase in property value over the tax increment base.)

**Step 3: Authorized User Name of Person Completing Form**

The person typing their name here in the report should be the same person listed in Step 1 as the contact person.



# City of Denton

City Hall  
215 E. McKinney St.  
Denton, Texas 76201  
[www.cityofdenton.com](http://www.cityofdenton.com)

## Legislation Text

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**File #:** ID 24-420, **Version:** 1

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### **AGENDA CAPTION**

Consider approval of a resolution of the City of Denton authorizing the submission of an application to the U.S. Department of Transportation FY 2024 Safe Streets and Roads for All grant program funded by the Infrastructure Investment and Jobs Act (IIJA) in the amount of \$600,000 to develop a comprehensive safety action plan; and providing an effective date.



## AGENDA INFORMATION SHEET

**DEPARTMENT:** Development Services, Finance

**ACM:** Cassey Ogden

**DATE:** April 2, 2024

### **SUBJECT**

Consider approval of a resolution of the City of Denton authorizing the submission of an application to the U.S. Department of Transportation FY 2024 Safe Streets and Roads for All Grant Program funded by the Infrastructure Investment and Jobs Acts (IIJA) in the amount of \$600,000 to develop a comprehensive safety action plan; and providing an effective date.

### **STRATEGIC ALIGNMENT**

This action supports Key Focus Area: Support Healthy and Safe Communities.

### **BACKGROUND**

The Infrastructure Investment and Jobs Act 2021 authorized and appropriated \$1 billion to the U.S. Department of Transportation (USDOT) for fiscal year 2024 for the Safe Streets and Roads for All (SS4A) grant program. The purpose of the SS4A grant program is to improve roadway safety by significantly reducing or eliminating roadway fatalities and serious injuries through safety action plan development, refinement, and implementation focused on all users, including pedestrians, bicyclists, public transportation users, motorists, personal conveyance and micromobility users, and commercial operators.

City of Denton Transportation Services is seeking \$600,000 through the SS4A grant program to create a comprehensive safety action plan.

Through a Safety Action Plan, the City will conduct supplemental safety planning to enhance road safety on roadways within the City limits. As part of this project, the City of Denton will:

1. Make an official public commitment to a goal of eliminating roadway fatalities and serious injuries by a certain date. This will be done through the creation of a Vision Zero Task Force that will oversee the implementation and monitoring of all components outlined in the Safety Action Plan.
2. Conduct a comprehensive safety analysis to determine existing conditions and historical trends of crashes within the city including data on location, severity, contributing factors, and crash type by road user. Other factors to consider in this analysis are representation and inclusion of underserved communities and the assessment of current plans and policies. This analysis will be used to create a High-Injury Network to determine areas within the roadway network that will require the most development.
3. From the High-Injury Network, select a subset of study corridors to focus on countermeasure analysis to produce a list of specific countermeasures intended to address and enhance safety within these corridors.

4. Engage with the public and relevant stakeholders through the creation of a project website, survey activities, and public event pop-ups. Feedback collected through public engagement will be incorporated into the action plan.
5. Coordinate with regional stakeholders to determine how the City's objectives coincide with the vision of regional planning organizations. As of now, there are no comprehensive safety action plans in place by any larger jurisdiction Denton would fall under.
6. Evaluate policy changes to integrate safety through new policies, guidelines, and/or standards and strategies.
7. Create a prioritized list of projects that includes the costing, scoring, and ranking based on the priority that provides time ranges for when the strategies and countermeasures will be deployed.
8. Complete a supplement planning analysis on the connection of Windsor Drive across Loop 288.

Transportation Services staff will complete the grant application which is due to USDOT on April 4, 2024. If awarded, the grant program requires a 20% local match. The \$120,000 match is budgeted in the Transportation Services Operating Fund for fiscal year 2025.

### **RECOMMENDATION**

Staff recommends approval of the SS4A resolution.

### **FISCAL INFORMATION**

Transportation Services is requesting \$600,000 in SS4A grant program funding assistance. Fiscal Year 2025 Transportation Services operating funds will be used to fulfill the 20% local match requirement of \$120,000.

### **EXHIBITS**

Exhibit 1 – Agenda Information Sheet

Exhibit 2 – Resolution

Respectfully submitted:

Scott McDonald, Development Services Director

Jessica Williams, Chief Financial Officer

Prepared By:

Farhan Butt, Deputy Director of Transportation

Daniel Jones, Senior Grants Analyst

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION OF THE CITY OF DENTON AUTHORIZING THE SUBMISSION OF AN APPLICATION TO THE U.S. DEPARTMENT OF TRANSPORTATION FY 2024 SAFE STREETS AND ROADS FOR ALL GRANT PROGRAM FUNDED BY THE INFRASTRUCTURE INVESTMENT AND JOBS ACT (IIJA) IN THE AMOUNT OF \$600,000 TO DEVELOP A COMPREHENSIVE SAFETY ACTION PLAN; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Infrastructure Investment and Jobs Act (IIJA) authorized and appropriated \$1 billion to be awarded by the U.S. Department of Transportation (USDOT) for the FY 2024 Safe Streets and Roads for All (SS4A) grant program, and

WHEREAS, the USDOT opened the FY 2024 SS4A grant program application on February 21, 2024, for planning projects that will improve roadway safety by reducing and eliminating roadway fatalities and injuries through safety action plan development; and

WHEREAS, the City of Denton is eligible to apply as a political subdivision of a State defined as a unit of government under the authority of State law including cities; and

WHEREAS, the SS4A grant program requires a 20 percent local matching share of eligible project costs and the city's matching costs are estimated at \$120,000, and

WHEREAS, the City has developed the necessary application materials and desires to make an application to the FY 2024 SS4A grant program; and

WHEREAS, grant applications are due on April 4, 2024; NOW, THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY RESOLVES:

SECTION 1. The recitals are hereby incorporated and made part of this resolution for all purposes.

SECTION 2. The application for the FY 2024 Safe Streets and Roads for All grant program is hereby authorized.

SECTION 3. The City Manager, or designee, is designated, delegated, and authorized to request grant funding under the USDOT FY 2024 SS4A grant program, including the submission of USDOT's application information and materials, and act on behalf of the City of Denton in all matters related to the grant application and any subsequent grant contracts and grant projects that may result.

SECTION 4. Should the project be funded, then the City of Denton shall comply with the requirements of the U.S. Department of Transportation.

SECTION 5. The City of Denton shall certify that the matching share for this program is readily available upon completion of the grant agreement.



SECTION 6. The project funds and any project-funded equipment and facilities will be used solely for the purposes for which they are intended under the grant.

SECTION 7. This Resolution shall become effective immediately upon its passage and approval.

The motion to approve this Resolution was made by \_\_\_\_\_ and seconded by \_\_\_\_\_. This Resolution was passed and approved by the following vote [\_\_\_\_ - \_\_\_\_]:

	<b>Aye</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>
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 \_\_\_\_\_, 2024.

\_\_\_\_\_  
GERARD HUDSPETH, MAYOR

ATTEST:  
JESUS SALAZAR, CITY SECRETARY

BY: \_\_\_\_\_

APPROVED AS TO LEGAL FORM:  
MACK REINWAND, CITY ATTORNEY

BY: \_\_\_\_\_  
 Digitally signed by Susan Keller  
DN: dc=com, dc=cityofdenton, dc=codad,  
ou=Department Users and Groups,  
ou=General Government, ou=Legal, cn=Susan  
Keller, email=Susan.Keller@cityofdenton.com  
Date: 2024.03.18 16:03:18 -05'00'



# City of Denton

City Hall  
215 E. McKinney St.  
Denton, Texas 76201  
[www.cityofdenton.com](http://www.cityofdenton.com)

## Legislation Text

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**File #:** ID 24-641, **Version:** 1

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### **AGENDA CAPTION**

Consider adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the City Manager to execute a Professional Services Agreement with Kimley-Horn and Associates, Inc., for water and wastewater modeling services for the Water Utilities Department as set forth in the contract; providing for the expenditure of funds therefor; and providing an effective date (RFQ 7574-031 - Professional Services Agreement for water and wastewater modeling services awarded to Kimley-Horn and Associates, Inc., in the not-to-exceed amount of \$95,000.00). The Public Utilities Board recommends approval (5 - 0).



# City of Denton

City Hall  
215 E. McKinney Street  
Denton, Texas  
[www.cityofdenton.com](http://www.cityofdenton.com)

## AGENDA INFORMATION SHEET

**DEPARTMENT:** Procurement  
**ACM:** Cassey Ogden  
**DATE:** April 2, 2024

### **SUBJECT**

Consider adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the City Manager to execute a Professional Services Agreement with Kimley-Horn and Associates, Inc., for water and wastewater modeling services for the Water Utilities Department as set forth in the contract; providing for the expenditure of funds therefor; and providing an effective date (RFQ 7574-031 – Professional Services Agreement for water and wastewater modeling services awarded to Kimley-Horn and Associates, Inc., in the not-to-exceed amount of \$95,000.00). [The Public Utilities Board recommends approval \(5 - 0\).](#)

### **STRATEGIC ALIGNMENT**

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

### **INFORMATION/BACKGROUND**

The purpose of this contract is to provide on-call engineering services as an extension of the City of Denton's staff to provide development review assistance, model updates, and any post-analysis services for the City's water and wastewater system.

Staff reviewed proposed construction plans to determine the impact on the City's existing water and wastewater system. Kimley-Horn will utilize the City's existing water and wastewater model to perform this analysis. Kimley-Horn will also prepare a review letter documenting system capacity as it relates to the proposed development. The City of Denton Water Utilities Department will provide expected water and wastewater demand for the proposed development, and review and provide comments on the submitted review letter. Kimley-Horn will update the water and wastewater model with any updated data from the City of Denton.

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).

On March 25, 2024, the Public Utilities Board (PUB) recommended this item to the City Council for consideration.

### **RECOMMENDATION**

Award a contract with Kimley-Horn and Associates, Inc., for water and wastewater modeling services for the Water Utilities Department, in a not-to-exceed amount of \$95,000.

### **PRINCIPAL PLACE OF BUSINESS**

Kimley-Horn and Associates, Inc.  
Dallas, TX

### **SUSTAINABILITY MEASURES**

The contract for Water and Wastewater modeling services will help the City of Denton in planning new water and wastewater infrastructure needed for the City's growing population. The new additional infrastructure will increase capacity throughout the City. The facilities are essential to the safe treatment of water and wastewater discharge of effluent to the sensitive accepting water bodies.

### **FISCAL INFORMATION**

These services will be funded from the Water Utilities Account #630512517.1360.10100. Requisition #163992 has been entered into the Purchasing software system in the amount of \$95,000. The budgeted amount for this item is \$95,000.

### **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: Nicholas Dampf, 940-349-8030.

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

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF DENTON, A TEXAS HOME-RULE MUNICIPAL CORPORATION, AUTHORIZING THE CITY MANAGER TO EXECUTE A PROFESSIONAL SERVICES AGREEMENT WITH KIMLEY-HORN AND ASSOCIATES, INC., FOR WATER AND WASTEWATER MODELING SERVICES FOR THE WATER UTILITIES DEPARTMENT AS SET FORTH IN THE CONTRACT; PROVIDING FOR THE EXPENDITURE OF FUNDS THEREFOR; AND PROVIDING AN EFFECTIVE DATE (RFQ 7574-031 – PROFESSIONAL SERVICES AGREEMENT FOR WATER AND WASTEWATER MODELING SERVICES AWARDED TO KIMLEY-HORN AND ASSOCIATES, INC., IN THE NOT-TO-EXCEED AMOUNT OF \$95,000.00).

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

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

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

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The City Manager, or their designee, is hereby authorized to enter into an agreement with Kimley-Horn and Associates, Inc., for water and wastewater modeling services for the Water Utilities Department a copy of which is attached hereto and incorporated by reference herein.

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

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

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

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

The motion to approve this ordinance was made by \_\_\_\_\_ and

seconded by \_\_\_\_\_. This ordinance was passed and approved by the following vote [\_\_\_\_ - \_\_\_\_]:

	<b>Aye</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>
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 \_\_\_\_\_, 2024.

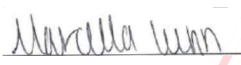
\_\_\_\_\_  
GERARD HUDSPETH, MAYOR

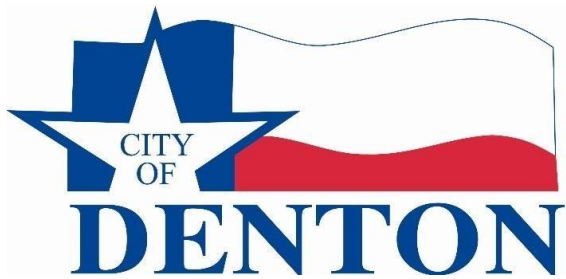
ATTEST:  
JESUS SALAZAR, CITY SECRETARY

BY: \_\_\_\_\_

APPROVED AS TO LEGAL FORM:  
MACK REINWAND, CITY ATTORNEY

BY: \_\_\_\_\_

  
Digitally signed by Marcella Lunn  
DN: dc=com, dc=cityofdenton, dc=codad, ou=Department Users and Groups, ou=General Government, ou=Legal, cn=Marcella Lunn, email=Marcella.Lunn@cityofdenton.com  
Date: 2024.03.06 13:00:48 -06'00'



Docusign City Council Transmittal Coversheet

PSA	7574-031
File Name	Water Modeling
Purchasing Contact	Gabby Leeper
City Council Target Date	
Piggy Back Option	Not Applicable
Contract Expiration	
Ordinance	



## **CITY OF DENTON, TEXAS**

### **STANDARD AGREEMENT FOR ENGINEERING RELATED PROFESSIONAL SERVICES**

This AGREEMENT is between the City of Denton, a Texas home-rule municipality ("CITY"), and **KIMLEY-HORN AND ASSOCIATES, INC.** with its corporate office at 421 Fayetteville Street, Suite 600, Raleigh, NC 27607 and authorized to do business in Texas, ("ENGINEER"), for a PROJECT generally described as: Water Modeling (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 \$95,000.00 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

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

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

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

BY:  
CITY OF DENTON, TEXAS

\_\_\_\_\_  
Sara Hensley, City Manager

BY:  
ENGINEER  
Kimley-Horn And Associates, INC.

DocuSigned by:  
John Atkins Senior Vice President  
\_\_\_\_\_  
Authorized Agent, Title

Full Name: John Atkins

2024-1129441  
TEXAS ETHICS COMMISSION  
CERTIFICATE NUMBER

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

DocuSigned by:  
Stephen Gay  
Signature

\_\_\_\_\_  
Director,  
Title

Water Utilities  
Department

Date Signed: 3/1/2024

APPROVED AS TO LEGAL FORM:  
MACK REINWAND, CITY ATTORNEY

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

ATTEST:  
JESUS SALAZAR, CITY SECRETARY

BY: \_\_\_\_\_

## ATTACHMENT "A"

Scope for:

### **WATER & WASTEWATER MODELING SERVICES**

The ENGINEER will perform its services pursuant to the requirements delineated below. Services under this attachment include analysis related to water and wastewater modeling.

#### **Project Understanding**

ENGINEER is to provide on-call engineering services as an extension of the CITY's staff for the purpose of providing development review assistance, model updates, and any post analysis services for the water or wastewater system.

#### **Scope of Services**

ENGINEER's scope of services is as follows:

- Task 1 – Development Review- \$50,000
- Task 2 – Model Updates- \$25,000
- Task 3 – Post Analysis Services- \$20,000

##### **Task 1 – Development Review**

1. ENGINEER will review proposed construction plans for the purpose of determining the impact to the CITY's existing water or wastewater system. ENGINEER will utilize the CITY's existing water or wastewater model to perform this analysis.
2. ENGINEER will prepare a review letter documenting system capacity as it relates to the proposed development.
3. CITY will:
  - a. Provide expected water or wastewater demand for the proposed development.
  - b. Review and provide comments on submitted review letter.

##### **Task 2 – Model Updates**

1. ENGINEER will update the water or wastewater model with any updated data provided by the CITY.

##### **Task 3 – Post Analysis Services**

1. Based on any completed water or wastewater model analysis or update, ENGINEER will provide additional scope of services agreed upon by the City. ENGINEER can provide these services, in accordance with the provisions of the Standard Agreement.

## **ATTACHMENT "A"**

Compensation for Engineering Design Related Services for:

### **WATER & WASTEWATER MODELING SERVICES**

ENGINEER will perform the Services in Tasks 1 - 3 on a labor fee plus expense basis. Labor fee will be billed on an hourly basis according to our then-current rates.

Direct reimbursable expenses such as express delivery services, fees, air travel, and other direct expenses will be billed at 1.15 times cost. A percentage of labor fee will be added to each invoice to cover certain other expenses such as telecommunications, in-house reproduction, postage, supplies, project related computer time, and local mileage. Administrative time related to the project will be billed hourly. All permitting, application, and similar project fees will be paid directly by the CITY. Should the CITY request ENGINEER to advance any such project fees on the CITY's behalf, an invoice for such fees, with a fifteen percent (15%) markup, will be immediately issued to and paid by the CITY.

Based on current information, ENGINEER estimates that labor fees will be approximately \$95,000. Fee estimates in this Agreement are for general budgeting purposes only. Actual fees may be less or more than the estimates.

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

**CONFLICT OF INTEREST QUESTIONNAIRE - FORM CIQ**

**For vendor or other person doing business with local governmental entity**

**This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.**

This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a) and by City of Denton Ethics Code, Ordinance 18-757.

By law this questionnaire must be filed with the records administrator of the local government entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. See Section 176.006(a-1), Local Government Code.

A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.

**1 Name of vendor who has a business relationship with local governmental entity.**

Kimley-Horn And Associates, Inc.

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

(The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7<sup>th</sup> 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 relations hip 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:

*John Atkins*

3/1/2024

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 3<sup>rd</sup> 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: E92447AB124A46A9984D00F1AE478E57

Status: Sent

Subject: Please DocuSign: City Council Contract 7574-031 Water Modeling

Source Envelope:

Document Pages: 23

Signatures: 4

Envelope Originator:

Certificate Pages: 6

Initials: 1

Gabby Leeper

AutoNav: Enabled

901B Texas Street

Enveloped Stamping: Enabled

Denton, TX 76209

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

Gabby.Leeper@cityofdenton.com

IP Address: 198.49.140.104

**Record Tracking**

Status: Original

Holder: Gabby Leeper

Location: DocuSign

2/29/2024 5:16:23 PM

Gabby.Leeper@cityofdenton.com

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

Gabby Leeper

**Completed**

Sent: 2/29/2024 5:17:29 PM

gabby.leeper@cityofdenton.com

Viewed: 2/29/2024 5:17:38 PM

Buyer

Signed: 2/29/2024 5:18:31 PM

City of Denton

Using IP Address: 198.49.140.104

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

Not Offered via DocuSign

Lori Hewell



Sent: 2/29/2024 5:18:34 PM

lori.hewell@cityofdenton.com

Viewed: 3/1/2024 7:53:24 AM

Purchasing Manager

Signed: 3/1/2024 8:14:08 AM

City of Denton

Signature Adoption: Pre-selected Style

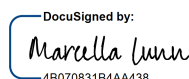
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(None)

Using IP Address: 198.49.140.10

**Electronic Record and Signature Disclosure:**

Not Offered via DocuSign

Marcella Lunn



Sent: 3/1/2024 8:14:10 AM

marcella.lunn@cityofdenton.com

Viewed: 3/1/2024 1:32:00 PM

Senior Deputy City Attorney

Signed: 3/1/2024 1:32:32 PM

City of Denton

Signature Adoption: Pre-selected Style

Security Level: Email, Account Authentication  
(None)

Using IP Address: 107.115.147.128

Signed using mobile

**Electronic Record and Signature Disclosure:**

Not Offered via DocuSign

John Atkins



Sent: 3/1/2024 1:32:36 PM

John.Atkins@kimley-horn.com

Viewed: 3/1/2024 3:25:29 PM

Vice President

Signed: 3/1/2024 3:31:37 PM

Security Level: Email, Account Authentication  
(None)

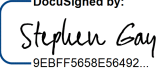
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**Electronic Record and Signature Disclosure:**

Accepted: 3/1/2024 3:25:29 PM

ID: a0fe16fc-6d87-4a50-9a76-201a9f02cec0

Signer Events	Signature	Timestamp
Stephen Gay Stephen.Gay@cityofdenton.com Director, Water Utilities Security Level: Email, Account Authentication (None)	<div>DocuSigned by:  9EBFF5658E56492...</div> Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.10	Sent: 3/1/2024 3:31:39 PM Viewed: 3/1/2024 3:46:51 PM Signed: 3/1/2024 3:48:17 PM

**Electronic Record and Signature Disclosure:**  
Accepted: 3/1/2024 3:46:51 PM  
ID: 02054601-8e94-4161-a09f-b2474bf380d6

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

Sent: 3/1/2024 3:48:21 PM

**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

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

**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

Jesus Salazar  
jesus.salazar@cityofdenton.com  
Security Level: Email, Account Authentication (None)

**Electronic Record and Signature Disclosure:**  
Accepted: 2/26/2024 9:37:24 AM  
ID: 2dd761df-a516-47b2-a74f-68d75f554a26

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: 2/29/2024 5:18:34 PM

Carbon Copy Events	Status	Timestamp
Gretna Jones gretna.jones@cityofdenton.com Legal Secretary City of Denton Security Level: Email, Account Authentication (None) <b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign  City Secretary Office citysecretary@cityofdenton.com Security Level: Email, Account Authentication (None) <b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign  Jewel Lanning Jewel.Lanning@cityofdenton.com Security Level: Email, Account Authentication (None) <b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign	<div>COPIED</div>	Sent: 3/1/2024 3:48:21 PM Viewed: 3/4/2024 11:22:09 AM
Witness Events	Signature	Timestamp
Notary Events	Signature	Timestamp
Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	2/29/2024 5:17:29 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](mailto: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](mailto: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](mailto: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](mailto: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"><li>•Allow per session cookies</li><li>•Users accessing the internet behind a Proxy Server must enable HTTP 1.1 settings via proxy connection</li></ul>

\*\* 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](http://www.cityofdenton.com)

## Legislation Text

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**File #: ID 24-642, Version: 1**

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### **AGENDA CAPTION**

Consider adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the City Manager to execute a contract with PowerWorld Corporation, for the annual licensing, maintenance, and support of PowerWorld Simulator software, currently used by Denton Municipal Electric, 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 8404 - awarded to PowerWorld Corporation, in the not-to-exceed amount of \$63,112.50, with a contract term expiring February 21, 2027). The Public Utilities Board recommends approval (5 - 0).



## AGENDA INFORMATION SHEET

**DEPARTMENT:** Procurement  
**ACM:** Cassey Ogden  
**DATE:** April 2, 2024

### **SUBJECT**

Consider adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the City Manager to execute a contract with PowerWorld Corporation, for the annual licensing, maintenance, and support of PowerWorld Simulator software, currently used by Denton Municipal Electric, 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 8404 – awarded to PowerWorld Corporation, in the not-to-exceed amount of \$63,112.50, with a contract term expiring February 21, 2027). [The Public Utilities Board recommends approval \(5 - 0\).](#)

### **STRATEGIC ALIGNMENT**

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

### **INFORMATION/BACKGROUND**

PowerWorld Simulator is a specialized software tool designed for engineers and energy market analysts to comprehensively model and analyze complex high-voltage power systems, making it an indispensable tool in the planning and operation of modern electrical grids. This powerful software enables analysts to model, simulate, and optimize complex electrical power systems with a high degree of precision. With PowerWorld Simulator, analysts can assess the stability and reliability of the grid, evaluate the impact of various contingencies, and plan for future system expansions or upgrades. Its real-time simulation capabilities allow for dynamic analysis of market operations, helping analysts make informed decisions on energy dispatch, pricing, and resource allocation. Additionally, the software provides insights into transmission congestion and voltage stability issues, assisting analysts in mitigating potential grid disruptions. Since 2020, PowerWorld has successfully provided Denton Municipal Electric (DME) with software that is cost-effective and meets all functional requirements. Additionally, PowerWorld holds all legal, patent, and brand rights for PowerWorld Simulator, thus it qualifies as the sole source vendor of its software suite.

PowerWorld has consistently demonstrated exceptional technical expertise in the energy market, and their support and partnership with DME since 2020 have proven to be invaluable. Their deep understanding of power system modeling and simulation has significantly contributed to DME's ability to navigate the ever-evolving energy landscape. PowerWorld's commitment to staying at the forefront of industry advancements has ensured that DME remains well-equipped to address emerging challenges and

opportunities. Their proactive support and tailored solutions have been instrumental in optimizing grid operations, enhancing reliability, and optimizing resource allocation. This ongoing partnership has not only strengthened DME's technical capabilities but has also fostered a collaborative environment where innovative solutions are continuously explored, solidifying PowerWorld's reputation as a trusted ally in DME's pursuit of excellence in the energy market.

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

#### **PRIOR ACTION/REVIEW (COUNCIL, BOARDS, COMMISSIONS)**

On March 25, 2024, the Public Utilities Board (PUB) recommended this item to the City Council for consideration.

#### **RECOMMENDATION**

Award with a contract to PowerWorld Corporation, for the annual licensing, maintenance, and support of PowerWorld Simulator software, currently used by Denton Municipal Electric, in a three (3) year not-to-exceed amount of \$63,112.50.

#### **PRINCIPAL PLACE OF BUSINESS**

PowerWorld Corporation  
Champaign, IL

#### **ESTIMATED SCHEDULE OF PROJECT**

This contract will expire on February 21, 2027.

#### **FISCAL INFORMATION**

The services will be funded from DME's account 600750.7899.5880. Requisition #163320 has been entered into the Purchasing software system in the amount of \$63,112.50. The budgeted amount for this item is \$63,112.50.

#### **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: Jerry Looper, 940-349-7676.

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

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF DENTON, A TEXAS HOME-RULE MUNICIPAL CORPORATION, AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT WITH POWERWORLD CORPORATION, FOR THE ANNUAL LICENSING, MAINTENANCE, AND SUPPORT OF POWERWORLD SIMULATOR SOFTWARE, CURRENTLY USED BY DENTON MUNICIPAL ELECTRIC, 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 8404 – AWARDED TO POWERWORLD CORPORATION, IN THE NOT-TO-EXCEED AMOUNT OF \$63,112.50, WITH A CONTRACT TERM EXPIRING FEBRUARY 21, 2027).

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 [Engineering functions]; 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>
8404	PowerWorld Corporation	\$63,112.50

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 [\_\_\_ - \_\_\_]:

	<b>Aye</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>
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 \_\_\_\_\_, 2024.

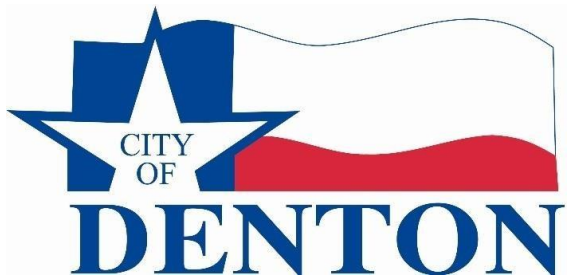
\_\_\_\_\_  
GERARD HUDSPETH, MAYOR

ATTEST:  
JESUS SALAZAR, CITY SECRETARY

BY: \_\_\_\_\_

APPROVED AS TO LEGAL FORM:  
MACK REINWAND, CITY ATTORNEY

BY: Marcella Lunn  
Digitally signed by Marcella Lunn  
DN: dc=com, dc=cityofdenton, dc=codad, ou=Department Users and Groups, ou=General Government, ou=Legal, cn=Marcella Lunn, email=Marcella.Lunn@cityofdenton.com  
Date: 2024.03.12 12:26:47 -05'00'



Docusign City Council Transmittal Coversheet

FILE	8404
File Name	POWERWORLD SIMULATOR PRODUCT RENEWAL
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 POWERWORLD CORPORATION  
(Contract #8404)**

**THIS CONTRACT** is made and entered into this date \_\_\_\_\_, by and between POWERWORLD CORPORATION a Illinois Corporation whose address is 2001 S First Street, STE 203, Champaign, IL 61820, hereinafter referred to as "Contractor," and the **CITY OF DENTON, TEXAS**, a home rule municipal corporation, hereinafter referred to as "City," to be effective upon approval of the Denton City Council and subsequent execution of this Contract by the Denton City Manager or his duly authorized designee.

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

**SCOPE OF SERVICES**

Contractor shall provide products in accordance with the City's File #8404 Power World Simulator Product Renewal, 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) PowerWorld Maintenance Agreement (**Exhibit "B"**);
- (c) PowerWorld Maintenance Agreement Addendum (**Exhibit "C"**);
- (d) PowerWorld License Agreement Site (**Exhibit "D"**);
- (e) PowerWorld License Agreement Single (**Exhibit "E"**);
- (f) Vendors Proposal (**Exhibit "F"**);
- (g) Standard Addendum to Agreement (**Exhibit "G"**);
- (h) Form CIQ – Conflict of Interest Questionnaire (**Exhibit "H"**);

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

**Prohibition on Contracts with Companies Boycotting Israel**

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

**Prohibition on Contracts with Companies Boycotting Certain Energy Companies**

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

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

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

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

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

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

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

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

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

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

CONTRACTOR

BY: 

DocuSigned by:

*Kelley Wegeng*

430768BC343F4D6...

  
AUTHORIZED SIGNATURE

Printed Name: kelley wegeng

Title: Executive Vice President

+1.217.384.6330 ext. 15

PHONE NUMBER  
kelley@powerworld.com

EMAIL ADDRESS

2024- N/A - IL corp, all work done in IL

TEXAS ETHICS COMMISSION  
1295 CERTIFICATE NUMBER

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

DocuSigned by:

*Antonio Puente, Jr.*

E3760944C2BE4B5...

  
SIGNATURE      PRINTED NAME

DME General Manager

TITLE

Electric

DEPARTMENT

CITY OF DENTON, TEXAS

BY: \_\_\_\_\_  
SARA HENSLEY, CITY MANAGER

ATTEST:  
JESUS SALAZAR, CITY SECRETARY

BY: \_\_\_\_\_

APPROVED AS TO LEGAL FORM:  
MACK REINWAND, CITY ATTORNEY

BY: 

DocuSigned by:

*Marcella Lunn*

4B070831B4AA438...

**Exhibit A**  
**Special Terms and Conditions**

**1. Contract Terms**

The contract term will be three (3) year, contract will expire on February 21, 2027.

**2. Total Contract Amount**

The contract total shall not exceed \$63,112.50. Pricing shall be per Exhibit F attached.

## **Exhibit B**

### **POWERWORLD Maintenance Agreement**

POWERWORLD CORPORATION ("LICENSOR") HAS LICENSED TO YOU ("LICENSEE") SOFTWARE UNDER A SEPARATE LICENSE AGREEMENT. THIS AGREEMENT PERTAINS TO THE MAINTENANCE OF THAT SOFTWARE LICENSE.

#### **Maintenance Terms**

1. Licensee's ability to use the software referenced in the License Agreement is NOT contingent upon its desire to continually pay the maintenance fees for this software. The license is a fully paid-up, perpetual license to the Software. It is irrevocable except in the case of a material breach of the license agreement.
2. As long as the maintenance fee is paid-in-full, the Licensee is entitled to no cost support for any of its users/technical support staff via email or phone.
3. As long as the maintenance fee is paid-in-full the Licensee is entitled to no cost access to any patches that are released for their current versions. These patches will be released via the PowerWorld Corporation website and will be accessed using a username and password that will be issued to the licensee.
4. As long as the maintenance fee is paid-in-full the Licensee is entitled to no cost upgrades to any new version of their software that are released. These upgrades will be automatically sent to the licensee without the licensee having to request them.

#### **Maintenance Fees**

5. The initial license fee for this software includes a paid-in-full maintenance agreement for one full year after the delivery date of the software.
6. As long as the licensee continues to pay the yearly maintenance fee, their maintenance fee will be considered paid-in-full.
7. Payment of the yearly maintenance as the original or future maintenance periods expire will extend the maintenance agreement for a full year after the payment.
8. If this maintenance agreement lapses renewal will be prorated by month for the period from the date of expiration through one year from the date of renewal, up to but not exceeding 100% of the license fee for the product at the time of renewal.

This Agreement is governed by the laws of the State of Illinois.

If you have any questions concerning this Agreement or wish to contact POWERWORLD for any reason, please email [info@powerworld.com](mailto:info@powerworld.com) or call (217) 384-6330.

Copyright © 1996 - 2022 POWERWORLD CORPORATION. All rights reserved.

## **Exhibit C**

### **POWERWORLD Maintenance Agreement Addendum**

Whereas, PowerWorld Corporation ("Licensor" or "Consultant") and the entity and/or entities set forth on the attached agreement ("Licensee" or "Client") have an existing Software License Agreement (the "License Agreement") which governs the Licensee's use of PowerWorld Software ("Software") and an accompanying Maintenance Agreement (the "Agreement") to which this Addendum ("Addendum") is attached. This Addendum is incorporated into the Agreement by reference.

Whereas the parties desire to incorporate the following additional terms into the contract as follows.

#### **Relationship and Disclosure of Data**

1. The technical support, patches, and upgrades provided by the Licensor to the Licensee constitute a Service ("Service") yielding a Consultant/Client relationship that enables the Consultant to support the Client's safe, reliable, and efficient analysis and/or operation of power systems and develop the Software so that it better supports those functions.
2. While providing such Service the Client may need to share information ("Data") which may be proprietary, non-public, sensitive or Controlled Unclassified Information ("Data").
3. Such Data may include (but is not limited to) power flow cases, dynamics files, contingency files, remedial action schemes, operating reliability data, and other data deemed Critical Energy Infrastructure Information by the United States Federal Energy Regulatory Commission ("FERC"), data for which the Consultant has been approved by FERC.
4. Such Data will remain strictly the property of the Client unless it becomes public through no fault of the Consultant and will only be used by the Consultant as needed for providing this Service to the Client.

#### **Treatment of Data**

5. The Consultant agrees to take all reasonable precautions to maintain the confidentiality of the Data and to prevent unauthorized access to it.
6. The Consultant agrees to not make available, disclose, provide, or communicate Data to any entity or individual, except employees or contractors of the Consultant using the Data for this Service.
7. Notwithstanding anything to the contrary herein, Consultant may disclose Data to a governmental authority as required by law, provided that to the extent permitted by law the Consultant notifies the Client, withholds such Data until the Client has had a chance to respond to the required disclosure, and cooperates with the Client as they respond to the required disclosure and/or protect their interests in the Data.

#### **Term and Termination of Addendum**

8. This Addendum shall continue in effect unless terminated. This Addendum may be terminated by the Consultant or Client at any time at their sole discretion.
9. If the Addendum is terminated the parties may at their mutual discretion continue the Agreement as previously defined.
10. If the Agreement expires the terms of this Addendum regarding the treatment of data shall survive.

### **Ownership of Work Product**

11. Although the Service is being provided to the Client by the Consultant, ownership of any Software developed while providing the Service remains exclusively with the Consultant as defined in the License Agreement.
12. Additionally, notwithstanding any other provision in this Agreement or any other agreement between Licensor and Licensee (including purchase orders, terms and conditions, master license agreements, consulting agreements, and purchase contracts), all improvements made to the Software remain the sole intellectual property of the Licensor even if they were implemented by the Licensor at the suggestion or funding of the Licensee.

### **Miscellaneous**

13. This Agreement is governed by the laws of the State of Illinois. In the event of a dispute relating to the terms of this Agreement, suit shall be brought only in a federal or state court located in Champaign County in the State of Illinois.
14. All provisions of this Agreement are severable, and the unenforceability or invalidity of any of the provisions of this Agreement shall not affect the validity or enforceability of the remaining provisions of the Agreement.

The parties have executed this contract on the dates shown below.

Licensee:

By: \_\_\_\_\_ Date

Licensor: PowerWorld Corporation, Champaign, Illinois

By: \_\_\_\_\_ Date



## **Exhibit D**

### **POWERWORLD License Agreement**

This License Agreement (the "Agreement") is between POWERWORLD CORPORATION ("Licensor") and the licensee installing the software to which this Agreement is attached (the "Licensee").

#### **Ownership of the Software**

1. The software which accompanies this license (the "Software"), including, but not limited to, object code, source code, data, information, modifications, enhancements, adaptations thereof, and derivative works, and the accompanying written materials, are owned by, and shall remain the sole and exclusive property of, Licensor and/or its suppliers. The Software is protected by United States copyright laws, by laws of other nations, and by international treaties. Any and all rights not specifically granted in this Agreement is expressly reserved by the Licensor. Nothing herein grants Licensee any ownership rights to the Software.

NOTE: This Agreement assumes use of the PowerWorld Simulator software as a SINGLE USER license. Please see PowerWorld Corporation's SITE license agreement if the Software is to be used as part of a site license.

#### **Grant of License**

2. Licensor grants to Licensee and Licensee accepts a perpetual, non-exclusive, non-transferable license to use one (1) copy of the Software on one (1) computer (the "License"). Licensee may load one (1) copy of the Software into permanent memory of one (1) computer (the "Primary Installation"). Licensee may install the Primary Installation on a real or virtual machine supporting multiple logins or on a single network server, provided there is no possibility of the Software being used by more than one (1) user simultaneously. Only one (1) user may use the Software at a time. Licensee may not launch more than one (1) concurrent instance of the Software via automation.

3. Licensee may install the Software on multiple machines if a hardware key has been purchased from the Licensor which restricts access to each such installation of the Software to only one (1) user at a time.

4. If no hardware key has been purchased from the Licensor, the primary user of the computer on which the Software is installed may make a second copy on a computer under the exclusive control of the primary user and/or the Licensee, for the primary user's exclusive use only at times when there are no application instances run by the Primary Installation.

#### **Restrictions on Use and Transfer**

5. Licensee may not copy the Software, except that (a) Licensee may make one (1) copy of the Software solely for backup or archival purposes, and (b) Licensee may transfer the Software to hard disks as specified in above under Grant of License.

6. Licensee may not re-sell the Software, or incorporate the Software or its results in any product or generalized service without express permission from the Licensor. Licensee's use of the Software and its results in the capacity of Licensee's employment as a consultant by a third-party client (a "Client") does not fall under this restriction on use, provided that Licensee shall not permit such Clients to use or access the Software and shall not transfer any copy or any part of the Software to such Clients.

7. Licensee may not reverse engineer, decompile, or disassemble the Software. Licensee may not alter or modify the Software or create derivative works thereof.

## Limited Warranty

8. Licensor warrants that the Software will perform substantially in accordance with the accompanying written materials for a period of 60 days from the date of receipt of the Software. Any implied warranties on the Software are limited to 60 days. Some states do not allow limitations on duration of an implied warranty, so the above limitation may not apply to Licensee.

9. LICENSOR DISCLAIMS ALL OTHER WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE SOFTWARE AND THE ACCOMPANYING WRITTEN MATERIALS. This limited warranty gives licensee specific legal rights. Licensee may have others, which vary from state to state.

10. Except as provided in Section 14, LICENSOR'S TOTAL LIABILITY PURSUANT TO THIS AGREEMENT AND RELATING TO THE SOFTWARE, REGARDLESS OF WHETHER SUCH LIABILITY ARISES FROM ANY CLAIM BASED ON CONTRACT, WARRANTY, TORT, OR OTHERWISE, SHALL NOT EXCEED, IN THE AGGREGATE, THE AMOUNT PAID TO LICENSOR BY LICENSEE PURSUANT TO A PURCHASE ORDER, PURCHASE CONTRACT, OR PURCHASE AGREEMENT BETWEEN LICENSOR AND LICENSEE. NOTWITHSTANDING THE FOREGOING, LICENSOR'S ENTIRE LIABILITY AND LICENSEE'S EXCLUSIVE REMEDY WITH RESPECT TO LICENSOR'S WARRANTY UNDER SECTION 8 SHALL BE REPLACEMENT OF THE SOFTWARE THAT DOES NOT MEET LICENSOR'S LIMITED WARRANTY AND WHICH IS RETURNED TO LICENSOR. Any replacement Software will be warranted for the remainder of the original warranty period or 30 days, whichever is longer. These remedies are not available outside the United States of America.

11. This Limited Warranty is void if failure of the Software has resulted from modification or alteration of the Software by anyone other than Licensor; negligence, accident, abuse, or any other cause within Licensee's control; the use of the Software in any manner not authorized by this Agreement or for the ordinary purpose for which the Software is designed; or any use of the Software beyond the number of computer systems permitted under this Agreement or by users beyond the number of users permitted under this Agreement.

12. Except as provided in Section 14, IN NO EVENT WILL LICENSOR BE LIABLE TO LICENSEE FOR DAMAGES, INCLUDING ANY LOSS OF PROFITS, LOST SAVINGS, OR OTHER INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF LICENSEE'S USE OR INABILITY TO USE THE SOFTWARE, EVEN IF LICENSOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF ANY LEGAL OR EQUITABLE THEORIES WHICH MAY BE ASSERTED. Because some states do not allow the exclusion or limitation of liability for consequential or incidental damages, the above limitation may not apply.

13. This Agreement is governed by the laws of the State of Illinois. In the event of a dispute relating to the terms of this Agreement, suit shall be brought only in a federal or state court located in Champaign County in the State of Illinois.

14. Notwithstanding any other provision in this Agreement to the contrary, Licensor agrees to indemnify, defend, and hold Licensee and its affiliates harmless from any and all claims or suits for loss or damage (including reasonable attorneys' fees) based upon a claim that the Software infringes a third party's copyright, trademarks or patents, or constitutes an unlawful disclosure, use or misappropriation of a third party's trade secrets or confidential information.

15. In the event of any disagreement between this Agreement and any other agreements between Licensor and Licensee except a Maintenance Agreement provided by Licensor and expressly referencing this Agreement, this agreement shall prevail, and in no event shall terms contained in any such agreements supersede or be made a part of this Agreement. Additionally, notwithstanding any other provision in this Agreement or any other agreement between Licensor and Licensee (including purchase orders, terms and

conditions, master license agreements, consulting agreements, and purchase contracts), all improvements made to the Software remain the sole intellectual property of the Licensor even if they were implemented by the Licensor at the suggestion or funding of the Licensee.

16. All provisions of this Agreement are severable, and the unenforceability or invalidity of any of the provisions of this Agreement shall not affect the validity or enforceability of the remaining provisions of the Agreement.

17. This Agreement may not be modified or amended except in writing signed by duly authorized representatives of Licensor and Licensee.

Licensee's acceptance of this Agreement will be deemed binding upon the installation of the Software.

## **Exhibit E**

### **POWERWORLD Site License Agreement**

This License Agreement (the "Agreement") is between POWERWORLD CORPORATION ("Licensor") and the licensee installing the software to which this Agreement is attached (the "Licensee").

#### **Ownership of the Software**

1. The software which accompanies this license (the "Software"), including, but not limited to, object code, source code, data, information, modifications, enhancements, adaptations thereof, and derivative works, and the accompanying written materials, are owned by, and shall remain the sole and exclusive property of, Licensor and/or its suppliers. The Software is protected by United States copyright laws, by laws of other nations, and by international treaties. Any and all rights not specifically granted in this Agreement is expressly reserved by the Licensor. Nothing herein grants Licensee any ownership rights to the Software.

#### **Grant of License**

2. Licensor grants to Licensee and Licensee accepts a perpetual, non-exclusive, non-transferable license to use as many copies of the Software as desired, provided all copies are used by persons employed by, or working under contract for, the Licensee, and that all copies are used within 1,000 meters of the site for which this License is purchased. One Site is defined as one geographic location of radius 1,000 meters.

3. This License is a fully paid-up, perpetual License to the Software. It is irrevocable except in case of a material breach of the Agreement.

4. Licensee has the right to move the Site provided they notify the Licensor of the move and they do not continue to use the Software at the former Site.

#### **Restrictions on Use and Transfer**

5. Licensee may not copy the Software, except that (a) Licensee may make one (1) copy of the Software solely for backup or archival purposes, and (b) Licensee may transfer the Software to hard disks as specified in above under Grant of License.

6. Licensee may not re-sell the Software, or incorporate the Software or its results in any product or generalized service without express permission from the Licensor. Licensee's use of the Software and its results in the capacity of Licensee's employment as a consultant by a third-party client (a "Client") does not fall under this restriction on use, provided that Licensee shall not permit such Clients to use or access the Software and shall not transfer any copy or any part of the Software to such Clients.

7. Licensee may not reverse engineer, decompile, or disassemble the Software. Licensee may not alter or modify the Software or create derivative works thereof.

#### **Limited Warranty**

8. Licensor warrants that the Software will perform substantially in accordance with the accompanying written materials for a period of 60 days from the date of receipt of the Software. Any implied warranties on the Software are limited to 60 days. Some states do not allow limitations on duration of an implied warranty, so the above limitation may not apply to Licensee.

9. LICENSOR DISCLAIMS ALL OTHER WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE SOFTWARE AND THE ACCOMPANYING WRITTEN MATERIALS. This limited warranty gives licensee specific legal rights. Licensee may have others, which vary from state to state.

10. Except as provided in Section 14, LICENSOR'S TOTAL LIABILITY PURSUANT TO THIS AGREEMENT AND RELATING TO THE SOFTWARE, REGARDLESS OF WHETHER SUCH LIABILITY ARISES FROM ANY CLAIM BASED ON CONTRACT, WARRANTY, TORT, OR OTHERWISE, SHALL NOT EXCEED, IN THE AGGREGATE, THE AMOUNT PAID TO LICENSOR BY LICENSEE PURSUANT TO A PURCHASE ORDER, PURCHASE CONTRACT, OR PURCHASE AGREEMENT BETWEEN LICENSOR AND LICENSEE. NOTWITHSTANDING THE FOREGOING, LICENSOR'S ENTIRE LIABILITY AND LICENSEE'S EXCLUSIVE REMEDY WITH RESPECT TO LICENSOR'S WARRANTY UNDER SECTION 8 SHALL BE REPLACEMENT OF THE SOFTWARE THAT DOES NOT MEET LICENSOR'S LIMITED WARRANTY AND WHICH IS RETURNED TO LICENSOR. Any replacement Software will be warranted for the remainder of the original warranty period or 30 days, whichever is longer. These remedies are not available outside the United States of America.

11. This Limited Warranty is void if failure of the Software has resulted from modification or alteration of the Software by anyone other than Licensor; negligence, accident, abuse, or any other cause within Licensee's control; the use of the Software in any manner not authorized by this Agreement or for the ordinary purpose for which the Software is designed; or any use of the Software beyond the number of computer systems permitted under this Agreement or by users beyond the number of users permitted under this Agreement.

12. Except as provided in Section 14, IN NO EVENT WILL LICENSOR BE LIABLE TO LICENSEE FOR DAMAGES, INCLUDING ANY LOSS OF PROFITS, LOST SAVINGS, OR OTHER INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF LICENSEE'S USE OR INABILITY TO USE THE SOFTWARE, EVEN IF LICENSOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF ANY LEGAL OR EQUITABLE THEORIES WHICH MAY BE ASSERTED. Because some states do not allow the exclusion or limitation of liability for consequential or incidental damages, the above limitation may not apply.

13. This Agreement is governed by the laws of the State of Illinois. In the event of a dispute relating to the terms of this Agreement, suit shall be brought only in a federal or state court located in Champaign County in the State of Illinois.

14. Notwithstanding any other provision in this Agreement to the contrary, Licensor agrees to indemnify, defend, and hold Licensee and its affiliates harmless from any and all claims or suits for loss or damage (including reasonable attorneys' fees) based upon a claim that the Software infringes a third party's copyright, trademarks or patents, or constitutes an unlawful disclosure, use or misappropriation of a third party's trade secrets or confidential information.

15. In the event of any disagreement between this Agreement and any other agreements between Licensor and Licensee except a Maintenance Agreement provided by Licensor and expressly referencing this Agreement, this agreement shall prevail, and in no event shall terms contained in any such agreements supersede or be made a part of this Agreement. Additionally, notwithstanding any other provision in this Agreement or any other agreement between Licensor and Licensee (including purchase orders, terms and conditions, master license agreements, consulting agreements, and purchase contracts), all improvements made to the Software remain the sole intellectual property of the Licensor even if they were implemented by the Licensor at the suggestion or funding of the Licensee.

16. All provisions of this Agreement are severable, and the unenforceability or invalidity of any of the provisions of this Agreement shall not affect the validity or enforceability of the remaining provisions of the Agreement.

17. This Agreement may not be modified or amended except in writing signed by duly authorized representatives of Licensors and Licensee.

Licensee's acceptance of this Agreement will be deemed binding upon the installation of the Software.

**EXHIBIT F**
**PowerWorld**  
 Corporation

[www.powerworld.com](http://www.powerworld.com)
[info@powerworld.com](mailto:info@powerworld.com)

 Phone: +1 (217) 384-6330  
 2001 South First Street  
 Champaign, IL 61820  
 USA

## Quote

Number: 230298

Date: August 17, 2023

To:			
City of Denton <a href="mailto:Nicholas.Dusak@cityofdenton.com">Nicholas.Dusak@cityofdenton.com</a> 1659 Spence Road Denton, TX 76205			
Quantity	Description	Unit Price	Amount
3	Your PowerWorld Simulator site license maintenance agreement will expire 2/21/2024. Cost to renew for one year.	US\$8,250.00	US\$24,750.00
3	Your two (2) Simulator ATC OPF SCOPF SimAuto TP single-user add-on maintenance agreements will expire 2/21/2024. Cost to renew for one year.	US\$12,787.50	US\$38,362.50
<i>Includes upgrades and technical support through February 21, 2027.</i>		SUBTOTAL	US\$63,112.50
		SALES TAX 0%	US\$0.00
		SHIPPING & HANDLING	US\$0.00
		<b>TOTAL</b>	<b>US\$63,112.50</b>

Terms: Net 30 Days, Net 60 Days purchase orders may be accepted with a 1.5% surcharge. If your company does not issue purchase orders, or if your PO T&C are unacceptable, 100% advance payment via ACH / wire transfer or check in USD is required. Software download instructions sent via email and hardware key sent via USPS within 1-2 days of receipt of an acceptable PO or payment in full. Destination. This quotation is good for 90 days from the date of issuance. If you have any questions or would like copies of applicable license and maintenance agreements purchase of these items mandates acceptance of, please email [quotes@powerworld.com](mailto:quotes@powerworld.com). No purchase of the licenses described herein may be made without accepting said agreements.



## Exhibit G

### Standard Addendum to Agreement

The agreement between the City of Denton, a Texas home-rule municipal corporation ("City"), and the other party to the agreement ("Vendor") to which this Standard Addendum to Agreement (this "Addendum") is attached, is subject to the terms and conditions of this Addendum, which are incorporated for all purposes into the agreement to which they are attached (the "Agreement"). This Addendum is subject to the underlying Agreements provided by Vendor; provided, however, any reference to Governing Law and Venue will be superseded by the Governing Law and Venue provision in this Addendum. For the avoidance of doubt, the Agreement includes: (i) the Site License Agreement (ii) the License Agreement, (iii) the Maintenance Agreement and (iv) the Maintenance Addendum.

**Payment.** In accordance with Chapter 2251 of the Texas Gov't Code: (a) payment shall be made no later than thirty days following the later of (i) delivery of the goods or services, (ii) performance is complete, or (iii) delivery of an invoice to City; and (b) interest, if any, on past due payments shall accrue and be paid at the maximum rate allowed by law. Invoices and any required supporting documents must be presented to: City of Denton – Purchasing Department, 901 B Texas Street, Denton, TX 76201.

**Tax Exempt.** No taxes shall be included in the invoice. City is exempt from the payment of taxes and the purchase order serves as the required exemption certificate for tax exemption. The City will provide other exemption certificates or documentation confirming its tax-exempt status as requested.

**Governing Law and Venue.** The Agreement shall be construed and enforced under and in accordance with the laws of the State of Texas. Venue for all issues arising from or related to the Agreement shall be resolved in the courts of Denton County, Texas, and the parties agree to submit to the exclusive jurisdiction of such courts.

**No Excess Obligations.** In the event the Agreement spans multiple fiscal years, the City's continuing performance under the Agreement is contingent upon the appropriation of funds to fulfill the requirements of the Agreement by the City Council of the City of Denton. If the City Council of the City of Denton fails to appropriate or allot the necessary funds, City shall issue written notice to Vendor that City may terminate the Agreement without penalty, further duty, or obligation.

**Delivery.** Delivery shall be FOB Destination.

**Public Information.** City shall release information in accordance with the Texas Public Information Act, Tex. Gov't Code Chapter 552, and other applicable law or court orders. If requested, Vendor shall make public information available to City in an electronic format, and any portions of records claimed by the Vendor to be proprietary must be clearly marked as such.

**Insurance.** City is insured for general liability insurance under a self-insurance program covering its limits of liability. The parties agree that such self-insurance by City shall, without further requirement, satisfy all insurance obligations of City under the Agreement.

**Israel Non-Boycott Verification.** Vendor 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 Addendum, Vendor certifies that Vendor's signature provides written verification to City that Vendor: (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.

**Foreign Terrorist Organization Prohibition Verification.** 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 Addendum, Vendor certifies that Vendor's signature provides written verification to City that Vendor, pursuant to Chapter 2252, is not ineligible to enter into this Addendum and will not become ineligible to receive payments under the 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.

**Limitations.** City is subject to constitutional and statutory limitations on its ability to enter into certain terms and conditions of the Agreement, which may include those terms and conditions relating to: liens on City property; disclaimers and limitations of warranties; disclaimers and limitation of liability for damages; waivers, disclaimers, and limitation on litigation or settlement to another party; liability for acts or omissions of third parties; payment of attorney's fees; dispute resolution; and indemnities. Terms and conditions relating to these limitations will not be binding on City, except to the extent not prohibited by the Constitution and the laws of the State of Texas.

**Prohibition on Contracts with Companies Boycotting Certain Energy Companies.** Vendor 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, Vendor certifies that Vendor's signature provides written verification to the City that Vendor: (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.** Vendor 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, Vendor certifies that Vendor's signature provides written verification to the City that Vendor: (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, Vendor certifies that Vendor's signature provides written verification to the City that Vendor, 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 Vendor 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.

**VENDOR:**

By:  
Name:  
Title:  
Date:

**CITY OF DENTON**

By:  
Name:  
Title:  
Date:

**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.**

POWERWORLD CORPORATION

**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 7<sup>th</sup> 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?

☐

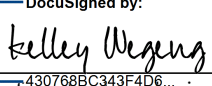
Yes

☐

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:  
  
430768BC343F4D6  
Signature of Vendor doing business with the governmental entity

3/4/2024

\_\_\_\_\_  
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 3<sup>rd</sup> 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: DF7B93C6EB2347E7A97195C682B194DA

Status: Sent

Subject: Please DocuSign: City Council Contract 8404 PowerWorld Simulator Product Renewal

Source Envelope:

Document Pages: 19

Signatures: 4

Envelope Originator:

Certificate Pages: 6

Initials: 1

Crystal Westbrook

AutoNav: Enabled

901B Texas Street

Enveloped Stamping: Enabled

Denton, TX 76209

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

crystal.westbrook@cityofdenton.com

IP Address: 198.49.140.10

**Record Tracking**

Status: Original

Holder: Crystal Westbrook

Location: DocuSign

3/1/2024 2:32:59 PM

crystal.westbrook@cityofdenton.com

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

Crystal Westbrook

**Completed**

Sent: 3/1/2024 2:35:32 PM

crystal.westbrook@cityofdenton.com

Viewed: 3/1/2024 2:35:41 PM

Senior Buyer

Signed: 3/1/2024 2:36:57 PM

City of Denton

Using IP Address: 198.49.140.10

Security Level: Email, Account Authentication  
(None)**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

Lori Hewell



Sent: 3/1/2024 2:37:01 PM

lori.hewell@cityofdenton.com

Viewed: 3/1/2024 2:47:48 PM

Purchasing Manager

Signed: 3/1/2024 2:48:03 PM

City of Denton

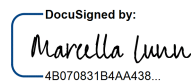
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Security Level: Email, Account Authentication  
(None)

Using IP Address: 198.49.140.104

**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

Marcella Lunn



Sent: 3/1/2024 2:48:06 PM

marcella.lunn@cityofdenton.com

Viewed: 3/1/2024 3:14:58 PM

Senior Deputy City Attorney

Signed: 3/1/2024 3:15:58 PM

City of Denton

Signature Adoption: Pre-selected Style

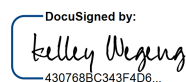
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(None)

Using IP Address: 107.115.147.128

Signed using mobile

**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

Kelley Wegeng



Sent: 3/1/2024 3:16:01 PM

kelley@powerworld.com

Viewed: 3/4/2024 9:36:43 AM

Executive Vice President

Signed: 3/4/2024 9:42:17 AM

Security Level: Email, Account Authentication  
(None)

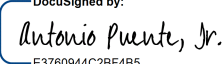
Signature Adoption: Pre-selected Style

Using IP Address: 206.221.149.34

**Electronic Record and Signature Disclosure:**

Accepted: 3/4/2024 9:36:43 AM

ID: a06dc393-abd2-4ad9-bf9d-d64ef68f608b

Signer Events	Signature	Timestamp
Antonio Puente, Jr. antonio.puente@cityofdenton.com DME General Manager Security Level: Email, Account Authentication (None)	DocuSigned by:  E3760944C2BF4B5...  Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.10	Sent: 3/4/2024 9:42:21 AM Viewed: 3/4/2024 11:10:21 AM Signed: 3/4/2024 11:10:34 AM

**Electronic Record and Signature Disclosure:**  
Accepted: 3/4/2024 11:10:21 AM  
ID: 34fb1d41-abbcb452a-a98c-3e7d18509b8c

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

Sent: 3/4/2024 11:10:38 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: 2/26/2024 9:37:24 AM  
ID: 2dd761df-a516-47b2-a74f-68d75f554a26

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

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

COPIED

Sent: 3/1/2024 2:37:01 PM

**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

Carbon Copy Events	Status	Timestamp
Gretna Jones gretna.jones@cityofdenton.com Legal Secretary City of Denton Security Level: Email, Account Authentication (None) <b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign  City Secretary Office citysecretary@cityofdenton.com Security Level: Email, Account Authentication (None) <b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign  Nicholas Dusak nicholas.dusak@cityofdenton.com Security Level: Email, Account Authentication (None) <b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign	<div>COPIED</div>	Sent: 3/4/2024 11:10:38 AM

Witness Events	Signature	Timestamp
Notary Events	Signature	Timestamp
Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	3/1/2024 2:35:32 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](mailto: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](mailto: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](mailto: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](mailto: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"><li>•Allow per session cookies</li><li>•Users accessing the internet behind a Proxy Server must enable HTTP 1.1 settings via proxy connection</li></ul>

\*\* 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](http://www.cityofdenton.com)

## Legislation Text

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**File #: ID 24-643, Version: 1**

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### **AGENDA CAPTION**

Consider adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the City Manager to execute a contract with Strong Data, Inc., for scalehouse software and hardware for the Solid Waste and Recycling Department, 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 8431 - awarded to Strong Data, Inc., for one (1) year, with the option for four (4) additional one (1) year extensions, in the total five (5) year not-to-exceed amount of \$339,080.85). The Public Utilities Board recommends approval (5 - 0).



## AGENDA INFORMATION SHEET

**DEPARTMENT:** Procurement  
**ACM:** Cassey Ogden  
**DATE:** April 2, 2024

### **SUBJECT**

Consider adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the City Manager to execute a contract with Strong Data, Inc., for scalehouse software and hardware for the Solid Waste and Recycling Department, 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 8431 – awarded to Strong Data, Inc., for one (1) year, with the option for four (4) additional one (1) year extensions, in the total five (5) year not-to-exceed amount of \$339,080.85). [The Public Utilities Board recommends approval \(5 - 0\).](#)

### **STRATEGIC ALIGNMENT**

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

### **INFORMATION/BACKGROUND**

On April 20, 2021, through a competitive Request for Proposal (RFP) and evaluation process, the Solid Waste and Recycling Department identified a software solution offered by Strong Data Inc., to replace the previous outdated scalehouse transaction system.

Through a separate project to enhance the Landfill scalehouse, infrastructure, and approaching roads, the need arose to enhance the Strong Data system, currently in place. Enhancing the Strong Data system will include upgrades, and additional transaction-automated kiosks, with cameras, voice communication, and credit card readers. The upgraded and additional kiosks will require technology infrastructure, connecting the interior operating stations to the communication room, then dispersed to landfill scales transaction kiosks, including cameras, and traffic control devices.

Strong Data technology products are designed to handle all the landfill scale transactions, including any other commodity transactions at the landfill site, and are currently used at the Home Chemical Collections and Compost sales.

Strong Data can be used for future local and remote weight/revenue-generating sites (i.e. transfer stations, drop-off stations, SSO organics facility, etc.)

Strong Data Inc. has accelerated the transaction process and, therefore, has reduced customer wait times. Accelerating transaction times generates additional revenue, manages traffic with efficacy, and reduces or eliminates safety concerns by keeping drivers and customers in the vehicle for the entire transaction process.

### **Technology Upkeep and Modernization**

The interior and exterior of the current building are outdated, and new technology has been merged with outdated technology. With this sole source contract, and assistance from Strong Data, the outdated building's technology will be renovated to accommodate the new and expanding technologies, consisting of automated, unattended kiosks to process transactions more efficiently.

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.

### **PRIOR ACTION/REVIEW (COUNCIL, BOARDS, COMMISSIONS)**

On March 25, 2024, the Public Utilities Board (PUB) recommended this item to the City Council for consideration.

### **RECOMMENDATION**

Award with a contract to Strong Data Inc., for scalehouse software and hardware for the Solid Waste and Recycling Department, in a one (1) year, with the option for four (4) additional one (1) year extensions, in a total five (5) year not-to-exceed amount of \$339,080.85.

### **SUSTAINABILITY MEASURES**

With the enhancements to the landfill scale transaction and infrastructure system, traffic will flow smoother, waiting lines will be less, therefore, greenhouse gas emissions will be less, addressing the concerns on air quality and public health, as well as increasing revenue. Promoting growth and upgrading infrastructure to ensure the ever-growing community needs to dispose of solid waste, green waste collections, and recycling.

### **PRINCIPAL PLACE OF BUSINESS**

Strong Data, Inc.  
Austin, TX

### **ESTIMATED SCHEDULE OF PROJECT**

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

### **FISCAL INFORMATION**

These items and services will be funded from Solid Waste & Recycling account 660904595.1365.40100. Requisition # 163983 has been entered into the Purchasing software system in the amount of \$105,079.20. The budgeted amount for this item is \$339,080.85.

### **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: 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, AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT WITH STRONG DATA, INC., FOR SCALEHOUSE SOFTWARE AND HARDWARE FOR THE SOLID WASTE AND RECYCLING DEPARTMENT, 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 8431 – AWARDED TO STRONG DATA, INC., FOR ONE (1) YEAR, WITH THE OPTION FOR FOUR (4) ADDITIONAL ONE (1) YEAR EXTENSIONS, IN THE TOTAL FIVE (5) YEAR NOT-TO-EXCEED AMOUNT OF \$339,080.85).

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 [Garbage and solid waste removal, collection, and disposal]; 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>
8431	Strong Data, Inc.	\$339,080.85

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 [\_\_\_ - \_\_\_]:

	<b>Aye</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>
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 \_\_\_\_\_, 2024.

\_\_\_\_\_  
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: dc=com, dc=cityofdenton,  
dc=codad, ou=Department  
Users and Groups, ou=General  
Government, ou=Legal,  
cn=Marcella Lunn,  
email=Marcella.Lunn@cityofde  
nton.com  
Date: 2024.03.08 13:09:02  
-06'00'



Docusign City Council Transmittal Coversheet

FILE	8431
File Name	STRONG DATA, INC.
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 STRONG DATA, INC.  
(CONTRACT 8431)**

**THIS CONTRACT** is made and entered into this date \_\_\_\_\_, by and between **Strong Data, Inc.**, a Canada corporation, whose address is 5900 Balcones Dr., STE 100, Austin, TX 78731 hereinafter referred to as "Contractor," and the **CITY OF DENTON, TEXAS**, a home rule municipal corporation, hereinafter referred to as "City," to be effective upon approval of the Denton City Council and subsequent execution of this Contract by the Denton City Manager or their duly authorized designee.

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

**SCOPE OF SERVICES**

Contractor shall provide products and/or services in accordance with the City's document File #8431 Scalehouse Technology Infrastructure, a copy of which is on file at the office of Purchasing Agent and incorporated herein for all purposes. The Contract consists of this written agreement and the following items which are attached hereto and incorporated herein by reference:

- (a) Special Terms and Conditions (**Exhibit "A"**);
- (b) City of Denton's File #8431 (**Exhibit "B" on File at the Office of the Purchasing Agent**);
- (c) City of Denton Standard Terms and Conditions (**Exhibit "C"**);
- (d) Certificate of Interested Parties Electronic Filing (**Exhibit "D"**);
- (e) Insurance Requirements (**Exhibit "E"**);
- (f) Contractor's Proposal (**Exhibit "F"**);
- (g) Form CIQ – Conflict of Interest Questionnaire (**Exhibit "G"**);

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

**Prohibition on Contracts with Companies Boycotting Israel**

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

**Prohibition on Contracts with Companies Boycotting Certain Energy Companies**

Contract # 8431

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 Contract # 8431

the year and day first above written.

CONTRACTOR

DocuSigned by:  
BY: Rocky Strong  
9095A0F03037437...  
AUTHORIZED SIGNATURE

Printed Name: Rocky Strong

Title: General Manager  
7095719776

PHONE NUMBER  
rocky@strongdata.ca

EMAIL ADDRESS  
2024- 1132039

TEXAS ETHICS COMMISSION  
1295 CERTIFICATE NUMBER

CITY OF DENTON, TEXAS

BY: \_\_\_\_\_  
SARA HENSLEY, CITY MANAGER

ATTEST:  
JESUS SALAZAR, CITY SECRETARY

BY: \_\_\_\_\_

APPROVED AS TO LEGAL FORM:  
MACK REINWAND, CITY ATTORNEY

DocuSigned by:  
BY: Marcella Lunn  
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THIS AGREEMENT HAS BEEN  
BOTH REVIEWED AND APPROVED  
as to financial and operational obligations  
and business terms.

DocuSigned by:  
Brian Boerner  
DCD14331B88A4A8...  
SIGNATURE PRINTED NAME

Director of Solid Waste

TITLE  
SWR

DEPARTMENT



## **Exhibit A**

### **Special Terms and Conditions**

#### **1. Total Contract Amount**

The contract total for services shall not exceed \$339,080.85. Pricing shall be per Exhibit F attached.

#### **2. The Quantities**

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

#### **3. Contract Terms**

The contract term will be one (1) year, effective from date of award. The City and the Supplier shall have the option to renew this contract for an additional four (4) one-year periods.

The Contract shall commence upon the issuance of a Notice of Award by the City of Denton and shall automatically renew each year, from the date of award by City Council. The Supplier's request to not renew the contract must be submitted in writing to the Purchasing Manager at least 60 days prior to the contract renewal date for each year. 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.

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

On Supplier's request in the form stated herein, the City will implement an escalation/de-escalation price adjustment annually based on these special terms. Any request for price adjustment must be based on the, U.S Department of Labor, Bureau of Labor Statistics, Producer Price Index (PPI) or the manufacturer published pricing list. The maximum escalation will not exceed +/- 8% for any individual year. The escalation will be determined annually at the renewal date. The price will be increased or decreased based upon the annual percentage change in the PPI or the percentage change in the manufacturer's price list. Should the PPI or manufacturer price list change exceed a minimum threshold value of +/-1%, then the stated eligible bid prices shall be adjusted in accordance with the percent change not to exceed the 8% limit per year. The supplier should provide documentation as percentage of each cost associated with the unit prices quoted for consideration.

Request must be submitted in writing with supporting evidence for need of such increase to the Purchasing Manager at least 60 days prior to contract expiration of each year. Respondent must also provide supporting documentation as justification for the request. If no request is made, then it will be assumed that the current contract price will be in effect.

Upon receipt of such request, the City of Denton reserves the right to either: accept the escalation as competitive with the general market price at the time, and become effective upon the renewal

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date of the contract award or reject the increases within 30 calendar days after receipt of a properly submitted request. If a properly submitted increase is rejected, the Contractor may request cancellation of such items from the Contract by giving the City of Denton written notice. Cancellation will not go into effect for 15 calendar days after a determination has been issued. Pre-price increase prices must be honored on orders dated up to the official date of the City of Denton approval and/or cancellation.

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

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

## **5. Performance Liquidated Damages**

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

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

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

## **Exhibit C**

### **Standard Purchase Terms and Conditions**

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

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

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

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

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

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

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

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

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

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

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

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

## **10. WORKFORCE**

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

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

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

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

C. If the City or the City's representative notifies the Contractor that any worker is incompetent,

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

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

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

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

## **12. INVOICES:**

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

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

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

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

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

The City will furnish a tax exemption certificate upon request.

## **13. PAYMENT:**

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

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

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

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

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

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

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

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

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

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the contractor in traveling to and from City facilities shall not be reimbursed, unless otherwise negotiated.

#### **15. FINAL PAYMENT AND CLOSE-OUT:**

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

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

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

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

#### **17. RIGHT TO AUDIT:**

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

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

#### **18. SUBCONTRACTORS:**

A. If the Contractor identified Subcontractors in a DBE/MBE/WBE agreed to Plan, the Contractor shall comply with all requirements approved by the City. The Contractor shall not initially employ any Subcontractor except as provided in the Contractor's Plan. The Contractor shall not substitute

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any Subcontractor identified in the Plan, unless the substitute has been accepted by the City in writing. No acceptance by the City of any Subcontractor shall constitute a waiver of any rights or remedies of the City with respect to defective deliverables provided by a Subcontractor. If a Plan has been approved, the Contractor is additionally required to submit a monthly Subcontract Awards and Expenditures Report to the Procurement Manager, no later than the tenth calendar day of each month.

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

Contract, and shall contain provisions that:

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

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

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

#### **19. WARRANTY-PRICE:**

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

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

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

**20. WARRANTY – TITLE:** The Contractor warrants that it has good and indefeasible title to all deliverables furnished under the Contract, and that the deliverables are free and clear of all liens, claims, security interests and encumbrances. The Contractor shall indemnify and hold the City

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harmless from and against all adverse title claims to the deliverables.

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

A. Recycled deliverables shall be clearly identified as such.

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

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

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

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

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

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

B. Unless otherwise specified in the Contract, the warranty period shall be at least one year from the Acceptance Date. If during the warranty period, one or more of the above warranties are breached, the Contractor shall promptly upon receipt of demand perform the services again in accordance with above standard at no additional cost to the City. All costs incidental to such additional performance shall be borne by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery

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of the breach warranty, but failure to give timely notice shall not impair the City's rights under this section.

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

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

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

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

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

**27. TERMINATION FOR CAUSE:** In the event of a default by the Contractor, the City shall have the right to terminate the Contract for cause, by written notice effective ten (10) calendar days, unless otherwise specified, after the date of such notice, unless the Contractor, within such ten (10) day period, cures such default, or provides evidence sufficient to prove to the City's reasonable satisfaction that such default does not, in fact, exist. In addition to any other remedy available under law or in equity, the City shall be entitled to recover all actual damages, costs, losses and expenses, incurred by the City as a result of the Contractor's default, including, without limitation, cost of cover, reasonable attorneys' fees, court costs, and prejudgment and post-judgment interest at the maximum lawful rate. Additionally, in the event of a default by the Contractor, the City may remove the Contractor from the City's vendor list for three (3) years and any Offer submitted by the Contractor may be disqualified for up to three (3) years. All rights and Contract # 8431

remedies under the Contract are cumulative and are not exclusive of any other right or remedy provided by law.

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

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

**30. DELAYS:**

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

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

**31. INDEMNITY:**

A. Definitions:

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

**B. THE CONTRACTOR SHALL DEFEND (AT THE OPTION OF THE CITY), INDEMNIFY, AND HOLD THE CITY, ITS SUCCESSORS, ASSIGNS, OFFICERS, EMPLOYEES AND ELECTED OFFICIALS HARMLESS FROM AND AGAINST ALL INDEMNIFIED CLAIMS DIRECTLY ARISING OUT OF, INCIDENT TO, CONCERNING OR RESULTING FROM THE FAULT OF THE CONTRACTOR, OR THE CONTRACTOR'S AGENTS, EMPLOYEES OR SUBCONTRACTORS, IN THE PERFORMANCE OF THE CONTRACTOR'S OBLIGATIONS UNDER THE CONTRACT. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, CONTRACTOR'S LIABILITY AND INDEMNIFICATION OBLIGATIONS SHALL IN NO EVENT EXCEED AN AMOUNT EQUAL TO THIRTY-SIX MONTHS OF SUBSCRIPTION FEES. NOTHING HEREIN SHALL BE DEEMED TO LIMIT THE RIGHTS OF THE CITY OR THE CONTRACTOR (INCLUDING, BUT NOT LIMITED TO, THE RIGHT TO SEEK CONTRIBUTION) AGAINST ANY THIRD PARTY WHO MAY BE LIABLE FOR AN INDEMNIFIED CLAIM.**

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

**A. General Requirements:**

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

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

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

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

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

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

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

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

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

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

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

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

**34. NOTICES:** Unless otherwise specified, all notices, requests, or other communications required or appropriate to be given under the Contract shall be in writing and shall be deemed delivered

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

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

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

**37. CONFIDENTIALITY:** In order to provide the deliverables to the City, Contractor may require access to certain of the City's and/or its licensors' confidential information (including inventions, employee information, trade secrets, confidential know-how, confidential business information, and other information which the City or its licensors consider confidential) (collectively, "Confidential Information"). Contractor acknowledges and agrees that the Confidential Information is the valuable property of the City and/or its licensors and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information will substantially injure the City and/or its licensors. The Contractor (including its employees, subcontractors, agents, or representatives) agrees that it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate, or otherwise use the Confidential Information without the prior written consent of the City or in a manner not expressly permitted under this Agreement, unless the Confidential Information is required to be disclosed by law or an order of any court or other governmental authority with proper jurisdiction, provided the Contractor promptly notifies the City before disclosing such information so as to Contract # 8431



permit the City reasonable time to seek an appropriate protective order. The Contractor agrees to use protective measures no less stringent than the Contractor uses within its own business to protect its own most valuable information, which protective measures shall under all circumstances be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.

**38. OWNERSHIP AND USE OF DELIVERABLES:** Contractor retains all ownership in any of its copyrights related to its Scale House Software and is licensing same to City pursuant to the terms and conditions stated herein; provided however, any equipment purchased by the City hereunder (the “Equipment”) will be owned by the City. The City shall own all rights, titles, and interests throughout the world in and to the Equipment.

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

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

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

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

**43. PROHIBITION AGAINST PERSONAL INTEREST IN CONTRACTS:** No officer, employee, independent consultant, or elected official of the City who is involved in the development, evaluation, or decision-making process of the performance of any solicitation shall have a financial interest, direct or indirect, in the Contract resulting from that solicitation 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.

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

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

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

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

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

**48. INTERPRETATION:** The Contract is intended by the parties as a final, complete and exclusive statement of the terms of their agreement. No course of prior dealing between the parties or course of performance or usage of the trade shall be relevant to supplement or explain any term used in the Contract. Although the Contract may have been substantially drafted by one party, it

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is the intent of the parties that all provisions be construed in a manner to be fair to both parties, reading no provisions more strictly against one party or the other. Whenever a term defined by the Uniform Commercial Code, as enacted by the State of Texas, is used in the Contract, the UCC definition shall control, unless otherwise defined in the Contract.

**49. DISPUTE RESOLUTION:**

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

B. If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within thirty (30) calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option; the City and the Contractor agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in the Contract prevents the parties from relying on the skills of a person who is trained in the subject matter of the dispute or a contract interpretation expert. If the parties fail to agree on a mediator within thirty (30) calendar days of initiation of the mediation process, the mediator shall be selected by the Denton County Alternative Dispute Resolution Program (DCAP). The parties agree to participate in mediation in good faith for up to thirty (30) calendar days from the date of the first mediation session. The City and the Contractor will share the mediator's fees equally and the parties will bear their own costs of participation such as fees for any consultants or attorneys they may utilize to represent them or otherwise assist them in the mediation.

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

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

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should a provision which is the essence of the Contract be determined to be void.

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

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

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

**53. SURVIVABILITY OF OBLIGATIONS:** All provisions of the Contract that impose continuing obligations on the parties, including but not limited to the warranty, indemnity, and confidentiality obligations of the parties, shall survive the expiration or termination of the Contract.

**54. NON-SUSPENSION OR DEBARMENT CERTIFICATION:**

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

**55. EQUAL OPPORTUNITY**

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

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

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

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

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

ii. "Cost of components" means -

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

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

iii. "Domestic end product" means-

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

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

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

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

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

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

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

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

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

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

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

**60. COMPLIANCE WITH ALL STATE, FEDERAL, AND LOCAL LAWS:** The contractor or supplier shall comply with all State, Federal, and Local laws and requirements. The Respondent must comply with all applicable laws at all times, including, without limitation, the following: (i) §36.02 of the Texas Penal Code, which prohibits bribery; (ii) §36.09 of the Texas Penal Code, Contract # 8431



which prohibits the offering or conferring of benefits to public servants. The Respondent shall give all notices and comply with all laws and regulations applicable to furnishing and performance of the Contract.

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

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

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

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

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

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a waiver of any continuing or succeeding breach.

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

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

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

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



**Exhibit D**  
**Certificate of Interested Parties 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](mailto: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.

## Exhibit E

### 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,

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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

Contract # 8431

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: \$500,000.00 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. CYBER/TECHNOLOGY NETWORK LIABILITY AND RISK INSURANCE**

**Cyber/Technology Network Liability and Risk Insurance, inclusive of Information Security and Privacy** (first and third party coverage) to provide coverage for any damage caused by a network risk, cyber act or breaches of data and privacy right, the rendering of, or the failure to properly perform professional services for, but not limited to, computer programming, management information systems, negligent system design, disclosure of confidential information, and copyright infringement with minimum limits with minimum limits of \$1,000,000.00 per claim.

**E. 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.

Contract # 8431

### **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 F



**Initial Estimate for New Scale  
House  
January-24-2025**

Item Description	Price / Unit	UOM	Qty	Ext Price
<b>LINE # 1 CONTRACT 7447</b>				
<b>2 years of licensing and support @ \$30,600</b>	30,600.00	YR	2	61,200.00
<b>Rubicon Estimate</b>	150.00	HR	50	7,500.00
<b>Pay at the Scale</b> ref Quote April 12th 2023	21,450.00	EA	1	21,450.00
<b>Remaining monies including contingency</b>	669.65	EA	1	669.65
<b>TOTAL VALUE LEFT ON 7447 CONTRACT</b>				<b><u>90,819.65</u></b>

<b>LINE # 2 ADDITIONAL 3 YEARS OF ORIGINAL ITEMS</b>				
<b>PARTIAL MANAGE SOFTWARE</b>	350.00	MTH	12	4,200.00
Includes: Enter Management Features, Accounts Receivable, General Ledger, Administration, Online Customer Portal Unlimited email and call support Continuous updates. Never left in an old version.				
± Extended Service package - Manage	50.00	MTH	12	600.00
<b>MANAGED CLOUD SERVER - 3-YEAR TERM</b>	900.00	MTH	12	10,800.00
- Server hosted in US on Microsoft Azure - Minimum monthly Windows update checks and monitoring of Windows correspondence with immediate action on security patches. - Automated monitoring of Strong Data Server Software. - Strong Data Server Software updates as released. - 2 Years of photo storage. - Unlimited transaction data storage. - Server Snapshot BU				
<b>SANDBOX SOFTWARE LICENSE</b>	100.00	MTH	12	1,200.00
- Training environment separate from live database, hosted on the same server - Demo new updates prior to updating production server - Update data with Denton's live data upon request, to a maximum of 6x per year. Note: Local computer required for "Enter" scale software; service cannot be activated/deactivated on a month-to month basis.				
<b>LANE 1 (ATTENDANT SCALE INBOUND)</b>				
Employee-Operated Software License & Service Contract	150.00	MTH	12	1,800.00
± Extended Service package - Enter	50.00	MTH	12	600.00
<b>LANE 2 (AUTOMATED LANE INBOUND)</b>				
Fully Automated Software License & Service Contract	250.00	MTH	12	3,000.00

‡ Extended Service package - Enter	50.00	MTH	12	600.00
<b>LANE 4 (ATTENDANT OUTBOUND)</b>				
Employee-Operated Software License & Service Contract	150.00	MTH	12	1,800.00
‡ Extended Service package - Enter	50.00	MTH	12	600.00
<b>Household Hazardous Waste</b>				
Employee-Operated Software License & Service Contract	150.00	MTH	12	1,800.00
‡ Extended Service package - Enter	50.00	MTH	12	600.00
<b>SECURITY CAMERA SYSTEM SUPPORT</b>	250.00	MTH	12	3,000.00
<b>TOTAL YEARLY</b>				<b><u>30,600.00</u></b>
<b>TOTAL COST FOR 2 YEARS</b>				<b><u>61,200.00</u></b>

<b>LINE # 3 ADDITIONAL 5 YEARS FOR NEW ITEMS BEYOND ORIGINAL 7447 CONTRACT</b>				
<b>LANE 3 (AUTOMATED INBOUND)</b>				
Employee-Operated Software License & Service Contract	250.00	MTH	12	3,000.00
‡ Extended Service package - Enter	50.00	MTH	12	600.00
<b>LANE 5 (AUTOMATED OUTBOUND)</b>				
Employee-Operated Software License & Service Contract	250.00	MTH	12	3,000.00
‡ Extended Service package - Enter	50.00	MTH	12	600.00
Added support for Payment	50.00	MTH	12	600.00
<b>Increase in Camera Support fee for extra cameras and intercoms</b>				
Additional Cameras (x3) and Intercoms (x5)	80.00	MTH	12	960.00
<b>TOTAL YEARLY</b>				<b><u>8,760.00</u></b>
<b>TOTAL COST FOR 5 YEARS</b>				<b><u>43,800.00</u></b>

<b>LINE # 4 PROJECT PLANNING FOR TEMP AND NEW SCALE HOUSE</b>				
Project planning time for scoping new scale house.	3,000.00	EA	1	3,000.00
<b>TOTAL</b>	<b><u>3,000.00</u></b>			

<b>LINE # 5 HARDWARE AND IMPLEMENTATION COSTS TEMPORARY SCALE HOUSE</b>				
<b>Cameras and Storage</b>				
- Load Camera from above	2,269.00	EA	1	2,269.00
- License plate camera for inbound automated	1,108.00	EA	2	2,216.00
- Indicator Camera inbound	404.00	EA	1	404.00
- Camera Station License	99.00	EA	4	396.00



- New Storage 12X18TB drives with a 12 Bay NAS (1-2 years)	7,875.00	EA	1	7,875.00
- New Storage 12X22TB drives with a 12 Bay NAS (over 2 years)	9,075.00	EA	0	0.00
- New Switch 48 port POE	625.00	EA	1	625.00
- Camera Station License	99.00	EA	3	297.00
- One traffic light on entrance	250.00	EA	1	250.00
- Cabling camera mounts etc (Estimate)	2,000.00	EA	1	2,000.00
- Cabling for RFID Antenna (up to 100')	150.00	EA	1	150.00
<b>Onsite Installation (Temp Scale House)</b>				
Onsite Day Rate for one technician (includes all expenses)	1,600.00	DAY	10	16,000.00
Mobilization and Demobilization per trip (Travel days for technician)	2,700.00	LOT	1	2,700.00

**TOTAL COSTS FOR TEMP SCALE HOUSE HARDWARE AND IMPLEMENTATION****\$35,182.00****LINE # 6 HARDWARE AND IMPLEMENTATION COSTS NEW SCALE HOUSE**

<b>Touchscreen Kiosk with RFID Reader</b>	18,000.00	EA	1	18,000.00
- Computer				
- RFID Reader and QR code				
- 19" Daylight readable touch monitors				
- Receipt printer				
- Climate controlled stands				
- Payment Terminal Installation (NOTE: physical payment terminal billed at cost from payment processor)				
- Intercom				
- Minimum 1 year warranty on parts				
<b>Existing Kiosk Add Ons</b>				
- Cabling for RFID Antenna (up to 100')	150.00	EA	1	150.00
- One traffic light on entrance	250.00	EA	1	250.00
- New Kiosk Doors For existing Kiosks	1,500.00	EA	3	4,500.00
- Payment terminal billed at cost from payment processor.				
- RFID Cable, Camera mounts, Attendant Intercom Mounts, other consumables (estimate)	2,500.00	EA	1	2,500.00
<b>Intercoms</b>				
- Intercom (additional intercoms for existing stands and attendant lanes)	1,308.00	EA	5	6,540.00
- Headsets (Jabra Engage 75)	467.00	EA	4	1,868.00
- Inside SIP device for communicating to intercoms	1,200.00	EA	3	3,600.00
- Camera Station License (one extra for intercom in new kiosk)	99.00	EA	6	594.00

Critical Spares

- Computer	1,893.00	EA	1	1,893.00
- Receipt printer	946.00	EA	1	946.00
- 19" Daylight readable touch monitors	2,468.00	EA	1	2,468.00
- Internet Controlled Power Bar	493.00	EA	1	493.00
- Intercom	1,308.00	EA	1	1,308.00
Onsite Day Rate for one technician (includes all expenses)	1,600.00	DAY	20	32,000.00
Mobilization and Demobilization per trip (Travel days for technician)	2,700.00	LOT	2	5,400.00

TOTAL COST FOR NEW SCALE HOUSE HARDWARE AND IMPLEMENTATION	\$82,510.00
TOTAL 5 YEAR CONTRACT VALUE INCLUDING REMAINING 7447 VALUE	\$316,511.65
LINE # 7 Contingency less remaining from original 7447 contract 10%	22,569.20
TOTAL W/ CONTINGENCY	\$339,080.85

TERMS

- All pricing in USD
- Tax and Duties not included.
- Quote valid for 120 days from proposal date.
- Installation related costs have not been quoted for implementation of optional equipment unless stated otherwise
- Installation of equipment and extras does not include the following:
- Electrical work.
  - Underground conduit if needed.
  - Running of Cat5e (can be discussed during negotiations)
  - Suitable mounting surface for all equipment
  - Other costs not explicitly stated
- † Additional 10% administration fee applied if paid monthly rather than annually.
- † Scale software is license is required for each individual scale.
- † Hardware invoiced on order.
- † Hourly and day rates billed monthly.
- † License and Support fees to begin once logins are provided.
- † Setup fees are billed on kickoff meeting.

**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.**

STRONG DATA, INC.

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

(The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7<sup>th</sup> 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 relations hip 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:

*Rocky Strong*

3/6/2024

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 3<sup>rd</sup> 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: 6AE22C6AACB5446BAC88E1D64043C911

Status: Sent

Subject: Please DocuSign: City Council Contract 8431 Scalehouse Technology Infrastructure

Source Envelope:

Document Pages: 36

Signatures: 4

Envelope Originator:

Certificate Pages: 6

Initials: 1

Crystal Westbrook

AutoNav: Enabled

901B Texas Street

Enveloped Stamping: Enabled

Denton, TX 76209

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

crystal.westbrook@cityofdenton.com

IP Address: 198.49.140.10

**Record Tracking**

Status: Original

Holder: Crystal Westbrook

Location: DocuSign

3/6/2024 8:14:53 AM

crystal.westbrook@cityofdenton.com

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

Crystal Westbrook

**Completed**

Sent: 3/6/2024 8:18:15 AM

crystal.westbrook@cityofdenton.com

Viewed: 3/6/2024 8:18:26 AM

Senior Buyer

Signed: 3/6/2024 8:19:35 AM

City of Denton

Using IP Address: 198.49.140.10

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

Not Offered via DocuSign

Lori Hewell



Sent: 3/6/2024 8:19:38 AM

lori.hewell@cityofdenton.com

Viewed: 3/6/2024 9:05:21 AM

Purchasing Manager

Signed: 3/6/2024 9:05:57 AM

City of Denton

Signature Adoption: Pre-selected Style

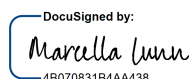
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(None)

Using IP Address: 198.49.140.10

**Electronic Record and Signature Disclosure:**

Not Offered via DocuSign

Marcella Lunn



Sent: 3/6/2024 9:06:01 AM

marcella.lunn@cityofdenton.com

Viewed: 3/6/2024 10:02:52 AM

Senior Deputy City Attorney

Signed: 3/6/2024 10:07:19 AM

City of Denton

Signature Adoption: Pre-selected Style

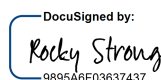
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Using IP Address: 198.49.140.10

**Electronic Record and Signature Disclosure:**

Not Offered via DocuSign

Rocky Strong



Sent: 3/6/2024 10:07:22 AM

rocky@strongdata.ca

Viewed: 3/6/2024 3:22:08 PM

General Manager

Signed: 3/6/2024 3:51:56 PM

Security Level: Email, Account Authentication  
(None)

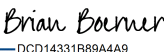
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**Electronic Record and Signature Disclosure:**

Accepted: 3/6/2024 3:22:08 PM

ID: 6124c421-2b4a-4d43-9ab2-6b740d25e934

Signer Events	Signature	Timestamp
Brian Boerner brian.boerner@cityofdenton.com Director of Solid Waste Security Level: Email, Account Authentication (None)	<div> <div>DocuSigned by:</div> <div>  </div> <div>DCD14331B89A4A9...</div> </div> Signature Adoption: Pre-selected Style Using IP Address: 38.65.73.152	Sent: 3/6/2024 3:52:01 PM Viewed: 3/7/2024 7:21:22 AM Signed: 3/7/2024 7:22:57 AM

**Electronic Record and Signature Disclosure:**  
 Accepted: 3/7/2024 7:21:22 AM  
 ID: 3a276c5c-62b7-4cad-b0ff-88468c2c3180

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

Sent: 3/7/2024 7:23:01 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: 3/6/2024 1:10:06 PM  
 ID: da891825-f76a-4433-8e64-4a86d2a4a868

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

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

COPIED

Sent: 3/6/2024 8:19:38 AM

**Electronic Record and Signature Disclosure:**  
 Not Offered via DocuSign

Carbon Copy Events	Status	Timestamp
Gretna Jones gretna.jones@cityofdenton.com Legal Secretary City of Denton Security Level: Email, Account Authentication (None) <b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign  City Secretary Office citysecretary@cityofdenton.com Security Level: Email, Account Authentication (None) <b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign  Arturo Garcia Arturo.Garcia@cityofdenton.com Security Level: Email, Account Authentication (None) <b>Electronic Record and Signature Disclosure:</b> Accepted: 2/8/2024 10:58:53 AM ID: b8721bbf-de91-429d-a1ba-f9696e3b633e	<div>COPIED</div>	Sent: 3/7/2024 7:23:01 AM Viewed: 3/7/2024 9:06:47 AM
Witness Events	Signature	Timestamp
Notary Events	Signature	Timestamp
Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	3/6/2024 8:18:15 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](mailto: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](mailto: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](mailto: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](mailto: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"><li>•Allow per session cookies</li><li>•Users accessing the internet behind a Proxy Server must enable HTTP 1.1 settings via proxy connection</li></ul>

\*\* 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](http://www.cityofdenton.com)

## Legislation Text

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**File #: ID 24-644, Version: 1**

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### **AGENDA CAPTION**

Consider adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the City Manager to execute a contract with Xylem Water Solutions U.S.A., Inc., to purchase Flygt pumps, equipment, parts, supplies, and services to operate and maintain the City of Denton sewage pumping stations and treatment plants for the Water Utilities Department, which is the sole provider of this service, in accordance with Texas Local Government Code 252.022, which provides that procurement of commodities and services that are available from one source are exempt from competitive bidding, and if over \$50,000, shall be awarded by the governing body; providing for the expenditure of funds therefor; and providing an effective date (File 8476 - awarded to Xylem Water Solutions U.S.A., Inc., 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 \$1,875,000.00). The Public Utilities Board recommends approval (5 - 0).



# City of Denton

City Hall  
215 E. McKinney Street  
Denton, Texas  
[www.cityofdenton.com](http://www.cityofdenton.com)

## AGENDA INFORMATION SHEET

**DEPARTMENT:** Procurement  
**ACM:** Cassey Ogden  
**DATE:** April 2, 2024

### **SUBJECT**

Consider adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the City Manager to execute a contract with Xylem Water Solutions U.S.A., Inc., to purchase Flygt pumps, equipment, parts, supplies, and services to operate and maintain the City of Denton sewage pumping stations and treatment plants for the Water Utilities Department, which is the sole provider of this service, in accordance with Texas Local Government Code 252.022, which provides that procurement of commodities and services that are available from one source are exempt from competitive bidding, and if over \$50,000, shall be awarded by the governing body; providing for the expenditure of funds therefor; and providing an effective date (File 8476 – awarded to Xylem Water Solutions U.S.A., Inc., 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 \$1,875,000.00). [The Public Utilities Board recommends approval \(5 - 0\).](#)

### **STRATEGIC ALIGNMENT**

This action supports Key Focus Area: Promote Sustainability and the Environment.

### **INFORMATION/BACKGROUND**

The Water Reclamation Department is currently under contract with Xylem Water Solutions USA, Inc., for the procurement of Flygt pump equipment, parts, and essential services. These services play a vital role in maintaining, repairing, and improving the infrastructure of the City of Denton's treatment plants and lift stations. The initial contract, approved by the City Council on February 18, 2020, was valued at \$1,000,000, spanning a five-year term. Currently, the expenditure stands at 93 percent, prompting the need for a new contract to continue supporting the wastewater infrastructure of the City of Denton.

Xylem Water Solutions is the exclusive source for Flygt pump equipment and replacement parts. While competitive bidding is involved in acquiring new project equipment, the installations for Plant and Lift Station pumps adhere to precisely engineered design and operating conditions. In cases where replacement becomes necessary, maintaining the use of the same designed operating conditions as the original equipment is crucial. Decisions regarding repair or replacement depend on factors such as the overall condition, age of the pump, and the cost of new equipment.

Repairs may sometimes involve significant lead times. According to the Texas Commission on Environmental Quality (TCEQ) Rule 317.3, it is mandated that "the firm pumping capacity of all lift stations shall be such that the expected peak flow can be pumped to its desired destination." Firm pumping capacity refers to the total maximum pumping capacity of the station, even with the largest pumping unit out of

service. Lack of redundancy when a pump is out of service can pose a challenge in meeting this rule. To uphold health and human safety standards, the City is obligated to ensure that repairs are promptly executed

<b>Project Description</b>	<b>Estimated 5-Year Expenditure</b>
Xylem pumps and services year 1	\$300,000
Xylem pumps and services year 2	300,000
Xylem pumps and services year 3	300,000
Xylem pumps and services year 4	300,000
Xylem pumps and services year 5	300,000
Contingency	375,000
<b>Total</b>	<b>\$1,875,000</b>

Section 252.022 of the Local Government Code stipulates that procurement of sole source commodities and services, exceeding \$50,000, is exempt from competitive bidding and must be awarded by the governing body.

### **PRIOR ACTION/REVIEW (COUNCIL, BOARDS, COMMISSIONS)**

On March 25, 2024, the Public Utilities Board (PUB) recommended this item to the City Council for consideration.

### **RECOMMENDATION**

Award with a contract to Xylem Water Solutions USA, Inc., to purchase Flygt pumps, equipment, parts, supplies, and services to operate and maintain the City of Denton sewage pumping stations and treatment plants for the Water Reclamation Department, in a three (3) year, with the option for two (2) additional one (1) year extensions, in the total five (5) year not-to-exceed amount of \$1,875,000.

### **SUSTAINABILITY MEASURES**

The repair and replacement of existing wastewater pumps ensures the reliable and safe operation of pumps, particularly in critical applications like water supply, wastewater management, and flood control.

### **PRINCIPAL PLACE OF BUSINESS**

Xylem Water Solutions U.S.A., Inc.  
Carrollton, TX

### **ESTIMATED SCHEDULE OF PROJECT**

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

### **FISCAL INFORMATION**

These items and services will be funded from Water Reclamation account 640100.6525. Requisitions will be entered on an as-needed basis. The budgeted amount for this item is \$1,875,000. The City will only pay for parts or 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: Chris Carroll, 940-349-7190.

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



ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF DENTON, A TEXAS HOME-RULE MUNICIPAL CORPORATION, AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT WITH XYLEM WATER SOLUTIONS U.S.A., INC., TO PURCHASE FLYGT PUMPS, EQUIPMENT, PARTS, SUPPLIES, AND SERVICES TO OPERATE AND MAINTAIN THE CITY OF DENTON SEWAGE PUMPING STATIONS AND TREATMENT PLANTS FOR THE WATER UTILITIES DEPARTMENT, WHICH IS THE SOLE PROVIDER OF THIS SERVICE, IN ACCORDANCE WITH TEXAS LOCAL GOVERNMENT CODE 252.022, WHICH PROVIDES THAT PROCUREMENT OF COMMODITIES AND SERVICES THAT ARE AVAILABLE FROM ONE SOURCE ARE EXEMPT FROM COMPETITIVE BIDDING, AND IF OVER \$50,000, SHALL BE AWARDED BY THE GOVERNING BODY; PROVIDING FOR THE EXPENDITURE OF FUNDS THEREFOR; AND PROVIDING AN EFFECTIVE DATE (FILE 8476 – AWARDED TO XYLEM WATER SOLUTIONS U.S.A., INC., 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 \$1,875,000.00).

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 services]; 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</u> <u>NUMBER</u>	<u>VENDOR</u>	<u>AMOUNT</u>
8476	Xylem Water Solutions U.S.A., Inc.	\$1,875,000.00

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 utilities; 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 [\_\_\_\_ - \_\_\_\_]:

	<b>Aye</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>
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 \_\_\_\_\_, 2024.

\_\_\_\_\_  
GERARD HUDSPETH, MAYOR

ATTEST:  
JESUS SALAZAR, CITY SECRETARY

BY: \_\_\_\_\_

APPROVED AS TO LEGAL FORM:  
MACK REINWAND, CITY ATTORNEY

BY: Marcella Zunn



Docusign City Council Transmittal Coversheet

FILE	8476
File Name	xylem Flight Pumps
Purchasing Contact	Ginny Brummett
City Council Target Date	
Piggy Back Option	Not Applicable
Contract Expiration	
Ordinance	

**CONTRACT BY AND BETWEEN  
CITY OF DENTON, TEXAS AND XYLEM WATER SOLUTIONS U.S.A., INC.  
(Contract #8476)**

**THIS CONTRACT** is made and entered into this date \_\_\_\_\_, by and between Xylem Water Solutions U.S.A., Inc., a Delaware Corporation whose address is 4828 Parkway Plaza Blvd, STE 200, Charlotte, NC 28217, hereinafter referred to as "Contractor," and the **CITY OF DENTON, TEXAS**, a home rule municipal corporation, hereinafter referred to as "City," to be effective upon approval of the Denton City Council and subsequent execution of this Contract by the Denton City Manager or his duly authorized designee.

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

**SCOPE OF SERVICES**

Contractor shall provide products in accordance with the City's Contract # 8476 Xylem Flyght Pumps, a copy of which is on file at the office of Purchasing Agent and incorporated herein for all purposes. The Contract consists of this written agreement and the following items which are attached hereto, or on file, and incorporated herein by reference:

- (a) Special Terms and Conditions (**Exhibit "A"**);
- (b) City of Denton Standard Terms and Conditions (**Exhibit "B"**);
- (c) Certificate of Interested Parties Electronic Filing (**Exhibit "C"**);
- (d) Contractor's Proposal. (**Exhibit "D"**);
- (e) Form CIQ – Conflict of Interest Questionnaire (**Exhibit "E"**)

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

**Prohibition on Contracts with Companies Boycotting Israel**

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

**Prohibition on Contracts with Companies Boycotting Certain Energy Companies**

Contractor acknowledges that in accordance with Chapter 2274 of the Texas Government Code, City is prohibited from entering into a contract with a company for goods or services unless the contract contains 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*** Contract 8476

*the City that Contractor: (1) does not boycott energy companies; and (2) will not boycott energy companies during the term of the agreement.* Failure to meet or maintain the requirements under this provision will be considered a material breach.

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

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

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

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

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

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

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

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

CONTRACTOR

BY: Susan Button  
AUTHORIZED SIGNATURE

Printed Name: Susan Button

Title: Sr. Mgr. Contracts

508-207-0966  
PHONE NUMBER

susan.button@xylem.com  
EMAIL ADDRESS

2024-11232156  
TEXAS ETHICS COMMISSION  
1295 CERTIFICATE NUMBER

CITY OF DENTON, TEXAS

BY: \_\_\_\_\_  
SARA HENSLEY, CITY MANAGER

ATTEST:  
JESUS SALAZAR, CITY SECRETARY

BY: \_\_\_\_\_

APPROVED AS TO LEGAL FORM:  
MACK REINWAND, CITY ATTORNEY

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

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

DocuSigned by:  
Stephen Gay  
SIGNATURE  
Stephen Gay  
PRINTED NAME

Director,  
TITLE  
water utilities  
DEPARTMENT



## **Exhibit A**

### **Special Terms and Conditions**

#### **1. Product Changes During Contract Term**

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

#### **2. Contract Terms**

The contract term will be three (3) year, effective from date of award. The City and the Contractor shall have the option to renew this contract for an additional two (2) one-year periods.

The Contract shall commence upon the issuance of a Notice of Award by the City of Denton and shall automatically renew each year, from the date of award by City Council. The Contractor's request to not renew the contract must be submitted in writing to the Purchasing Manager at least 60 days prior to the contract renewal date for each year. At the sole option of the City of Denton, the Contract may be further extended as needed, not to exceed a total of six (6) months.

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

On Contractor's request in the form stated herein, the City will implement an escalation/de-escalation price adjustment annually based on these special terms. Any request for price adjustment must be based on the, U.S Department of Labor, Bureau of Labor Statistics, Producer Price Index (PPI) or the manufacturer published pricing list. The maximum escalation will not exceed +/- 8% for any individual year. The escalation will be determined annually at the renewal date. The price will be increased or decreased based upon the annual percentage change in the PPI or the percentage change in the manufacturer's price list. Should the PPI or manufacturer price list change exceed a minimum threshold value of +/-1%, then the stated eligible bid prices shall be adjusted in accordance with the percent change not to exceed the 8% limit per year. The Contractor should provide documentation as percentage of each cost associated with the unit prices quoted for consideration.

Request must be submitted in writing with supporting evidence for need of such increase to the Purchasing Manager at least 60 days prior to contract expiration of each year. Respondent must also provide supporting documentation as justification for the request. If no request is made, then it will be assumed that the current contract price will be in effect.

Upon receipt of such request, the City of Denton reserves the right to either: accept the escalation as competitive with the general market price at the time, and become effective upon the renewal date of the contract award or reject the increases within 30 calendar days after receipt of a Contract 8476

properly submitted request. If a properly submitted increase is rejected, the Contractor may request cancellation of such items from the Contract by giving the City of Denton written notice. Cancellation will not go into effect for 15 calendar days after a determination has been issued. Pre-price increase prices must be honored on orders dated up to the official date of the City of Denton approval and/or cancellation.

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

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

#### **4. Item #66, NO WAIVER OF SOVEREIGN IMMUNITY, Exception**

City and Contractor waive against each other, and against the other's officers, directors, members, partners, and employees any and all claims for or entitlement to special, incidental, indirect, punitive, and consequential damages, loss of use, loss of profits and revenue, and loss of reputation arising out of, resulting from, or related to the Contract. The parties also agree that the total liability of each party to the other for all claims, costs, losses, and damages arising from this Purchase Order will be limited to the Purchase Order value ("Cap"). **This Cap does not apply to or limit any claim by City for the following:** (a) costs, losses, or damages asserted by third parties for destruction of tangible property; (b) bodily injury, sickness, disease, or death or (c) gross negligence or willful misconduct.

#### **5. Total Contract Amount**

The contract total shall not exceed \$1,875,000. Pricing shall be per Exhibit D attached.

**Exhibit B**  
**City of Denton**  
**Standard Purchase Terms and Conditions**

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

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

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

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

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

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

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

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

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

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

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

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

## **10. WORKFORCE**

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

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

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

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

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

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

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

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

## **12. INVOICES:**

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

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

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

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

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

The City will furnish a tax exemption certificate upon request.

**13. PAYMENT:**

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

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

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

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

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

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

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

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

**14. TRAVEL EXPENSES:** All travel, lodging and per diem expenses in connection with the Contract shall be paid by the Contractor, unless otherwise stated in the contract terms. During the term of this contract, the contractor shall bill and the City shall reimburse contractor for all reasonable and approved out of pocket expenses which are incurred in the connection with the performance of duties hereunder. Notwithstanding the foregoing, expenses for the time spent by Contractor 8476

the contractor in traveling to and from City facilities shall not be reimbursed, unless otherwise negotiated.

**15. FINAL PAYMENT AND CLOSE-OUT:**

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

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

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

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

**17. RIGHT TO AUDIT:**

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

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

**18. SUBCONTRACTORS:**

A. If the Contractor identified Subcontractors in a DBE/MBE/WBE agreed to Plan, the Contractor shall comply with all requirements approved by the City. The Contractor shall not initially employ any Subcontractor except as provided in the Contractor's Plan. The Contractor shall not substitute any Subcontractor identified in the Plan, unless the substitute has been accepted by the City in Contract 8476



writing. No acceptance by the City of any Subcontractor shall constitute a waiver of any rights or remedies of the City with respect to defective deliverables provided by a Subcontractor. If a Plan has been approved, the Contractor is additionally required to submit a monthly Subcontract Awards and Expenditures Report to the Procurement Manager, no later than the tenth calendar day of each month.

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

Contract, and shall contain provisions that:

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

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

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

#### **19. WARRANTY-PRICE:**

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

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

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

**20. WARRANTY – TITLE:** The Contractor warrants that it has good and indefeasible title to all deliverables furnished under the Contract, and that the deliverables are free and clear of all liens, claims, security interests and encumbrances. The Contractor shall indemnify and hold the City harmless from and against all adverse title claims to the deliverables.

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

A. Recycled deliverables shall be clearly identified as such.

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

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

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

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

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

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

B. Unless otherwise specified in the Contract, the warranty period shall be at least one year from the Acceptance Date. If during the warranty period, one or more of the above warranties are breached, the Contractor shall promptly upon receipt of demand perform the services again in accordance with above standard at no additional cost to the City. All costs incidental to such additional performance shall be borne by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach warranty, but failure to give timely notice shall not impair the City's rights under this section.

C. If the Contractor is unable or unwilling to perform its services in accordance with the above Contract 8476

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

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

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

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

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

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

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

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

**30. DELAYS:**

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

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

**31. INDEMNITY:**

**A. Definitions:**

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

**B. THE CONTRACTOR SHALL DEFEND (AT THE OPTION OF THE CITY), INDEMNIFY, AND HOLD THE CITY, ITS SUCCESSORS, ASSIGNS, OFFICERS,**

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

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

**A. General Requirements:**

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

- viii. If insurance policies are not written for amounts agreed to with the City, the Contractor shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.
- ix. The City shall be entitled, upon request, at an agreed upon location, and without expense, to review certified copies of policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the parties hereto or the underwriter on any such policies.
- x. The City reserves the right to review the insurance requirements set forth during the effective period of the Contract and to make reasonable adjustments to insurance coverage, limits, and exclusions when deemed necessary and prudent by the City based upon changes in statutory law, court decisions, the claims history of the industry or financial condition of the insurance company as well as the Contractor.
- xi. The Contractor shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of the Contract or as required in the Contract.
- xii. The Contractor shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in policies. All deductibles or self-insured retentions shall be disclosed on the Certificate of Insurance.
- xiii. The Contractor shall endeavor to provide the City thirty (30) calendar days' written notice of erosion of the aggregate limits below occurrence limits for all applicable coverages indicated within the Contract.
- xiv. The insurance coverages specified in within the solicitation and requirements are required minimums and are not intended to limit the responsibility or liability of the Contractor.

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

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

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

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

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

**37. CONFIDENTIALITY:** In order to provide the deliverables to the City, Contractor may require access to certain of the City's and/or its licensors' confidential information (including inventions, employee information, trade secrets, confidential know-how, confidential business information, and other information which the City or its licensors consider confidential) (collectively, "Confidential Information"). Contractor acknowledges and agrees that the Confidential Information is the valuable property of the City and/or its licensors and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information will substantially injure the City and/or its licensors. The Contractor (including its employees, subcontractors, agents, or representatives) agrees that it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate, or otherwise use the Confidential Information without the prior written consent of the City or in a manner not expressly permitted under this Agreement, unless the Confidential Information is required to be disclosed by law or an order of any court or other governmental authority with proper jurisdiction, provided the Contractor promptly notifies the City before disclosing such information so as to permit the City reasonable time to seek an appropriate protective order. The Contractor agrees to use protective measures no less stringent than the Contractor uses within its own business to protect its own most valuable information, which protective measures shall under all circumstances be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.

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

A. Patents. As to any patentable subject matter contained in the deliverables, the Contractor agrees

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

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

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

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

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

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



percentage, brokerage or contingent fee.

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

**43. PROHIBITION AGAINST PERSONAL INTEREST IN CONTRACTS:** No officer, employee, independent consultant, or elected official of the City who is involved in the development, evaluation, or decision-making process of the performance of any solicitation shall have a financial interest, direct or indirect, in the Contract resulting from that solicitation as defined in the City's Ethic Ordinance 18-757 and in the City Charter chapter 2 article XI(Ethics). Any willful violation of this section shall constitute impropriety in office, and any officer or employee guilty thereof shall be subject to disciplinary action up to and including dismissal. Any violation of this provision, with the knowledge, expressed or implied, of the Contractor shall render the Contract voidable by the City. The Contractor shall complete and submit the City's Conflict of Interest Questionnaire.

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

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

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

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merger or acquisition agreement. Failure to do so may adversely impact future invoice payments.

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

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

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

**49. DISPUTE RESOLUTION:**

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

B. If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within thirty (30) calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option; the City and the Contractor agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in the Contract prevents the parties from relying on the skills of a person who is trained in the subject matter of the dispute or a contract interpretation expert. If the parties fail to agree on a mediator within thirty (30) calendar days of initiation of the mediation process, the mediator shall be selected by the Denton County Alternative Dispute Resolution Program (DCAP). The parties agree to participate in mediation in good faith for up to thirty (30) calendar days from the date of the first mediation session. The City and the Contractor will share the mediator's fees equally and the parties will bear their own costs of

participation such as fees for any consultants or attorneys they may utilize to represent them or otherwise assist them in the mediation.

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

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

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

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

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

**53. SURVIVABILITY OF OBLIGATIONS:** All provisions of the Contract that impose continuing obligations on the parties, including but not limited to the warranty, indemnity, and confidentiality obligations of the parties, shall survive the expiration or termination of the Contract.

**54. NON-SUSPENSION OR DEBARMENT CERTIFICATION:**

The City of Denton is prohibited from contracting with or making prime or sub-awards to parties that are suspended or debarred or whose principals are suspended or debarred from Federal, State, Contract 8476

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

## **55. EQUAL OPPORTUNITY**

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

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

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

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

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

ii. "Cost of components" means -

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

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

iii. "Domestic end product" means-

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

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

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

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

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

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

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

D. The Contractor shall deliver only domestic end products except to the extent that it specified delivery of foreign end products in the provision of the Solicitation entitled "Buy American Act Contract 8476

Certificate".

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

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

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

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

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

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

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

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

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

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

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

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

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

**Exhibit C**  
**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](mailto: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.



**Xylem Water Solutions USA, Inc.**  
2310 McDaniel Road, Carrollton, TX 75006

November 20, 2023

City of Denton, TX  
215 E McKinney St  
Denton, TX 76201-4229

Re: Xylem / Flygt Products – Sales/Service Channel

To Whom it May Concern:

From its location in Carrollton, TX, Flygt (a Xylem brand) products are exclusively sold DIRECTLY TO END USERS for the municipal water and wastewater market, including Denton County. No distributors are used in our sales channel for this area. We are offering a 15% discount on all Flygt products (new equipment and repair parts) to The City of Denton. Our shop labor rate is \$140 per hour and our field labor rate is \$175 per hour.

We are the only Flygt Authorized Warranty/Service Center for Flygt Pumps, Mixers, and Monitoring and Control products in this area. Xylem Inc. – Flygt Products offer a large range of pumps (.25Hp – 1140Hp), mixers (1.2Hp – 40Hp) and controls. We invite you and your team to our Carrollton facility (2310 McDaniel Road, Carrollton, TX 75006) where we sell, service and rent units here. We at Xylem Inc. – Flygt Products appreciate working with you for all your pumping, mixing and controls needs.

Please feel free to contact the undersigned with any questions regarding this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Matt Rottman".

Matt Rottman  
Sales Representative  
Flygt Products  
Carrollton, TX  
O: 972-512-3615  
matt.rottman@xylem.com



**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.**

xylem water solutions U.S.A., Inc

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

(The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7<sup>th</sup> 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:

Susan Button

3/4/2024

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 3<sup>rd</sup> 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: FF8E2EC28A2C4E7BAB762B0603431238

Status: Sent

Subject: Please DocuSign: City Council Contract 8476 Xylem Flyght Pumps

Source Envelope:

Document Pages: 29

Signatures: 4

Envelope Originator:

Certificate Pages: 6

Initials: 1

Ginny Brummett

AutoNav: Enabled

901B Texas Street

Envelopeld Stamping: Enabled

Denton, TX 76209

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

Ginny.Brummett@cityofdenton.com

IP Address: 198.49.140.10

**Record Tracking**

Status: Original

Holder: Ginny Brummett

Location: DocuSign

2/28/2024 4:48:12 PM

Ginny.Brummett@cityofdenton.com

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

Ginny Brummett

**Completed**

Sent: 2/28/2024 4:50:35 PM

ginny.brummett@cityofdenton.com

Viewed: 2/28/2024 4:50:44 PM

Buyer

Signed: 2/28/2024 4:50:57 PM

City of Denton

Using IP Address: 198.49.140.10

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

Not Offered via DocuSign

Lori Hewell



Sent: 2/28/2024 4:50:59 PM

lori.hewell@cityofdenton.com

Viewed: 2/29/2024 7:58:20 AM

Purchasing Manager

Signed: 2/29/2024 7:58:47 AM

City of Denton

Signature Adoption: Pre-selected Style

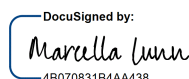
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Using IP Address: 198.49.140.104

**Electronic Record and Signature Disclosure:**

Not Offered via DocuSign

Marcella Lunn



Sent: 2/29/2024 7:58:49 AM

marcella.lunn@cityofdenton.com

Viewed: 2/29/2024 5:20:06 PM

Senior Deputy City Attorney

Signed: 3/1/2024 3:18:36 PM

City of Denton

Signature Adoption: Pre-selected Style

Security Level: Email, Account Authentication  
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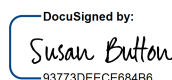
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Signed using mobile

**Electronic Record and Signature Disclosure:**

Not Offered via DocuSign

Susan Button



Sent: 3/1/2024 3:18:38 PM

Susan.Button@xylem.com

Viewed: 3/4/2024 11:16:27 AM

Sr. Mgr. Contracts Management

Signed: 3/4/2024 11:19:41 AM

Security Level: Email, Account Authentication  
(None)

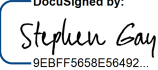
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Signer Events	Signature	Timestamp
Stephen Gay Stephen.Gay@cityofdenton.com Director, Water Utilities Security Level: Email, Account Authentication (None)	<div> DocuSigned by:    9EBFF5658E56492... </div> Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.10	Sent: 3/4/2024 11:19:44 AM Viewed: 3/4/2024 12:24:49 PM Signed: 3/4/2024 12:43:10 PM

**Electronic Record and Signature Disclosure:**  
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ID: 2ac0e185-8427-4260-98a2-4667fe731736

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

Sent: 3/4/2024 12:43:13 PM

**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

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

**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

Jesus Salazar  
jesus.salazar@cityofdenton.com  
Security Level: Email, Account Authentication (None)

**Electronic Record and Signature Disclosure:**  
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ID: 2dd761df-a516-47b2-a74f-68d75f554a26

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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)

Sent: 2/28/2024 4:50:59 PM

COPIED

**Electronic Record and Signature Disclosure:**  
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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) <b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign  City Secretary Office citysecretary@cityofdenton.com Security Level: Email, Account Authentication (None) <b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign  Rusty Willard Rusty.Willard@cityofdenton.com Security Level: Email, Account Authentication (None) <b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign  Chris Carroll Chris.Carroll@cityofdenton.com Security Level: Email, Account Authentication (None) <b>Electronic Record and Signature Disclosure:</b> Accepted: 2/27/2024 5:21:42 PM ID: e4a8c514-d1ae-4e3a-90d4-dda6a6ddaff8	<div>COPIED</div>	Sent: 3/4/2024 12:43:13 PM Viewed: 3/4/2024 12:56:05 PM
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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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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](mailto: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](mailto: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](mailto: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](mailto:purchasing@cityofdenton.com) and in the body of such request you must state your e-mail, full name, IS 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"><li>•Allow per session cookies</li><li>•Users accessing the internet behind a Proxy Server must enable HTTP 1.1 settings via proxy connection</li></ul>

\*\* 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](http://www.cityofdenton.com)

## Legislation Text

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**File #: ID 24-645, Version: 1**

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### **AGENDA CAPTION**

Consider adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the approval of a sixth amendment to a Professional Services Agreement between the City of Denton and Nelson + Morgan Architects, Inc., amending the contract approved by Purchasing on February 13, 2014, in the not-to-exceed amount of \$24,840.00, amended by Amendments 1-5 approved by Purchasing and City Council, said sixth amendment to provide additional design services for the base project and additional design services of the HVAC system at Fleet Maintenance; providing for the expenditure of funds therefor; and providing an effective date (File 5497 - providing for an additional sixth amendment expenditure amount not-to-exceed \$171,299.00, with the total contract amount not-to-exceed \$541,698.97).



## AGENDA INFORMATION SHEET

**DEPARTMENT:** Procurement  
**ACM:** Cassey Ogden  
**DATE:** April 2, 2024

### **SUBJECT**

Consider adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the approval of a sixth amendment to a Professional Services Agreement between the City of Denton and Nelson + Morgan Architects, Inc., amending the contract approved by Purchasing on February 13, 2014, in the not-to-exceed amount of \$24,840.00, amended by Amendments 1-5 approved by Purchasing and City Council, said sixth amendment to provide additional design services for the base project and additional design services of the HVAC system at Fleet Maintenance; providing for the expenditure of funds therefor; and providing an effective date (File 5497 – providing for an additional sixth amendment expenditure amount not-to-exceed \$171,299.00, with the total contract amount not-to-exceed \$541,698.97).

### **STRATEGIC ALIGNMENT**

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

### **INFORMATION/BACKGROUND**

The Fleet Services Maintenance Facility opened in 2000 and is located at the Denton Service Center off Mingo Road. The facility is a 24,400-square-foot structure and comprised of 15 bays to house 16 technicians. All fleet repairs and fueling are conducted as a centralized operation.

In 2014, the City contracted with Nelson+Morgan Architects (NMA) to perform an initial design project to expand to an additional four (4) bays. In 2016, Solid Waste and Fleet Services explored building a satellite facility at the Landfill and engaged NMA to complete the design documents. Amendment No. 1 was executed by Purchasing staff to expand the original design to incorporate additional bays for a total amount of \$20,073.09. While Amendment No. 2 covered the design of a satellite Fleet facility at Solid Waste for a total amount of \$158,035. However, the expansion project was never constructed due to financial and operational considerations.

In early 2018, Fleet Staff worked with Facilities Management to explore several options for re-initiating the expansion project that never commenced in 2014. Staff recommendations included expanding the Fleet Maintenance facilities to an additional six (6) bays for a total of twelve bays. It was the City staff's opinion that the 12-bay expansion should accommodate the City's fleet maintenance repair needs through 2030 or until other facilities are planned to address the City's growth. Since NMA had already completed the design documents in 2016 for the original bay expansion, it was determined that there would be economies of scale to amend the NMA contract for a third time to complete the design documents for an additional six (6) bays,

which would bring the total to 12 bays to be constructed at the Service Center. Council approved Amendment No. 3 on December 14, 2018, to include the revised design changes to expand the Fleet Maintenance Facility to a total of 12 bays for a total amount of \$139,871.88.

Amendment No. 4 and No. 5 were executed by Purchasing staff for the additional professional services necessary to compile alternates and the re-bid of the Fleet Expansion project for a total amount of \$9,320 and \$18,260.

This Amendment No. 6 will cover additional construction administration, design for price requests 6-9 and 11, and HVAC design requested by the project stakeholders. The aforementioned price requests include changes to access control, compressor, oil distribution, Independent Distribution Frame (IDF) changes, and wash bay equipment. This project is currently in the close-out phase, with only a few miscellaneous items and HVAC design remaining.

### **PRIOR ACTION/REVIEW (COUNCIL, BOARDS, COMMISSIONS)**

On October 18, 2016, City Council approved Amendment No. 2 with Nelson + Morgan Architects, Inc. in the not-to-exceed amount of \$145,000, for a total not-to-exceed amount of \$202,948.09 (Ordinance 2016-329).

On December 11, 2018, City Council approved Amendment No. 3 with Nelson + Morgan Architects, Inc. in the not-to-exceed amount of \$139,871.88, for a total not-to-exceed amount of \$342,819.97.

### **RECOMMENDATION**

Award Amendment No. 6 with Nelson + Morgan Architects, Inc., to provide additional design services for the base project and additional design services of the HVAC system at Fleet Maintenance, in a not-to-exceed amount of \$171,299.00, for a total contract award of \$541,698.97.

### **PRINCIPAL PLACE OF BUSINESS**

Nelson + Morgan Architects, Inc.  
Denton, TX

### **ESTIMATED SCHEDULE OF PROJECT**

This project will continue upon approval with an estimated completion date occurring within 365 days.

### **FISCAL INFORMATION**

These services will be funded from Fleet account 820026725. Purchase Order #188120 will be revised to include the sixth amendment amount of \$171,299. The total amended amount of this contract is \$541,698.97.

### **EXHIBITS**

Exhibit 1: Agenda Information Sheet  
Exhibit 2: Original Contract, Ordinances, and Amendments 1-5  
Exhibit 3: Ordinance and Amendment 6

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

For information concerning this acquisition, contact: Aaron Skinner, 940-349-8182.

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

**PROFESSIONAL SERVICES AGREEMENT  
FOR ARCHITECT OR ENGINEER  
FILE #5497**

THIS AGREEMENT is made and entered into as of the 13<sup>th</sup> day of February, 2014, by and between the City of Denton, Texas, a Texas municipal corporation, with its principal office at 215 East McKinney Street, Denton, Denton County, Texas 76201, hereinafter called "Owner" and Nelson+Morgan Architects, Inc., with its corporate office at 2717 Wind River Lane, Suite 230, Denton, Texas 76210 hereinafter called "Design Professional," acting herein, by and through their duly authorized representatives.

In consideration of the covenants and agreements herein contained, the parties hereto do mutually agree as follows:

**SECTION 1**

**EMPLOYMENT OF DESIGN PROFESSIONAL**

The Owner hereby contracts with the Design Professional, a licensed Texas architect or engineer, as an independent contractor. The Design Professional hereby agrees to perform the services as described herein and in the Proposal, the General Conditions, and other attachments to this Agreement that are referenced in Section 3, in connection with the Project. The Project shall include, without limitation, architectural and engineering design services for the City of Denton's Fleet Services Facility Expansion project, as fully described in the proposal, herein attached as Attachment A.

## **SECTION 2** **COMPENSATION**

The Owner shall compensate the Design Professional as follows:

### **2.1 BASIC SERVICES**

**2.1.1** For Basic Services the total compensation shall not exceed the following services:

Basic Professional Services	\$11,800.00
MEP	\$ 4,680.00
Structural	\$ 3,600.00
Civil	\$ 3,000.00
TAS	\$ 1,260.00

**2.1.2** Progress payments for Basic Services shall be paid based upon the Design Professional estimate of the percentage of the work effort that has been completed.

### **2.2 ADDITIONAL SERVICES**

**2.2.1** Compensation for Additional Services, see Attachment A, Section IV, Subsection 2, which includes the fee/rate schedule.

**2.2.2** Compensation for Additional Services of consultants, including additional structural, mechanical and electrical engineering services shall be based on a multiple of 1.20 times the amounts billed to the Design Professional for such additional services.

**2.2.3** Compensation for Texas Accessibility Standards (TAS) Project Registration/Review shall not exceed \$1,260.

**2.3 REIMBURSABLE EXPENSES** Reimbursable Expenses shall be a multiple of 1.20 times the expenses incurred by the Design Professional, the Design Professional's employees and consultants in the interest of the Project as defined in the General Conditions but not to exceed a total of \$500 without the prior written approval of the Owner.

**2.4 TOTAL COMPENSATION** The total comprehensive not-to-exceed amount for this agreement shall be \$24,840.

**SECTION 3**  
**ENTIRE AGREEMENT**

This Agreement includes this executed agreement and the following documents all of which are attached hereto and made a part hereof by reference as if fully set forth herein:

1. City of Denton General Conditions to Agreement for Architectural or Engineering Services.
2. The Design Professional's Proposal

This Agreement is signed by the parties hereto effective as of the date first above written.

CITY OF DENTON

BY: C. Longo, Buyer  
PURCHASING

DESIGN FIRM

BY: Am  
FIRM'S OFFICER/REPRESENTATIVE  
(SIGNATURE)

WITNESS:

BY: \_\_\_\_\_

**CITY OF DENTON  
GENERAL CONDITIONS  
TO  
AGREEMENT FOR ARCHITECTURAL OR ENGINEERING SERVICES**

**ARTICLE 1. ARCHITECT OR ENGINEER'S RESPONSIBILITIES**

**1.1** The Architect or Engineer's services consist of those services for the Project (as defined in the agreement (the "Agreement") and proposal (the "Proposal") to which these General Conditions are attached) performed by the Architect or Engineer (hereinafter called the "Design Professional") or Design Professional's employees and consultants as enumerated in Articles 2 and 3 of these General Conditions as modified by the Agreement and Proposal (the "Services").

**1.2** The Design Professional will perform all Services as an independent contractor to the prevailing professional standards consistent with the level of care and skill ordinarily exercised by members of the same profession currently practicing in the same locality under similar conditions, including reasonable, informed judgments and prompt timely actions (the "Degree of Care"). The Services shall be performed as expeditiously as is consistent with the Degree of Care necessary for the orderly progress of the Project. Upon request of the Owner, the Design Professional shall submit for the Owner's approval a schedule for the performance of the Services which may be adjusted as the Project proceeds, and shall include allowances for periods of time required for the Owner's review and for approval of submissions by authorities having jurisdiction over the Project. Time limits established by this schedule and approved by the Owner shall not, except for reasonable cause, be exceeded by the Design Professional or Owner, and any adjustments to this schedule shall be mutually acceptable to both parties.

**ARTICLE 2 SCOPE OF BASIC SERVICES**

**2.1 BASIC SERVICES DEFINED** The Design Professional's Basic Services consist of those described in Sections 2.2 through 2.6 of these General Conditions and include normal structural, civil, mechanical and electrical engineering services to produce a complete and accurate set of Construction Documents, as described by and required in Section 2.4. The Basic Services may be modified by the Agreement.

**2.2 SCHEMATIC DESIGN PHASE**

**2.2.1** The Design Professional shall provide a preliminary evaluation of the Owner's program, construction schedule and construction budget requirements, each in terms of the other, subject to the limitations set forth in Subsection 5.2.1.

**2.2.2** Based on the mutually agreed-upon program, schedule and construction budget requirements, the Design Professional shall prepare, for approval by the Owner, Schematic Design Documents consisting of drawings and other documents illustrating the scale and relationship of Project components. The Schematic Design shall contemplate compliance with all applicable laws, statutes, ordinances, codes and regulations.

**2.3 DESIGN DEVELOPMENT PHASE**

**2.3.1** Based on the approved Schematic Design Documents and any adjustments authorized by the Owner in the program, schedule or construction budget, the Design Professional shall prepare for approval by the Owner, Design Development Documents consisting of drawings and other documents to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, materials and such other elements as may be appropriate, which shall comply with current interpretation of laws, statutes, ordinances, codes and regulations relating to this project. Notwithstanding Owner's approval of the documents, Design Professional represents that the Documents and specifications will be sufficient and adequate to fulfill the purposes of the Project.

**2.4 CONSTRUCTION DOCUMENTS PHASE**

**2.4.1** Based on the approved Design Development Documents and any further adjustments in the scope or quality of the Project or in the construction budget authorized by the Owner, the Design Professional shall prepare, for approval by the Owner, Construction Documents consisting of Drawings and Specifications setting forth in detail requirements for the construction of the Project, which shall comply with all applicable laws, statutes, ordinances, codes and regulations.

**2.4.2** The Design Professional shall assist the Owner in the preparation of the necessary bidding or procurement information, bidding or procurement forms, the Conditions of the contract, and the form of Agreement between the Owner and contractor.

**2.4.3** The Design Professional shall advise the Owner of any adjustments to previous preliminary estimates of Construction Cost indicated by changes in requirements or general market conditions.

**2.4.4** The Design Professional shall assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

**2.5 CONSTRUCTION CONTRACT PROCUREMENT**

**2.5.1** The Design Professional, following the Owner's approval of the Construction Documents and of the latest preliminary detailed estimate of Construction Cost, shall assist the Owner in procuring a construction contract for the Project through any procurement method that is legally applicable to the Project including without limitation, the competitive sealed bidding process. Although the Owner will consider the advice of the Design Professional, the award of the construction contract is in the sole discretion of the Owner.

**2.5.2** If the construction contract amount for the Project exceeds the total construction cost of the Project as set forth in the approved Detailed Statement of Probable Construction Costs of the Project submitted by the Design Professional, then the Design Professional, at its sole cost and expense, will revise the Construction Documents as may be required by the Owner to reduce or modify the quantity or quality of the work so that the total construction cost of the Project will not exceed the total construction cost set forth in the approved Detailed Statement of Probable Construction Costs.

**2.6 CONSTRUCTION PHASE - ADMINISTRATION OF THE CONSTRUCTION CONTRACT**

**2.6.1** The Design Professional's responsibility to provide Basic Services for the Construction Phase under this Agreement commences with the award of the Contract for Construction and terminates at the issuance to the Owner of the final Certificate for Payment, unless extended under the terms of Subsection 8.3.2.



**2.6.2** The Design Professional shall provide detailed administration of the Contract for Construction as set forth below. For design professionalss the administration shall also be in accordance with AIA document A201, General Conditions of the Contract for Construction, current as of the date of the Agreement as may be amended by the City of Denton special conditions, unless otherwise provided in the Agreement. For engineers the administration shall also be in accordance with the Standard Specifications for Public Works Construction by the North Central Texas Council of Governments, current as of the date of the Agreement, unless otherwise provided in the Agreement.

**2.6.3** Construction Phase duties, responsibilities and limitations of authority of the Design Professional shall not be restricted, modified or extended without written agreement of the Owner and Design Professional.

**2.6.4** The Design Professional shall be a representative of and shall advise and consult with the Owner (1) during construction, and (2) at the Owner's direction from time to time during the correction, or warranty period described in the Contract for Construction. The Design Professional shall have authority to act on behalf of the Owner only to the extent provided in the Agreement and these General Conditions, unless otherwise modified by written instrument.

**2.6.5** The Design Professional shall observe the construction site at least one time a week, while construction is in progress, and as reasonably necessary while construction is not in progress, to become familiar with the progress and quality of the work completed and to determine if the work is being performed in a manner indicating that the work when completed will be in accordance with the Contract Documents. Design Professional shall provide Owner a written report subsequent to each on-site visit. On the basis of on-site observations the Design Professional shall keep the Owner informed of the progress and quality of the work, and shall exercise the Degree of Care and diligence in discovering and promptly reporting to the Owner any observable defects or deficiencies in the work of Contractor or any subcontractors. The Design Professional represents that he will follow Degree of Care in performing all Services under the Agreement. The Design Professional shall promptly correct any defective designs or specifications furnished by the Design Professional at no cost to the Owner. The Owner's approval, acceptance, use of or payment for all or any part of the Design Professional's Services hereunder or of the Project itself shall in no way alter the Design Professional's obligations or the Owner's rights hereunder.

**2.6.6** The Design Professional shall not have control over or charge of and shall not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the work. The Design Professional shall not be responsible for the Contractor's schedules or failure to carry out the work in accordance with the Contract Documents except insofar as such failure may result from Design Professional's negligent acts or omissions. The Design Professional shall not have control over or charge of acts or omissions of the Contractor, Subcontractors, or their agents or employees, or of any other persons performing portions of the work.

**2.6.7** The Design Professional shall at all times have access to the work wherever it is in preparation or progress.

**2.6.8** Except as may otherwise be provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall communicate through the Design Professional. Communications by and with the Design Professional's consultants shall be through the Design Professional.

**2.6.9** Based on the Design Professional's observations at the site of the work and evaluations of the Contractor's Applications for Payment, the Design Professional shall review and certify the amounts due the Contractor.

**2.6.10** The Design Professional's certification for payment shall constitute a representation to the Owner, based on the Design Professional's observations at the site as provided in Subsection 2.6.5 and on the data comprising the Contractor's Application for Payment, that the work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to minor deviations from the Contract Documents correctable prior to completion and to specific qualifications expressed by the Design Professional. The issuance of a Certificate for Payment shall further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment shall not be a representation that the Design Professional has (1) reviewed construction means, methods, techniques, sequences or procedures, or (2) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

**2.6.11** The Design Professional shall have the responsibility and authority to reject work which does not conform to the Contract Documents. Whenever the Design Professional considers it necessary or advisable for implementation of the intent of the Contract Documents, the Design Professional will have authority to require additional inspection or testing of the work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Design Professional nor a decision made in good faith either to exercise or not exercise such authority shall give rise to a duty or responsibility of the Design Professional to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees or other persons performing portions of the work.

**2.6.12** The Design Professional shall review and approve or take other appropriate action upon Contractor's submittals such as Shop Drawings, Product Data and Samples for the purpose of (1) determining compliance with applicable laws, statutes, ordinances and codes; and (2) determining whether or not the work, when completed, will be in compliance with the requirements of the Contract Documents. The Design Professional shall act with such reasonable promptness to cause no delay in the work or in the construction of the Owner or of separate contractors, while allowing sufficient time in the Design Professional's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities or for substantiating instructions for installation or performance of equipment or systems designed by the Contractor, all of which remain the responsibility of the Contractor to the extent required by the Contract Documents. The Design Professional's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Design Professional, of construction means, methods, techniques, sequences or procedures. The Design Professional's approval of a specific item shall not indicate approval of an assembly of which the item is a component. When professional certification of performance characteristics of materials, systems or equipment is required by the Contract Documents, the Design Professional shall be entitled to rely upon such certification to establish that the materials, systems or equipment will meet the performance criteria required by the Contract Documents.

**2.6.13** The Design Professional shall prepare Change Orders and Construction Change Directives, with supporting documentation and data if deemed necessary by the Design Professional as provided in Subsections 3.1.1 and 3.3.3, for the Owner's approval and execution in accordance with the Contract Documents, and may authorize minor changes in the work not involving an adjustment in the Contract Sum or an extension of the Contract Time which are not inconsistent with the intent of the Contract Documents.

**2.6.14** On behalf of the Owner, the Design Professional shall conduct inspections to determine the dates of Substantial Completion and Final Completion, and if requested by the Owner shall issue Certificates of Substantial and Final Completion. The Design Professional will receive and review written guarantees and related documents required by the Contract for Construction to be assembled by the Contractor and shall issue a final certificate for Payment upon compliance with the requirements of the Contract Documents.

**2.6.15** The Design Professional shall interpret and provide recommendations on matters concerning performance of the Owner and Contractor under the requirements of the Contract Documents on written request of either the Owner or Contractor. The Design Professional's response to such requests shall be made with reasonable promptness and within any time limits agreed upon.

**2.6.16** Interpretations and decisions of the Design Professional shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and initial decisions, the Design Professional shall endeavor to secure faithful performance by both Owner and Contractor, and shall not be liable for results or interpretations or decisions so rendered in good faith in accordance with all the provisions of this Agreement and in the absence of negligence.

**2.6.17** The Design Professional shall render written decisions within a reasonable time on all claims, disputes or other matters in question between the Owner and Contractor relating to the execution or progress of the work as provided in the Contract Documents.

**2.6.18** The Design Professional (1) shall render services under the Agreement in accordance with the Degree of Care; (2) will reimburse the Owner for all damages caused by the defective designs the Design Professional prepares; and (3) by acknowledging payment by the Owner of any fees due, shall not be released from any rights the Owner may have under the Agreement or diminish any of the Design Professional's obligations thereunder.

**2.6.19** The Design Professional shall provide the Owner with four sets of reproducible prints showing all significant changes to the Construction Documents during the Construction Phase.

## **ARTICLE 3 ADDITIONAL SERVICES**

### **3.1 GENERAL**

**3.1.1** The services described in this Article 3 are not included in Basic Services unless so identified in the Agreement or Proposal, and they shall be paid for by the Owner as provided in the Agreement, in addition to the compensation for Basic Services. The services described under Sections 3.2 and 3.4 shall only be provided if authorized or confirmed in writing by the Owner. If services described under Contingent Additional Services in Section 3.3 are required due to circumstances beyond the Design Professional's control, the Design Professional shall notify the Owner in writing and shall not commence such additional services until it receives written approval from the Owner to proceed. If the Owner indicates in writing that all or part of such Contingent Additional Services are not required, the Design Professional shall have no obligation to provide those services. Owner will be responsible for compensating the Design Professional for Contingent Additional Services only if they are not required due to the negligence or fault of Design Professional.

### **3.3 CONTINGENT ADDITIONAL SERVICES**

**3.3.1** Making material revisions in Drawings, Specifications or other documents when such revisions are:

1. inconsistent with approvals or instructions previously given by the Owner, including revisions made necessary by adjustments in the Owner's program or Project budget;
2. required by the enactment or revision of codes, laws or regulations subsequent to the preparation of such documents, or
3. due to changes required as a result of the Owner's failure to render decision in a timely manner.

**3.3.2** Providing services required because of significant changes in the Project including, but not limited to, size, quality, complexity, or the Owner's schedule, except for services required under Subsection 2.5.2.

**3.3.3** Preparing Drawings, Specifications and other documentation and supporting data, and providing other services in connection with Change Orders and Construction Change Directives.

**3.3.4** Providing consultation concerning replacement of work damaged by fire or other cause during construction, and furnishing services required in connection with the replacement of such work.

**3.3.5** Providing services made necessary by the default of the Contractor, by major defects or deficiencies in the work of the Contractor, or by failure of performance of either the Owner or Contractor under the Contract for Construction.

**3.3.6** Providing services in evaluating an extensive number of claims submitted by the Contractor or others in connection with the work.

**3.3.7** Providing services in connection with a public hearing, arbitration proceeding or legal proceeding except where the Design Professional is party thereto.

**3.3.8** Providing services in addition to those required by Article 2 for preparing documents for alternate, separate or sequential bids or providing services in connection with bidding or construction prior to the completion of the Construction Documents Phase.

**3.3.9** Notwithstanding anything contained in the Agreement, Proposal or these General Conditions to the contrary, all services described in this Article 3 that are caused or necessitated in whole or in part due to the negligent act or omission of the Design Professional shall be performed by the Design Professional as a part of the Basic Services under the Agreement with no additional compensation above and beyond the compensation due the Design Professional for the Basic Services. The intervening or concurrent negligence of the Owner shall not limit the Design Professional's obligations under this Subsection 3.3.9.

### **3.4 OPTIONAL ADDITIONAL SERVICES**

**3.4.1** Providing financial feasibility or other special studies.

**3.4.2** Providing planning surveys, site evaluations or comparative studies of prospective sites.

- 3.4.3 Providing special surveys, environmental studies and submissions required for approvals of governmental authorities or others having jurisdiction over the Project.
- 3.4.4 Providing services relative to future facilities, systems and equipment.
- 3.4.5 Providing services to investigate existing conditions or facilities or to make measured drawings thereof.
- 3.4.6 Providing services to verify the accuracy of drawings or other information furnished by the Owner.
- 3.4.7 Providing coordination of construction performed by separate contractors or by the Owner's own forces and coordination of services required in connection with construction performed and equipment supplied by the Owner.
- 3.4.8 Providing detailed quantity surveys or inventories of material, equipment and labor.
- 3.4.9 Providing analyses of operating and maintenance costs.
- 3.4.10 Making investigations, inventories of materials or equipment, or valuations and detailed appraisals of existing facilities.
- 3.4.12 Providing assistance in the utilization of equipment or systems such as testing, adjusting and balancing, preparation of operation and maintenance manuals, training personnel for operation and maintenance and consultation during operation.
- 3.4.13 Providing interior design and similar services required for or in connection with the selection, procurement or installation of furniture, furnishings and related equipment.
- 3.4.14 Providing services other than as provided in Section 2.6.4, after issuance to the Owner of the final Certificate for Payment and expiration of the Warranty period of the Contract for Construction.
- 3.4.15 Providing services of consultants for other than architectural, civil, structural, mechanical and electrical engineering portions of the Project provided as a part of Basic Services.
- 3.4.16 Providing any other services not otherwise included in this Agreement or not customarily furnished in accordance with generally accepted architectural practice.
- 3.4.17 Preparing a set of reproducible record drawings in addition to those required by Subsection 2.6.19, showing significant changes in the work made during construction based on marked-up prints, drawings and other data furnished by the Contractor to the Design Professional.
- 3.4.18 Notwithstanding anything contained in the Agreement, Proposal or these General Conditions to the contrary, all services described in this Article 3 that are caused or necessitated in whole or in part due to the negligent act or omission of the Design Professional shall be performed by the Design Professional as a part of the Basic Services under the Agreement with no additional compensation above and beyond the compensation due the Design Professional for the Basic Services. The intervening or concurrent negligence of the Owner shall not limit the Design Professional's obligations under this Subsection 3.4.18.

#### ARTICLE 4 OWNER'S RESPONSIBILITIES

- 4.1 The Owner shall consult with the Design Professional regarding requirements for the Project, including (1) the Owner's objectives, (2) schedule and design constraints and criteria, including space requirements and relationships, flexibility, expendability, special equipment, systems and site requirements, as more specifically described in Subsection 2.2.1.
- 4.2 The Owner shall establish and update an overall budget for the Project, including the Construction Cost, the Owner's other costs and reasonable contingencies related to all of these costs.
- 4.3 If requested by the Design Professional, the Owner shall furnish evidence that financial arrangements have been made to fulfill the Owner's obligations under this Agreement.
- 4.4 The Owner shall designate a representative authorized to act on the Owner's behalf with respect to the Project. The Owner or such authorized representative shall render decisions in a timely manner pertaining to documents submitted by the Design Professional in order to avoid unreasonable delay in the orderly and sequential progress of the Design Professional's services.
- 4.5 Where applicable, the Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data pertaining to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a project benchmark.
- 4.6 Where applicable, the Owner shall furnish the services of geotechnical engineers when such services are requested by the Design Professional. Such services may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion and resistivity tests, including necessary operations for anticipating sub-soil conditions, with reports and appropriate professional recommendations.
- 4.6.1 The Owner shall furnish the services of other consultants when such services are reasonably required by the scope of the Project and are requested by the Design Professional and are not retained by the Design Professional as part of its Basic Services or Additional Services.
- 4.7 When not a part of the Additional Services, the Owner shall furnish structural, mechanical, chemical, air and water pollution tests, tests of hazardous materials, and other laboratory and environmental tests, inspections and reports required by law or the Contract Documents.

4.8 The Owner shall furnish all legal, accounting and insurance counseling services as may be necessary at any time for the Project, including auditing services the Owner may require to verify the Contractor's Applications for Payment or to ascertain how or for what purposes the Contractor has used the money paid by or on behalf of the Owner.

4.9 The services, information, surveys and reports required by Owner under Sections 4.5 through 4.8 shall be furnished at the Owner's expense, and the Design Professional shall be entitled to rely upon the accuracy and completeness thereof in the absence of any negligence on the part of the Design Professional.

4.10 The Owner shall give prompt written notice to the Design Professional if the Owner becomes aware of any fault or defect in the Project or nonconformance with the Contract Documents.

4.11 Design Professional shall propose language for certificates or certifications to be requested of the Design Professional or Design Professional's consultants and shall submit such to the Owner for review and approval at least fourteen (14) days prior to execution. The Owner agrees not to request certifications that would require knowledge or services beyond the scope of the Agreement.

## **ARTICLE 5 CONSTRUCTION COST**

### **5.1 CONSTRUCTION COST DEFINED**

5.1.1 The Construction Cost shall be the total cost or estimated cost to the Owner of all elements of the Project designed or specified by the Design Professional.

5.1.2 The Construction Cost shall include the cost at current market rates of labor and materials furnished by the Owner and equipment designed, specified, selected or specially provided for by the Design Professional, plus a reasonable allowance for the Contractor's overhead and profit. In addition, a reasonable allowance for contingencies shall be included for market conditions at the time of bidding and for changes in the work during construction.

5.1.3 Construction Cost does not include the compensation of the Design Professional and Design Professional's consultants, the costs of the land, rights-of-way, financing or other costs which are the responsibility of the Owner as provided in Article 4.

### **5.2 RESPONSIBILITY FOR CONSTRUCTION COST**

5.2.1 Evaluations of the Owner's Project budget, preliminary estimates of Construction Cost and detailed estimates of Construction Cost prepared by the Design Professional represent the Design Professional's best judgment as a design professional familiar with the construction industry. It is recognized, however, that neither the Design Professional nor the Owner has control over the cost of labor, materials or equipment, over the Contractor's methods of determining bid prices, or over competitive bidding or market conditions. Accordingly, the Design Professional cannot and does not warrant or represent that bids or cost proposals will not vary from the Owner's Project budget or from any estimate of Construction Cost or evaluation prepared or agreed to by the Design Professional.

5.2.2 No fixed limit of Construction Cost shall be established as a condition of the Agreement by the furnishing, proposal or establishment of a Project budget, unless such fixed limit has been agreed upon in writing and signed by the parties thereto. If such a fixed limit has been established, the Design Professional shall be permitted to include contingencies for design, bidding and price escalation, to determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents, to make reasonable adjustments in the scope of the Project and to include in the Contract Documents alternate bids to adjust the Construction Cost to the fixed limit. Fixed limits, if any, shall be increased in the amount of an increase in the Contract Sum occurring after execution of the Contract for Construction.

5.2.3 If the Procurement Phase has not commenced within 90 days after the Design Professional submits the Construction Documents to the Owner, any Project budget or fixed limit of Construction Cost shall be adjusted to reflect changes in the general level of prices in the construction industry between the date of submission of the Construction Documents to the Owner and the date on which proposals are sought.

## **ARTICLE 6 OWNERSHIP AND USE OF DOCUMENTS**

6.1 The Drawings, Specifications and other documents prepared by the Design Professional for this Project are instruments of the Design Professional's service and shall become the property of the Owner upon termination or completion of the Agreement. The Design Professional is entitled to retain copies of all such documents. Such documents are intended only be applicable to this Project, and Owner's use of such documents in other projects shall be at Owner's sole risk and expense. In the event the Owner uses any of the information or materials developed pursuant to the Agreement in another project or for other purposes than are specified in the Agreement, the Design Professional is released from any and all liability relating to their use in that project.

6.2 Submission or distribution of documents to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the Design Professional's reserved rights.

## **ARTICLE 7 TERMINATION, SUSPENSION OR ABANDONMENT**

7.1 The Design Professional may terminate the Agreement upon not less than thirty days written notice should the Owner fail substantially to perform in accordance with the terms of the Agreement through no fault of the Design Professional. Owner may terminate the Agreement or any phase thereof with or without cause upon thirty (30) days prior written notice to the Design Professional. All work and labor being performed under the Agreement shall cease immediately upon Design Professional's receipt of such notice. Before the end of the thirty (30) day period, Design Professional shall invoice the Owner for all work it satisfactorily performed prior to the receipt of such notice. No amount shall be due for lost or anticipated profits. All plans, field surveys, and other data related to the Project shall become property of the Owner upon termination of the Agreement and shall be promptly delivered to the Owner in a reasonably organized form. Should Owner subsequently contract with a new Design Professional for continuation of services on the Project, Design Professional shall cooperate in providing information.

7.2 If the Project is suspended by the Owner for more than 30 consecutive days, the Design Professional shall be compensated for services satisfactorily performed prior to notice of such suspension. When the Project is resumed, the Design Professional's compensation shall be equitably adjusted to provide for expenses incurred in the interruption and resumption of the Design Professional's services.

7.3 The Agreement may be terminated by the Owner upon not less than seven days written notice to the Design Professional in the event that the Project is permanently abandoned. If the Project is abandoned by the Owner for more than 90 consecutive days, the Design Professional or the Owner may terminate the Agreement by giving written notice.

7.4 Failure of the Owner to make payments to the Design Professional for work satisfactorily completed in accordance with the Agreement shall be considered substantial non-performance and cause for termination.

7.5 If the Owner fails to make payment to Design Professional within thirty (30) days of receipt of a statement for services properly and satisfactorily performed, the Design Professional may, upon seven days written notice to the Owner, suspend performance of services under the Agreement.

7.6 In the event of termination not the fault of the Design Professional, the Design Professional shall be compensated for services properly and satisfactorily performed prior to termination.

## **ARTICLE 8 PAYMENTS TO THE DESIGN PROFESSIONAL**

### **8.1 DIRECT PERSONNEL EXPENSE**

8.1.1 Direct Personnel Expense is defined as the direct salaries of the Design Professional's personnel engaged on the Project and the portion of the cost of their mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, pensions and similar contributions and benefits.

### **8.2 REIMBURSABLE EXPENSES**

8.2.1 Reimbursable Expenses are in addition to compensation for Basic and Additional Services and include expenses incurred by the Design Professional and Design Professional's employees and consultants in the interest of the Project, as identified in the following Clauses.

8.2.1.1 Expense of transportation in connection with the Project; expenses in connection with authorized out-of-town travel; long-distance communications; and fees paid for securing approval of authorities having jurisdiction over the Project.

8.2.1.2 Expense of reproductions (except the reproduction of the sets of documents referenced in Subsection 2.6.19), postage and handling of Drawings, Specifications and other documents.

8.2.1.3 If authorized in advance by the Owner, expense of overtime work requiring higher than regular rates.

8.2.1.4 Expense of renderings, models and mock-ups requested by the Owner.

8.2.1.5 Expense of computer-aided design and drafting equipment time when used in connection with the Project.

8.2.1.6 Other expenses that are approved in advance in writing by the Owner.

### **8.3 PAYMENTS ON ACCOUNT OF BASIC SERVICES**

8.3.1 Payments for Basic Services shall be made monthly and, where applicable, shall be in proportion to services performed within each phase of service, on the basis set forth in Section 2 of the Agreement and the schedule of work.

8.3.2 If and to the extent that the time initially established in the Agreement is exceeded or extended through no fault of the Design Professional, compensation for any services rendered during the additional period of time shall be computed in the manner set forth in Section 2 of the Agreement.

8.3.3 When compensation is based on a percentage of Construction Cost and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions, in accordance with the schedule set forth in Section 2 of the Agreement based on (1) the lowest bona fide bid or (2) if no such bid or proposal is received, the most recent preliminary estimate of Construction Cost or detailed estimate of Construction Cost for such portions of the Project.

### **8.4 PAYMENTS ON ACCOUNT OF ADDITIONAL SERVICES**

8.4.1 Payments on account of the Design Professional's Additional Services and for Reimbursable Expenses shall be made monthly within 30 days after the presentation to the Owner of the Design Professional's statement of services rendered or expenses incurred.

8.5 **PAYMENTS WITHHELD** No deductions shall be made from the Design Professional's compensation on account of penalty, liquidated damages or other sums withheld from payments to contractors, or on account of the cost of changes in the work other than those for which the Design Professional is responsible.

8.6 **DESIGN PROFESSIONAL'S ACCOUNTING RECORDS** Design Professional shall make available to Owner or Owner's authorized representative records of Reimbursable Expenses and expenses pertaining to Additional Services and services performed on the basis of a multiple of Direct Personnel Expense for inspection and copying during regular business hours for three years after the date of the final Certificate of Payment, or until any litigation related to the Project is final, whichever date is later.

## **ARTICLE 9 INDEMNITY**

9.1 The Owner shall, to the fullest extent permitted by law, indemnify and hold harmless the Design Professional, his or her officers, directors, and employees from and against all damage, liability and cost, including reasonable attorney's fees and defense costs, arising out of or in any way connected with the performance of the services under this agreement, excepting only those damages, liabilities or costs attributable to the sole negligence or willful misconduct of the Design Professional. In recognition of the relative potential risks and benefits of this project to both Owner and the Design Professional, the risks are allocated such that Owner agrees to the fullest extent permitted by law, to limit the liability of the Design Professional for any and all claims, losses, costs, damages of any nature whatsoever or claims expenses resulting from any cause or causes, such that the total aggregate liability of the Design Professional to all those named shall not exceed the lesser of either the total fee for this project or twenty five thousand dollars (\$25,000.00).

9.2 Nothing herein shall be construed to create a liability to any person who is not a party to the Agreement, and nothing herein shall waive any of the parties' defenses, both at law or equity, to any claim, cause of action, or litigation filed by anyone not a party to the Agreement, including the defense of governmental immunity, which defenses are hereby expressly reserved.

**ARTICLE 10 INSURANCE** During the performance of the Services under the Agreement, Design Professional shall maintain the following insurance with an insurance company licensed or authorized to do business in the State of Texas by the State Insurance Commission or any successor agency that has a rating with Best Rate Carriers of at least an A- or above:

**10.1** Comprehensive General Liability Insurance with bodily injury limits of not less than \$1,000,000 for each occurrence and not less than \$2,000,000 in the aggregate, and with property damage limits of not less than \$100,000 for each occurrence and not less than \$250,000 in the aggregate.

**10.2** Automobile Liability Insurance with bodily injury limits of not less than \$500,000 for each person and not less than \$500,000 for each accident, and with property damage limits of not less than \$100,000 for each accident.

**10.3** Worker's Compensation Insurance in accordance with statutory requirements, and Employers' Liability Insurance with limits of not less than \$100,000 for each accident including occupational disease.

**10.4** Professional Liability Insurance with limits of not less than \$1,000,000 annual aggregate, and subject to the limitation of liability in Article 9.1.

**10.5** The Design Professional shall furnish insurance certificates or insurance policies to the Owner evidencing insurance in compliance with this Article 10 at the time of the execution of the Agreement. The General Liability and Automobile Liability insurance policies shall name the Owner as an additional insured, the Workers' Compensation policy shall contain a waiver of subrogation in favor of the Owner, and each policy shall contain a provision that such insurance shall not be canceled or modified without thirty (30) days' prior written notice to Owner and Design Professional. In such event, the Design Professional shall, prior to the effective date of the change or cancellation, furnish Owner with substitute certificates of insurance meeting the requirements of this Article 10.

## **ARTICLE 11 MISCELLANEOUS PROVISIONS**

**11.1** The Agreement shall be governed by the laws of the State of Texas. Venue of any suit or cause of action under the Agreement shall lie exclusively in Denton County, Texas.

**11.2** The Owner and Design Professional, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement. The Design Professional shall not assign its interests in the Agreement without the written consent of the Owner.

**11.3** The term Agreement as used herein includes the executed Agreement, the Proposal, these General Conditions and other attachments referenced in Section 3 of the Agreement which together represent the entire and integrated agreement between the Owner and Design Professional and supersedes all prior negotiations, representations or agreements, either written or oral. The Agreement may be amended only by written instrument signed by both Owner and Design Professional. When interpreting the Agreement the executed Agreement, Proposal, these General Conditions and the other attachments referenced in Section 3 of the Agreement shall to the extent that is reasonably possible be read so as to harmonize the provisions. However, should the provisions of these documents be in conflict so that they can not be reasonably harmonized, such documents shall be given priority in the following order:

1. The executed Agreement
2. Attachments referenced in Section 3 of the Agreement other than the Proposal
3. These General Provisions
4. The Proposal

**11.4** Nothing contained in the Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or Design Professional.

**11.5** Upon receipt of prior written approval of Owner, the Design Professional shall have the right to include representations of the design of the Project, including photographs of the exterior and interior, among the Design Professional's promotional and professional materials. The Design Professional's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Design Professional in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Design Professional on the construction sign and in the promotional materials for the Project.

**11.6** Approval by the Owner shall not constitute, nor be deemed a release of the responsibility and liability of the Design Professional, its employees, associates, agents, subcontractors, and subconsultants for the accuracy and competency of their designs or other work; nor shall such approval be deemed to be an assumption of such responsibility by the Owner for any defect in the design or other work prepared by the Design Professional, its employees, subcontractors, agents, and consultants.

**11.7** All notices, communications, and reports required or permitted under the Agreement shall be personally delivered or mailed to the respective parties by depositing same in the United States mail to the address shown below signature block on the Agreement, certified mail, return receipt requested, unless otherwise specified herein. All notices shall be deemed effective upon receipt by the party to whom such notice is given, or within three (3) days after mailing.

**11.8** If any provision of the Agreement is found or deemed by a court of competent jurisdiction to be invalid or unenforceable, it shall be considered severable from the remainder of the Agreement and shall not cause the remainder to be invalid or unenforceable. In such event, the parties shall reform the Agreement to replace such stricken provision with a valid and enforceable provision which comes as close as possible to expressing the intention of the stricken provision.

**11.9** The Design Professional shall comply with all federal, state, and local laws, rules, regulations, and ordinances applicable to the work covered hereunder as they may now read or hereinafter be amended during the term of this Agreement.

**11.10** In performing the Services required hereunder, the Design Professional shall not discriminate against any person on the basis of race, color, religion, sex, national origin or ancestry, age, or physical handicap.

**11.11** The captions of the Agreement are for informational purposes only, and shall not in any way affect the substantive terms or conditions of the Agreement.

**11.12** Limitation of Liability: The Client, through its authorized representative, and NMA, have discussed their risks, rewards and benefits of the project and NMA's total fee for services. Neither NMA, nor their consultants, agents, or employees shall be jointly, severally or individually liable to Client in excess of twenty five thousand (\$25,000.00) by any act of omission, including breach of contract or negligence not amounting to willful or intentional wrong.

January 3, 2014

Mr. Dean Hartley  
Director of Facilities Management  
869 S. Woodrow  
Denton, Texas 76205

RE: Fleet Services Facility Expansion  
Professional Services Proposal

**I. PROJECT SCOPE:**

Nelson + Morgan, Architects are pleased to provide the following proposal for providing Professional Services relating to the referenced project. It is our intent to provide normal architectural, structural, mechanical and electrical design services specific to the project requirements. Our understanding of the general scope of work is as follows:

1. Development of the construction documents for an expansion to the existing fleet services facility located at the Denton Service Center, 804 Texas Street, Denton, Texas 76209.
  - Project scope is to provide two new service bays to the north side of the existing facility, specifically designed to accommodate CNG fueled vehicles.
  - Service bays will be sized and generally configured to match the adjacent fleet service bays.
  - Existing wash bay and roof structure will be removed to allow for expansion of new service bays.
  - Approximate size will be 26' x 110' (2860 sf).
  - NMA and sub-consultants will incorporate code required and any owner directed specific CNG design features.
2. Project Budget for this Project is not known at this time.
3. Professional Services:
  - NMA will provide plans and specifications to obtain construction bids and construction permits.
  - NMA will provide professional assistance in preparing Bidding documents and Construction Administration.
  - Project will be designed to meet the IBC 2009 and related City of Denton codes and ordinances and Texas Accessibility Standards.
4. NMA proposes the following sub-consultants into the design team on this project:
  - Structural and foundation: Lobsinger and Potts, Structural Engineers (LPSE).
  - Mechanical and Electrical Engineering: Hergenrether Penner McGuire and Burkett Consulting Engineers, Inc. (HPMB)
  - TAS Plan Review and Registered Accessibility Specialist; Jeff Gutknecht
  - Civil Engineering; Allison Engineering Group (AEG); work scope limited to immediate site drainage and general grading. AEG will provide a topographic survey of the immediate area (up to 100' around building for site drainage and paving modifications only.)
5. Services not included are:
  - Civil Engineering. It is assumed that no additional civil engineering related to the drainage, detention, utility extensions or modifications, platting or zoning will be necessary. If it is determined that the additional services of a Civil Engineer will be necessary, these will be provided under Additional Services as stated below.



- Landscape Design: the project scope will not require the services of a landscape design/architect.
- Soils Investigation; Services for a geotechnical survey are not included in our basic services, but will be necessary for foundation design. NMA can provide these services as an additional service if desired.

Professional Services are more fully described below.

## II. BASIC SERVICES

The following is a brief list of Professional Services that we anticipate will be required and propose to provide. This is not intended to limit our scope of service, but to generally define and explain our intent to provide professional services necessary for the successful completion of the project. Basic Services are those services outlined under Section II of this Agreement. The services outlined in Section II shall be provided on a fee basis as outlined under the Section IV - Professional Fees portion of this agreement.

- NMA will provide preliminary site visits and interviews with management and key personnel to establish full project scope and needs.
- Field measure building.
- Review of Owner provided drawings and supporting documents (if any).
- Coordinate the following professional services and design elements:
  - Architectural design and project coordination
  - Structural Engineering
  - Mechanical Engineering
  - Civil Engineering
- Drawings and supporting information that will be developed during this phase will include, but not be necessarily limited to the following:
  - Architectural floor plan.
  - Partition types.
  - Exterior elevations
  - Roof plan
  - Building and wall sections
  - Major interior elevations.
  - Reflected ceiling/lighting plan.
  - General Notes.
  - Preliminary details.
  - Room finishes & door schedules.
  - Preliminary mechanical, electrical and plumbing plans and details.
  - Preliminary structural plans and details.
  - Preliminary project specifications.
  - Meeting notes documenting the basic issues, resolutions and action items agreed to during this phase.
- Time frame for this phase is anticipated to take approximately 4 weeks from approval of the proposal and receipt of a notice to proceed. This schedule could be accelerated based upon meeting coordination and preliminary design approvals, etc.

### Preparation of Construction Documents.

Based on the provided preliminary design sketches, NMA will prepare the final drawings, details and specifications required to construct the Project. The Construction Documents Phase includes attendance by the Architect's personnel at meetings with the Client to coordinate the Work and review the Construction Documents and Opinion of Probable Cost. Any comments received from the Client during final review will be incorporated into the documents prior to bidding.

- Development of all design elements into a detailed and coordinated construction contract package consisting of plans, details and specifications
- Governmental and regulatory review assistance
- Time frame for this phase is anticipated to take approximately 4 weeks from approval of the design development phase.

#### Assistance during Bidding and Contract Negotiations

- Provide plans and specifications to Materials Management Department for project advertising and bidding. Printing expenses to be reimbursed.
- Assist City of Denton in the advertisement of plans
- Answer contractor questions during bidding phase
- Review substitution requests.
- Prepare and issue any necessary addenda.

#### Construction Administration

Once the successful Contractor is given notice to proceed, the Architect will provide the following *Contract Administration* phase services:

- Schedule and attend a Pre-Construction conference with General Contractor and key sub-contractors.
- Submittal reviews.
- Review substitution requests from the Contractor for materials or products which become unavailable during construction due to circumstances beyond the Contractor's control.
- Finishes and color selection and recommendations
- Provide site visits as deemed necessary by the Architect and his consultants (unless it is determined that no work is being performed at the site) to review the Work in an effort to determine, in general, whether or not it is being constructed in accordance with the *Construction Documents*.
- Attend construction progress meetings at the site. (Frequency to be determined with Owner and Contractor at Pre-Construction meeting. For proposal purposes, a total of 12 site visits have been included. Any additional can be provided as an Additional Service.)
- Review Contractor's schedule and advise Client of construction progress.
- Payment Certification
- Testing and material inspection
- Interpretations and decisions
- Prepare punch lists for the Project.
- Establish dates of Substantial and Final Completion and prepare certificates for same.
- Coordinate project close out and receipt of warranty & maintenance binders from the Contractor.

### III.SUPPLEMENTAL SERVICES:

Nelson + Morgan, Architects will provide any supplemental services as deemed necessary by Project requirements or Client. These may include additional extensive architectural, structural or civil engineering or design revisions, mechanical, electrical or acoustical engineering services, Environmental analysis or testing. *Supplemental Services* shall be provided by the Architect, when requested by the Client, on an hourly or negotiated fee basis in addition to the fees charged for *Basic Services* Fees for any supplemental services will receive a 20% mark-up for handling and coordination.

### IV.PROFESSIONAL FEES

1. Basic Services: Professional fees for items identified above in Section II, Basic Services shall be based on a **total of the fees listed below**. These fees shall be invoiced on as "as completed" basis for each part.

Texas Accessibility Standards: NMA shall register the proposed project with the Texas Department of Licensing and Regulation as required by the TAS code. NMA will also submit the plans and specifications required under Section 469.101 of the TAS code for review and approval by a registered Accessibility Specialist.

2. Additional Services, if required, shall be provided on an hourly basis at the following hourly rates.

Principal	\$150.00/hr.
Associate	\$95.00/hr.
Project Manager	\$85.00/hr.
Project Architect	\$87.50/hr.
Interior Designer	\$75.00/hr.
Project Coordinator	\$75.00/hr.
Staff Architect/Intern	\$67.50/hr.
Clerical	\$42.50/hr.
Consultants	Cost plus 20%

3. Reimbursable expenses constitute expenses incurred on the Client's behalf by Nelson + Morgan, Architects and NMA's consultants directly related to the Project, as follows:

- Printing, reproductions, plots, standard form documents;
- Postage, handling and delivery;
- Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- Renderings, models, mock-ups, professional photography, and presentation materials requested by the Owner;
- Architect's Consultant's expense of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits if the Owner requests such insurance in excess of that normally carried by the Architect's consultants;
- All taxes levied on professional services and on reimbursable expenses; and
- Other similar Project-related expenditures.

Reimbursable expenses will receive a 20% mark-up for handling and coordination. For your convenience, we suggest that you budget \$500.00 for these expenses, exclusive of any submittal or filing fees.

#### V. Fee Summary:

FEE SUMMARY		
Basic Services	\$	11,800.00
MEP	\$	4,680.00
Structural	\$	3,600.00
Civil	\$	3,000.00
TAS	\$	1,260.00
Additional Services		
Reimbursable	\$	500.00
<b>TOTAL</b>	<b>\$</b>	<b>24,840.00</b>

## VI. PROFESSIONAL REGISTRATION:

The Texas Board of Architectural Examiners, 333 Guadalupe, Suite 2-350, Austin, Texas 78701-3942, Phone: 512/305-9000, has jurisdiction over individuals licensed under the Architects Registration Law, Article 249A, VTCS, and under the Interior Designer's Registration Law, Article 249E, VTCS.

## VII. OTHER CONDITIONS

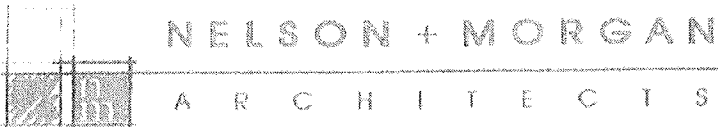
Nelson + Morgan, Architects Terms and Conditions page shall be a part of this agreement.

Please acknowledge your acceptance of this proposal for the above work. I look forward to working with you. Should you have any further questions, please feel free to give me a call at your convenience.



ALAN F. NELSON, Architect  
Nelson + Morgan, Architects

# AMENDMENT 1



August 27, 2015

Accounts Payable  
215 E. McKinney Street  
Denton, Texas 76201-4299

RE: DME Fleet Services  
Purchase Order #166997  
NMA Invoice No. 14004-4 revised

INVOICE 4 Services thru August 18, 2015							
PHASE		FEE AMOUNT	% COMPLETE	TOTAL	PREVIOUS	CURRENT DUE	
BASIC SERVICES							
Construction Doc	80%	\$ 9,440.00	100%	\$ 9,440.00	\$ 9,440.00	\$	-
Bid/negotiation	5%	\$ 590.00	100%	\$ 590.00	\$	\$	590.00
Construction Admin	15%	\$ 1,770.00			\$		
TOTAL	100%	\$ 11,800.00	85%	\$ 10,030.00	\$ 9,440.00	\$	590.00
Architectural Additional Services						\$	7,690.00
CONSULTANT COORDINATION							
Civil	Land	\$ 3,600.00		\$ 3,600.00	\$ 3,000.00	\$	-
MEP	HBMB	\$ 4,680.00		\$ 4,680.00	\$ 4,680.00	\$	2,000.00
	sub-con Markup	20%				\$	400.00
Structural	LPSE	\$ 3,600.00		\$ 3,600.00	\$ 3,600.00	\$	900.00
	sub-con Markup	20%				\$	180.00
TAS Project Registration	Gut	\$ 210.00		\$ 210.00	\$ 210.00	\$	-
TAS Plan review	Gut	\$ 1,050.00	100%	\$ 1,050.00	\$ 1,050.00		
Bldg Code Consult	BOCS	\$ 850.00			\$ 370.00		
Allison Eng. (sewer plan)		\$ 3,048.11			\$ 3,048.11	\$	5,372.59
	sub-con Markup	20%			\$ 609.63	\$	1,074.52
REIMBURSABLE EXPENSES (Article 11.8)							
Copies/Prints		\$ 500.00			\$ 118.47	\$	185.76
	Markup	20%			\$ 23.70	\$	37.16
Predesign application		\$ 250.00		\$ 250.00	\$ 250.00		
	Markup	20%			\$ 50.00		
Postage/Delivery						442.17	
(CREDIT for sales tax on invoice #14004-4)						-10.85	
TOTAL DUE						\$	18,419.18

Summary	Current Inv	Previous Inv.	TOTAL Inv
Fee	\$ 8,280.00	\$ 9,440.00	\$ 17,720.00
Consultants	\$ 9,927.11	\$ 16,611.74	\$ 26,538.85
Reimbursable	\$ 212.07	\$ 442.17	\$ 654.24
<b>TOTAL</b>	<b>\$ 18,419.18</b>	<b>\$ 26,493.91</b>	<b>\$ 44,913.09</b>

blue Original Contract  
orange Additional Services  
green AMOUNT DUE

If you have any questions, please do not hesitate to give me a call.

Sincerely,

Alan F. Nelson, Architect  
Nelson + Morgan Architects Inc.

OK to Pay  
Dy

# AMENDMENT 1



## INVOICE

Date: August 14, 2015

Project: DME Fleet Services  
Purchase Order No. 166997

RE: Additional Architectural Services

James Beckett (Nov. 2014-June 2015)	
64 hours / \$ 85	\$ 5440.00

Alan Nelson (Nov. 2014-June 2015)	
15 hours / \$150	<u>\$2250.00</u>

TOTAL \$ 7690.00

If you have any questions, please contact me at your convenience.

Sincerely,

Alan Nelson  
Nelson + Morgan Architects, Inc.

ARCHITECTS • INTERIORS • ALTIMA DESIGN

3717 Windhover Lane, Ste 230 | Denton, Texas 76210

940.556.0266

fax 940.556.0223

# AMENDMENT 1



CONSULTING ENGINEERS, INC.  
14004 RICHMOND AVE. SUITE 100  
DENTON, TX 76210

## Mall To:

Nelson + Morgan Architects  
2717 Wind River Lane  
Denton, TX 76210

## Bill To:

Nelson + Morgan Architects  
2717 Wind River Lane  
Denton, TX 76210

## Invoice

Invoice #: 2568  
Invoice Date: 2/13/2015  
Due Date: 3/15/2015  
Project: H14068 Denton Fleet Services

Description	Proposal Amount	Prior Amount	Current Amount
Engineering Services:			
Extra Service: <u>Design add'l bay</u>	2,000.00		2,000.00
Please remit payment to HPMB Consulting Engineers, inc.			
	Total		\$2,000.00
	Payments/Credits		\$0.00
	Balance Due		\$2,000.00

14004-RC

# AMENDMENT 1

1723 E. Southlake Blvd., Suite 200  
Southlake, TX 76092  
Phone 817.488.9933 Fax 817.488.9937

## INVOICE:

Invoice No.	15-0462
Invoice Date	4/21/15

<b>Bill To:</b>	
Company: Nelson Morgan Architects	Phone: 940.566.0266
Contact: Alan Nelson	Cell: 0
Address: 2717 Wind River Lane, Suite 230	Fax: 0
Denton, TX. 76210	Email: 0

Project Name: Fleet Services Addition  
LPSE Project #: 15-0463

Location: Denton, TX

Qty	Scope	% Complete	Unit Price	TOTAL
1	Structural Design	100.00%	\$900.00	\$900.00
SubTotal				\$900.00
TOTAL				\$900.00

Payment is due 30 days after invoice date.

Please contact Cory Potts (contact information shown above) with any questions.

Additional amounts may be due from previous invoices.

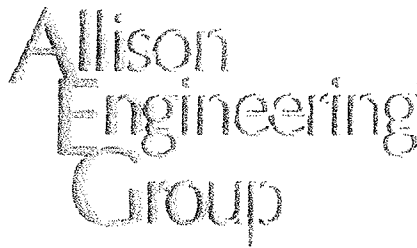
Office Use Only:

14004-RC



# AMENDMENT 1

4401 N. I 35  
 Suite 102  
 Denton, TX 76207  
 Office: (940) 380-9453  
 Fax: (940) 380-9431



Date 3/31/2015

## Bill To

Nelson + Morgan Architects, Inc.  
 Attn: Alan Nelson  
 2717 Wind River Lane  
 Suite 230  
 Denton, TX 76210

Invoice # **8458**

Due Date 5/12/2015

## Invoice

Project:

NMA1402 - COD Fleet Services SS

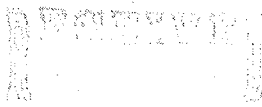
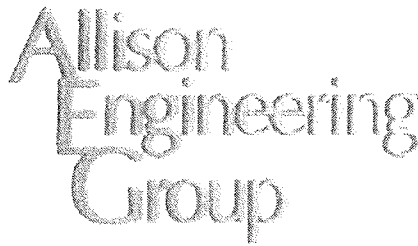
Task No.	Description	Fee Basis	Qty	Rate	Amount
	Site Grading and Drainage Plan and Sanitary Sewer Plan Adjustments and Coordination with Surveyor				
	Project Engineer	Hourly	5.00	115.00	575.00
	Senior Designer	Hourly	29.75	110.00	3,272.50
	Administrative Assistant	Hourly	1.00	65.00	65.00
	Subtotal - Labor				3,912.50
	Miscellaneous Expenses @ 5.5% of Labor			5.50%	215.19
	DIRECT EXPENSES				
	Printing & Reproduction	Reimbursable	0.00	1.00	0.00
We appreciate your business.			Total	\$4,127.69	
			Payments/Credits	\$0.00	
			Balance Due	\$4,127.69	

"Planning Communities - Designing the Systems That Serve Them."

14004-RC

# AMENDMENT 1

4401 N. I-35  
Suite 102  
Denton, TX 76207  
Office: (940) 380-9453  
Fax: (940) 380-9431



Date.....4/30/2015

Bill To

Nelson + Morgan Architects, Inc.  
Attn: Alan Nelson  
2717 Wind River Lane  
Suite 230  
Denton, TX 76210

Invoice # **8482**

Due Date 5/30/2015

## Invoice

Project:

NMA1402 - COD Fleet Services SS

Task No.	Description	Fee Basis	Qty	Rate	Amount
	For Services Rendered Through April 30, 2015 Revise Grading, Sanitary Sewer and Storm Sewer Design in accordance with new City comments.				
	Project Engineer	Hourly	3	115.00	345.00
	Senior Designer	Hourly	7	110.00	770.00
	Administrative Assistant	Hourly	1	65.00	65.00
	Subtotal - Labor				1,180.00
	Miscellaneous Expenses @ 5.5% of Labor			5.50%	64.90
	DIRECT EXPENSES				
	Printing & Reproduction	Reimbursable	0	1.00	0.00
We appreciate your business.				Total	\$1,244.90
				Payments/Credits	\$0.00
				Balance Due	\$1,244.90

*"Planning Communities - Designing the Systems That Serve Them."*

14004-2C

# AMENDMENT 1

Premier Blueprinting  
525 Fort Worth Drive # 210  
Denton, TX 76201

Date 7/9/2015  
Invoice # 3546

Bill To  
Nelson & Morgan Architects  
2717 Wind River Lane # 200  
Denton, TX 76210

Ship To  
Nelson & Morgan Architects  
2717 Wind River Lane  
Denton, TX 76210

P.O. #  
Terms Net 30

Ship Date 7/8/2015  
Due Date 8/8/2015  
Other

Item	Description	Qty	Price	Amount
24 X 36 Plain ...	Plot Services 3 sets	129	1.44	185.76

Premier Blueprinting  
dev@premier-blueprinting.com

940-322-6625

Subtotal	\$185.76
Sales Tax (8.25%)	\$15.23
Total	\$201.09
Payments/Credits	\$9.00
Balance Due	\$201.09

14004 - EC

ORDINANCE NO. 2016-329

AN ORDINANCE OF THE CITY OF DENTON, TEXAS AUTHORIZING THE CITY MANAGER TO EXECUTE A SECOND AMENDMENT TO A PROFESSIONAL SERVICES AGREEMENT BY AND BETWEEN THE CITY OF DENTON, TEXAS AND NELSON + MORGAN ARCHITECTS, INC. FOR ARCHITECTURAL, STRUCTURAL, MECHANICAL, AND ENGINEERING DESIGN SERVICES TO SUPPORT THE DESIGN OF THE NEW CITY OF DENTON FLEET SERVICES ANNEX FACILITY TO BE LOCATED AT 1527 SOUTH MAYHILL ROAD; PROVIDING AN EFFECTIVE DATE (FILE NO. 5497 IN THE ADDITIONAL AMOUNT NOT-TO-EXCEED \$158,035.00; AGGREGATING A TOTAL NOT-TO-EXCEED \$202,948.09).

WHEREAS, on February 14, 2014, the City awarded a Professional Services Agreement for Architect or Engineering Services (hereafter the "Agreement") to Nelson + Morgan Architects, Inc., Denton, Texas, in the amount of \$24,840 for professional engineering services regarding the design of the City of Denton's Fleet Services Facility Expansion; said Agreement was approved by the City of Denton Purchasing staff in accordance with their authority; and

WHEREAS, on August 27, 2015, City of Denton Purchasing staff approved the further amount of \$20,073.09 aggregating a not-to-exceed amount of \$44,913.09 for additional services to be rendered on the Fleet Services Facility Expansion Project for the Solid Waste Department of the City; said Agreement was approved by the City of Denton Purchasing staff in accordance with their authority; and

WHEREAS, there appears to the Council that further professional services must be completed in order to move the Facility Expansion Project forward to completion; and Staff having recommended, the Public Utilities Board having approved, and the City Manager having recommended to the Council that the "Second Amendment to Professional Services Agreement with Nelson + Morgan Architects, Inc., (hereafter the "Second Amendment") be authorized to amend such Agreements, with respect to the scope of work and an increase in the payment amount by \$158,035.00; and said fees under the proposed Second Amendment 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 is hereby authorized to enter into the "Second Amendment to Professional Services Agreement" with Nelson + Morgan Architects, Inc., (the "Second Amendment"), in substantially the form that is attached hereto as Exhibit "A" and incorporated herewith by reference, which increases the amount of the engagement by and between the City of Denton, Texas and Nelson + Morgan Architects, Inc., which Agreement is on file in the office of the Purchasing Agent, in the additional amount of \$158,035, which amount is hereby approved; and the expenditure of funds therefor is hereby authorized in accordance with said Second Amendment. The

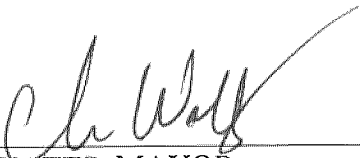
total purchase order amount therefore increases to the amount of not-to-exceed \$202,948.09.

SECTION 2. The City Council of the City of Denton, Texas hereby expressly delegates the authority to expend funds and to take any actions that may be required or permitted to be performed by the City of Denton, Texas under File 5497, to the City Manager of the City of Denton, Texas, or his designee.

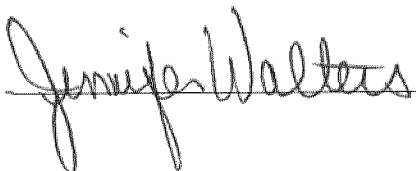
SECTION 3. The recitations and statements contained in the preamble hereto are incorporated herewith as a part of this Ordinance for all purposes.

SECTION 4. This ordinance shall become effective immediately upon its passage and approval.

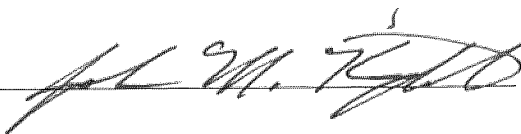
PASSED AND APPROVED this the 18 day of October, 2016.

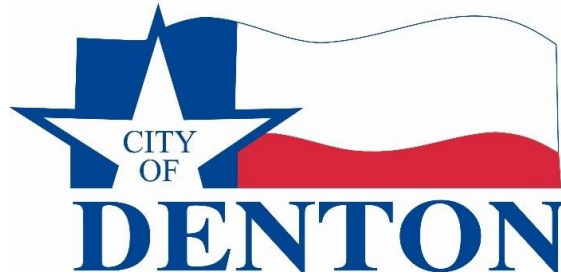
  
CHRIS WATTS, MAYOR

ATTEST:  
JENNIFER WALTERS, CITY SECRETARY

By: 

APPROVED AS TO LEGAL FORM:  
ANITA BURGESS, CITY ATTORNEY

By: 



## DocuSign City Council Transmittal Coversheet

PSA	5497
File Name	PSA Nelson+Morgan Second Amendment
Purchasing Contact	Rebecca Hunter
City Council Target Date	October 18, 2016
Granicus #	
Ordinance #	

THE STATE OF TEXAS           §  
   §  
 COUNTY OF DENTON           §

SECOND AMENDMENT TO CONTRACT  
BY AND BETWEEN THE CITY OF DENTON, TEXAS  
AND NELSON+MORGAN ARCHITECTS, INC.  
[FILE NO. 5497]

THIS SECOND AMENDMENT TO CONTRACT (hereafter the “Second Amendment”) to that certain Contract by and between the City of Denton, Texas and Nelson+Morgan Architects, Inc. (hereafter the “Agreement”) in the original not-to-exceed amount of \$24,840, which was heretofore executed on February 13, 2014, and was approved within the delegated authority of the City of Denton Purchasing Agent; and said Agreement was heretofore entered into by and between the City of Denton, Texas, a Texas Municipal Corporation with its offices at 215 East McKinney Street, Denton, Texas 76201 (hereafter the “CITY”); and the firm of Nelson+Morgan Architects, Inc. (hereafter “Nelson+Morgan”) with its offices at 2717 Wind River Lane, Suite 230, Denton, Texas 76210; and

The original Agreement provided for Nelson+Morgan’s services related to the architectural and engineering design services for the City of Denton’s Fleet Services Facility Expansion project as is contained in Attachment (a) of the original Agreement. Upon completion of the original services, it was deemed necessary to request additional design services in the amount of \$20,073.09. Further, additional services to be performed by Nelson+Morgan are contained in Attachment “b” of this Second Amended Agreement.

Nelson+Morgan has substantially completed the work called for in the original Agreement and First Amendment; and the City deems it necessary to further expand the services provided by Nelson+Morgan to the CITY, and to provide an additional not-to-exceed amount \$158,035, for an aggregate of \$202,948.09, for the additional required services.

NOW THEREFORE, the CITY and Nelson+Morgan (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 Second Amendment, which amends the following terms and conditions of the said Agreement, to wit:

1.

The provisions of Section III. “Entire Agreement” of the original agreement are hereby amended to add the additional language as follows, to wit:

“3. Contractor’s Second Amended Proposal. (Attachment B)

2.

The provisions of Section II. "Compensation" in the Agreement shall instead read, "The total comprehensive not-to-exceed amount for this agreement shall be \$202,948.09." The number \$24,840 contained on the original Agreement at the same location is hereby removed.


3.

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

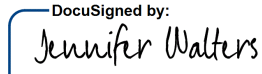
IN WITNESS WHEREOF, the City of Denton, Texas and Nelson+Morgan, have each executed this Second Amendment electronically, by and through their respective duly authorized representatives and officers on this date October 18, 2016.

"CITY"

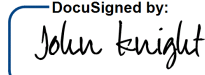
CITY OF DENTON, TEXAS  
A Texas Municipal Corporation

By:   
742392382FE7423...  
HOWARD MARTIN  
INTERIM CITY MANAGER

ATTEST:  
JENNIFER WALTERS, CITY SECRETARY

By:   
C5BFAFC1821946D...

APPROVED AS TO LEGAL FORM:  
ANITA BURGESS, CITY ATTORNEY

By:   
C621996C2A2B439...

"NELSON+MORGAN"

NELSON+MORGAN ARCHITECTS, INC.

By:   
DDF6C04E3B4543D...  
AUTHORIZED SIGNATURE, TITLE



## ATTACHMENT B



**NELSON + MORGAN**  
ARCHITECTS, INC.

July 19, 2016

Mr. Herman Lawson  
City of Denton Facilities  
Denton, Texas 76208

**RE: Vehicle and Equipment Maintenance Facility Annex  
651 Mayhill Road  
Professional Services amendment to Contract #5497/PO 166997**

#### I. PROJECT SCOPE:

Nelson + Morgan, Architects are pleased to provide the following proposal for providing Professional Services relating to the referenced project. It is our intent to provide normal architectural, structural, mechanical and electrical design services specific to the project requirements. Our understanding of the general scope of work is as follows:

1. Design and development of the construction documents to provide a heavy-duty truck and off-road equipment service, maintenance and repair facility.
  - Project will be designed to meet the general design criteria outlined in the Owner furnished document Building Construction Project 2015-048, Building 112, dated July 31, 2015 and the estimate of probable cost furnished by Links Construction dated March 4, 2016.
2. Facility will be designed to match the general construction features of the Fleet Services Facility located on Texas Street.
  - Precast Concrete "tilt wall" exterior walls.
  - 3-25' wide service bays with 14' x 20' overhead coiling doors designed to accommodate CNG fueled vehicles
  - 1-30' wide service bay with 14' x 20' overhead coiling doors designed to accommodate CNG fueled vehicles
  - Recessed service pit will be located in one service bay.
  - 40' wide covered (open sided) service bay on west end of building.
  - 50' reinforced concrete service apron outside all service doors.

Approximate building areas:

  - 2,500 s.f. administrative and staff support spaces (located on the east side of service bays)
  - 8,500 s.f. enclosed service spaces
  - 4,000 s.f. covered outdoor service area
  - 15,000 s.f. total area under roof
3. Project Budget for this Project has been estimated by Links Construction to be approximately \$1,660,000.00 however this does not represent a complete estimate to establish a final project cost budget. For preliminary fee purposes, the following is recommended:

Enclosed area	11,000	sf	x	175.00	/sf	\$	1,925,000.00
Open area	4,000	sf	x	100.00	/sf	\$	400,000.00
<b>TOTAL</b>	<b>15,000</b>	<b>sf</b>	<b>x</b>	<b>155.00</b>	<b>/sf</b>	<b>\$</b>	<b>2,325,000.00</b>

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If requested, NMA will include the services of a cost consultant to develop the estimate of probable cost. One estimate will be developed at the approval of the design development phase and a final estimate of probable cost will be furnished at the approval of the final construction documents, prior to issuance for bidding.

4. Professional Services: NMA will furnish professional services for this project as follows:
  - Upon approval of the Preliminary design, NMA will furnish the professional services necessary to obtain construction bids and construction permits.
  - NMA will provide professional assistance in preparing Bidding documents and Construction Administration.
  - Project will be designed to meet the IBC 2012, Energy codes, related City of Denton codes and ordinances and Texas Accessibility Standards.
5. NMA proposes the following sub-consultants into the design team on this project:
  - Structural and foundation: Armstrong-Douglass, Structural Engineers (ADSE).
  - Mechanical and Electrical Engineering: Hergenrether Penner McGuire and Burkett Consulting Engineers, Inc. (HPMB)
  - TAS Plan Review and Registered Accessibility Specialist; Jeff Gutknecht
  - Civil Engineering; Parkhill Smith and Cooper (PSC); work scope limited to immediate site drainage and general grading, dimensional control, site paving and utility coordination. It is understood that the Owner will provide a topographic survey.
6. Services not included are:
  - Civil Engineering. It is assumed that no additional civil engineering related to the drainage, detention, utility extensions or modifications, platting or zoning will be necessary. If it is determined that the additional services will be necessary, these will be provided under Additional Services as stated below.
  - Site Topography: Owner will furnish a current site survey with all easements, features and topographic information for the proposed construction site.
  - Platting: It is understood that the City of Denton will coordinate any required platting services that may be necessary.
  - Landscape Design: the project scope will not require the services of a landscape design/architect. NMA will develop a landscape plan to meet the requirements of the City of Denton minimum landscape requirements as outlined in the DDC and related site design criteria.
  - Soils Investigation; Services for a geotechnical survey are not included in our basic services, but will be necessary for foundation and site paving design.

Professional Services are more fully described below.

## II. BASIC SERVICES

The following is a brief list of Professional Services that we anticipate will be required and propose to provide. This is not intended to limit our scope of service, but to generally define and explain our intent to provide professional services necessary for the successful completion of the project. Basic Services are those services outlined under Section II of this Agreement. The services outlined in Section II shall be provided on a fee basis as outlined under the Section IV - Professional Fees portion of this agreement.

- NMA will provide preliminary site visits and interviews with management and key personnel to establish full project scope and needs.
- Review of Owner provided drawings and supporting documents.
- Coordinate the following professional services and design elements:

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- Architectural design and project coordination
  - Structural Engineering
  - Mechanical and Electrical Engineering
  - Civil Engineering
- Meeting notes documenting the basic issues, resolutions and action items agreed to during this phase.

**Part One: Pre-design, Planning services:**

- NMA will prepare the *Preliminary Design* drawings illustrating the design concept for the Project addressing the vehicular and pedestrian circulation, functional grouping of spaces, massing and blocking of major elements, construction phasing, etc.
- Attend design meetings with client to review the *Preliminary Design* documents.
- NMA will prepare a pre-application submittal and attend the follow-up Pre Design and DRC meeting(s). Site design and use concepts will be reviewed for compliance with City of Denton codes, ordinances and development criteria. Results and decisions forthcoming from this process will dictate the development and further submittals of any required platting, site design modifications, utility changes, etc. for project approval.
- Review the scope of work compared with the preliminary cost estimate from Links Construction.
- After final review and approval of preliminary site layout and concept design, further drawings and supporting information that will be developed will include, but not be necessarily limited to the following:
  - Architectural floor plan.
  - Partition types.
  - Major interior elevations.
  - Major millwork elevations.
  - Reflected ceiling plan.
  - General Notes.
  - Preliminary details.
  - Room finishes & door schedules.
  - Preliminary mechanical, electrical and plumbing plans and details.
  - Preliminary structural plans and details.
  - Preliminary project specifications.
  - Meeting notes documenting the basic issues, resolutions and action items agreed to during this phase.
- Time frame for completion of Part One is anticipated to take approximately 6 weeks from approval of the proposal and receipt of a notice to proceed. This schedule could be accelerated based upon meeting coordination and preliminary design approvals, etc.

**Preparation of Construction Documents.**

**Part Two: Construction Documents and Construction Contract Administration:** Based on the approved Part One preliminary design, NMA will prepare the final drawings, details and specifications required to construct the Project. The Construction Documents Phase includes attendance by the Architect's personnel at meetings with the Client to coordinate the Work and review the Construction Documents and Opinion of Probable Cost. Any comments received from the Client during final review will be incorporated into the documents prior to bidding.

- Development of all design elements into a detailed and coordinated construction contract package consisting of plans, details and specifications
- Governmental and regulatory review assistance
- Time frame for this phase is anticipated to take approximately 4 months from approval of the Part One design development phase.

**Assistance during Bidding and Contract Negotiations**

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- Provide plans and specifications to Materials Management Department for project advertising and bidding. Printing expenses to be reimbursed.
- Assist City of Denton in the advertisement of plans
- Answer contractor questions during bidding phase
- Review substitution requests.
- Prepare and issue any necessary addenda.

**Construction Administration**

Once the successful Contractor is given notice to proceed, the Architect will provide the following *Contract Administration* phase services:

- Schedule and attend a Pre-Construction conference with General Contractor and key sub-contractors.
- Submittal reviews.
- Review substitution requests from the Contractor for materials or products which become unavailable during construction due to circumstances beyond the Contractor's control.
- Finishes and color selection and recommendations
- Provide site visits as deemed necessary by the Architect and his consultants (unless it is determined that no work is being performed at the site) to review the Work in an effort to determine, in general, whether or not it is being constructed in accordance with the *Construction Documents*.
- Attend construction progress meetings at the site. (Frequency to be determined with Owner and Contractor at Pre-Construction meeting. For proposal purposes, a total of 12 site visits have been included. Any additional can be provided as an Additional Service.)
- Review Contractor's schedule and advise Client of construction progress.
- Payment Certification
- Testing and material inspection
- Interpretations and decisions
- Prepare punch lists for the Project.
- Establish dates of Substantial and Final Completion and prepare certificates for same.
- Coordinate project close out and receipt of warranty & maintenance binders from the Contractor.

**III.SUPPLEMENTAL SERVICES:**

Nelson + Morgan, Architects will provide any supplemental services as deemed necessary by Project requirements or Client. These may include additional extensive architectural, structural or civil engineering or design revisions, mechanical, electrical or acoustical engineering services, Environmental analysis or testing. *Supplemental Services* shall be provided by the Architect, when requested by the Client, on an hourly or negotiated fee basis in addition to the fees charged for *Basic Services*. Fees for any supplemental services will receive a 20% mark-up for handling and coordination.

**IV.PROFESSIONAL FEES**

1. Basic Services: Professional fees for items identified above in Section II, Basic Services shall be based on a total fee of FIVE and ONE-HALF percent (5.5%) of the final Construction Cost of the Project. Services for Part One will be furnished on a lump sum basis as shown below. Part Two services will be furnished for the balance of the professional fees not paid in Part One. These fees shall be billed monthly up to the percentages listed below for each phase based on the latest Opinion of Probable Cost. A final adjustment will be made at the end of the project based on the total construction cost of the Project.

The monthly invoicing will be based upon the following breakdown as services are provided:

PART ONE: 100% upon Completion of task

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## PART TWO:

Schematic Design Phase	15% of total fee balance less Part One
Design Development Phase	30% of total fee balance
Construction Documents Phase	35% of total fee balance
Bidding and Negotiation Phase	05% of total fee balance
Construction Administration Phase	15% of total fee balance

2. Texas Accessibility Standards: NMA shall register the proposed project with the Texas Department of Licensing and Regulation as required by the TAS code. NMA will also submit the plans and specifications required under Section 469.101 of the TAS code for review and approval by a registered Accessibility Specialist. The cost for work associated with compliance with the TAS code will be **One thousand two hundred sixty dollars (\$1,260.00)**

3. Civil Engineering: Professional fees for Civil Engineering will be furnished for a total of **Seventeen Thousand Dollars (\$17,000.00)** as outlined below:

Part One:	Concept Site Plan Development:	\$ 2,500.00
	Pre Application Submittal	\$ 500.00
Part Two:	Site Civil Plans	\$ 14,000.00
	Construction Period Service	\$ Hourly as needed

4. Cost Consultant: NMA will furnish the services of a professional cost consultant to provide project professional services at the 100% Design Development phase and 90% Construction Documents phase to substantiate and validate the project budget and the Architects Opinions of Probable Cost. Total fee for these services will be provided for **Seven Thousand Five Hundred dollars (\$7,500.00)**.

5. Additional Services, if required, shall be provided on an hourly basis at the following hourly rates.

Principal	\$150.00/hr
Project Manager	\$87.50/hr
Project Architect	\$87.50/hr
Interior Designer	\$85.00/hr
Staff Architect/Intern	\$77.50/hr
Clerical	\$42.50/hr
Consultants	Cost plus 20%

6. Reimbursable expenses constitute expenses incurred on the Client's behalf by Nelson + Morgan, Architects and NMA's consultants directly related to the Project, as follows:

- Printing, reproductions, plots, standard form documents;
- Postage, handling and delivery;
- Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- Renderings, models, mock-ups, professional photography, and presentation materials requested by the Owner;
- Architect's Consultant's expense of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits if the Owner requests such insurance in excess of that normally carried by the Architect's consultants;
- All taxes levied on professional services and on reimbursable expenses; and
- Other similar Project-related expenditures.

Reimbursable expenses will receive a 20% mark-up for handling and coordination. For your convenience, we suggest that you **budget \$1,000.00** for these expenses, exclusive of any submittal or filing fees.

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**V. Fee Summary:**

Fee Summary			
A/E Basic Services			
	Part One	\$	10,000.00
	Part Two	\$	117,875.00
Additional Services/Subconsultants			
	Civil Engineering		20,400.00
	Cost Estimating Services - CC		7,500.00
	TAS registration	\$	1,050.00
	TAS Plan Review	\$	210.00
	Reimbursables (printing, shipping, etc.)	\$	1,000.00
TOTAL		\$	158,035.00

**VI. PROFESSIONAL REGISTRATION:**

The Texas Board of Architectural Examiners, 333 Guadalupe, Suite 2-350, Austin, Texas 78701-3942, Phone: 512/305-9000, has jurisdiction over individuals licensed under the Architects Registration Law, Article 249A, VTCS, and under the Interior Designer's Registration Law, Article 249E, VTCS.

We look forward to working with you. Should you have any further questions, please feel free to give me a call at your convenience.



**ALAN F. NELSON, Architect**  
 Nelson + Morgan, Architects

ORDINANCE NO. 18-2076

AN ORDINANCE OF THE CITY OF DENTON, TEXAS, A TEXAS HOME-RULE MUNICIPAL CORPORATION, AUTHORIZING THE APPROVAL OF A THIRD AMENDMENT TO A PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY OF DENTON AND NELSON + MORGAN ARCHITECTS, INC., AMENDING THE CONTRACT APPROVED BY PURCHASING STAFF ON FEBRUARY 13, 2014, IN THE NOT-TO-EXCEED AMOUNT OF \$24,840, AMENDED BY AMENDMENTS 1-2 APPROVED BY PURCHASING STAFF AND COUNCIL, SAID THIRD AMENDMENT TO PROVIDE ADDITIONAL DESIGN SERVICES OF 12 SERVICE BAYS AT FLEET MAINTENANCE IN THE AMOUNT OF \$139,871.88; PROVIDING FOR THE EXPENDITURE OF FUNDS THEREFOR; AND PROVIDING AN EFFECTIVE DATE (FILE 5497 – PROVIDING FOR AN ADDITIONAL THIRD AMENDMENT EXPENDITURE AMOUNT NOT-TO-EXCEED \$139,871.88, WITH THE TOTAL CONTRACT AMOUNT NOT-TO-EXCEED \$342,819.97).

WHEREAS, on February 13, 2014, Purchasing Staff awarded a Professional Services Agreement to Nelson + Morgan Architects, Inc., in the amount of \$24,840 for design services for the Fleet Services Facility Expansion; and

WHEREAS, on August 27, 2015, a first amendment to the contract was executed by the Purchasing Staff for additional design services on the Fleet Services Facility for the Solid Waste Department, totaling \$20,073.09, and on October 18, 2016, the Council authorized a second amendment to the contract for Architectural, Structural, Mechanical and Engineering Design Services and authorized an additional \$158,035 to the contract, for a total amount of the amended contract not to exceed \$202,948.09; and

WHEREAS, the Staff having recommended, and the City Manager having recommended to the Council that an amendment be authorized to amend such contract agreement to provide additional design services for 12 Service Bays at Fleet Services, and an increase in the payment amount, and said fees under the proposed contract 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 Third Amendment, increasing the amount of the contract between the City and Nelson + Morgan Architects, Inc., which is on file in the office of the Purchasing Agent, in the amount of One Hundred Thirty Nine Thousand Eight Hundred Seventy One and 88/100 (\$139,871.88) Dollars, is hereby approved and the expenditure of funds therefor is hereby authorized in accordance with said amendment. The total contract amount increases to \$342,819.97.

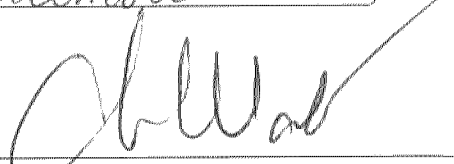
SECTION 2. This ordinance shall become effective immediately upon its passage and approval.

The motion to approve this ordinance was made by John Ryan and seconded by Paul Meltzer. The ordinance was passed and approved by

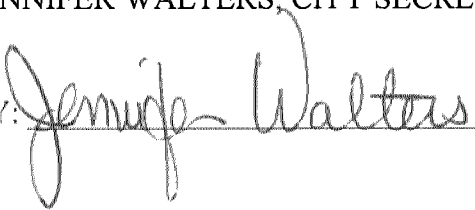
the following vote [7 - 0]:

	<b>Aye</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>
Mayor Chris Watts:	<u>✓</u>	<u>      </u>	<u>      </u>	<u>      </u>
Gerard Hudspeth, District 1:	<u>✓</u>	<u>      </u>	<u>      </u>	<u>      </u>
Keely G. Briggs, District 2:	<u>✓</u>	<u>      </u>	<u>      </u>	<u>      </u>
Don Duff, District 3:	<u>✓</u>	<u>      </u>	<u>      </u>	<u>      </u>
John Ryan, District 4:	<u>✓</u>	<u>      </u>	<u>      </u>	<u>      </u>
Deb Armintor, At Large Place 5:	<u>✓</u>	<u>      </u>	<u>      </u>	<u>      </u>
Paul Meltzer, At Large Place 6:	<u>✓</u>	<u>      </u>	<u>      </u>	<u>      </u>

PASSED AND APPROVED this the 11th day of December, 2018.

  
CHRIS WATTS, MAYOR

ATTEST:  
JENNIFER WALTERS, CITY SECRETARY

BY: 

APPROVED AS TO LEGAL FORM:  
AARON LEAL, CITY ATTORNEY

BY: 





## DocuSign City Council Transmittal Coversheet

PSA	5497
File Name	Fleet Expansion - Amendment 3
Purchasing Contact	Jamie Cogdell
City Council Target Date	December 11, 2018
Piggy Back Option	Not Applicable
Contract Expiration	N/A
Ordinance	18-2076

THE STATE OF TEXAS           §  
   §  
 COUNTY OF DENTON           §

THIRD AMENDMENT TO CONTRACT  
BY AND BETWEEN THE CITY OF DENTON, TEXAS  
AND NELSON+MORGAN ARCHTECTS, INC.  
[FILE NO. 5497]

THIS THIRD AMENDMENT TO CONTRACT (this “Third Amendment”) by and between the City of Denton, Texas (the “City”) and Nelson+Morgan Architects, Inc. (“Nelson+Morgan”) to that certain Contract executed on February 13, 2014, in the original not-to-exceed amount of \$24,840 (the “Original Agreement”); amended on August 27, 2015 in the additional amount of \$20,073.09 aggregating a not-to-exceed amount of \$44,913.09 (the “First Amendment”); amended on October 18, 2016 in the additional amount of \$158,035 aggregating a not-to-exceed amount of \$202,948.09 (the “Second Amendment”) (collectively, the Original Agreement, the First Amendment, and the Second Amendment are the “Agreement”) for Nelson+Morgan’s services related to the architectural and engineering design services for the City of Denton’s Fleet Services Facility Expansion project as is contained in the Agreement.

WHEREAS, Nelson+Morgan has substantially completed the work called for in the Agreement, and the City deems it necessary to further expand the services provided by Nelson+Morgan to the City, and to provide an additional not-to-exceed amount \$139,871.88 with this Third Amendment to further expand Fleet Services at the Business Service Center located at 804 Texas Street, for an aggregate not-to-exceed of \$342,819.97.

NOW THEREFORE, the CITY and Nelson+Morgan (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 Third Amendment, which amends the following terms and conditions of the said Agreement, to wit:

1.

The provisions of Section III. “Entire Agreement” of the Agreement are hereby amended to add the additional language as follows, to wit:

“4. Contractor’s Third Amended Proposal. (Attachment A to the Third Amendment)”

2.

The provisions of Section II. “Compensation”, Subsection 2.4 “Total Compensation” in the Agreement shall instead read, “The total comprehensive not-to-exceed amount for this agreement shall be \$342,819.97.”

3.

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

IN WITNESS WHEREOF, the City of Denton, Texas and Nelson+Morgan, have each executed this Third Amendment electronically, by and through their respective duly authorized representatives and officers on this date 12/11/2018.

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

DocuSigned by:  
Mario Canizares Mario Canizares  
6298D023C9C341B...  
SIGNATURE PRINTED NAME

Assistant City Manager

TITLE

City Manager's office

DEPARTMENT

“CITY”

CITY OF DENTON, TEXAS  
A Texas Municipal Corporation

By: DocuSigned by:  
Todd Hileman  
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TODD HILEMAN  
CITY MANAGER

JENNIFER WALTERS, CITY SECRETARY

By: DocuSigned by:  
Jennifer Walters  
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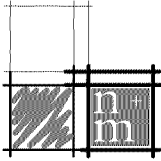
APPROVED AS TO LEGAL FORM:  
AARON LEAL, CITY ATTORNEY

By: DocuSigned by:  
Mack Peinward  
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“NELSON+MORGAN”  
NELSON+MORGAN ARCHITECTS, INC.

By: DocuSigned by:  
Alan Nelson Principal  
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AUTHORIZED SIGNATURE, TITLE

## ATTACHMENT A

**NELSON + MORGAN**

ARCHITECTS, INC.

August 27, 2018

Mr. Dean Harley  
 Director, Facilities Management  
 869 S. Woodrow  
 Denton, TX 76209

RE: Fleet Services Service 12 Bay Expansion  
 Professional Services Proposal

**I. PROJECT SCOPE:**

Nelson + Morgan, Architects (NMA) are pleased to provide the following proposal for providing Professional Services relating to the referenced project. It is our intent to provide normal architectural, structural, mechanical, electrical and plumbing design services specific to the project requirements.

NMA shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. NMA shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

1. Design and development of the construction documents to provide a 12-vehicle service bay expansion to the existing Fleet Services Facility.
  - Project will be designed to meet the general design criteria and features of the existing facility.
  - Expansion will be on the north end of the current facility.
  - Existing wash bay and roof structure will be removed to allow for expansion of new service bays.
  - Approximate size of each 2 vehicle service bays are anticipated to be: 20' x 110' sf).
    - 12 bay expansion shall be approximately 125'x110' (13,750 sf).
2. Facility will be designed to match the general construction features of the Fleet Services Facility located on Texas Street.
  - Precast Concrete "tilt wall" exterior walls.
  - 20' wide service bays with 14' x 20' overhead coiling doors
  - 50' reinforced concrete service apron outside all service doors on the east and west sides will be provided.
  - No finished crew rooms or staff facilities are anticipated.
  - The existing 8" sanitary sewer line and manholes will be relocated to avoid the new expansion areas.
  - Site grading on the north between the expanded bays and the existing fueling island will be adjusted with the installation of new drop inlets into an underground storm water drainage system. New concrete or asphalt paving will be necessary.
  - Service bays will be furnished with electrical power, lighting, mechanical ventilation and fire protection similar to the existing facility.
3. Preliminary Project Budget:
  - Bids were received for a similar scope of expansion in July 2015 (RFP#5845). Average cost for construction was \$239/sf with approximately \$28/sf allocated to the site paving and utility relocation.
  - A preliminary estimate of probable construction cost was developed by CCM in June 2018, based on a 13,682 net sf. This estimate established an approximate cost of \$2,805,837.00. This total was without any detailed site or utility design, no contingencies, FFE, Owner furnished equipment or professional fees.

NMA will include in our professional services a cost consultant to update probable cost as the construction package is completed. The estimate developed with the preliminary design will be updated and adjusted with the final construction documents prior to issuance for bidding.

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City of Denton  
 Fleet Service 12 Bay Expansion  
 Professional Services Proposal  
 August 27, 2018  
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## 4. Professional Services:

Recently during the budgeting and preliminary planning for this project, NMA completed the development of preliminary site and floor plans of the 12-bay expansion for use by the cost consultants to use in the budget process. We also scheduled and met with the Denton building official and worked out solutions with regard to several code compliance issues that must be addressed for this design.

This knowledge of the project needs and requirements, the use of the construction documents and details already developed for the CNG expansion project (RFP 5845), and the proposed inclusion of the original design team of sub-consultants, NMA has the unique advantage in preparing the construction and bidding package for this project. As such, our professional services fees will be adjusted to reflect this value and benefit.

Upon award of this PSA, NMA will schedule a design review meeting with the Fleet Services and FM staff to confirm scope, budget and timing. It is anticipated that with only minimal changes, if any, we should be able to begin the development of the final Construction Documents and bidding package immediately. The majority of this phase will concentrate on the civil design for the drainage and utility relocations around the north end of the site and electrical and plumbing coordination inside the service bays. With these understandings and expectations, NMA will reduce our typical design services fee proportionally.

It is our intention to furnish the professional services required by standard City of Denton PSA agreement, including necessary professional assistance during the bidding phase and full construction administration and post construction services.

Project will be designed to meet the IBC 2012, Energy codes, related City of Denton codes and ordinances and Texas Accessibility Standards.

## 5. NMA proposes the following sub-consultants into the design team on this project (same as the CNG Expansion):

- Structural and foundation: Cory Potts, P.E. with Lobsinger Potts Structural Engineers (LPSE).
- Mechanical and Electrical Engineering: Hergenrether Penner McGuire and Burkett Consulting Engineers, Inc. (HPMB)
- TAS Plan Review and Registered Accessibility Specialist; Jeff Gutknecht
- Civil Engineering; Allison Engineering Group (AEG); work scope limited to immediate site drainage and general grading, dimensional control, site paving and utility coordination, storm water collection and discharge piping system, relocation of existing sanitary sewer main. It is understood that the Owner will provide a topographic survey and accurate record drawings of all underground utilities.
- Construction Cost Management, Inc.: CCM, Inc. will furnish the consulting services during all phases of project development including planning, design, and construction. Fees for CCM are identified as a Supplemental Service.

## 6. Services not included are:

- Civil Engineering. It is assumed that no additional civil engineering related to the drainage, detention, off-site utility extensions or modifications, platting or zoning will be necessary. If it is determined that the additional services will be necessary, these will be provided under Additional Services as stated below.
- LEED design or certification: This project will not be required to meet any specific USGBC LEED certification or ranking. It will be designed to the current requirements of the 2015 IECC Energy code and IBC codes.
- Building Commissioning: The project specifications will require that the new mechanical systems be reviewed and certified by an approved third-party Test and Balance Agency, but third-party building commissioning is not included in our scope.
- Site Topography: Owner will furnish a current site survey with all easements, features and topographic information for the proposed construction site.
- Platting: It is understood that the City of Denton will coordinate any required platting services that may be necessary.
- Landscape Design: the project scope will not require the services of a landscape design/architect. NMA will develop a landscape plan to meet the requirements of the City of Denton minimum landscape requirements as outlined in the DDC and related site design criteria.

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Fleet Service 12 Bay Expansion  
Professional Services Proposal  
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- Soils Investigation; services for a geotechnical survey are not included in our basic services, but will be necessary for foundation and site paving design.

Professional Services are more fully outlined below.

## II. BASIC SERVICES

### A. Schematic Design Phase:

The Schematic Design Phase for this project has already been completed and will not be necessary as a specific services phase. NMA will review the program and other information furnished by the Client, and shall review laws, codes, and regulations applicable to the Architect's services.

### B. Design Development phase:

Based on the Client's approval of the Preliminary Design Documents, and on the Client's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Design Development Documents for the Client's approval. The Design Development Documents shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, and such other elements as may be appropriate. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish in general their quality levels.

The Architect shall update the Opinion of Probable Cost of the Work.

The Architect shall submit the Design Development Documents to the Owner, advise the Owner of any adjustments to the Opinion of Probable Cost of the Work, and request the Owner's approval

### C. Construction Documents Phase:

Based on the Client's approval of the Design Development Documents, and on the Client's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Construction Documents for the Client's approval. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the quality levels of materials and systems and other requirements for the construction of the Work. The Client and Architect acknowledge that in order to construct the Work the Contractor will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Architect shall review.

During the development of the Construction Documents, the Architect shall assist the Owner in the development and preparation of (1) bidding and procurement information that describes the time, place and conditions of bidding, including bidding or proposal forms; (2) the form of agreement between the Owner and Contractor; and (3) the Conditions of the Contract for Construction (General, Supplementary and other Conditions). The Architect shall also compile a project manual that includes the Conditions of the Contract for Construction and Specifications and may include bidding requirements and sample forms.

Assist the client with the selection of interior and exterior finishes, colors, materials, and fixtures for incorporation into the project.

The Architect shall incorporate into the Construction Documents the design requirements of governmental authorities having jurisdiction over the Project.

The Architect shall update the Opinion of Probable Cost of the Work.

The Architect shall submit the Construction Documents to the Client, advise the Client of any adjustments to the Opinion of Probable Cost of the Work, take any action required, and request the Client's approval.

### D. Bidding or Negotiation Phase Services and Permit review process:

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The City of Denton has jurisdiction over this project. NMA will coordinate the efforts on behalf of the owner to obtain the necessary approvals for construction.

The Architect shall assist the Owner in establishing a list of prospective contractors. Following the Owner's approval of the Construction Documents, the Architect shall assist the Owner in (1) obtaining either competitive bids or negotiated proposals; (2) confirming responsiveness of bids or proposals; (3) determining the successful bid or proposal, if any; and, (4) awarding and preparing contracts for construction.

**E. Construction Administration Phase:**

The Architect shall provide administration of the Contract between the Owner and the Contractor as outlined in the City of Denton PSA agreement and outlined in AIA Document A201™–2007, General Conditions of the Contract for Construction.

The Architect shall advise and consult with the Owner during the Construction Phase Services. The Architect shall have authority to act on behalf of the Owner only to the extent provided in the Agreement. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Contractor or of any other persons or entities performing portions of the Work.

The Architect's responsibility to provide Construction Phase Services commences with the award of the Contract for Construction and terminates on the date the Architect issues the final Certificate for Payment.

**Project completion services**

The Architect shall conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion; receive from the Contractor and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and assembled by the Contractor; and issue a final Certificate for Payment based upon a final inspection indicating the Work complies with the requirements of the Contract Documents.

The Architect's inspections shall be conducted with the Owner to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the Contractor of Work to be completed or corrected.

When the Work is found to be substantially complete, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid the Contractor, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.

The Architect shall forward to the Owner the following information received from the Contractor: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (2) affidavits, receipts, releases and waivers of liens or bonds indemnifying the Owner against liens; and (3) any other documentation required of the Contractor under the Contract Documents.

Upon request of the Owner, and prior to the expiration of one year from the date of Substantial Completion, the Architect shall, without additional compensation, conduct a meeting with the Owner to review the facility operations and performance.

The Architect will provide the following Contract Administration phase services:

- Site visits as deemed necessary by the Architect and his consultants to review the Work in an effort to determine, in general, whether or not it is being constructed in accordance with the Construction Documents.
- Schedule and attend a Pre-Construction conference with General Contractor and key sub-contractors.
- Submittal and shop drawing reviews.
- Review substitution requests from the Contractor for materials or products which become unavailable during construction due to circumstances beyond the Contractor's control.
- Finish materials and color selection and recommendations
- Review Contractor's schedule and advise Client of construction progress.
- Monthly Payment Certification

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- Review and respond to any Requests for information (RFI) and issue any Architectural Supplemental Instructions (ASI) as may be necessary.
- Prepare punch lists for the Project.
- Establish dates of Substantial and Final Completion and prepare certificates for same.
- Coordinate project close out and receipt of warranty and maintenance binders from the Contractor.
- Payment Certification
- Testing and material inspection
- Interpretations and decisions

## III. SUPPLEMENTAL SERVICES:

Nelson + Morgan, Architects will provide any supplemental services as deemed necessary by Project requirements or Client. These may include additional extensive architectural, structural or civil engineering or design revisions, mechanical, electrical or acoustical engineering services, Environmental analysis or testing. *Supplemental Services* shall be provided by the Architect, when requested by the Client, on an hourly or negotiated fee basis in addition to the fees charged for *Basic Services*. Fees for any supplemental services will receive a 20% mark-up for handling and coordination.

## IV. PROFESSIONAL FEES

1. Basic Services: Professional fees for items identified above in Section II, Basic Services shall be based on a total fee of FIVE percent (5%) of the final Construction Cost of the Project. Services for Schematic Design will be reduced by \$-24,000.00 which will result in a net adjusted fee basis of 4.14%. These fees shall be billed monthly up to the percentages listed below for each phase based on the latest Opinion of Probable Cost. A final adjustment will be made at the end of the project based on the total construction cost of the Project.

The monthly invoicing will be based upon the following breakdown as services are provided:

Schematic Design Phase	30% of total fee
Design Development Phase	20% of total fee
Construction Documents Phase	30% of total fee
Bidding and Negotiation Phase	05% of total fee
Construction Administration Phase	15% of total fee

2. Texas Accessibility Standards: NMA shall register the proposed project with the Texas Department of Licensing and Regulation as required by the TAS code. NMA will also submit the plans and specifications required under Section 469.101 of the TAS code for review and approval by a registered Accessibility Specialist. The cost for work associated with compliance with the TAS code will be One thousand two hundred sixty dollars (\$1,260.00)

3. Civil Engineering: Professional fees for Civil Engineering will be furnished for a total of Twelve Thousand one hundred twenty Dollars (\$12,120.00) as outlined below:

Concept Site Plan Development:	\$ 4,200.00
Pre-Application Submittal	\$ 800.00
Site Civil Plans	\$ 8,000.00
Construction Period Service	\$ 2,000.00

4. Cost Consultant: NMA will furnish the services of a professional cost consultant to provide project professional services at the 100% Design Development phase and 90% Construction Documents phase to substantiate and validate the project budget and the Architects Opinions of Probable Cost. Total fee for these services will be provided for Ten Thousand two Hundred dollars (\$10,200.00).

5. Additional Services shall be provided on an hourly basis at the following hourly rates:

Principal	\$175.00/hr.
Project Architect/Manager	\$115.00/hr.
Interior Designer	\$115.00/hr.
Staff Architect/Intern	\$90.00/hr.
Clerical	\$42.50/hr.
Consultants	Cost plus 20%



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6. Reimbursable expenses constitute expenses incurred on the Client's behalf by Nelson + Morgan, Architects and NMA's consultants directly related to the Project, as follows:

- Printing, reproductions, plots, standard form documents;
- Postage, handling and delivery;
- Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- Renderings, models, mock-ups, professional photography, and presentation materials requested by the Owner;
- Architect's Consultant's expense of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits if the Owner requests such insurance in excess of that normally carried by the Architect's consultants;
- All taxes levied on professional services and on reimbursable expenses; and
- Other similar Project-related expenditures.

Reimbursable expenses will receive a 20% mark-up for handling and coordination. For your convenience, we suggest that you budget \$1,000.00 for these expenses, exclusive of any submittal or filing fees.

## V. FEE SUMMARY:

FEE SUMMARY		12 Bay Expansion	
<b>Basic Services</b>	(adjusted net Fee)	4.14%	
Pre Construction Services			
Schematic Design Phase	30%	\$	18,087.56
Design Development Phase	20%	\$	28,058.38
Construction Documents Phase	30%	\$	42,087.56
Bidding and Contract Phase	5%	\$	7,014.59
Construction Phase Services			
Construction Administration	15%	\$	21,043.78
<b>TOTAL BASIC SERVICES</b>	<b>100%</b>	<b>\$</b>	<b>116,291.88</b>
<b>Supplemental Services</b>			
Civil Engineering services			12,120.00
Construction Cost services			10,200.00
TDLR/TAS review services		\$	1,260.00
<b>TOTAL SUPPLEMENTAL SERVICES</b>		<b>\$</b>	<b>23,580.00</b>
<b>TOTAL PROFESSIONAL SERVICES</b>		<b>\$</b>	<b>139,871.88</b>

## VI. LIMITATION OF LIABILITY

In recognition of the relative risks and benefits of the Project to both the Client and the Architect, the risks have been allocated such that the Client agrees, to the fullest extent permitted by law, to limit the liability of the Architect to the Client for any and all claims, losses, costs, damages of any nature whatsoever or claims expenses from any cause or causes, including attorneys' fees and costs and expert-witness fees and costs, so that the total aggregate liability of the Architect to the Client shall not exceed the Architect's total fee for services rendered on this Project. It is intended that this limitation apply to any and all liability or cause of action however alleged or arising, unless otherwise prohibited by law.

## VII. INDEMNIFICATION:

The Client shall, to the fullest extent permitted by law, indemnify and hold harmless the Firm, his or her officers, directors, employees, agents and sub consultants from and against all damage, liability and cost, including reasonable attorney's fees and defense costs, arising out of or in any way connected with the performance by any of the parties above named of the services under this agreement, excepting only those damages, liabilities or costs attributable to the sole negligence or willful misconduct of the Firm. In recognition of the relative potential risks and benefits of this project to both Owner and NMA, the

## ATTACHMENT A

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risks are allocated such that Owner agrees to the fullest extent permitted by law, to limit the liability of NMA and to all third parties with whom Owner initiates business relationships on this project, including, but not limited to lender, counselors, designers, surveyors, suppliers, contractors, subcontractors and inspectors for any and all claims, losses, costs, damages of any nature whatsoever or claims expenses resulting from any cause or causes. Such claims and causes include, but are not limited to negligence, professional errors or omissions, strict liability, and breach of contract or warranty.

**VIII. PROFESSIONAL REGISTRATION:**

The Texas Board of Architectural Examiners, 333 Guadalupe, Suite 2-350, Austin, Texas 78701-3942, Phone: 512/305-9000, has jurisdiction over individuals licensed under the Architects Registration Law, Article 249A, VTCS, and under the Interior Designer's Registration Law, Article 249E, VTCS.

**IX. OTHER CONDITIONS**

Nelson + Morgan, Architects Terms and Conditions page shall be a part of this agreement.

Please acknowledge your acceptance of this proposal for the above work. I look forward to working with you. Should you have any further questions, please feel free to give me a call at your convenience.



ALAN F. NELSON, Architect  
Nelson + Morgan, Architects

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TERMS AND CONDITIONS

Nelson + Morgan, Architects (NMA, The Firm) shall perform the services outlined in this agreement for the stated fee arrangement.

**Access to Site:**

Unless otherwise stated, The Firm will have access to the site for activities necessary for the performance of the services. The Firm will take precautions to minimize damage due to these activities, but has not included in the fee the cost of restoration of any resulting damage. Site inaccessibility due to inclement weather may delay the delivery of documents where access to the site is necessary, such as obtaining soil samples.

**Dispute Resolution:**

Any claims or disputes made during design, construction or post-construction between the Client and Firm shall be submitted to non-binding mediation. Client and Firm agree to include a similar mediation agreement with all contractors, subcontractors, sub-consultants, suppliers and fabricators, thereby providing for mediation as the primary method for dispute resolution between all parties.

**Billings/Payments:**

Invoices for the Firm's services shall be submitted, at the Firm's option, either upon completion of such services or on a monthly basis. Invoices shall be payable within 30 days after the invoice date. If the invoice is not paid within 30 days, the Firm may, without waiving any claim or right against the Client, and without liability whatsoever to the Client, terminate the performance of the service.

**Late Payments:**

Accounts unpaid 90 days after the invoice date may be subject to a monthly service charge of 1.5% (or the legal rate) on the then unpaid balance. In the event any portion or all of an account remains unpaid 120 days after billing, the Client shall pay all costs of collection, including reasonable attorney's fees.

**Indemnification:**

The Client shall, to the fullest extent permitted by law, indemnify and hold harmless the Firm, his or her officers, directors, employees, agents and sub consultants from and against all damage, liability and cost, including reasonable attorney's fees and defense costs, arising out of or in any way connected with the performance by any of the parties above named of the services under this agreement, excepting only those damages, liabilities or costs attributable to the sole negligence or willful misconduct of the Firm. In consideration of the above fee which includes a reduction allowance for risk funding, the Owner agrees to limit the Architects liability to the Owner arising from the Architect's professional act, errors or omissions, such that the total aggregate liability of the Architect to all those named shall not exceed the lesser of either the total fee for this project or the amount of Professional Liability Insurance the Architect has in force. Such claims and causes include, but are not limited to negligence, professional errors or omissions, strict liability, and breach of contract or warranty.

**Limitation of Liability:**

The Client, through its authorized representative, and NMA, have discussed their risks, rewards and benefits of the project and NMA's total fee for services. Neither NMA, nor their consultants, agents, or employees shall be jointly, severally or individually liable to Client in excess of one twenty five thousand (\$25,000.00) by any act of omission, including breach of contract or negligence not amounting to willful or intentional wrong.

**Certifications:**

Guarantees and Warranties: The Firm shall not be required to execute any document that would result in its certifying, guaranteeing or warranting the existence of conditions whose existence the Firm cannot ascertain.

**Suspension of Services:**

After giving seven days written notice, NMA may suspend services under this Agreement until all amounts due have been paid in full. Furthermore, NMA may withhold design drawings, documents, specifications reports, or any other tangible items produced under the terms of this Agreement until outstanding invoices are paid.

**Termination of Services:**

This agreement may be terminated by the Client or the Firm should the other fail to perform its obligations hereunder. In the event of termination, the Client shall pay the Firm for all services rendered to the date of termination, all reimbursable expenses, and reimbursable termination expenses.

## Certificate of Completion

Envelope Id: F01727378E404CA9A9B321DA781D4482

Subject: Please DocuSign: City Council Contract 5497 Amendment 3 - Fleet Services Expansion

Source Envelope:

Document Pages: 11

Signatures: 5

Certificate Pages: 6

Initials: 0

AutoNav: Enabled

Enveloped Stamping: Enabled

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

Status: Completed

Envelope Originator:

Jamie Cogdell

901B Texas Street

Denton, TX 76209

Jamie.Cogdell@cityofdenton.com

IP Address: 129.120.6.150

## Record Tracking

Status: Original

11/19/2018 3:01:08 PM

Holder: Jamie Cogdell

Jamie.Cogdell@cityofdenton.com

Location: DocuSign

## Signer Events

Jamie Cogdell

jamie.cogdell@cityofdenton.com

Senior Buyer

City Of Denton

Security Level: Email, Account Authentication  
(None)

**Electronic Record and Signature Disclosure:**

Not Offered via DocuSign

## Signature

**Completed**

Using IP Address: 129.120.6.150

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Mack Reinwand

mack.reinwand@cityofdenton.com

City of Denton

Security Level: Email, Account Authentication  
(None)

DocuSigned by:

*Mack Reinwand*

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Signature Adoption: Pre-selected Style

Using IP Address: 129.120.6.150

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Viewed: 11/19/2018 3:32:55 PM

Signed: 11/19/2018 3:33:03 PM

**Electronic Record and Signature Disclosure:**

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Alan Nelson

anelson@nelsonmorgan.com

Principal

Nelson+Morgan, Architects

Security Level: Email, Account Authentication  
(None)

DocuSigned by:

*Alan Nelson*

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Signature Adoption: Pre-selected Style

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**Electronic Record and Signature Disclosure:**

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ID: 977b6064-9dc1-48d4-812b-30eebd2dedcd

Mario Canizares

mario.canizares@cityofdenton.com

Assistant City Manager

Security Level: Email, Account Authentication  
(None)

DocuSigned by:

*Mario Canizares*

6298D023C9C341B...

Signature Adoption: Pre-selected Style

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Signed using mobile

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Signed: 11/26/2018 2:31:45 PM

**Electronic Record and Signature Disclosure:**

Accepted: 11/26/2018 2:31:39 PM

ID: 73255fe6-41b9-4e91-a94c-61f4163e93fa

## Signer Events

Tabitha Millsop  
tabitha.millsop@cityofdenton.com  
City of Denton  
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(None)

**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

Todd Hileman  
Todd.Hileman@cityofdenton.com  
City Manager  
City of Denton  
Security Level: Email, Account Authentication  
(None)

**Electronic Record and Signature Disclosure:**  
Accepted: 7/25/2017 11:02:14 AM  
ID: 57619fbf-2aec-4b1f-805d-6bd7d9966f21

Jennifer Walters  
jennifer.walters@cityofdenton.com  
City Secretary  
City of Denton  
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(None)

**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

## In Person Signer Events

### Editor Delivery Events

### Agent Delivery Events

### Intermediary Delivery Events

### Certified Delivery Events

### Carbon Copy Events

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Not Offered via DocuSign

Jane Richardson  
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Assistant City Secretary  
City of Denton  
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(None)

**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

## Signature

### Completed

Using IP Address: 129.120.6.150

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*Todd Hileman*  
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Using IP Address: 47.190.47.120  
Signed using mobile

DocuSigned by:  
*Jennifer Walters*  
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Signature Adoption: Pre-selected Style  
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### Status

### Status

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## Carbon Copy Events

Jennifer Bridges  
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(None)

**Electronic Record and Signature Disclosure:**  
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Jane Richardson  
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Assistant City Secretary  
City of Denton  
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Dawn Wilson  
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Security Level: Email, Account Authentication  
(None)

**Electronic Record and Signature Disclosure:**  
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## Notary Events

## Signature

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### Envelope Summary Events

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12/13/2018 9:01:37 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](mailto: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](mailto: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](mailto: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](mailto: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"> <li>•Allow per session cookies</li> <li>•Users accessing the internet behind a Proxy Server must enable HTTP 1.1 settings via proxy connection</li> </ul>

\*\* 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.

THE STATE OF TEXAS                   §  
    §  
 COUNTY OF DENTON                   §

FOURTH AMENDMENT TO CONTRACT  
BY AND BETWEEN THE CITY OF DENTON, TEXAS  
AND NELSON+MORGAN ARCHITECTS, INC.  
[FILE NO. 5497]

THIS FOURTH AMENDMENT TO CONTRACT (this “Third Amendment”) by and between the City of Denton, Texas (the “City”) and Nelson+Morgan Architects, Inc. (“Nelson+Morgan”) to that certain Contract executed on February 13, 2014, in the original not-to-exceed amount of \$24,840 (the “Original Agreement”); amended on August 27, 2015 in the additional amount of \$20,073.09 aggregating a not-to-exceed amount of \$44,913.09 (the “First Amendment”); amended on October 18, 2016 in the additional amount of \$158,035 aggregating a not-to-exceed amount of \$202,948.09 (the “Second Amendment”); amended on December 11, 2018 in the additional amount of \$139,871.88 aggregating a not-to-exceed amount of \$342,819.97 (the “Third Amendment”) (collectively, the Original Agreement, the First, the Second, and the Third Amendments are the “Agreement”) for Nelson+Morgan’s services related to the architectural and engineering design services for the City of Denton’s Fleet Services Facility Expansion project as is contained in the Agreement.

WHEREAS, Nelson+Morgan has substantially completed the work called for in the Agreement, and the City deems it necessary to further expand the services provided by Nelson+Morgan to the City, and to provide an additional not-to-exceed amount \$9,320.00 with this Fourth Amendment to further expand Fleet Services at the Business Service Center located at 804 Texas Street, for an aggregate not-to-exceed of \$352,139.97.

NOW THEREFORE, the CITY and Nelson+Morgan (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 Fourth Amendment, which amends the following terms and conditions of the said Agreement, to wit:

1.

The provisions of Section III. “Entire Agreement” of the Agreement are hereby amended to add the additional language as follows, to wit:

“4. Contractor’s Fourth Amended Proposal. (Attachment A to the Fourth Amendment)”

2.

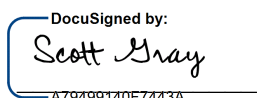
The provisions of Section II. “Compensation”, Subsection 2.4 “Total Compensation” in the Agreement shall instead read, “The total comprehensive not-to-exceed amount for this agreement shall be \$352,139.97.”

3.

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

IN WITNESS WHEREOF, the City of Denton, Texas and Nelson+Morgan, have each executed this Fourth Amendment electronically, by and through their respective duly authorized representatives and officers on this date 04/23/2021.

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

DocuSigned by:  
  
A79499140F7443A  
SIGNATURE  
Scott Gray  
PRINTED NAME  
Director - Airport, Facilities, Real Estate  
TITLE  
Facilities Managment  
DEPARTMENT

“CITY”

CITY OF DENTON, TEXAS  
A Texas Municipal Corporation

DocuSigned by:  
  
6A8263DE08F4429...  
By: Christa Christian, CPPB  
Procurement & Compliance

“NELSON+MORGAN”  
NELSON+MORGAN ARCHITECTS, INC.

DocuSigned by:  
  
3AE22A755DFF4A6...  
By: President  
AUTHORIZED SIGNATURE, TITLE



April 16, 2021

Scott Gray  
 Director  
 Airport, Facilities, Real Estate

Via email: [scott.gray@cityofdenton.com](mailto:scott.gray@cityofdenton.com)

**RE: Fleet Services Expansion**  
**Additional Services – Alternates and Bidding**  
**NMA Project No. 18014**  
**City of Denton PSA 5497**

Scott, below are the Additional Services necessary for us to compile the alternates and re-bid the Fleet Services Expansion/Flush Truck Expansion

<b>Basic Services</b>					
PM	24 hrs	\$	115.00	/hr	\$ 2,760.00
Drafting	16 hrs	\$	90.00	/hr	\$ 1,440.00
Principal	20 hrs	\$	175.00	/hr	\$ 3,500.00
					\$ 7,700.00
<b>Subconsultants</b>					
HPMB	Lump sum				\$ 500.00
Lobsinger & Potts	Lump sum				\$ 850.00
markup			20%		\$ 270.00
					\$ 1,620.00
<b>TOTAL ADDITIONAL SERVICE</b>					<b>\$ 9,320.00</b>

If you have any questions, please don't hesitate to give me a call.

A handwritten signature in blue ink, appearing to read 'Kelly D. Morgan'.

Kelly D. Morgan, President


## Certificate Of Completion

Envelope Id: 56088CA622B844D7B3CA57BB7C3B0AFE	Status: Completed
Subject: Please DocuSign: 5497 Amendment 4 - Nelson Morgan Architects revised.pdf, Attachment A.pdf	
Source Envelope:	
Document Pages: 3	Signatures: 3
Certificate Pages: 5	Initials: 0
AutoNav: Enabled	Envelope Originator:
Envelopeld Stamping: Enabled	Christa Christian
Time Zone: (UTC-06:00) Central Time (US & Canada)	901B Texas Street
	Denton, TX 76209
	Christa.Christian@cityofdenton.com
	IP Address: 198.49.140.104

## Record Tracking

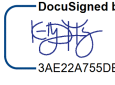
Status: Original	Holder: Christa Christian	Location: DocuSign
4/20/2021 4:26:25 PM	Christa.Christian@cityofdenton.com	

## Signer Events

Signer Events	Signature	Timestamp
Christa Christian christa.christian@cityofdenton.com Senior Buyer City of Denton Security Level: Email, Account Authentication (None)	<p>DocuSigned by:</p>  <p>6A8263DE08F4429...</p> <p>Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.104</p>	<p>Sent: 4/20/2021 4:29:35 PM</p> <p>Viewed: 4/20/2021 4:29:44 PM</p> <p>Signed: 4/20/2021 4:29:52 PM</p>


### Electronic Record and Signature Disclosure:

Not Offered via DocuSign

Kelly D. Morgan Kmorgan@nelsonmorgan.com President Security Level: Email, Account Authentication (None)	<p>DocuSigned by:</p>  <p>3AE22A75DEE4A6...</p> <p>Signature Adoption: Uploaded Signature Image Using IP Address: 47.190.52.65</p>	<p>Sent: 4/20/2021 4:29:53 PM</p> <p>Viewed: 4/20/2021 4:38:14 PM</p> <p>Signed: 4/20/2021 4:40:00 PM</p>
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### Electronic Record and Signature Disclosure:

Accepted: 4/20/2021 4:38:14 PM  
ID: fc895fe7-4860-4431-a818-b41928a51747

Scott Gray scott.gray@cityofdenton.com Director - Airport, Facilities, Real Estate x Security Level: Email, Account Authentication (None)	<p>DocuSigned by:</p>  <p>A79499140F7443A...</p> <p>Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.10</p>	<p>Sent: 4/20/2021 4:40:01 PM</p> <p>Viewed: 4/23/2021 9:21:32 AM</p> <p>Signed: 4/23/2021 9:21:59 AM</p>
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### Electronic Record and Signature Disclosure:

Accepted: 4/23/2021 9:21:32 AM  
ID: c9b7064e-42ff-4d17-b141-2f17be3b949d

Cheyenne Defee cheyenne.defee@cityofdenton.com Contract Administrator City of Denton Security Level: Email, Account Authentication (None)	<p><b>Completed</b></p> <p>Using IP Address: 198.49.140.104</p>	<p>Sent: 4/23/2021 9:22:00 AM</p> <p>Viewed: 4/23/2021 10:27:02 AM</p> <p>Signed: 4/23/2021 10:27:11 AM</p>
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### Electronic Record and Signature Disclosure:

Not Offered via DocuSign

## 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 Contract Administrator City of Denton Security Level: Email, Account Authentication (None) <b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign	COPIED	Sent: 4/23/2021 10:27:12 AM
Marissa Barrett marissa.barrett@cityofdenton.com Management Analyst City of Denton Security Level: Email, Account Authentication (None) <b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign	COPIED	Sent: 4/23/2021 10:27:12 AM
Witness Events	Signature	Timestamp
Notary Events	Signature	Timestamp
Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	4/20/2021 4:29:35 PM
Certified Delivered	Security Checked	4/23/2021 10:27:02 AM
Signing Complete	Security Checked	4/23/2021 10:27:11 AM
Completed	Security Checked	4/23/2021 10:27:13 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](mailto: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](mailto: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](mailto: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](mailto: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"><li>•Allow per session cookies</li><li>•Users accessing the internet behind a Proxy Server must enable HTTP 1.1 settings via proxy connection</li></ul>

\*\* 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.

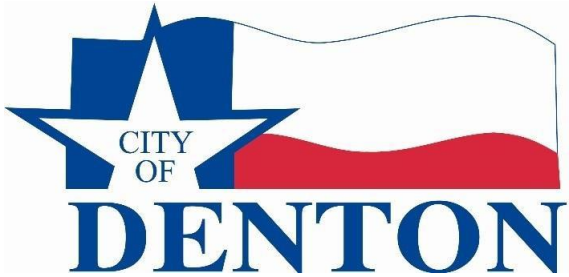


**Acknowledging your access and consent to receive materials electronically**

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.



DocuSign Transmittal Coversheet

File Name	5497
Purchasing Contact	Christa Christian
Contract Expiration	N/A

THE STATE OF TEXAS           §  
   §  
 COUNTY OF DENTON           §

FIFTH AMENDMENT TO CONTRACT  
BY AND BETWEEN THE CITY OF DENTON, TEXAS  
AND NELSON+MORGAN ARCHITECTS, INC.  
[FILE NO. 5497]

THIS FIFTH AMENDMENT TO CONTRACT (this “Fifth Amendment”) by and between the City of Denton, Texas (the “City”) and Nelson+Morgan Architects, Inc. (“Nelson+Morgan”) to that certain Contract executed on February 13, 2014, in the original not-to-exceed amount of \$24,840 (the “Original Agreement”); amended on August 14, 2015 in the additional amount of \$20,073.09 aggregating a not-to-exceed amount of \$44,913.09 (the “First Amendment”); amended on October 18, 2016 in the additional amount of \$158,035 aggregating a not-to-exceed amount of \$202,948.09 (the “Second Amendment”); amended on December 11, 2018 in the additional amount of \$139,871.89 aggregating a not-to-exceed amount of \$342,819.98 (the “Third Amendment”); amended on April 23, 2021 in the additional amount of \$9,320.00 aggregating a not-to-exceed amount of \$352,139.98 (the “Fourth Amendment”) (collectively, the Original Agreement, the First, the Second, the Third, and the Fourth Amendments are the “Agreement”) for Nelson+Morgan’s services related to the architectural and engineering design services for the City of Denton’s Fleet Services Facility Expansion project as is contained in the Agreement.

WHEREAS, Nelson+Morgan has substantially completed the work called for in the Agreement, and the City deems it necessary to further expand the services provided by Nelson+Morgan to the City, and to provide an additional not-to-exceed amount \$18,260.00 with this Fourth Amendment to further expand Fleet Services at the Business Service Center located at 804 Texas Street, for an aggregate not-to-exceed of \$370,399.98.

NOW THEREFORE, the CITY and Nelson+Morgan (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 Fifth Amendment, which amends the following terms and conditions of the said Agreement, to wit:

1.

The provisions of Section III. “Entire Agreement” of the Agreement are hereby amended to add the additional language as follows, to wit:

“4. Contractor’s Fifth Amended Proposal. (Attachment A to the Fifth Amendment)”

2.

The provisions of Section II. “Compensation”, Subsection 2.4 “Total Compensation” in the Agreement shall instead read, “The total comprehensive not-to-exceed amount for this agreement shall be \$370,399.98.”



**NELSON + MORGAN**

ARCHITECTS, INC.

April 28, 2021

Scott Gray  
 Director  
 Airport, Facilities, Real Estate

Via email: [scott.gray@cityofdenton.com](mailto:scott.gray@cityofdenton.com)

**RE: Fleet Services Expansion**  
**Additional Services – Alternates and Bidding**  
**NMA Project No. 18014**  
**City of Denton PSA 5497**

Scott, below are the Additional Services necessary for us to compile the additional alternates for the Fleet Services Expansion/Flush Truck Expansion

<b>Basic Services</b>					
PM	24 hrs	\$ 115.00	/hr	\$ 2,760.00	
Drafting	32 hrs	\$ 90.00	/hr	\$ 2,880.00	
Principal	8 hrs	\$ 175.00	/hr	\$ 1,400.00	
				\$ 7,040.00	
<b>Subconsultants</b>					
Civil Engineering	Lump sum			\$ 5,000.00	
MEP Engineering	Lump sum			\$ 3,600.00	
Structural Engineer	Lump sum			\$ 750.00	
markup		20%		\$ 1,870.00	
				\$ 11,220.00	
<b>TOTAL ADDITIONAL SERVICE</b>				<b>\$ 18,260.00</b>	

If you have any questions, please don't hesitate to give me a call.

Kelly D. Morgan, President

**Certificate Of Completion**

Envelope Id: B9E1A052473940C48FA1B1C07B275A32

Status: Completed

Subject: \*\*\*Purchasing Approval\*\*\* 5497, Amendment 5

Source Envelope:

Document Pages: 4

Signatures: 2

Envelope Originator:

Certificate Pages: 5

Initials: 1

Christa Christian

AutoNav: Enabled

901B Texas Street

Envelopel Stamping: Enabled

Denton, TX 76209

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

Christa.Christian@cityofdenton.com

IP Address: 198.49.140.104

**Record Tracking**

Status: Original

Holder: Christa Christian

Location: DocuSign

5/20/2021 2:36:56 PM

Christa.Christian@cityofdenton.com

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

Christa Christian

**Completed**

Sent: 5/20/2021 2:42:14 PM

christa.christian@cityofdenton.com

Viewed: 5/20/2021 2:42:22 PM

Senior Buyer

Signed: 5/20/2021 2:43:48 PM

City of Denton

Using IP Address: 198.49.140.104

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

Not Offered via DocuSign

Tabitha Millsop



Sent: 5/20/2021 2:43:50 PM

tabitha.millsop@cityofdenton.com

Viewed: 5/21/2021 2:48:43 PM

Assistant Purchasing Manager

Signed: 5/24/2021 1:50:52 PM

City of Denton

Signature Adoption: Pre-selected Style

Security Level: Email, Account Authentication  
(None)

Using IP Address: 198.49.140.104

**Electronic Record and Signature Disclosure:**

Not Offered via DocuSign

Kelly D. Morgan



Sent: 5/24/2021 1:50:55 PM

Kmorgan@nelsonmorgan.com

Viewed: 5/24/2021 3:20:08 PM

President

Signed: 5/24/2021 3:20:54 PM

Security Level: Email, Account Authentication  
(None)

Signature Adoption: Uploaded Signature Image

Using IP Address: 47.190.52.65

**Electronic Record and Signature Disclosure:**

Accepted: 5/24/2021 3:20:08 PM

ID: d05af21a-6c09-472e-9601-b24642803909

Scott Gray



Sent: 5/24/2021 3:20:56 PM

scott.gray@cityofdenton.com

Viewed: 5/24/2021 3:22:00 PM

Director - Airport &amp; Facilities

Signed: 5/24/2021 3:22:30 PM

x

Signature Adoption: Pre-selected Style

Security Level: Email, Account Authentication  
(None)

Using IP Address: 198.49.140.10

**Electronic Record and Signature Disclosure:**

Accepted: 5/24/2021 3:22:00 PM

ID: e54215b6-8a69-417f-a450-482e69de62a0

Signer Events	Signature	Timestamp
Cheyenne Defee cheyenne.defee@cityofdenton.com Contract Administrator City of Denton Security Level: Email, Account Authentication (None) <b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign	<b>Completed</b>  Using IP Address: 198.49.140.104	Sent: 5/24/2021 3:22:31 PM Viewed: 5/24/2021 3:47:32 PM Signed: 5/24/2021 3:47:43 PM
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
Marissa Barrett marissa.barrett@cityofdenton.com Management Analyst City of Denton Security Level: Email, Account Authentication (None) <b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign	<div>COPIED</div>	Sent: 5/24/2021 3:47:44 PM
Cheyenne Defee cheyenne.defee@cityofdenton.com Contract Administrator City of Denton Security Level: Email, Account Authentication (None) <b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign	<div>COPIED</div>	Sent: 5/24/2021 3:47:45 PM
Witness Events	Signature	Timestamp
Notary Events	Signature	Timestamp
Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	5/20/2021 2:42:14 PM
Certified Delivered	Security Checked	5/24/2021 3:47:32 PM
Signing Complete	Security Checked	5/24/2021 3:47:43 PM
Completed	Security Checked	5/24/2021 3:47:45 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](mailto: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](mailto: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](mailto: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](mailto: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"><li>•Allow per session cookies</li><li>•Users accessing the internet behind a Proxy Server must enable HTTP 1.1 settings via proxy connection</li></ul>

\*\* 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.

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF DENTON, A TEXAS HOME-RULE MUNICIPAL CORPORATION, AUTHORIZING THE APPROVAL OF A SIXTH AMENDMENT TO A PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY OF DENTON AND NELSON + MORGAN ARCHITECTS, INC., AMENDING THE CONTRACT APPROVED BY PURCHASING ON FEBRUARY 13, 2014, IN THE NOT-TO-EXCEED AMOUNT OF \$24,840.00, AMENDED BY AMENDMENTS 1-5 APPROVED BY PURCHASING AND CITY COUNCIL, SAID SIXTH AMENDMENT TO PROVIDE ADDITIONAL DESIGN SERVICES FOR THE BASE PROJECT AND ADDITIONAL DESIGN SERVICES OF THE HVAC SYSTEM AT FLEET MAINTENANCE; PROVIDING FOR THE EXPENDITURE OF FUNDS THEREFOR; AND PROVIDING AN EFFECTIVE DATE (FILE 5497 – PROVIDING FOR AN ADDITIONAL SIXTH AMENDMENT EXPENDITURE AMOUNT NOT-TO-EXCEED \$171,299.00, WITH THE TOTAL CONTRACT AMOUNT NOT-TO-EXCEED \$541,698.97).

WHEREAS, on February 13, 2014, Purchasing awarded a Professional Services Agreement to Nelson + Morgan Architects, Inc., in the amount of \$24,840.00 for design services for the Fleet Services Facility Expansion; and

WHEREAS, on August 27, 2015, Purchasing awarded a First Amendment to Nelson + Morgan Architects, Inc., in the amount of \$20,073.09, for additional design services for the Fleet Services Facility for the Solid Waste Department; and

WHEREAS, on October 18, 2016, by Ordinance No. 2016-329, City Council awarded a Second Amendment to Nelson + Morgan Architects, Inc., in the amount of \$158,035.00, to provide additional design services for 12 service bays at Fleet Maintenance; and

WHEREAS, on December 11, 2018, by Ordinance No. 18-2076, City Council awarded a Third Amendment to Nelson + Morgan Architects, Inc., in the amount of \$139,871.88, to provide additional design services for 12 service bays at Fleet Maintenance; and

WHEREAS, on April 23, 2021, Purchasing awarded a Fourth Amendment to Nelson + Morgan Architects, Inc., in the amount of \$9,320.00, to provide additional design services for 12 service bays at Fleet Maintenance; and

WHEREAS, on May 24, 2021, Purchasing awarded a Fifth Amendment to Nelson + Morgan Architects, Inc., in the amount of \$18,260.00, to provide additional design services for 12 service bays at Fleet Maintenance; and

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

WHEREAS, the additional fees under the proposed Sixth 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 Sixth Amendment, increasing the amount of the contract between the City and Nelson + Morgan Architects, Inc., which is on file in the office of the Purchasing Agent, in the amount of One Hundred Seventy-One Thousand Two Hundred Ninety-Nine and 0/100 (\$171,299.00) Dollars, is hereby approved, and the expenditure of funds therefor is hereby authorized in accordance with said amendment which shall be attached hereto. The total contract amount increases to \$541,698.97.

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 [\_\_\_\_ - \_\_\_\_]:

	<b>Aye</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>
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 \_\_\_\_\_, 2024.

\_\_\_\_\_  
GERARD HUDSPETH, MAYOR

ATTEST:  
JESUS SALAZAR, CITY SECRETARY

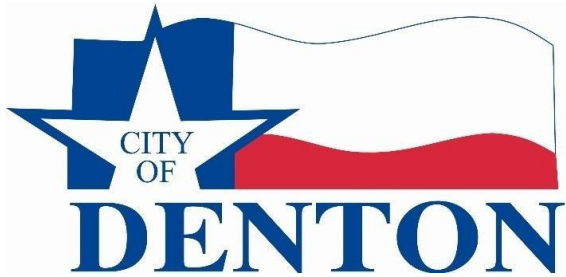
BY: \_\_\_\_\_

APPROVED AS TO LEGAL FORM:  
MACK REINWAND, CITY ATTORNEY

BY: \_

*Marcella Lunn*

Digitally signed by Marcella Lunn  
DN: dc=com, dc=cityofdenton,  
dc=codad, ou=Department Users  
~~and Groups, ou=General~~  
Government, ou=Legal,  
cn=Marcella Lunn,  
email=Marcella.Lunn@cityofdent  
on.com  
Date: 2024.03.08 13:06:30 -06'00'



Docusign City Council Transmittal Coversheet

PSA	5497
File Name	Fleet Services Facility Expansion Design Amendment #6
Purchasing Contact	Cori Power
City Council Target Date	
Piggy Back Option	Not Applicable
Contract Expiration	
Ordinance	

THE STATE OF TEXAS                   §  
   §  
 COUNTY OF DENTON                   §

**SIXTH AMENDMENT TO CONTRACT  
 BY AND BETWEEN THE CITY OF DENTON, TEXAS  
 AND NELSON+MORGAN ARCHTECTS, INC.  
 PSA 5497**

THIS SIXTH AMENDMENT TO CONTRACT (this “Sixth Amendment”) by and between the City of Denton, Texas (the “City”) and Nelson+Morgan Architects, Inc. (“Nelson+Morgan”) to that certain Contract executed on February 13, 2014, in the original not-to-exceed amount of \$24,840 (the “Original Agreement”); amended on August 27, 2015 in the additional amount of \$20,073.09 aggregating a not-to-exceed amount of \$44,913.09 (the “First Amendment”); amended on October 18, 2016 in the additional amount of \$158,035 aggregating a not-to-exceed amount of \$202,948.09 (the “Second Amendment”); amended on December 11, 2018 in the additional amount of \$139,871.88 aggregating a not-to-exceed amount of \$342,819.97 (the “Third Amendment”); amended on April 23, 2021 in the additional amount of \$9,320.00 aggregating a not-to-exceed amount of \$352,139.97 (the “Fourth Amendment”); amended on May 24, 2021 in the additional amount of \$18,260.00 aggregating a not-to-exceed amount of \$370,399.97 (the “Fifth Amendment”) (collectively, the Original Agreement, the First Amendment, the Second Amendment, the Third Amendment, the Fourth Amendment, and the Fifth Amendment are the “Agreement”) for services related to the architectural and engineering design services for the Fleet Services Facility Expansion project.

WHEREAS, the City deems it necessary to further expand the services provided by Architect to the City pursuant to the terms of the Agreement, and to provide an additional not-to-exceed amount \$171,299.00 with this Amendment for an aggregate not-to-exceed amount of \$541,698.97; and

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

NOW THEREFORE, the City and Architect (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 Fleet Services Facility Expansion project, are hereby authorized to be performed by Architect. For and in consideration of the additional services to be performed by Architect, the City agrees to pay, based on the cost estimate detail attached as Exhibit “A”, a total fee, including reimbursement for non-labor expenses an amount not to exceed \$171,299.00.

2. This Amendment modifies the Agreement amount to provide an additional \$171,299.00 for the additional services with a revised aggregate not to exceed total of \$541,698.97.

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 Architect, have each executed this Amendment electronically, by and through their respective duly authorized representatives and officers on this date \_\_\_\_\_.

“ARCHITECT”

NELSON+MORGAN ARCHTECTS,  
INC.

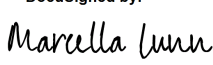
DocuSigned by:  
By:  President  
3AF33A7F55DFF4A6  
AUTHORIZED SIGNATURE, TITLE

“CITY”

CITY OF DENTON, TEXAS  
A Texas Municipal Corporation

By: \_\_\_\_\_

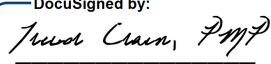
APPROVED AS TO LEGAL FORM:  
MACK REINWAND, CITY ATTORNEY

DocuSigned by:  
By:   
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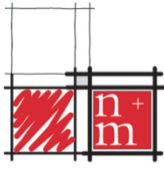
ATTEST:  
JESUS SALAZAR, CITY SECRETARY

By: \_\_\_\_\_

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

DocuSigned by:  
 Trevor Crain, PMP  
4B070831B4AA438...  
SIGNATURE PRINTED NAME  
Director of Capital Projects  
TITLE  
Engineering Services  
DEPARTMENT





NELSON + MORGAN

ARCHITECTS, INC.

October 5, 2023

Exhibit A

Aaron Skinner  
Project Manager  
City of Denton  
Via email: [aaron.skinner@cityofdenton.com](mailto:aaron.skinner@cityofdenton.com)

**RE: Fleet Services Expansion  
Additional Services – HVAC installation in Existing  
building, PR#6, PR#7, PR#8, PR#9, PR#11, Construction  
Administration  
NMA Project No. 18014  
City of Denton PSA 5497**

Aaron, below are the Additional Services necessary for us to design the HVAC system for the Fleet Services Expansion. I have also included the additional services for PR#6, PR#7, PR#8, PR#9, PR#11, and construction administration services.

#### Architectural Proposal for HVAC Installation in Existing Building

##### 1. Introduction:

We are pleased to submit our proposal for the addition of HVAC units to the existing building in compliance with the 2021 Energy Code. This will entail wall and ceiling insulation upgrades, structural designs for roof-mounted unit placements, and an informed opinion on probable costs. The existing HVAC systems will remain as they are.

##### 2. Project Scope:

###### 2.1 HVAC Installation

- Evaluate current ventilation and thermal needs.
- Selection of compatible HVAC units.
- Identification of installation sites, ensuring minimal disruption.

###### 2.2 Insulation Upgrade:

- Selection and installation of wall and ceiling insulation materials, as mandated by the 2021 Energy Code.
- Selection of suitable insulation materials based on regional requirements and building characteristics.

###### 2.3 Structural Considerations:

- Structural assessment of the existing roof to ensure its capability to support new HVAC units.
- Designing reinforcements or load redistributions, if necessary.

##### 3. Opinion of Probable Cost:

An itemized estimation will include:

- Costs of HVAC equipment and their installation.
- Insulation material and associated installation expenses.
- Structural modifications, if required.
- Additional expenses like electrical, plumbing, or ductwork adjustments.
- Contingencies.

#### 4. Additional Services (As Additive Alternates at the City of Denton's Option):

##### 4.1 Permitting:

- Coordination with local authorities.
- Submission of necessary documents and designs for permit approvals.
- Attending city meetings or reviews if required.

##### 4.2 Construction Administration:

- Coordination and quality control with contractors.
- Regular site inspections over an assumed duration of six months.
- Handling issues and offering timely resolutions.
- Reviewing and validating contractor's applications for payment.
- Overseeing the completion, including certificates, warranties, and the handover process.

#### 5. Timeline:

- Site Surveying: 1 week.
- Construction Documents: 6 weeks.
- Construction Administration: assume 6 months (if opted for by the City of Denton)

#### 6. Architect's Scope of Services:

##### Inclusions:

- Site survey and data collection.
- Wall and ceiling insulation recommendations and design.
- Coordination with HVAC, and structural consultants.
- Production of construction documents, including drawings and specifications.
- Regular coordination meetings with the client and associated contractors.

##### Exclusions:

- HVAC equipment or insulation material procurement.
- Fees for any third-party testing or inspections.
- Electrical or plumbing alterations not directly associated with the HVAC installation.
- Ongoing maintenance or post-warranty repairs of the HVAC system.

#### 8. Next Steps:

Please review and share feedback or modifications required. Upon agreement, we'll commence with the site surveying and move forward as per the mentioned timeline.

Proposal – Fleet Services Additional Services  
 October 5, 2023  
 Page 3 of 4

ADDITIONAL SERVICES - Fleet Services HVAC					
<b>Basic Services</b>					
Arch				\$ 15,000.00	
MEP				\$ 38,000.00	
Structural				\$ 2,500.00	
Estimating				\$ 3,000.00	
TOTAL BASIC SERVICES					\$ 58,500.00
<b>Add Alternate Services</b>					
Permitting					\$ 3,500.00
Construction Administration - assume 6 months					
Arch				\$ 15,000.00	
MEP				\$ 7,500.00	
SUBTOTAL					\$ 22,500.00
TOTAL ADDITIONAL SERVICE					\$ 84,500.00

## PR #6 – Access Control

ADDITIONAL SERVICES - PR #6 ACCESS CONTROL					
<b>Basic Services</b>					
PM	30.5	hrs	\$ 132.00	/hr	\$ 4,026.00
Drafting		hrs	\$ 100.00	/hr	
Principal		hrs	\$ 200.00	/hr	
<b>Subconsultants</b>					
HPMB					
Lobsinger & Potts					
markup			20%		
TOTAL ADDITIONAL SERVICE					\$ 4,026.00

## PR#7, #8, #9 – Compressor, Oil Distribution, IDF

Basic Services	PR #7 Compressor					PR #8 Oil Distribution					PR #9 IDF				
Principal	1	hrs	\$ 200	/hr	\$ 200	0.5	hrs	\$ 200	/hr	\$ 100	0.5	hrs	\$ 200	/hr	\$ 100
Project Manager	19.75	hrs	\$ 132	/hr	\$ 2,607	11	hrs	\$ 132	/hr	\$ 1,452	6	hrs	\$ 132	/hr	\$ 792
Drafting	4	hrs	\$ 100	/hr	\$ 400	1	hrs	\$ 100	/hr	\$ 100		hrs	\$ 100	/hr	
Subtotal					\$ 3,207					\$ 1,652					\$ 892
Subconsultants															
MEP Engineer	40	hrs	\$ 170	/hr	\$ 6,800						3	hrs	\$ 170	/hrs	\$ 510
Markup				20%	\$ 1,360								20%		\$ 102
Total					\$ 11,367					\$ 1,652					\$ 1,504
TOTAL ADDITIONAL SERVICE											\$ 14,523				

Proposal – Fleet Services Additional Services  
 October 5, 2023  
 Page 4 of 4

## PR#11 – Wash Bay Equipment

ADDITIONAL SERVICES - PR #11 WASH BAY EQUIPMENT					
<b>Basic Services</b>					
PM		8 hrs	\$ 132.00 /hr		\$ 1,056.00
Drafting		hrs	\$ 100.00 /hr		
Principal		hrs	\$ 200.00 /hr		
<b>Subconsultants</b>					
<b>HPMB</b>					
Principal		1 hrs	\$ 220.00		\$ 220.00
Design Engineer		4 hrs	\$ 170.00		\$ 680.00
Drafting		1 hrs	\$ 95.00		\$ 95.00
<b>Lobsinger &amp; Potts</b>					
markup			20%		\$ 199.00
<b>TOTAL ADDITIONAL SERVICE</b>					<b>\$ 2,250.00</b>

## Construction Administration

ADDITIONAL SERVICES - CONSTRUCTION ADMINISTRATION									
<b>Construction Administration</b>			Principal		PM		Staff		Staff
6/1/22-5/22/23	Pre Construction Meeting		3.50		3.50				\$ 1,162.00
	OAC Meetings		9.25		32.75				\$ 6,173.00
	Submittal Review/ASI's/PCO's/Punch		41.11		258.50		3.00		\$ 42,644.00
<b>TOTAL</b>									<b>\$ 49,979.00</b>
5/23/23-11/30/2023	OAC Meetings		3.00		21.00		0.75		\$ 3,447.00
	Submittal Review/ASI's/PCO's/Punch		48.71		128.25				\$ 26,671.00
<b>TOTAL</b>									<b>\$ 30,118.00</b>
	Rate			200 /hr		132 /hr		100 /hr	
<b>DISCOUNT</b>									\$ (14,097.00)
<b>TOTAL ADDITIONAL SERVICE</b>									<b>\$ 66,000.00</b>

## Additional Services Summary

ADDITIONAL SERVICES - FLEET SERVICES					
HVAC					\$ 84,500.00
PR#6 - Access Control					\$ 4,026.00
PR#7 - Compressor					\$ 11,367.00
PR#8 - Oil Distribution					\$ 1,652.00
PR#9 - IDF					\$ 1,504.00
PR#11 - Wash Bay					\$ 2,250.00
Construction Administration					\$ 66,000.00
<b>TOTAL ADDITIONAL SERVICES</b>					<b>\$ 171,299.00</b>

If you have any questions, please don't hesitate to give me a call.



Kelly D. Morgan, President

**Certificate Of Completion**

Envelope Id: C556B104FFE949DC827EB065DD40D02D

Status: Sent

Subject: Please DocuSign: City Council Contract 5497 Fleet Services Facility Expansion Design Amendment #6

Source Envelope:

Document Pages: 7

Signatures: 3

Envelope Originator:

Certificate Pages: 6

Initials: 1

Cori Power

AutoNav: Enabled

901B Texas Street

Envelopel Stamping: Enabled

Denton, TX 76209

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

cori.power@cityofdenton.com

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cori.power@cityofdenton.com

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

Cori Power

**Completed**

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cori.power@cityofdenton.com

Viewed: 2/29/2024 7:01:45 PM

Purchasing Supervisor

Signed: 2/29/2024 7:02:06 PM

City of Denton

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Lori Hewell



Sent: 2/29/2024 7:02:08 PM

lori.hewell@cityofdenton.com

Viewed: 3/1/2024 8:03:42 AM

Purchasing Manager

Signed: 3/1/2024 8:05:00 AM

City of Denton

Signature Adoption: Pre-selected Style

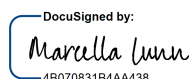
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Marcella Lunn



Sent: 3/1/2024 8:05:02 AM

marcella.lunn@cityofdenton.com

Viewed: 3/6/2024 10:36:17 AM

Senior Deputy City Attorney

Signed: 3/6/2024 10:44:31 AM

City of Denton

Signature Adoption: Pre-selected Style

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**Electronic Record and Signature Disclosure:**

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Kelly Morgan



Sent: 3/6/2024 10:44:33 AM

Kmorgan@nelsonmorgan.com

Viewed: 3/6/2024 10:46:03 AM

President

Signed: 3/6/2024 10:47:44 AM

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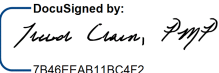
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Signer Events	Signature	Timestamp
<p>Trevor Crain, PMP</p> <p>Trevor.Crain@cityofdenton.com</p> <p>Director of Capital Projects</p> <p>City of Denton</p> <p>Security Level: Email, Account Authentication (None)</p>	<p>DocuSigned by:</p>  <p>7B46EEAB11BC4F2...</p> <p>Signature Adoption: Pre-selected Style</p> <p>Using IP Address: 198.49.140.10</p>	<p>Sent: 3/6/2024 10:47:48 AM</p> <p>Viewed: 3/6/2024 10:52:29 AM</p> <p>Signed: 3/6/2024 10:53:21 AM</p>

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

Sent: 3/6/2024 10:53:24 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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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)

Sent: 2/29/2024 7:02:08 PM

**COPIED**

**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

Carbon Copy Events	Status	Timestamp
Gretna Jones gretna.jones@cityofdenton.com Legal Secretary City of Denton Security Level: Email, Account Authentication (None) <b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign  City Secretary Office citysecretary@cityofdenton.com Security Level: Email, Account Authentication (None) <b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign  Aaron Skinner Aaron.Skinner@cityofdenton.com Security Level: Email, Account Authentication (None) <b>Electronic Record and Signature Disclosure:</b> Accepted: 2/29/2024 9:48:09 AM ID: 2ea99c06-680b-4a4d-b862-2925d2f211a3	<div>COPIED</div>	Sent: 3/6/2024 10:53:23 AM Viewed: 3/6/2024 1:04:23 PM
Witness Events	Signature	Timestamp
Notary Events	Signature	Timestamp
Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	2/29/2024 7:01:36 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](mailto: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](mailto: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](mailto: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](mailto: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"><li>•Allow per session cookies</li><li>•Users accessing the internet behind a Proxy Server must enable HTTP 1.1 settings via proxy connection</li></ul>

\*\* 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](http://www.cityofdenton.com)

## Legislation Text

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**File #:** ID 24-646, **Version:** 1

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### **AGENDA CAPTION**

Consider adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the approval of a second amendment to a Professional Services Agreement between the City of Denton and Coffman Associates, Inc., amending the contract approved by Purchasing on July 26, 2023, in the not-to-exceed amount of \$15,000.00; amended by Amendment 1 approved by City Council; said second amendment to provide additional objectives within the Scope of Work for the Airport Master Plan; providing for the expenditure of funds therefor; and providing an effective date (File 8133 - providing for an additional second amendment expenditure amount not-to-exceed \$788,644.00, with the total contract amount not-to-exceed \$874,894.00). The Airport Advisory Board recommends approval (5 - 0).



## AGENDA INFORMATION SHEET

**DEPARTMENT:** Procurement  
**ACM:** Cassey Ogden  
**DATE:** April 2, 2024

### **SUBJECT**

Consider adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the approval of a second amendment to a Professional Services Agreement between the City of Denton and Coffman Associates, Inc., amending the contract approved by Purchasing on July 26, 2023, in the not-to-exceed amount of \$15,000.00; amended by Amendment 1 approved by City Council; said second amendment to provide additional objectives within the Scope of Work for the Airport Master Plan; providing for the expenditure of funds therefor; and providing an effective date (File 8133 – providing for an additional second amendment expenditure amount not-to-exceed \$788,644.00, with the total contract amount not-to-exceed \$874,894.00). The Airport Advisory Board recommends approval (5 - 0).

### **STRATEGIC ALIGNMENT**

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

### **INFORMATION/BACKGROUND**

Growth of the Denton Enterprise Airport (“Airport”) in the last ten (10) years has resulted in the Airport being ranked 5<sup>th</sup> in the state and 59<sup>th</sup> in the country for operations (planes that land, and planes that take off from the Airport). The Airport Master Plan will create a 20-year outlook for the future of the airport, including strategic needs and opportunities. The plan will provide the City of Denton with a guide for future development and services that will satisfy aviation demands and be wholly compatible with the environment. Coffman Associates, Inc. (“Coffman”), was selected through a competitive process and will be completing the Airport Master Plan.

Required and generalized master planning objectives in the Scope of Services will include:

- To research factors likely to affect all air transportation demand segments at the Airport over the next twenty years including the development of forecasts of potential commercial, service, air cargo, general aviation operational, and basing demand.
- To determine the projected needs of airport users for the next twenty years, taking into consideration recent revisions to Federal Aviation Administration (FAA) design standards and the airport’s conformance requirements, global positioning system (GPS) approaches or other new technology, commercial passenger and cargo trends, and the impact of general aviation fleet transition on design standards.

- To recommend improvements that will enhance the landside area's ability to satisfy future aviation needs taking into consideration the potential for commercial passenger service, air cargo, advanced air mobility (AAM), and general aviation needs.
- To analyze the existing airfield system to determine the existing and ultimate runway lengths required to satisfy the airport's critical aircraft. This analysis will include future improvements necessary to aid in supporting forecast demand.
- To produce accurate base maps of existing and proposed facilities and updated Airport Layout Plan (ALP) drawings consistent with the FAA's Standard Operating Procedure sub-consultant contract agreements.
- Perform monthly budget invoicing and contract management.
- Provide general ongoing project coordination with airport/city staff. This task does not include any on-site meetings with staff but could include video, phone, or other distance meeting options.
- Provide general ongoing project coordination with the project management of sub-consultants.

Denton Enterprise Airport is receiving a grant through the FAA under the Infrastructure Investment and Jobs Act of 2021 (IIJA). This grant program authorizes \$1.2 trillion for transportation and infrastructure spending, with the Airport receiving grant allocations over 5 years, beginning in 2022. The Airport will be utilizing its 2022 IIJA funding of \$763,000 for the project, under which the grant will fund 90% of the Master Plan project cost, with the City providing the remaining 10%. The Texas Department of Transportation (TxDOT) will receive the funds from the FAA and administer reimbursement of the 90% grant funding directly to the City. The use of the IIJA grant requires the City to first provide full payment every month and receive a reimbursement within 30 days of notification of the City's payment.

Because the City must first submit payment before receiving reimbursement (which is different from the typical grant process), the Council must authorize the expenditure of the full amount. However, 90% of that amount will be reimbursed to the City.

### **PRIOR ACTION/REVIEW (Council, Boards, Commissions)**

On December 6, 2023, the Airport Advisory Board recommended approval of the first amendment (6-0).

On December 12, 2023, City Council approved Amendment No. 1 with Coffman Associates, Inc., in the not-to-exceed amount of \$71,250, for a total not-to-exceed amount of \$86,250. (Ordinance 23-2350).

On March 20, 2024, the Airport Advisory Board recommended approval of the second amendment (5-0).

### **RECOMMENDATION**

Award Amendment No. 2 with Coffman Associates, Inc., to provide additional objectives within the Scope of Work for the Airport Master Plan, in a not-to-exceed amount of \$788,644, for a total amended contract amount of \$874,894.

### **PRINCIPAL PLACE OF BUSINESS**

Coffman Associates, Inc.  
Kansas City, KS

### **ESTIMATED SCHEDULE OF PROJECT**

The proposed scope of services and work plan is eighteen (18) months.

## **FISCAL INFORMATION**

This funding is available in the Airport Enterprise Fund project account 200082565.10100. The FAA IIJA Grant will reimburse the Airport \$709,779.60, making the final cost to the Airport \$78,864.40. The funds will not impact the Airport Operating fund balance.

## **EXHIBITS**

Exhibit 1: Agenda Information Sheet

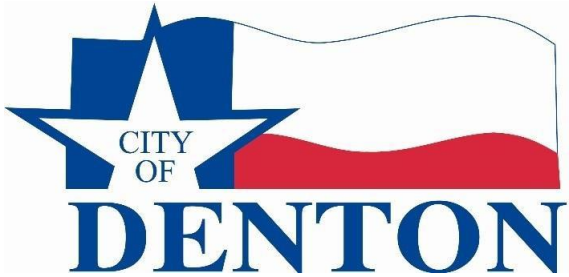
Exhibit 2: Contract, Ordinance, and Amendment 1

Exhibit 3: Ordinance and Amendment 2

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

For information concerning this acquisition, contact: Ryan Adams, 940-349-7744.

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



DocuSign Transmittal Coversheet

File Name	8133 Airport Planning Services
Purchasing Contact	Gabby Leeper
Contract Expiration	7/26/2023

**PROFESSIONAL SERVICES AGREEMENT  
FOR CONSULTING SERVICES  
FILE 8133**

STATE OF TEXAS                   §

COUNTY OF DENTON           §

THIS AGREEMENT (the “Agreement”) is made and entered into on 7/26/2023, by and between the City of Denton, Texas, a Texas municipal corporation, with its principal office at 215 East McKinney Street, Denton, Denton County, Texas 76201, hereinafter called “OWNER” and Coffman Associates, Inc., with its corporate office at 12920 Metcalf Avenue, Suite 200 Overland Park, KS 66213, hereinafter called “CONSULTANT,” acting herein, by and through their duly authorized representatives.

WITNESSETH, that in consideration of the covenants and agreements herein contained, the parties hereto do mutually agree as follows:

**ARTICLE I  
CONSULTANT AS INDEPENDENT CONTRACTOR**

The OWNER has selected CONSULTANT on the basis of demonstrated competence and qualifications to perform the services herein described for a fair and reasonable price pursuant to Chapter 2254 of the Texas Government Code. The OWNER hereby contracts with the CONSULTANT as an independent contractor and not as an employee, and as such, the OWNER will not assert control over the day-to-day operations of the CONSULTANT. The CONSULTANT is customarily engaged to provide services as described herein independently and on a nonexclusive basis in the course of its business. This Agreement does not in any way constitute a joint venture between OWNER and CONSULTANT. The CONSULTANT hereby agrees to perform the services described herein based on the skills required for the scope of work in connection with the Project as stated in the sections to follow, with diligence and in accordance with the highest professional standards customarily obtained for such services in the State of Texas. The professional services set out herein are in connection with the following described project:

The Project shall include, without limitation, Airport Planning Services, as described in Exhibit A, which is on file at the purchasing office (the “Project”).

**ARTICLE II  
SCOPE OF BASIC SERVICES**

The CONSULTANT shall perform the following services in a professional manner:



- A. The CONSULTANT shall perform all those services as necessary and as described in the OWNER's RFQ 8133- Airport Planning Services, which is on file at the purchasing office and made a part hereof as Exhibit A as if written word for word herein
- B. To perform all those services set forth in CONSULTANT's proposal for task order 1, which proposal is attached hereto and made a part hereof as Exhibit B as if written word for word herein.
- C. CONSULTANT shall perform all those services set forth in individual task orders, as described in Exhibit B, and task orders agreed to in writing by OWNER and CONSULTANT after the execution of this Agreement which shall be attached to this Agreement and made a part hereof.
- D. If there is any conflict between the terms of this Agreement and the exhibits attached to this Agreement, the terms and conditions of this Agreement will control over the terms and conditions of the attached exhibits or task orders.

### **ARTICLE III** **ADDITIONAL SERVICES**

Additional services to be performed by the CONSULTANT, if authorized by the OWNER, which are not included in the above-described Basic Services, may be negotiated as needed, per rates included in Exhibit C.

- A. Preparing applications and supporting documents for government grants, loans, or planning advances and providing data for detailed applications.
- B. Preparing data and reports for assistance to OWNER in preparation for hearings before regulatory agencies, courts, arbitration panels or mediator, giving testimony, personally or by deposition, and preparations therefore before any regulatory agency, court, arbitration panel or mediator.
- C. Assisting OWNER in preparing for, or appearing at litigation, mediation, arbitration, dispute review boards, or other legal and/or administrative proceedings in the defense or prosecution of claims disputes with Contractor(s).
- D. Assisting OWNER in the defense or prosecution of litigation in connection with or in addition to those services contemplated by this AGREEMENT. Such services, if any, shall be furnished by CONSULTANT on a fee basis negotiated by the respective parties outside of and in addition to this AGREEMENT.
- E. Visits to the site in excess of the number of trips included in Exhibit B.
- F. Preparing statements for invoicing or other documentation for billing other than for the standard invoice for services attached to this professional services agreement.

#### **ARTICLE IV**

#### **TIME OF COMPLETION**

CONSULTANT is authorized to commence work under this contract upon execution of this AGREEMENT. CONSULTANT shall perform and complete its obligations herein in a prompt and continuous manner, so as to not delay the completion of the Project in accordance with the schedules as described in **Exhibit A**. The contract shall remain effective for a three (3) year period with the option for two (2) additional one (1) year extensions, in the total of a five (5) year term, acceptance by an authorized representative of the OWNER, exhaustion of authorized funds, or termination as provided in this Agreement, whichever occurs first.

#### **ARTICLE V**

#### **COMPENSATION**

**A. COMPENSATION TERMS:**

1. "Subcontract Expense" is defined as expenses incurred by the CONSULTANT in employment of others in outside firms for services related to this agreement.
2. "Direct Non-Labor Expense" is defined as that expense for any assignment incurred by the CONSULTANT for supplies, transportation and equipment, travel, communications, subsistence, and lodging away from home, and similar incidental expenses in connection with that assignment.

**B. BILLING AND PAYMENT:** For and in consideration of the professional services to be performed by the CONSULTANT herein, the OWNER agrees to pay, based on the cost estimate detail at an hourly rate shown in **Exhibit B** which is attached hereto and made a part of this Agreement as if written word for word herein, a total fee, including reimbursement for direct non-labor expenses not to exceed **\$15,000**.

Partial payments to the CONSULTANT will be made on the basis of detailed monthly statements rendered to and approved by the OWNER through its City Manager or his designee; however, under no circumstances shall any monthly statement for services exceed the value of the work performed at the time a statement is rendered.

Nothing contained in this Article shall require the OWNER to pay for any work which is unsatisfactory, as reasonably determined by the City Manager or his designee, or which is not submitted in compliance with the terms of this Agreement. The OWNER shall not be required to make any payments to the CONSULTANT when the CONSULTANT is in default under this Agreement.

It is specifically understood and agreed that the CONSULTANT shall not be authorized to undertake any work pursuant to this Agreement which would require additional payments by the OWNER for any charge, expense, or reimbursement above the maximum not to exceed fee as stated, without first having obtained written authorization from the OWNER. The CONSULTANT shall not proceed to perform the services listed

in Article III “Additional Services,” without obtaining prior written authorization from the OWNER.

- C. **ADDITIONAL SERVICES:** For additional services authorized in writing by the OWNER in Article III, the CONSULTANT shall be paid based on the Schedule of Charges at an hourly rate shown in **Exhibit C**. Payments for additional services shall be due and payable upon submission by the CONSULTANT and approval by the City staff, and shall be in accordance with subsection B hereof. Statements shall not be submitted more frequently than monthly.
- D. **PAYMENT:** If the OWNER fails to make payments due the CONSULTANT for services and expenses within thirty (30) days after receipt of the CONSULTANT’s undisputed statement thereof, the amounts due the CONSULTANT will be paid interest in accordance with the Texas Government Code 2251.025. Additionally, the CONSULTANT may, after giving seven (7) days’ written notice to the OWNER, suspend services under this Agreement until the CONSULTANT has been paid in full all amounts due for services, expenses, and charges. Nothing herein shall require the OWNER to pay the late charge if the OWNER reasonably determines that the work is unsatisfactory, in accordance with this Article V, “Compensation,” there is a bona fide dispute concerning the amount due, or the invoice was not mailed to the address or in the form as described in this Agreement. The OWNER will notify CONSULTANT of any disputes within twenty-one (21) days of receipt of the invoice.
- E. **Invoices** shall be sent directly to the City of Denton Accounts Payable Department, 215 E McKinney St, Denton, TX, 76201-4299. A pro-forma invoice shall be sent to the contract administrator. It is the intention of the City of Denton to make payment on completed orders within thirty days after receipt of invoice or items; whichever is later, unless unusual circumstances arise. **Invoices must be fully documented as to labor, materials, and equipment provided, if applicable, and must reference the City of Denton Purchase Order Number in order to be processed. No payments shall be made on invoices not listing a Purchase Order Number.**

## **ARTICLE VI** **OBSERVATION AND REVIEW OF THE WORK**

The CONSULTANT will exercise reasonable care and due diligence in discovering and promptly reporting to the OWNER any defects or deficiencies in the work of the CONSULTANT or any subcontractors or subconsultants.

## **ARTICLE VII** **OWNERSHIP OF DOCUMENTS**

All documents prepared or furnished by the CONSULTANT (and CONSULTANT’s subcontractors or subconsultants) pursuant to this Agreement are instruments of service, and shall become the property of the OWNER upon the termination of this Agreement. The CONSULTANT is entitled to retain copies of all such documents. The documents prepared and

furnished by the CONSULTANT are intended only to be applicable to this Project, and OWNER's use of these documents in other projects shall be at OWNER's sole risk and expense. In the event the OWNER uses any of the information or materials developed pursuant to this Agreement in another project or for other purposes than specified herein, CONSULTANT is released from any and all liability relating to their use in that project.

## **ARTICLE VIII** **INDEMNITY AGREEMENT**

**THE CONSULTANT SHALL INDEMNIFY AND SAVE AND HOLD HARMLESS THE OWNER AND ITS OFFICERS, OFFICIALS, AGENTS, AND EMPLOYEES FROM AND AGAINST ANY AND ALL LIABILITY, CLAIMS, DEMANDS, DAMAGES, LOSSES, AND EXPENSES, INCLUDING, BUT NOT LIMITED TO COURT COSTS AND REASONABLE ATTORNEY FEES ASSERTED AGAINST OR INCURRED BY THE OWNER, AND INCLUDING, WITHOUT LIMITATION, DAMAGES FOR BODILY AND PERSONAL INJURY, DEATH AND PROPERTY DAMAGE, RESULTING FROM THE NEGLIGENT ACTS OR OMISSIONS OF THE CONSULTANT OR ITS OFFICERS, SHAREHOLDERS, AGENTS, OR EMPLOYEES INCIDENTAL TO, RELATED TO, AND IN THE EXECUTION, OPERATION, OR PERFORMANCE OF THIS AGREEMENT.**

Nothing in this Agreement shall be construed to create a liability to any person who is not a party to this Agreement, and nothing herein shall waive any of the parties' defenses, both at law or equity, to any claim, cause of action, or litigation filed by anyone not a party to this Agreement, including the defense of governmental immunity, which defenses are hereby expressly reserved.

## **ARTICLE IX** **INSURANCE**

During the performance of the services under this Agreement, CONSULTANT shall maintain insurance in compliance with the requirements of **Exhibit D** which is attached hereto and made a part of this Agreement as if written word for word herein.

## **ARTICLE X** **ALTERNATIVE DISPUTE RESOLUTION**

The parties may agree to settle any disputes under this Agreement by submitting the dispute to mediation with each party bearing its own costs of mediation. No mediation arising out of or relating to this Agreement, involving one party's disagreement may include the other party to the disagreement without the other's approval. Mediation will not be a condition precedent to suit.

## **ARTICLE XI** **TERMINATION OF AGREEMENT**

- A. Notwithstanding any other provision of this Agreement, either party may terminate by giving thirty (30) days' advance written notice to the other party.
- B. This Agreement may be terminated in whole or in part in the event of either party substantially failing to fulfill its obligations under this Agreement. No such termination will be affected unless the other party is given (1) written notice (delivered by certified mail, return receipt requested) of intent to terminate and setting forth the reasons specifying the non-performance, and not less than fifteen (15) calendar days to cure the failure; and (2) an opportunity for consultation with the terminating party prior to termination.
- C. If the Agreement is terminated prior to completion of the services to be provided hereunder, CONSULTANT shall immediately cease all services and shall render a final bill for services to the OWNER within thirty (30) days after the date of termination. The OWNER shall pay CONSULTANT for all services properly rendered and satisfactorily performed and for reimbursable expenses to termination incurred prior to the date of termination, in accordance with Article V "Compensation." Should the OWNER subsequently contract with a new consultant for the continuation of services on the Project, CONSULTANT shall cooperate in providing information. The CONSULTANT shall turn over all documents prepared or furnished by CONSULTANT pursuant to this Agreement to the OWNER on or before the date of termination, but may maintain copies of such documents for its use.

## **ARTICLE XII**

### **RESPONSIBILITY FOR CLAIMS AND LIABILITIES**

Approval by the OWNER shall not constitute, nor be deemed a release of the responsibility and liability of the CONSULTANT, its employees, associates, agents, subcontractors, and subconsultants for the accuracy and competency of their designs or other work; nor shall such approval be deemed to be an assumption of such responsibility by the OWNER for any defect in the design or other work prepared by the CONSULTANT, its employees, subcontractors, agents, and consultants.

## **ARTICLE XIII**

### **NOTICES**

All notices, communications, and reports required or permitted under this Agreement shall be personally delivered or mailed to the respective parties by depositing same in the United States mail to the address shown below, certified mail, return receipt requested, unless otherwise specified herein. Mailed notices shall be deemed communicated as of three (3) days' mailing:

To CONSULTANT:

Coffman Associates, Inc  
Eric Pfeifer  
12920 Metcalf Ave Suite 200  
Overland Park KS, 66213

To OWNER:

City of Denton  
Purchasing Manager –File 8133  
901B Texas Street  
Denton, Texas 76201

All notices shall be deemed effective upon receipt by the party to whom such notice is given, or within three (3) days' mailing.

**ARTICLE XIV**  
**ENTIRE AGREEMENT**

This Agreement and related exhibits constitute the complete and final expression of this Agreement of the parties, and is intended as a complete and exclusive statement of the terms of their agreements, and supersedes all prior contemporaneous offers, promises, representations, negotiations, discussions, communications, and agreements which may have been made in connection with the subject matter hereof.

**ARTICLE XV**  
**SEVERABILITY**

If any provision of this Agreement is found or deemed by a court of competent jurisdiction to be invalid or unenforceable, it shall be considered severable from the remainder of this Agreement and shall not cause the remainder to be invalid or unenforceable. In such event, the parties shall reform this Agreement to replace such stricken provision with a valid and enforceable provision which comes as close as possible to expressing the intention of the stricken provision.

**ARTICLE XVI**  
**COMPLIANCE WITH LAWS**

The CONSULTANT shall comply with all federal, state, and local laws, rules, regulations, and ordinances applicable to the work covered hereunder as those laws may now read or hereinafter be amended.

**ARTICLE XVII**  
**DISCRIMINATION PROHIBITED**

In performing the services required hereunder, the CONSULTANT shall not discriminate against any person on the basis of race, color, religion, sex, sexual orientation, national origin or ancestry, age, or physical handicap.

**ARTICLE XVIII**  
**PERSONNEL**

- A. The CONSULTANT represents that it has or will secure, at its own expense, all personnel required to perform all the services required under this Agreement. Such personnel shall not be employees or officers of, or have any contractual relations with the OWNER. CONSULTANT shall inform the OWNER of any conflict of interest or potential conflict of interest that may arise during the term of this Agreement.
- B. All services required hereunder will be performed by the CONSULTANT or under its supervision. All personnel engaged in work shall be qualified, and shall be authorized and permitted under state and local laws to perform such services.

### **ARTICLE XIX** **ASSIGNABILITY**

The CONSULTANT acknowledges that this Agreement is based on the demonstrated competence and specific qualifications of the CONSULTANT and is therefore personal as to the CONSULTANT. Therefore, the CONSULTANT shall not assign any interest in this Agreement, and shall not transfer any interest in this Agreement (whether by assignment, novation, or otherwise) without the prior written consent of the OWNER.

### **ARTICLE XX** **MODIFICATION**

No waiver or modification of this Agreement or of any covenant, condition, or limitation herein contained shall be valid unless in writing and duly executed by the party to be charged therewith, and no evidence of any waiver or modification shall be offered or received in evidence in any proceeding arising between the parties hereto out of or affecting this Agreement, or the rights or obligations of the parties hereunder, and unless such waiver or modification is in writing and duly executed; and the parties further agree that the provisions of this section will not be waived unless as set forth herein.

### **ARTICLE XXI** **MISCELLANEOUS**

- A. The following exhibits are attached to and made a part of this Agreement:

Exhibit A- RFQ 8133- Airport Planning Service (on file at the purchasing office)  
 Exhibit B- Consultant's Scope of Services Offer and Project Schedule  
 Exhibit C- Consultant's Compensation Rate Sheet  
 Exhibit D- Consultant's Insurance Requirements

What is called for by one exhibit shall be as binding as if called for by all. In the event of an inconsistency or conflict in this Agreement and any of the provisions of the exhibits, the inconsistency or conflict shall be resolved by giving precedence first to this Agreement then to the exhibits in the order in which they are listed above.

- B. This Agreement shall be governed by, construed, and enforced in accordance with, and subject to, the laws of the State of Texas or federal law, where applicable, without regard to the conflict of law principles of any jurisdiction. In the event there shall be any dispute arising out of the terms and conditions of, or in connection with, this Agreement, the party seeking relief shall submit such dispute to the District Courts of Denton County or if federal diversity or subject matter jurisdiction exists, to the United States District Court for the Eastern District of Texas-Sherman Division.
- C. For the purpose of this Agreement, the key persons who will perform most of the work hereunder shall be Eric Pfeifer. However, nothing herein shall limit CONSULTANT from using other equally qualified and competent members of its firm to perform the services required herein.
- D. CONSULTANT shall commence, carry on, and complete any and all projects with all applicable dispatch, in a sound, economical, and efficient manner and in accordance with the provisions hereof. In accomplishing the projects, CONSULTANT shall take such steps as are appropriate to ensure that the work involved is properly coordinated with related work being carried on by the OWNER.
- E. The OWNER shall assist the CONSULTANT by placing at the CONSULTANT's disposal all available information pertinent to the Project, including previous reports, any other data relative to the Project, and arranging for the access thereto, and make all provisions for the CONSULTANT to enter in or upon public and private property as required for the CONSULTANT to perform services under this Agreement.
- F. The captions of this Agreement are for informational purposes only, and shall not in any way affect the substantive terms or conditions of this Agreement.
- G. 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.

## **ARTICLE XXII**

### **INDEPENDENT CONTRACTOR**

CONSULTANT shall provide services to OWNER as an independent contractor, not as an employee of the OWNER. CONSULTANT shall not have or claim any right arising from employee status.

## **ARTICLE XXIII**

### **RIGHT TO AUDIT**



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

Failure to comply with the provisions of this section shall be a material breach of this contract and shall constitute, in the OWNER'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.

#### **ARTICLE XXIV**

##### **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.

#### **ARTICLE XXV**

##### **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.

**ARTICLE XXVI****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.

**ARTICLE XXVII****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.

**ARTICLE XXVIII****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.

**ARTICLE XXIX**  
**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 Consultant shall complete and submit the City's Conflict of Interest Questionnaire.

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 HEREOF, the City of Denton, Texas has caused this Agreement to be executed by its duly authorized City Manager, and CONSULTANT has executed this Agreement through its duly authorized undersigned officer on this date 7/26/2023.

**CONSULTANT**

DocuSigned by:  
BY: Mike Dmyterko  
AUTHORIZED SIGNATURE

Printed Name: Mike Dmyterko

Title: President

816-524-3500  
PHONE NUMBER

miked@coffmanassociates.com  
EMAIL ADDRESS

**CITY OF DENTON, TEXAS**

DocuSigned by:  
BY: Gabby Leeper  
0C35AF55752440F...

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

DocuSigned by:  
Scott Gray Scott Gray  
SIGNATURE PRINTED NAME

Airport Director  
TITLE

Airport  
DEPARTMENT

July 18, 2023

Mr. Scott T Gray, C.M., C.A.E.  
Airport Director  
Denton Enterprise Airport  
5000 Airport Road  
Denton, TX 76207-0207

**RE: General Services Support for Denton Enterprise Airport**

Dear Mr. Gray,

Coffman Associates is pleased to submit this proposal to the City of Denton (Sponsor) to provide professional airport consulting services for the Denton Enterprise Airport.

**SCOPE OF SERVICES**

---

Specific tasks in this Scope will be:

- General Services
  - Grant Administration
  - Project Coordination
  - Funding Agency Coordination
  - Project Site Plan Reviews
  - Conceptual Layouts
  - Project Supportive Graphics

**COST PROPOSAL**

The cost for this project will be billed on a time and materials basis, plus standard reimbursable expenses based on the following hourly rates **not to exceed Fifteen Thousand Dollars (\$15,000)**. Services will be billed monthly, and invoices are payable within 30 days of receipt. All hourly rates are effective until December 31, 2023, and are subject to revision following this date.

Coffman Associates Hourly Rates:

- Principal - \$303.00
- Senior Professional/Project Manager - \$279.00
- Professional - \$166.00
- Technical/Support - \$118.00

Scott Gray  
July 18, 2023  
Page Two

**ACCEPTANCE**

If this proposal is acceptable, please indicate by signing and dating below and returning a copy for our files. Coffman Associates will not undertake any work beyond the currently approved scope and cost without prior written approval.

We hope this proposal meets with your approval. In the meantime, if you have any questions or need additional information, please do not hesitate to contact me at 816-524-3500.

Thank you for the opportunity to provide our services and we look forward to hearing back from you soon.

Sincerely,



Eric Pfeifer  
Principal

**ACCEPTANCE BY CLIENT:**

DocuSigned by:  
Signature: Gabby Leeper  
0C35AF55752440F...  
Printed Name: Gabby Leeper  
Organization: City of Denton  
Title: Buyer  
Date: 7/26/2023

Exhibit C  
**COFFMAN ASSOCIATES, INC.**  
**FEE SCHEDULE \***  
**January 1, 2023 – December 31, 2023**

<b><u>Employee Category</u></b>	<b><u>Hourly Rate</u></b>
Principal-In-Charge .....	\$ 303.00
Senior Professional/Project Manager .....	\$ 279.00
Professional .....	\$ 166.00
Technical/Support .....	\$ 118.00

<b><u>Employee Category</u></b>	<b><u>Daily Rate</u></b>
Principal-In-Charge .....	\$ 2,424.00
Senior Professional/Project Manager .....	\$ 2,232.00
Professional .....	\$ 1,328.00
Technical/Support .....	\$ 944.00

\* This Fee Schedule shall be in effect until December 31, 2023. Following this date, a new Fee Schedule will be submitted.

## Exhibit D

## CITY OF DENTON INSURANCE REQUIREMENTS FOR CONTRACTORS

*Bidder's attention is directed to the insurance requirements below. It is highly recommended that bidders confer with their respective insurance carriers or brokers to determine in advance of Bid submission the availability of insurance certificates and endorsements as prescribed and provided herein. If an apparent low bidder fails to comply strictly with the insurance requirements, that bidder may be disqualified from award of the contract. Upon bid award, all insurance requirements shall become contractual obligations, which the successful bidder 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 bid award, Contractor shall file with the Purchasing Department satisfactory certificates of insurance, containing the bid 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 bid opening, since the insurance requirements may not be modified or waived after bid opening unless a written exception has been submitted with the 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- VII or better**.
- Any deductibles or self-insured retentions shall be declared in the bid 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 before the expiration date.***
  - Should any of the required insurance be provided under a claims-made form, Contractor shall maintain such coverage continuously throughout the term of this contract and, without lapse, for a period of three years beyond the contract expiration, such that occurrences arising during the contract term which give rise to claims made after expiration of the contract shall be covered.
  - Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit providing for claims investigation or legal defense costs to be included in the general annual aggregate limit, the Contractor shall either double the occurrence limits or obtain Owners and Contractors Protective Liability Insurance.
  - Should any required insurance lapse during the contract term, requests for payments originating after such lapse shall not be processed until the City receives satisfactory evidence of reinstated coverage as required by this contract, effective as of the lapse date. If insurance is not reinstated, City may, at its sole option, terminate this agreement effective on the date of the lapse.

#### **SPECIFIC ADDITIONAL INSURANCE REQUIREMENTS:**

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

#### **[X] A. General Liability Insurance:**

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

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

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

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

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

**[X] Automobile Liability Insurance:**

Contractor shall provide Commercial Automobile Liability insurance with Combined Single Limits (CSL) of not less than **\$500,000.00** either in a single policy or in a combination of basic and umbrella or excess policies. The policy will include bodily injury and property damage liability arising out of the operation, maintenance and use of all automobiles and mobile equipment used in conjunction with this contract.

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

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

**[X] Workers' Compensation Insurance**

Contractor shall purchase and maintain Worker's Compensation insurance which, in addition to meeting the minimum statutory requirements for issuance of such insurance,

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

☐ **Owner's and Contractor's Protective Liability Insurance**

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

☒ **Professional Liability Insurance**

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

☐ **Builders' Risk Insurance**

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

☐ **Commercial Crime**

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

☐ **Additional Insurance**

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

## ATTACHMENT 1

### [ ] **Workers' Compensation Coverage for Building or Construction Projects for Governmental Entities**

#### A. Definitions:

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

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

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

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

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

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

**Certificate Of Completion**

Envelope Id: 4A3F176B20FF400D95DA9284C4CFD346

Status: Completed

Subject: \*\*\*Purchasing Approval\*\*\*8133 Airport Master Planning Services

Source Envelope:

Document Pages: 24

Signatures: 4

Envelope Originator:

Certificate Pages: 5

Initials: 1

Gabby Leeper

AutoNav: Enabled

901B Texas Street

Envelopeld Stamping: Enabled

Denton, TX 76209

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

Gabby.Leeper@cityofdenton.com

IP Address: 198.49.140.10

**Record Tracking**

Status: Original

Holder: Gabby Leeper

Location: DocuSign

7/25/2023 9:58:42 AM

Gabby.Leeper@cityofdenton.com

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

Gabby Leeper

**Completed**

Sent: 7/25/2023 10:23:25 AM

gabby.leeper@cityofdenton.com

Viewed: 7/25/2023 10:23:34 AM

Buyer

Signed: 7/25/2023 10:23:45 AM

City of Denton

Using IP Address: 198.49.140.10

Security Level: Email, Account Authentication  
(None)**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

Lori Hewell



Sent: 7/25/2023 10:23:46 AM

lori.hewell@cityofdenton.com

Viewed: 7/25/2023 3:06:37 PM

Purchasing Manager

Signed: 7/25/2023 3:07:33 PM

City of Denton

Signature Adoption: Pre-selected Style

Security Level: Email, Account Authentication  
(None)

Using IP Address: 198.49.140.104

**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

Mike Dmyterko



Sent: 7/25/2023 3:07:35 PM

miked@coffmanassociates.com

Viewed: 7/26/2023 7:19:23 AM

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(None)

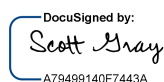
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Scott Gray



Sent: 7/26/2023 7:19:43 AM

scott.gray@cityofdenton.com

Viewed: 7/26/2023 7:29:15 AM

Airport Director

Signed: 7/26/2023 7:29:45 AM

x

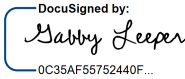
Signature Adoption: Pre-selected Style

Security Level: Email, Account Authentication  
(None)

Using IP Address: 66.52.82.51

Signed using mobile

**Electronic Record and Signature Disclosure:**  
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ID: 26fdd4fc-8f24-4dc0-9b72-fbe17b43af40

Signer Events	Signature	Timestamp
Gabby Leeper gabby.leeper@cityofdenton.com Buyer City of Denton Security Level: Email, Account Authentication (None)	 Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.10	Sent: 7/26/2023 7:29:47 AM Viewed: 7/26/2023 8:49:46 AM Signed: 7/26/2023 8:49:58 AM

**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

In Person Signer Events	Signature	Timestamp
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Editor Delivery Events	Status	Timestamp
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Agent Delivery Events	Status	Timestamp
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Intermediary Delivery Events	Status	Timestamp
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Certified Delivery Events	Status	Timestamp
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Carbon Copy Events	Status	Timestamp
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Cheyenne Defee cheyenne.defee@cityofdenton.com Procurement Administration Supervisor City of Denton Security Level: Email, Account Authentication (None)		Sent: 7/26/2023 8:50:00 AM
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**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

Witness Events	Signature	Timestamp
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Notary Events	Signature	Timestamp
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Envelope Summary Events	Status	Timestamps
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Certified Delivered	Security Checked	7/26/2023 8:49:46 AM
Signing Complete	Security Checked	7/26/2023 8:49:58 AM
Completed	Security Checked	7/26/2023 8:50:00 AM

Payment Events	Status	Timestamps
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Electronic Record and Signature Disclosure
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## **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.

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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.

### **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](mailto: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](mailto: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](mailto: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](mailto:purchasing@cityofdenton.com) and in the body of such request you must state your e-mail, full name, IS 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"><li>•Allow per session cookies</li><li>•Users accessing the internet behind a Proxy Server must enable HTTP 1.1 settings via proxy connection</li></ul>

\*\* 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.

ORDINANCE NO. 23-2350

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 COFFMAN ASSOCIATES, INC., AMENDING THE CONTRACT APPROVED BY PURCHASING ON JULY 26, 2023, IN THE NOT-TO-EXCEED AMOUNT OF \$15,000.00; SAID FIRST AMENDMENT TO CONTINUE TO PROVIDE A FINANCIAL ANALYSIS FOR THE AIRPORT; PROVIDING FOR THE EXPENDITURE OF FUNDS THEREFOR; AND PROVIDING AN EFFECTIVE DATE (RFQ 8133 – PROVIDING FOR AN ADDITIONAL FIRST AMENDMENT EXPENDITURE AMOUNT NOT-TO-EXCEED \$71,250.00, WITH THE TOTAL CONTRACT AMOUNT NOT-TO-EXCEED \$86,250.00).

WHEREAS, on July 26, 2023, Purchasing awarded a contract to Coffman Associates, Inc. in the amount of \$15,000.00, for a financial analysis for the Airport; 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 Coffman Associates, Inc., which is on file in the office of the Purchasing Agent, in the amount of Seventy-One Thousand Two Hundred Fifty and 0/100 (\$71,250.00) 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 \$86,250.00.

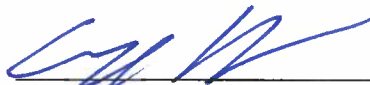
SECTION 2. This ordinance shall become effective immediately upon its passage and approval.

The motion to approve this ordinance was made by Gerard Hudspeth and seconded by Brendan Chase McGee. This ordinance was passed and approved by the following vote [6 - 0]:

	Aye	Nay	Abstain	Absent
Mayor Gerard Hudspeth:	<u>✓</u>	<u>      </u>	<u>      </u>	<u>      </u>
Vicki Byrd, District 1:	<u>✓</u>	<u>      </u>	<u>      </u>	<u>      </u>
Brian Beck, District 2:	<u>✓</u>	<u>      </u>	<u>      </u>	<u>      </u>

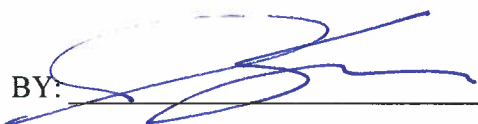
Paul Meltzer, District 3:	<u>✓</u>	<u>        </u>	<u>        </u>	<u>        </u>
Joe Holland, District 4:	<u>✓</u>	<u>        </u>	<u>        </u>	<u>        </u>
Brandon Chase McGee, At Large Place 5:	<u>✓</u>	<u>        </u>	<u>        </u>	<u>        </u>
Chris Watts, At Large Place 6:	<u>        </u>	<u>        </u>	<u>        </u>	<u>✓</u>

PASSED AND APPROVED this the 12<sup>th</sup> day of December, 2023.



GERARD HUDSPETH, MAYOR

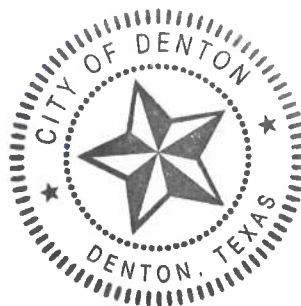
ATTEST:  
JESUS SALAZAR, CITY SECRETARY

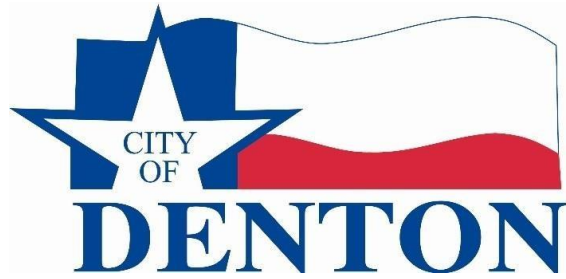
BY: 

APPROVED AS TO LEGAL FORM:  
MACK REINWAND, CITY ATTORNEY

BY: Marcella Lunn

Digitally signed by Marcella Lunn  
DN: dc=com, dc=cityofdenton,  
dc=codad, ou=Department Users  
and Groups, ou=General  
Government, ou=Legal,  
cn=Marcella Lunn,  
email=Marcella.Lunn@cityofdenton.com  
Date: 2023.11.29 20:57:53 -06'00'





## DocuSign City Council Transmittal Coversheet

RFQ	8133
File Name	Airport Master Plan
Purchasing Contact	Christina Dormady
City Council Target Date	DECEMBER 12, 2023
Piggy Back Option	Not Applicable
Contract Expiration	JULY 26, 2028
Ordinance	23-2350

**FIRST AMENDMENT TO CONTRACT  
BY AND BETWEEN THE CITY OF DENTON, TEXAS  
AND COFFMAN ASSOCIATES, INC.  
PSA 8133**

THE STATE OF TEXAS                   §

COUNTY OF DENTON                   §

THIS FIRST AMENDMENT TO CONTRACT 8133 (“Amendment”) by and between the City of Denton, Texas (“City”) and **COFFMAN ASSOCIATES, INC.** (“Consultant”); to that certain contract executed on July 26, 2023, in the original not-to-exceed amount of \$15,000 (the “Agreement”); for services related to **Airport Master Planning Services**.

WHEREAS, the City deems it necessary to further expand the services provided by Consultant to the City pursuant to the terms of the Agreement, and to provide an additional not-to-exceed amount \$71,250 with this Amendment for an aggregate not-to-exceed amount of \$86,250; and

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

NOW THEREFORE, the City and Consultant (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 **Airport Master Planning Services**, are hereby authorized to be performed by Consultant. For and in consideration of the additional services to be performed by Consultant, the City agrees to pay, based on the cost estimate detail attached as Exhibit “A.
2. This Amendment modifies the Agreement amount to provide an additional \$71,250 for the additional services with a revised aggregate not to exceed total of \$86,250.

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 Consultant, have each executed this Amendment electronically, by and through their respective duly authorized representatives and officers on this date 12/12/2023.

“CITY”

CITY OF DENTON, TEXAS  
A Texas Municipal Corporation

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

ATTEST:  
JESUS SALAZAR, INTERIM CITY  
SECRETARY

By: DocuSigned by:  
Jesus Salazar  
2437C77B897541D...

“CONSULTANT”

COFFMAN ASSOCIATES, INC.

By: DocuSigned by:  
Mike Dmyterko  
13710B492494  
AUTHORIZED SIGNATURE, TITLE

APPROVED AS TO LEGAL FORM:  
MACK REINWAND, CITY ATTORNEY

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

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

DocuSigned by:  
Ryan Adams  
763410730B84498  
SIGNATURE PRINTED NAME

Interim Airport Director

TITLE

Denton Municipal Airport

DEPARTMENT





## PROPOSAL

**Client:** City of Denton  
215 East McKinney  
Denton, Texas 76201

Coffman Associates  
12920 Metcalf Avenue, Suite 200  
Overland Park, Kansas 66213

**Contact:** Chase Patterson, C.M., ACE  
Eric Pfeifer, C.M., LEED, Principal

**Location:** Denton Enterprise Airport (Airport)

**Services:** Revenue Enhancement

**Scope:** Aviation Management Consulting Group (AMCG) will provide the scope of services outlined in the following elements:

**Element 1:** AMCG proposes to conduct an *Airport Financial Allocation Analysis* to allocate and analyze the Airport's operating revenues and expenses and non-operating sources and uses of funds by the Airport's primary functional areas and revenue streams (e.g., airside, aviation real estate, and non-aviation real estate). The Analysis will assist the Airport's policymakers, management, and staff in the identification of the primary functional areas and revenue streams where the Airport's operating revenues and sources of funds need to be enhanced and operating expenses and uses of funds need to be managed to fulfill the City's FAA airport sponsor assurance obligation to "make the airport as self-sustaining as possible under the circumstances existing..." at the Airport.

**Element 2:** AMCG proposes to conduct an *Aeronautical Fee Study* to recommend aeronautical fees to help recover the operating expenses and non-operating sources of funds (e.g., non-AIP or other grant funds) that have been and are anticipated to be incurred by the City relating to the planning, development, operation, and management of the Airport. It is important to note that AMCG believes aeronautical fees should be cost-recovery based – not market based (like rents).

**Element 3:** AMCG proposes to analyze the *Revenue Generation* of the Airport to the City of Denton. AMCG anticipates this analysis will include an analysis of total direct airport employment (City and commercial operators) and tax revenue (e.g., property taxes, sales tax, etc.). Based on the analysis, AMCG will convey the total direct financial contribution to the City.

The proposed work plans are provided in **Attachment A**.

**Fees:** Based on the proposed scope of services, proposed work plans, and AMCG's experience with similar projects, the services can be provided for the following fees (by element).

Elements	Budget
<b>Element 1:</b> Airport Financial Allocation Analysis	\$31,500
<b>Element 2:</b> Aeronautical Fee Study	\$22,750
<b>Total</b>	<b>\$54,250</b>
<b>Element 3:</b> Revenue Generation	Hourly

**Element 3** would be provided on an hourly basis in accordance with AMCG's Regular Hourly Fee Schedule (outlined below). AMCG anticipates most of the effort to be conducted at the Managing Consultant and Senior Aviation Consultant level not to exceed 50 hours.



## PROPOSAL

AMCG's 2023 Hourly Fee Schedule	
Position	Hourly Billing Rate
Managing Principal	\$340
Managing Consultant	\$280
Senior Aviation Consultant	\$245
Aviation Consultant	\$230
Associate Aviation Consultant	\$215
Managing Analyst	\$190
Senior Aviation Analyst	\$175
Aviation Analyst	\$160
Staff	\$90

**Expenses:** An expense allocation of \$3,250 is included in the Fee for **Element 1** and **Element 2** to cover the direct (project-related) expenses for the proposed scope of services and work plans. The expense allocation includes one site visit that will consist of two people for a maximum of one and one-half days on-site which will include necessary meetings for **Element 3**. Any direct (project-related) expenses incurred by the AMCG team in excess of the expense allocation would be reimbursed to the AMCG team (at cost without mark-up).

*Direct (project-related) expenses include air and ground transportation, lodging, subsistence, and costs for outside services (e.g., overnight or courier service, copying, printing, and document production/duplication, etc.).*

**Schedule:** Notwithstanding circumstances beyond the AMCG team's control and based on the AMCG team's experience with similar projects, the proposed scope of services and work plan can be completed within 12 weeks from the site visit date.

**Other:** This proposal is valid through December 29, 2023, and is subject to change thereafter including, but not limited to, withdrawal in whole or in part. Fees and expenses (and completion of the project in accordance with the schedule) are dependent on the: (1) quality, composition, and timeliness of the information provided to/obtained by the AMCG team and (2) the time required by the City, its representatives, or others to review draft work products and/or provide comments.

A signed Project Authorization Agreement will be required to commence work on the project.



## ATTACHMENT A – WORK PLANS

### ***Element 1: Airport Financial Allocation Analysis***

The Airport Financial Allocation Analysis will allocate and analyze the Airport's operating revenues and expenses and non-operating sources and uses of funds by the Airport's primary functional areas and revenue streams (i.e., airside, aviation real estate, and non-aviation real estate). The Analysis will assist the Airport's policymakers, management, and staff in the identification of the primary functional areas and revenue streams where the Airport's operating revenues and sources of funds need to be enhanced and operating expenses and uses of funds need to be managed to fulfill the City's FAA airport sponsor assurance obligation to "make the airport as self-sustaining as possible under the circumstances..." existing at the Airport.

#### TASK 1: INITIALIZATION MEETING

Conduct a working session (by web-based meeting software) with the Airport management to (1) initialize the project; (2) discuss the Work Plan; (3) discuss information request (Task 2); (4) identify the Airport's primary functional areas and revenue streams; and (5) discuss any questions related to the allocation process.

#### TASK 2: INFORMATION COLLECTION

Relevant and pertinent information, data, and documentation on the operational statistics (i.e., aircraft operations, based aircraft, fuel volumes, square footages, employees, etc.) and financial statements for the last three fiscal years (i.e., balance sheets, income statements, depreciation schedules, etc.) will be compiled by Airport management. AMCG will provide a written information request to Airport management to help facilitate this process.

#### TASK 3: ALLOCATE AIRPORT FINANCIALS

Allocate all Airport operating revenues and expenses and non-operating sources and uses of funds by the Airport's primary functional areas and revenue streams identified during Task 1.

Based on the findings, identify which primary functional areas need to be enhanced or managed to make the Airport as self-sustaining as possible and develop recommendations for resolving identified deficiencies. Recommendations may include airside enhancements (e.g., Aeronautical Fee Study) or real estate enhancements (e.g., development fees, RFQ/RFP strategies, asset transitions, non-aeronautical development, etc.).

#### TASK 4: DRAFT ALLOCATION SPREADSHEETS

Draft the financial allocation spreadsheets and provide to Airport management for review.

#### TASK 5: WORKING SESSION – DRAFT ALLOCATION SPREADSHEETS

Conduct a working session with Airport management to review first draft spreadsheets and provide comments, identify questions, and make recommendations.

#### TASK 6: DRAFT AIRPORT FINANCIAL ALLOCATION ANALYSIS

Draft *Airport Financial Allocation Analysis* based on comments provided, questions identified, and recommendations made during Task 5.

#### TASK 7: WORKING SESSION – DRAFT AIRPORT FINANCIAL ALLOCATION ANALYSIS

Conduct a working session with Airport management to review the draft *Airport Financial Allocation Analysis* and provide comments, identify questions, and make recommendations.

#### TASK 8: FINAL AIRPORT FINANCIAL ALLOCATION ANALYSIS

Revise and finalize the *Airport Financial Allocation Analysis* based on the comments provided, questions identified, and recommendations made during Task 7.



## ATTACHMENT A – WORK PLANS

### **Element 2: Aeronautical Fee Study**

Under Phase I, AMCG will (1) review the current aeronautical fee program for the Airport, (2) the methodologies currently being utilized to establish the aeronautical fees and the basis (or the unit measure) currently being deployed for charging aeronautical fees, and (3) identify current industry practices for establishing aeronautical fees including summarizing the types of aeronautical fees generally being charged, the methodologies generally being utilized, and the measures generally being deployed in the industry. AMCG anticipates the aeronautical fees analyzed would include fuel flowage fees, throughput fees, transient aircraft handling fees, landing fees, aircraft parking fees, based aircraft fees, percentage of gross receipts (including percentage of hangar fee), aeronautical permit fees (including independent operators), and airport access fees.

Under Phase II, once the types of aeronautical fees, the methodologies, and the basis for charging have been selected by Airport management, AMCG would conduct a cost recovery financial analysis of the Airport's operating expenses and non-operating sources of funds and calculate aeronautical fees (dollar amounts for each fee) for the Airport.

To accomplish the proposed scope of services for an **Aeronautical Fee Study (Study)**, AMCG would complete the following tasks:

#### TASK 1: INITIALIZATION MEETING

Conduct a working session (by web-based meeting software) with Airport management to (1) initialize the project; (2) discuss the Work Plan; (3) discuss information request (Task 2); (4) identify all existing, desired, and non-desired Airport fees; and (5) discuss any questions related to the fee study process.

#### TASK 2: INFORMATION COLLECTION

Relevant and pertinent information, data, and documentation on the community, market, Airport, aviation businesses, non-commercial aeronautical entities, and non-aeronautical entities located at the Airport will be compiled by Airport management. AMCG will provide a written information request to Airport management to help facilitate this process.

Review current fee program for the Airport, including the types of fees currently being charged at the Airport, the methodologies currently being utilized to establish the fees, and the basis (or the unit measure) currently being deployed for charging fees.

Identify current industry practices for establishing fees including summarizing the types of fees generally being charged, the methodologies generally being utilized, and the measures generally being deployed in the industry.

#### TASK 3: SITE VISIT

AMCG will conduct a site visit to include: (1) meeting with Airport management and City personnel, (2) a tour of the Airport, and (3) meetings with select stakeholders (i.e., representatives of the aviation businesses, non-commercial aeronautical entities, and/or non-aeronautical entities) – as determined by Airport management or City personnel working in collaboration with the team and based on available budget and schedule.

#### TASK 4: COMPARABLE AND COMPETITIVE AIRPORTS IDENTIFICATION

Identify comparable and competitive airports based on the Airport profile and provide for Airport management review and concurrence.



## ATTACHMENT A – WORK PLANS

### TASK 5: WORKING SESSION – COMPARABLE AND COMPETITIVE AIRPORTS REVIEW

Conduct a working session (by web-based meeting software) with Airport management to review and discuss preliminary list of airports identified in Task 4.

### TASK 6: AIRPORT FEE COMPARATIVE ANALYSIS DEVELOPMENT AND REVIEW

Develop and provide an airport fee comparative analysis that will include (1) the identification of current industry practices for establishing aeronautical fees including summarizing the types of fees typically being charged in the industry, the methodologies typically being utilized in the industry to establish fees, and the basis typically being deployed in the industry for charging fees and (2) the comparison of the current fee program at the Airport to the current fee programs at comparable and competitive airports.

Obtain and validate relevant information from comparable and competitive airports using AMCG's proprietary database, reference library, and/or directly from the airports identified.

Develop and provide the findings of the airport fee comparative analysis and best practices recommendations regarding the types of fees that could be charged, the methodology for establishing such fees, and the basis (or the unit measure) for charging such fees (Phase I).

### TASK 7: WORKING SESSION – COMPARATIVE ANALYSIS REVIEW

Conduct a working session (by web-based meeting software) with Airport management to review Phase I and provide comments, identify questions, and make recommendations.

### TASK 8: COST RECOVERY ANALYSIS

Conduct a cost recovery analysis based on the types of fees, the methodologies, and the basis selected by Airport management.

### TASK 9: FIRST DRAFT OF SCHEDULE OF FEES

Predicated on the findings of the cost recovery analysis, calculate proposed fees (dollar amounts for each fee) for the Airport and develop the cost recovery analysis spreadsheets and a first draft of the Schedule of Fees for review by Airport management (Phase II).

### TASK 10: WORKING SESSION – SCHEDULE OF FEES REVIEW

Conduct a working session (by web-based meeting software) with Airport management to review Phase II and provide comments, identify questions, and make recommendations.

### TASK 11: FINAL STUDY

Revise Phase II based on the comments provided, questions identified, and recommendations made by Airport management during the working session and develop and provide final Phase II.

## **Element 3: Revenue Generation**

### TASK 1: INITIALIZATION MEETING

Conduct a working session (by web-based meeting software) with Airport management to (1) initialize the project; (2) discuss the Work Plan; (3) discuss information request (Task 2); (4) discuss revenue generation streams; and (5) discuss any questions related to the process.

### TASK 2: INFORMATION COLLECTION, REVIEW, AND ANALYSIS

Collect, review, and analyze relevant information, data, and documentation on the Airport, aviation businesses, non-commercial aeronautical entities, and non-aeronautical entities located at the Airport. An information request will be provided to Airport management to help facilitate the collection of information.



## ATTACHMENT A – WORK PLANS

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### TASK 3: SITE VISIT

AMCG will conduct a site visit to include: (1) meeting with Airport management and City personnel, (2) a tour of the Airport, and (3) meetings with select stakeholders (i.e., representatives of the aviation businesses, non-commercial aeronautical entities, and/or non-aeronautical entities) – as determined by Airport management or City personnel working in collaboration with the team and based on available budget and schedule.

While on-site, AMCG will meet with Airport and City financial personnel to verify the types of financial generation created by Airport activity and research supporting documentation.

### TASK 4: FINANCIAL ANALYSIS

Based on the information gathered in Task 3, analyze the information and data to determine the financial generation created by Airport activity.

### TASK 5: FIRST DRAFT

AMCG will prepare the first draft of the summary report (based on the financial analysis) conveying the financial generation and provide to Airport management for review.

### TASK 6: WORKING SESSION – DRAFT 1

Conduct a working session (by telephone or web-based meeting software) with Airport management.

### TASK 7: FINAL DOCUMENT

AMCG will finalize the summary report and provide the final report.



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Buyer

Signed: 11/16/2023 8:58:40 AM

City of Denton

Using IP Address: 198.49.140.10

Security Level: Email, Account Authentication (None)

**Electronic Record and Signature Disclosure:**

Not Offered via DocuSign

Lori Hewell



Sent: 11/16/2023 8:58:42 AM

lori.hewell@cityofdenton.com

Viewed: 11/16/2023 11:45:50 AM

Purchasing Manager

Signed: 11/16/2023 11:46:09 AM

City of Denton

Signature Adoption: Pre-selected Style

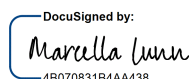
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Using IP Address: 198.49.140.104

**Electronic Record and Signature Disclosure:**

Not Offered via DocuSign

Marcella Lunn



Sent: 11/16/2023 11:46:10 AM

marcella.lunn@cityofdenton.com

Viewed: 11/17/2023 6:00:59 PM

Mack Reinwand City Attorney

Signed: 11/17/2023 6:02:20 PM

City of Denton

Signature Adoption: Pre-selected Style

Security Level: Email, Account Authentication (None)

Using IP Address: 198.49.140.104

**Electronic Record and Signature Disclosure:**

Not Offered via DocuSign

Mike Dmyterko



Sent: 11/17/2023 6:02:22 PM

Miked@coffmanassociates.com

Resent: 11/28/2023 11:02:54 AM

Security Level: Email, Account Authentication (None)

Viewed: 11/28/2023 11:21:14 AM

Signature Adoption: Pre-selected Style

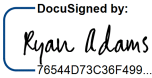

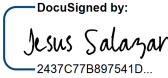
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Using IP Address: 107.136.68.104

**Electronic Record and Signature Disclosure:**

Accepted: 11/28/2023 11:21:14 AM

ID: 3af13d23-0f12-4b10-862b-9b30e77962c0

Signer Events	Signature	Timestamp
Ryan Adams Ryan.adams@cityofdenton.com Interim Airport Director Security Level: Email, Account Authentication (None)	 DocuSigned by: Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.10	Sent: 11/28/2023 11:21:23 AM Viewed: 11/28/2023 11:51:45 AM Signed: 11/28/2023 11:55:15 AM
<b>Electronic Record and Signature Disclosure:</b> Accepted: 11/28/2023 11:51:45 AM ID: 18efc6c8-9c2b-4baf-9a2a-5b193b2ba864		
Cheyenne Defee cheyenne.defee@cityofdenton.com Procurement Administration Supervisor City of Denton Security Level: Email, Account Authentication (None)	<b>Completed</b> Using IP Address: 198.49.140.10	Sent: 11/28/2023 11:55:17 AM Viewed: 12/13/2023 8:08:23 AM Signed: 12/13/2023 8:08:37 AM
<b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign		
Sara Hensley sara.hensley@cityofdenton.com City Manager City of Denton Security Level: Email, Account Authentication (None)	 DocuSigned by: Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.10	Sent: 12/13/2023 8:08:39 AM Viewed: 12/13/2023 8:48:04 AM Signed: 12/13/2023 8:48:10 AM
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Jesus Salazar jesus.salazar@cityofdenton.com Security Level: Email, Account Authentication (None)	 DocuSigned by: Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.10	Sent: 12/13/2023 8:48:12 AM Viewed: 12/13/2023 10:18:34 AM Signed: 12/13/2023 10:19:15 AM
<b>Electronic Record and Signature Disclosure:</b> Accepted: 12/13/2023 10:18:34 AM ID: 42a55175-91b1-4481-8ab2-d477cb1336d6		

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)	<div>COPIED</div>	Sent: 11/16/2023 8:58:42 AM
<b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign		



Carbon Copy Events	Status	Timestamp
Gretna Jones gretna.jones@cityofdenton.com Legal Secretary City of Denton Security Level: Email, Account Authentication (None) <b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign	COPIED	Sent: 11/28/2023 11:55:18 AM Viewed: 11/28/2023 3:46:13 PM
City Secretary Office citysecretary@cityofdenton.com Security Level: Email, Account Authentication (None) <b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign	COPIED	Sent: 12/13/2023 10:19:17 AM
Ryan Adams Ryan.adams@cityofdenton.com Interim Airport Director Security Level: Email, Account Authentication (None) <b>Electronic Record and Signature Disclosure:</b> Accepted: 12/12/2023 11:32:59 AM ID: 277522a1-a326-487d-8fd0-981acd338511	COPIED	Sent: 12/13/2023 10:19:18 AM
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Notary Events	Signature	Timestamp
Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	11/16/2023 8:56:54 AM
Certified Delivered	Security Checked	12/13/2023 10:18:34 AM
Signing Complete	Security Checked	12/13/2023 10:19:15 AM
Completed	Security Checked	12/13/2023 10:19:18 AM
Payment Events	Status	Timestamps
Electronic Record and Signature Disclosure		

## **ELECTRONIC RECORD AND SIGNATURE DISCLOSURE**

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

### **Getting paper copies**

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

### **Withdrawing your consent**

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

### **Consequences of changing your mind**

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

### **All notices and disclosures will be sent to you electronically**

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

**How to contact City of Denton:**

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

To contact us by email send messages to: [purchasing@cityofdenton.com](mailto: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](mailto: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](mailto: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](mailto: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"><li>•Allow per session cookies</li><li>•Users accessing the internet behind a Proxy Server must enable HTTP 1.1 settings via proxy connection</li></ul>

\*\* 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.

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF DENTON, A TEXAS HOME-RULE MUNICIPAL CORPORATION, AUTHORIZING THE APPROVAL OF A SECOND AMENDMENT TO A PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY OF DENTON AND COFFMAN ASSOCIATES, INC., AMENDING THE CONTRACT APPROVED BY PURCHASING ON JULY 26, 2023, IN THE NOT-TO-EXCEED AMOUNT OF \$15,000.00; AMENDED BY AMENDMENT 1 APPROVED BY CITY COUNCIL; SAID SECOND AMENDMENT TO PROVIDE ADDITIONAL OBJECTIVES WITHIN THE SCOPE OF WORK FOR THE AIRPORT MASTER PLAN; PROVIDING FOR THE EXPENDITURE OF FUNDS THEREFOR; AND PROVIDING AN EFFECTIVE DATE (FILE 8133 – PROVIDING FOR AN ADDITIONAL SECOND AMENDMENT EXPENDITURE AMOUNT NOT-TO-EXCEED \$788,644.00, WITH THE TOTAL CONTRACT AMOUNT NOT-TO-EXCEED \$874,894.00).

WHEREAS, on July 26, 2023, Purchasing awarded a contract to Coffman Associates, Inc., in the amount of \$15,000.00, for the Airport Master Plan; and

WHEREAS, on December 12, 2023, City Council awarded a First Amendment to Coffman Associates, Inc. in the amount of \$71,250.00, to continue to provide a financial analysis for the Airport; and

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

WHEREAS, the additional fees under the proposed Second 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 Second Amendment, increasing the amount of the contract between the City and Coffman Associates, Inc., which is on file in the office of the Purchasing Agent, in the amount of Seven Hundred Eighty-Eight Thousand Six Hundred Forty-Four and 0/100 (\$788,644.00) 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 \$874,894.00.

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 \_\_\_\_\_. The ordinance was passed and approved by the following vote [\_\_\_ - \_\_\_]:

	<b>Aye</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>
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 \_\_\_\_\_, 2024.

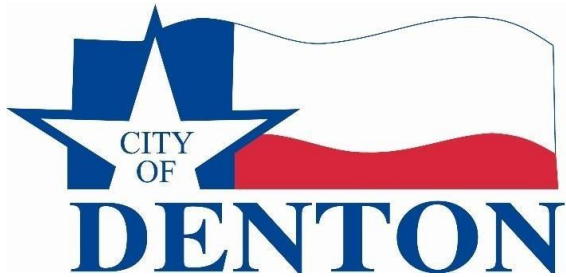
\_\_\_\_\_  
GERARD HUDSPETH, MAYOR

ATTEST:  
JESUS SALAZAR, CITY SECRETARY

BY: \_\_\_\_\_

APPROVED AS TO LEGAL FORM:  
MACK REINWAND, CITY ATTORNEY

BY: Marcella Lunn  
Digitally signed by Marcella Lunn  
DN: dc=com, dc=cityofdenton,  
dc=codad, ou=Department Users  
and Groups, ou=General  
Government, ou=Legal,  
cn=Marcella Lunn,  
email=Marcella.Lunn@cityofdent  
on.com  
Date: 2024.03.12 12:11:32 -05'00'



Docusign City Council Transmittal Coversheet

RFQ	8133
File Name	Airport Master Plan
Purchasing Contact	Christina Dormady
City Council Target Date	
Piggy Back Option	Not Applicable
Contract Expiration	
Ordinance	

**SECOND AMENDMENT TO CONTRACT  
BY AND BETWEEN THE CITY OF DENTON, TEXAS  
AND COFFMAN ASSOCIATES, INC.  
PSA 8133**

THE STATE OF TEXAS                   §

COUNTY OF DENTON                   §

THIS SECOND AMENDMENT TO CONTRACT 8133 (“Amendment”) by and between the City of Denton, Texas (“City”) and Coffman Associates, Inc. (“Consultant”); to that certain contract executed on July 26, 2023, in the original not-to-exceed amount of \$15,000 (the “Original Agreement”); amended on December 12, 2023 in the additional amount of \$71,250 aggregating a not-to-exceed amount of \$86,250 (the “First Amendment”) (collectively, the Original Agreement, and the First Amendment are the “Agreement”); for services related to Airport Planning Services.

WHEREAS, the City deems it necessary to further expand the services provided by Consultant to the City pursuant to the terms of the Agreement, and to provide an additional not-to-exceed amount \$788,644 with this Amendment for an aggregate not-to-exceed amount of \$874,894; and

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

NOW THEREFORE, the City and Consultant (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 Airport Planning Services, are hereby authorized to be performed by Consultant. For and in consideration of the additional services to be performed by Consultant, the City agrees to pay, based on the cost estimate detail attached as Exhibit “B” to this Amendment, attached hereto and incorporated herein for all purposes, a total fee, including reimbursement for non-labor expenses an amount not to exceed \$788,644.
2. This Amendment modifies the Agreement amount to provide an additional \$788,644 for the additional services with a revised aggregate not to exceed total of \$874,894.



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 Consultant, have each executed this Amendment electronically, by and through their respective duly authorized representatives and officers on this date \_\_\_\_\_.

“Consultant”

Coffman Associates, INC.

DocuSigned by:  
By: Mike Dmyterko  
B377F88FB89C4D6...

AUTHORIZED SIGNATURE, TITLE  
APPROVED AS TO LEGAL FORM:  
MACK REINWAND, CITY  
ATTORNEY

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

“CITY”

CITY OF DENTON, TEXAS  
A Texas Municipal Corporation

By: \_\_\_\_\_

ATTEST:  
JESUS SALAZAR, CITY  
SECRETARY

By: \_\_\_\_\_

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

DocuSigned by:  
Ryan Adams Ryan Adams  
76541073CB9A499... SIGNATURE PRINTED NAME

Director of Airport  
TITLE  
Airport  
DEPARTMENT

**EXHIBIT A**  
**AIRPORT MASTER PLAN**  
**SCOPE OF SERVICES**  
**FOR THE**  
**DENTON ENTERPRISE AIRPORT**  
**DENTON, TEXAS**

## INTRODUCTION

This Airport Master Plan Scope of Services for Denton Enterprise Airport (DTO) is being prepared prior to initiation of the study, to establish the goals of the project and framework from which all parties to the project may participate. The objective of the master plan is to provide the Sponsor (City of Denton) with proper guidance for future development which will satisfy aviation demands and be wholly compatible with the environment. Coordination between the Sponsor, the Federal Aviation Administration (FAA), and other parties with an interest in the airport will be essential to bringing together all facts and data relevant to the project and to developing a mutual agreement regarding future development at the airport. A Planning Advisory Committee (PAC), made up of airport stakeholders, state and federal agencies, and city officials will be established for the study to provide proper direction for the development of the master plan recommendations.

The master plan will align with the following FAA Advisory Circulars and Orders where applicable:

- FAA Order 5090.3C, *Field Formulation of the National Plan of Integrated Airport Systems (NPIAS)*
- FAA Order 5190.6B, *Airport Compliance Manual* with Change 1 published November 22, 2021.
- FAA Order 5100.38D, *Airport Improvement Program (AIP) Handbook*
- FAA Order 5280.5D, *Airport Certification Program Handbook*
- FAA Order 2150.3C, *FAA Compliance and Enforcement Program, Change 7*
- FAA Order 1050.1F, *Environmental Impacts and Procedures*
- FAA Order 5050.4B, *National Environmental Policy Act (NEPA) Implementing Instructions for Airport Actions.*
- FAA Order 5090.5 *Formulation of the NPIAS and ACIP*
- FAA AC 150/5070-6B, *Airport Master Plans*
- FAA AC 150/5300-13B, *Airport Design* published March 30, 2022
- FAA AC 150/100-14E, *Architecture, Engineering, and Planning Consultant Services for Airport Grant Projects.*
- FAA AC 150/5190-7, *Minimum Standards for Commercial Aeronautical Activities.*
- FAA AC 150/5100-19D, *Guide for Financial Reports Filed by Airport Sponsors*
- FAA AC 150/5325-4B, *Runway Length Requirements for Airport Design*
- FAA AC 150/5000-17, *Critical Aircraft and Regular Use Determination*
- FAA AC 150/5300-19, *Airport Data and Information Program*

- FAA AC 150/5060-5, *Airport Capacity and Delay*
- FAA AC 120/57A, *Surface Movement Guidance and Control System*
- AC 150/5210-20A, *Ground Vehicle Operations to include Taxiing or Towing an Aircraft on Airports*
- AC 150/5220-20A, *Airport Snow and Ice Control Equipment*
- Draft AC 150/5020-1A, [Noise Control and Compatibility Planning for Airports](#)
- AC 150/5100-19D, *Guide for Financial Reports Filed by Airport Sponsors*
- AC 150/5300-16B, *General Guidance and Specifications for Aeronautical Surveys: Establishment of Geodetic Control and Submission to the National Geodetic Survey*, updated errata Jan. 6, 2021
- AC 150/5300-17C, *Standards for Using Remote Sensing Technologies in Airport Surveys*
- AC 150/5300-18, *General Guidance and Specifications for Submission of Aeronautical Surveys to NGS: Field Data Collection and Geographic Information System (GIS) Standards*.
- AC 150/5210-15, *Airport Rescue and Firefighting Station Building Design*

Coffman Associates, Inc., will serve as the primary master planning consultant. The following subconsultants will contribute to various elements/tasks as noted in the scope of services below:

- **HubPoint Strategic Advisors** (air cargo feasibility and forecasts)
- **Jordan Aviation Strategies & Ambrogio Consulting Services** (financial analysis)
- **Martinez Geospatial** (airport mapping/survey)

Required and generalized master planning objectives in this Scope will include:

- To research factors likely to affect all air transportation demand segments at DTO over the next twenty years including the development of forecasts of potential commercial service, air cargo, general aviation operational and basing demand.
- To determine projected needs of airport users for the next twenty years, taking into consideration recent revisions to FAA design standards and the airport's conformance requirements, global positioning system (GPS) approaches or other new technology, commercial passenger and cargo trends, and the impact of general aviation fleet transitions on design standards.
- To recommend improvements which will enhance the landside area's ability to satisfy future aviation needs taking into consideration the potential for commercial passenger service, air cargo, advanced air mobility (AAM), and general aviation needs.
- To analyze the existing airfield system to determine the existing and ultimate runway lengths required to satisfy the airport's critical aircraft. This analysis will include future improvements necessary to aid in supporting forecast demand.
- To produce accurate base maps of existing and proposed facilities and updated Airport Layout Plan (ALP) drawings consistent with the FAA's Standard Operating Procedure

(SOP) No. 2.0.

- To review future use and zoning of airport property and approaches to each runway for future protection. This will involve the development of new noise exposure contours.
- Landside development options to maximize revenue streams.
- To establish a schedule of development priorities and a program for improvements proposed in the master plan, consistent with the FAA's capital improvement program planning.
- Consider sustainability efforts, specifically waste and recycling improvements as part of FAA's updated standards.

## **ELEMENT 1 - STUDY INITIATION AND ORGANIZATION**

The purpose of this element is to allow for proper time to manage the project including the project website, project updates with the sponsor, team management, and overall QA/QC.

### **Task 1.1 Study Design**

Description: In accordance with Federal Aviation Administration guidelines for the preparation of master plans contained in Advisory Circulars 150/5070-6B, *Airport Master Plans*, and 150/5300-13B, *Airport Design*, prepare an outline of the basic elements of the master planning work effort. Identify respective individual work tasks which will be necessary to meet both the requirements set by the FAA and the sponsor for each element of the master plan work scope. Prepare detailed descriptions of each individual work task which describe the specific work effort involved and identify the result or product of the work effort.

Responsibilities:

Consultant: Prepare work scope and budget.

Sponsor: Review work scope and budget.

Product: Work scope and budget.

### **Task 1.2 Establish Planning Advisory Committee (PAC) and Conduct PAC Kickoff Meeting**

Description: Potential members will be identified and asked to serve on a Planning Advisory Committee (PAC) for the master plan. The PAC will be composed of a) representatives of FAA as well as other local, regional, state, or federal agencies; b) airport board, users, and tenants; and c) local community representatives. The PAC, which is a non-voting body, will advise the Consultant on the content and recommendations of the master plan study through meetings and review of working papers.

Upon appointment by the Sponsor of a PAC, provide fifteen (15) standard three-ring notebooks

for distribution to the PAC for their use during the study. A workbook cover will be designed, and the workbook format will be developed with sections for inserting working papers, notes, and other pertinent information. A glossary and list of abbreviations/acronyms will be developed and included as an appendix in the workbook.

The initial, or kickoff meeting, of the PAC will be undertaken during the initial inventory trip by the Consultant. The consultant will also provide the opportunity to conduct an open house public workshop and/or Airport Advisory Board briefing during the inventory trip.

**Responsibilities:**

**Consultant:** Design and prepare workbooks for the Committee and attend kickoff meeting.  
**Sponsor:** Distribute invitations and initiation materials to PAC and provide meeting room.  
**Product:** Fifteen (15) study workbooks. Conduct PAC kickoff meeting and public coordination as desired by the Sponsor. A virtual component for the PAC meeting and public coordination may be available, as necessary.

### **Task 1.3 Develop Project Website**

**Description:** Various project materials will be hosted on a project specific website developed by the Consultant to allow public access to project materials. Materials which would be available on the website could include the presentation boards from the various public information workshops and monthly project status updates. During the planning process, all working draft materials will be available for review on the website. The public will be able to utilize the website to make comments on the contents of the phase reports. All pertinent comments will be included within the Final Master Plan document.

**Responsibilities:**

**Consultant:** Develop project specific website. Host the project materials on a project specific website.  
**Sponsor:** Review and provide comment.  
**Product:** Website access to project materials. Encourage use of the website to comment on the draft materials during the planning process.

### **Tasks 1.4 Project Management**

**Description:** The project management task includes work items required to set up and manage contracts, budgets, and invoicing as well as to provide project management and coordination with DTO, the FAA, and sub-consultants. The project timeline and coordination are anticipated to take place over a period of eighteen (18) months. Project coordination in the form of semi-regular project coordination conference calls/online communication is also included. This task does not include on-site meetings (included in other tasks). This task covers the following types of coordination and project management:

- Set up and prepare project scopes, budgets, contracts with airport/city staff and establish

subconsultant contract agreements.

- Perform monthly budget invoicing and contract management.
- Provide general on-going project coordination with airport/city staff. This task does not include any on-site meetings with staff but could include video, phone, or other distance meeting options.
- Provide general on-going project coordination with and project management of sub-consultants.

**Responsibilities:**

Consultant: Provide project management for scheduled 18-month schedule.

Sponsor: As necessary aid consultant.

Product: Project management services.

## **ELEMENT 2 - INVENTORY OF EXISTING CONDITIONS**

The purpose of this study element is to assemble and organize relevant information and data pertaining to the airport and the surrounding area. A series of inventory efforts are necessary to collect and organize a variety of specific historical, technical, legal, financial, and planning data as described in the following tasks.

### **Task 2.1 Inventory Airport Facilities**

Description: Perform inventories of physical facilities and existing land uses within the present boundaries of the airport. These inventories will identify and describe existing facilities as to age, type, ownership, and condition, as well as changes to building conditions and uses since the completion of the last master plan, and will include, as a minimum, the following items:

- Airfield: Runways, Taxiways, Aprons, Lighting and Marking, Navigational Aids
- Terminal Area: Terminal building, access and parking
- General Aviation Areas: Square footage of hangars
- Military use areas (as applicable): Ramp, Access and Parking
- FBO/Specialty Operators: Leased Area, Airfield facilities
- Support: Utilities, Fire and Rescue facilities, Fueling facilities, Maintenance areas
- Other areas: Airport tenants including military facilities (as necessary)
- Wildlife Hazards: summarize known wildlife issues
- Additional on-airport and off-airport land uses

In addition, all available plans, specifications, maps, photographs, drawings, and other data, including FAA Master Records (or other records maintained by the FAA), or other reports or studies considered to be relevant, will be obtained for possible use during the study. This task includes an on-site inventory trip to gather data, tour the airport facilities, and to conduct in-

person interviews with airport staff and relevant airport tenants as necessary.

**Responsibilities:**

- Consultant:** Conduct a complete inventory of the airport facilities to accumulate pertinent data including an on-site tour of facilities and in-person interviews with airport staff and airport tenants as necessary.
- Sponsor:** Provide the Consultant access to the airport property and airport records as necessary.
- Product:** Tabulated airport facilities inventory for input to later tasks, highlighting changed conditions since the last master plan was prepared.

**Task 2.2 Inventory Air Traffic Activity and Airspace**

**Description:** A detailed review of available information pertaining to air traffic and passenger/cargo activity at DTO will be performed for the past 20-year period. Data collection will include an inventory count of aircraft based at the airport by aircraft type, enplaning and deplaning passenger data (as available), air cargo (as available) and fuel sales maintained by the airport or fixed base operators. The information will be collected in various formats for forecasting purposes.

Air traffic activity data for the airport will be assembled and organized from various sources such as the FAA's Traffic Flow Management System Count (TFMSC) and GCR's Airport IQ. Relevant data on commercial, air cargo, general aviation (private and corporate), air taxi, and military activity will be collected. Data will be obtained from the Sponsor, the FAA Southwest Region, and Fixed Base Operators (FBOs). The assembled data will include, as available:

- a) Historical operations, including local (touch-and-go) and itinerant operational splits.
- b) Based aircraft by type, as available.
- c) Estimated use (by percentage) of each runway.

Review and perform inventories of airspace and air traffic procedures at the airport. Conduct interviews with airport officials, FAA representatives, pilots, and others as necessary or appropriate to develop a complete description of the existing airspace environment and current airport traffic procedures. Basic inventory items will include:

- a) Airport traffic patterns.
- b) Approach and departure procedures.
- c) Military airspace near the airport.
- d) National parks/wilderness areas.

**Responsibilities:**

- Consultant:** Assemble data.
- Sponsor:** Assist Consultant in obtaining available airport records. Assist as necessary.

Product: Input to subsequent tasks.

### **Task 2.3 Inventory Local Plans, Land Uses, and Demographic Data**

Description: Obtain available information concerning local land use, economic development, and environmental plans, and demographic or economic factors which are likely to have a significant impact on the demand for air transportation in the air trade area as well as those factors that involve potential impact characteristics of the airport environs. Key information will include the area-wide composition, characteristics, distribution, and growth patterns of the following:

- Population
- Economic base (business, income, and employment)
- Present and projected land uses
- Existing and planned surface transportation
- Environmental documentation
- Long range transportation plan
- Zoning ordinance(s)
- Height and hazard ordinance/mitigation measures

Responsibilities:

Consultant: Assemble data based on latest information available.

Sponsor: Assist in collection of data.

Product: Input to later analysis.

### **Task 2.4 Obtain Tabulated Wind Data**

Description: The Consultant will obtain the most current ten years of wind data for DTO, from the National Oceanic and Atmospheric Administration, National Climatic Center and/or on-airport weather reporting aids for use in preparing an updated wind rose for the airport layout plan.

Responsibilities:

Consultant: Obtain tabulated wind data.

Sponsor: Coordinate with the Consultant as necessary.

Product: Tabulated wind data for use in preparing an updated wind rose.

### **Task 2.5 Environmental Inventory**

Description: The purpose of this task is to obtain information regarding environmental sensitivities on or near airport property. Sources of information will include past environmental documents, agency maps, existing literature, and relevant internet sources. Examples of information to be gathered includes wetlands, riparian areas, threatened or endangered species, floodplains, cultural resources, air quality, parks and natural resource areas, and prime farmland. Informal consultation with various federal and state agencies will occur only if needed information is not available through resources listed above. The information obtained in this task



is intended to identify any significant environmental resources prior to the alternatives evaluation process to lessen or eliminate environmental requirements for potential project development.

**Responsibilities:**

Consultant: Assemble data based on latest information available.

Sponsor: Assist in collection of data.

Product: Input into later analysis.

### **ELEMENT 3 – AVIATION DEMAND FORECASTS**

This study element is intended to update the estimate of future levels of air traffic by quantity and by characteristics that will identify the demand that is projected at DTO, and the local socioeconomic characteristics contributed by the local area. The following work tasks will be carried out as part of this element.

#### **Task 3.1 Review Regional Aviation and Socioeconomic Forecasts**

Description: Review and analyze current local and regional socioeconomic forecasts obtained in the inventory element. Similarly review the forecasts and assumptions of the aviation forecasts prepared by the FAA for its *Terminal Area Forecasts*. The forecasts prepared for the last master plan, if available, will also be reviewed and analyzed.

**Responsibilities:**

Consultant: Review all socioeconomic material pertaining to the study and the region.

Sponsor: Assist in identifying potential sources of information and assist Consultant in obtaining identified socioeconomic material.

Product: Forecasts of expected socioeconomic factors and aviation activity at DTO and other regional airports.

#### **Task 3.2 Prepare Aviation Demand Forecasts**

Description: Develop aviation demand forecasts using both simple and more complex methodologies, taking into consideration forecasts from other sources such as the FAA. Historical aviation activity statistics for the airport will be organized to evaluate airport peaking characteristics and fleet mix ratios. The methodology used in this analysis will involve a variety of techniques that will factor in national transportation statistics, local socioeconomic factors, as well as the independent airport data. Correlation analysis techniques will include relatively simple graphical comparison, as well as more complex regression analysis.

The forecasts shall result in estimates of aviation demand for five, ten and twenty years including:

- Potential commercial airline passenger enplanements, fleet mix, and operations

- Potential air cargo operations, tonnage, and fleet mix **(primary responsibility for HubPoint Strategic Advisors)**
- Annual volume and mix of aircraft operations
- Air taxi (related to scheduled or non-scheduled operations having fewer than 60 passenger seats)
- Based aircraft by aggregate and fleet mix
- Aircraft operations by aggregate, itinerant/local
- Other air taxi to include Part 135 and fractional ownership operations

Peaking characteristics will also be established for use in demand capacity evaluations for the following:

- Potential air carrier enplanements/passengers and operations
- General aviation operations
- Total airport operations

Responsibilities:

Consultant: Prepare aviation demand forecasts for the 20-year planning horizon. **Air cargo activity projections will be the primary responsibility of HubPoint Strategic Advisors.**

Sponsor: Assist Consultant in obtaining available airport records.

Product: Complete incremental forecasts for 5, 10, and 20 years from the base year. These forecasts will be coordinated with the FAA (for their approval) to ensure that the study proceeds based on generally supported assumptions.

### **Task 3.3 Identify Existing and Future Airport Design Critical Aircraft**

Description: Utilizing data provided by the airport and that obtained from FAA database resources, identify the current critical and future aircraft for the airport, per FAA AC 150/5000-17, *Critical Aircraft and Regular Use Determination*. The aircraft identified will be the most demanding aircraft, or family of aircraft, conducting a minimum of 500 annual operations. The analysis will include a projection of aircraft operations by runway design code (RDC) and airport reference code (ARC) to determine future planning design standards.

This analysis will outline the RDC for commercial airline, air cargo, general aviation, and military aircraft. Moreover, the analysis will be considered for each of the airport's runways, as applicable, to determine sufficiency in later tasks.

Responsibilities:

Consultant: Determine current critical aircraft and projection of future critical aircraft by RDC and ARC.

Sponsor: Assist the Consultant in obtaining available airport records.

Product: Determination of existing and future critical aircraft for airfield design. This task will be coordinated with the FAA during the forecast review and approval process.

### **Task 3.4 Prepare Phase I Report**

Description: Upon completion of the work tasks in Elements 2 and 3, working papers comprising the Phase I report will be prepared to outline the analysis, methodologies, and findings of the study efforts. Narrative prepared will highlight the history of the airport, the airport setting, and a definition of the airport's role in the state and national airport system, study process, goals and objectives, and methodology as well as an updated aviation demand forecasting chapter. A glossary and list of acronyms/abbreviations will be prepared and summarized in an appendix. Up to fifteen (15) hard copies and electronic (PDF) versions of the report will be submitted for review by the PAC, FAA, and Sponsor officials.

***THIS TASK ALSO INCLUDES TIME REQUIRED TO COORDINATE, MAKE CHANGES, AND/OR MODIFY FINDINGS IN TASKS 3.2 AND/OR 3.3 BASED ON FAA REVIEW, COMMENT, AND APPROVALS.***

Responsibilities:

Consultant: Develop complete narrative and graphics for the Phase I report. Responsible for the distribution of the Phase I report to the PAC, FAA, and Sponsor staff.

Sponsor: Review and comment.

Product: Up to Fifteen (15) hard copies of the Phase I report and electronic (PDF) versions of the report. The chapters comprising Phase I will also be posted to the project website.

### **Task 3.5 Conduct Planning Advisory Committee Meeting No. 2 and Public Workshop No.1**

Description: Prepare graphic display and/or handout information necessary to adequately explain Phase I report which will include:

- Study Introduction
- Inventory (Element 2)
- Aviation Demand Forecasts (Task 3.1-3.4)

Meet with the PAC to review the Phase I report, as well as to review the project schedule, progress, and subsequent work efforts. This task will include holding an open-house style format public information workshop the evening of PAC meeting, if requested and desired by airport/city staff. The workshop will allow for interested public entities to review project materials and interact with the consultant.

Responsibilities:

Consultant: Provide presentation material and necessary graphics for the meeting. Also provide documentation allowing for the sponsor to publish notice of public meeting.

Sponsor: Distribute meeting notices and arrange for meeting room.

Product: Conduct second PAC meeting and first public workshop for master plan study. A virtual component for the PAC meeting and public coordination may be available, as necessary.

### **Task 3.6      Conduct Phase I City Council Meeting**

Description: Provide a project update and presentation of the Phase I materials to City Council. A decision tree will be presented with options to move forward with commercial passenger air service facility requirements and alternatives, as an optional element (**see Element 11**). If City Council chooses not to pursue commercial passenger air service, facility requirements and alternatives for a new passenger terminal facility and its support facilities will be excluded from the remainder of the study.

**Responsibilities:**

Consultant: Provide presentation materials for the City Council meeting.

Sponsor: Coordinate the inclusion of the presentation on the City Council agenda.

Product: Presentation of Phase I materials to City Council.

## **ELEMENT 4 – FACILITY REQUIREMENTS**

The purpose of this study element is to determine available capacities of various facilities at DTO, their conformance or non-conformance with FAA standards, and identify the facilities that will be needed to meet compliance requirements or projected demand over the next twenty years.

### **Task 4.1      Establish Physical Planning Criteria**

Description: Identify physical facility planning criteria for use in assessing the adequacy of various airport facilities to meet forecast demands. These criteria shall be based upon the latest FAA requirements and standards as they apply to the level of activity identified, new technology, and role of the airport. These criteria shall include dimensional standards for safety including runway length, runway separation, height restrictions, etc. In addition, these criteria shall include requirements to maintain airspace/air traffic control including approach and runway protection zones, safety areas, and other general physical area requirements such as apron, terminal/operations, access circulation and parking, hangars and services, administrative, ARFF, and other airport service and support facilities.

**Responsibilities:**

Consultant: Develop physical planning criteria.

Sponsor: Review.

Product: Detailed criteria for airport physical planning.

### **Task 4.2      Determine Airfield Capacity and Delay**

Description: Using the FAA's airfield capacity/delay model, estimate current and future levels of airfield capacity (annual service volume) and delay for DTO. These analyses will be based on the existing airfield configuration, aviation demand forecasts, and an analysis of airspace capacity potentials and constraints, and will involve the investigation of management and operational

procedures to optimize the use of the total airside (runway, taxiway, and apron).

The analysis in this task will determine if aviation demand factors generate a capacity rationale for runway eligibility.

**Responsibilities:**

**Consultant:** Estimate airfield capacity and delay utilizing FAA guidance.

**Sponsor:** Review and comment.

**Product:** Detailed description the airport annual service volume for the current, 5, 10, and 20-year time frames.

### **Task 4.3 Prepare Airfield Facility Requirements**

**Description:** Using the results of the forecasts (Element 3), as well as relevant information from other tasks, determine and prepare a list of facility requirements needed to meet projected demands for the airport for existing, short term (1-5 years), intermediate term (6-10 years), and long term (11-20 years) time frames. These facility requirements will be used in the later comparative evaluations and will be based upon both the airport physical planning criteria and the aviation forecasts.

Facility requirements to meet aviation demand for the airfield will include (but not be limited to) runways, taxiways, lighting, navigational aids, and marking and signage. These facility requirements will be developed in the form of gross areas and basic units and will be compared to those that presently exist to identify the future development items needed to maintain adequate service, function, and operations of the airport. In addition, airfield design standards deficiencies will be identified, and corrective actions evaluated and recommended. In subsequent tasks, the above facility requirements will be translated into alternative plans for further evaluation in relation to established planning criteria.

Specifically, these tasks will be performed:

- Runway 18L-36R pavement length, width, and strength needs based on the established existing and ultimate critical design aircraft
- Runway 18R-36L pavement length, width, and strength needs based on the established existing and ultimate critical design aircraft
- Airfield geometry issue identification(s) to include taxiways and apron direct access issues which may exist.
- Airspace obstruction and/or RPZ incompatibility analyses

**Responsibilities:**

**Consultant:** Identify specific airfield facility needs, offer runway pavement minimum justification(s), and outline nonstandard airfield geometry.

**Sponsor:** Review.

**Product:** Detailed description of all airfield facilities required to meet aviation demands at

the airport through the 20-year planning period.

#### **Task 4.4 Prepare Landside Facility Requirements**

Description: Using information provided by the aviation planning criteria established under preceding tasks, develop a set of facility requirements addressing the landside facilities necessary to support the airfield and its related activity.

This work effort will outline cargo facility needs, as applicable based on the findings of projected cargo demands at DTO **(with input from HubPoint Strategic Advisors)**.

General aviation requirements will determine best location for the next generation of facilities at DTO. This work effort will outline the general spacing requirements for use in determining long term locations to be conducted in the alternatives chapter.

Requirements for facilities such as fuel/fuel farm areas, ARFF, airport maintenance, and automobile parking lots (public and rental cars) will be developed under this task. **Additionally, an evaluation of the potential for an on-site U.S. Customs facility will be conducted.**

##### **Responsibilities:**

Consultant: Identify specific landside area facility needs.

Sponsor: Review.

Product: Detailed description of facility requirements necessary for landside development to support forecast aviation demand through the 20-year planning period.

### **ELEMENT 5 – AIRPORT DEVELOPMENT ALTERNATIVES**

The purpose of this study element is to develop those airport development alternatives that appear most feasible and evaluate them to determine the most prudent and feasible alternative concept available for the airport.

#### **Task 5.1 Establish Alternative Development Issues**

Description: Based upon the results of the facility requirements necessary to meet projected demand, identify those issues which will impact the development of alternatives for the various functional areas of the airport. This task will provide insights into the potentials for and policies constraining the development of specific land uses within the existing or future airport boundaries, including those areas which are unconstrained and meet current functional potential, thereby requiring no additional development.

##### **Responsibilities:**

Consultant: Establish alternative development issues.

Sponsor: Review and comment.

Product: Alternative development issues.

## **Task 5.2      Evaluate Potential Airside Alternatives**

Description: The airside facility requirements developed in the previous evaluations will be translated into a series of alternative plans for comparative evaluation in relation to the established planning criteria. The analysis will address a maximum of three possible airfield alternatives (in addition to the “do nothing”). The alternatives with greatest potential for meeting airside demand in the most prudent order will be evaluated.

### **Responsibilities:**

Consultant: Development of airside development alternatives.

Sponsor: Review.

Product: A series of development options, each of which will attempt to meet the forecast airfield facility demands as well as FAA airfield criteria.

## **Task 5.3      Identify Potential Landside Alternatives**

Description: Based on the facility requirements determined under the previous element, formulate preliminary development alternatives. These alternatives will be based on concepts for development within or beyond existing airport boundaries which show all necessary development during the planning period and beyond. This task will be conducted simultaneously with other tasks in this element and result in a series of overall development options for the airport.

Specific landside alternative issues to examine will include:

- Commercial air cargo facility development siting options.
- General aviation development opportunities. The analysis of conceptual general aviation building site locations and design considerations at DTO to include specific airside master plan development designs for conformance with industry best practices needs and demand.
- [Siting options for U.S. Customs facility.](#)
- Non-aviation land development options for potential land use release

### **Responsibilities:**

Consultant: Develop up to three (3) landside development options, one being the “no-build” concept alternative.

Sponsor: Review.

Product: A series of landside alternatives which fulfill the facility requirements to meet forecast demand levels.

#### **Task 5.4 Prepare Phase II Report**

Description: Upon completion of the work tasks in Elements 4 and 5, a report will be prepared to outline the analysis, methodologies, and findings of the study efforts. Narrative prepared as part of this Element will include detailed facility requirements and alternative concepts. Up to fifteen (15) hard copies and electronic (PDF) versions of the report will be submitted for review by the PAC, FAA, and Sponsor officials.

##### **Responsibilities:**

Consultant: Develop complete narrative and graphics for the Phase II report. Responsible for the distribution of the Phase II report to the PAC, FAA, and Sponsor staff.

Sponsor: Review and comment.

Product: Up to Fifteen (15) hard copies of the Phase II report and electronic (PDF) versions of the report.

#### **Task 5.5 Conduct Planning Advisory Committee Meeting No. 3 and Public Workshop No.2**

Description: Prepare graphic display and/or handout information necessary to adequately explain Phase II report. Meet with the PAC to review the Phase II report, as well as to review the project schedule, progress, and subsequent work efforts. This task will include holding an open-house style format public information workshop the evening of PAC meeting. The workshop will allow for interested public entities to review project materials and interact with the consultant.

##### **Responsibilities:**

Consultant: Provide presentation material and necessary graphics for the meeting. Also provide documentation allowing for the sponsor to publish notice of public meeting.

Sponsor: Distribute meeting notices and arrange for meeting room.

Product: Conduct second PAC meeting for Master Plan study. A virtual component for the PAC meeting and public coordination may be available, as necessary.

### **ELEMENT 6 – RECOMMENDED MASTER PLAN CONCEPT**

The purpose of this study element is to establish a capital implementation program to provide the airport development requirements necessary to meet aviation activity demands during the forecast period.

#### **Task 6.1 Recommended Master Plan Concept**

Description: Based on the information developed in the airport alternatives element as well as comments provided by airport staff, PAC members, and the general public, a single recommended master plan concept for development of the airport facilities will be prepared. The recommendation for the most prudent and feasible master plan concept will become the



basis for the development of airport plans, costs, and scheduling.

**Responsibilities:**

**Consultant:** Develop a refined Master Plan concept for review by the Sponsor, PAC and other interested parties.

**Sponsor:** Review.

**Product:** A recommended master plan concept.

## **Task 6.2 Prepare Aircraft Noise Exposure Contours**

**Description:** Compile computer batch files for development of existing and future noise exposure contours using FAA's Airport Environmental Design Tool (AEDT) Provide computer plot of 65 DNL and higher contours, at 5 DNL increments, and areas (in square miles and acres) within each contour. It is envisioned that two computer modeling runs will be developed – one for existing conditions and one for future conditions. The noise contours will be plotted on base maps utilizing aerial photography, if available, and/or best available mapping. No population impact counts will be developed under the task. Information on forecast operations will be obtained from the forecast analysis in the master plan. Information on traffic patterns and runway utilization rates will be reviewed with the airport sponsor. The results of the analysis will be included in the airport plans/land use compatibility working paper. Digital copies of the AEDT analysis can be provided to the sponsor at the conclusion of the analysis, if requested.

**Responsibilities:**

**Consultant:** Develop existing and future noise exposure contours.

**Sponsor:** Review traffic pattern and runway utilization assumptions.

**Product:** Existing and future noise exposure contours for the airport.

## **Task 6.3 Land Use Controls and Plans**

**Description:** Review and summarize existing zoning ordinances, subdivision regulations, building codes, and land use and transportation plans, and land use management documentation in the study area. Prepare tables and exhibits of the zoning, future land planning designation, and improvements.

**Responsibilities:**

**Consultant:** Review reports and documents from area planning agencies and prepare summary tables and exhibits.

**Sponsor:** Review.

**Product:** Tables and exhibits for analysis in later tasks.

## **Task 6.4 Non-compatible Development Analysis**

**Description:** Based on information collected in Task 6.3, areas with the greatest potential for non-compatible development when compared to updated noise exposure contours and Part 77

approach surfaces will be identified. It is anticipated that this area will not extend beyond one mile from each runway end. Additionally, land use control inconsistencies will be identified. Growth-risk areas will be categorized by type of land use.

**Responsibilities:**

Consultant: Responsible for this task.

Sponsor: Review.

Product: Growth risk analysis including mapping of non-compatible growth areas.

### **Task 6.5 Land Use Management Techniques**

Description: Identify various land use management techniques that could be applied in the airport vicinity. These techniques may include, but not necessarily be limited to changes in existing zoning districts, creation of new zoning classifications, modification of other development regulations and building codes, property and easement acquisition, and other mitigation measures.

**Responsibilities:**

Consultant: Responsible for this task.

Sponsor: Review.

Product: A list of recommended land use management techniques that may be effective in promoting land use compatibility.

### **Task 6.6 Environmental Overview (NEPA)**

Description: The purpose of this task is to identify potential environmental issues associated with the airport development alternatives and recommended development concept, including mitigation measures that may be needed for proposed projects.

Once a recommended master plan concept has been developed, a preliminary environmental overview will be conducted using the information collected to identify any potential environmental concerns that must be addressed prior to program implementation. This evaluation will be structured in a table format and will include an analysis of potential impacts on environmental resources as defined within FAA's Order 1050.1F and its accompanying Desk Reference. Projects which may require further NEPA analysis (i.e., Environmental Assessment or Environmental Impact Statement) will be identified. This evaluation is not intended to serve as a formal Environmental Assessment under NEPA.

**Responsibilities:**

Consultant: Assemble data based on latest information available.

Sponsor: Assist in collection of data.

Product: Input to later analysis.

## Task 6.7      Recycling Plan

Description: The FAA Modernization and Reform Act of 2012 includes a new requirement for Airport Master Plans to address recycling by:

- Evaluating the feasibility of solid waste recycling,
- Minimizing the generation of waste,
- Identifying operations & maintenance requirements,
- Reviewing of waste management contracts, and
- Identifying the potential for cost savings or revenue generation.

To develop a recycling plan that meets this FAA requirement, the Consultant will align with the following guidance (as applicable):

- Reauthorization Program Guidance Letters (R-PGL) 19-02, *Planning and Project Eligibility*, Section 148(a)(1-2) *Recycling Plans*
- FAA Memorandum *Guidance on Airport Recycling, Reuse, and Waste Reduction Plans*.
- FAA Modernization and Reform Act of 2012 (49 U.S.C. 47102(5) and 47106(a))
- FAA Synthesis Document: Recycling, Reuse, and Waste Reduction Plans at Airports

The Consultant will do the following:

*Collect baseline information on the airport's waste management program.* Meet with DTO staff to understand how waste is managed at the airport and what current education efforts for passengers, employees, contractors, and tenants are already in place. In addition, collect information such as waste collection contracts, monthly waste/recycling invoices, and the waste-related costs for waste and recycling (containers, hauling, disposal, and labor).

*Assess existing waste management program.* To understand the sources, composition, and quantities of waste generated at the airport, conduct a facility walk-through, and an examination of monthly waste/recycling invoices.

*Assess opportunities for expansion of recycling program.* Review current waste collection contracts and conduct research on current market conditions to determine whether there are any logistical limitations to expanding the recycling program.

*Develop recommendations for improving the recycling program.* Based on the above assessment of the airport's waste and recycling program, develop recommendations for improving the airport's recycling program as well as minimizing waste generated at the airport. Recommendations will include identification of potential cost savings or revenue generation.

Responsibilities:

Consultant:    Develop Recycling Plan

Sponsor:      Assist in collection of data

Product: Recycling Plan

## ELEMENT 7 – FINANCIAL MANAGEMENT AND DEVELOPMENT PROGRAM

The purpose of this element is to analyze benefits and costs that may be associated with the recommended plan as well as determine and set out the assumptions, terms, and conditions by which agreed-upon capital improvement programs can be financially implemented for the airport.

### Task 7.1 Prepare Airport Development Schedules and Cost Estimates

Description: Prepare the airport development schedules and cost estimates (in current dollars) for the selected master plan concept for DTO, thereby ensuring that logical staging of improvements are given proper consideration in the development of a financial plan and capital improvement program. Items that are eligible for funding under the Airport Improvement Program will be identified in accordance with FAA Order 5100.38D, *Airport Improvement Program (AIP) Handbook*.

Responsibilities:

Consultant: Prepare an airport development schedule and estimated costs.

Sponsor: Review.

Product: Development schedules and cost for the improvements proposed as a part of the selected master plan concepts.

### Task 7.2 Prepare Capital Program and Financial Plan

Description: Develop a recommended 20-year airport capital improvement program and a condensed financial plan suitable for DTO. The airport capital improvement program will identify individual projects for each year through the first five years of the plan, then prioritize projects through the intermediate (6–10 year) and long term (11–20 year) periods.

*This task will be assisted by Jordan Aviation Strategies and Ambrogio Consulting Services.*

Responsibilities:

Consultant: Develop a detailed capital program.

Sponsor: Provide review and input.

Product: Capital program for the 20-year planning period.

### Task 7.3 Perform Financial Analysis

Description: The financial plan of the master plan presents the financial assumptions which will ultimately impact facility and funding requirements. Initial assumptions and project objectives are revised to reflect changes in activity forecasts and collateral development alternatives. Elements to be refined include the types of facilities to be built or rehabilitated, the total costs of

these facilities, the timing of cash flows associated with the construction of planned facilities, and financing sources and terms.

The estimated demand on operating revenues and the impact on tenant rates and charges will be identified and analyzed and recommended strategies for completing and funding the proposed projects will be presented. The preferred alternative will reflect a financial management structure in combination with a physical plan which accomplishes DTO's objectives for strategic growth, economic development, air and ground transportation services, and environmental mitigation.

The following components of the financial analysis will be conducted:

- Sources and uses of funds analysis – Reviewing design cost and phasing to determine the various sources of funding for the recommendations including any portion that must be financed through bonds.
- Debt service analysis – Determining the par amounts required for construction and or refinancing; calculation of required reserve funds, capitalized interest, and debt service coverage per the bond resolution.
- Revenue forecasting analysis – Projecting amount and timing of additional revenues from increased facilities and from activity forecasts, as well as reviewing concession tenant leases to determine if rates can be increased during the projection period.
- Operating expense projections – Analyzing historical trends and the impact of new facilities on projections.
- Cash flow analysis – Calculating net revenue projections, including the effects of economic and financial constraints on project viability.

***This task will be the primary work effort to be completed by Jordan Aviation Strategies and Ambrogio Consulting Services.***

Responsibilities:

Consultant: Prepare a financial analysis.

Sponsor: Provide information on lease income and review analysis.

Product: Financial analysis to be used in the preparation of the capital improvement program.

#### **Task 7.4 Prepare Phase III Report**

Description: Upon completion of the work tasks in Element 6 and 7, a report will be prepared to outline the analysis, methodologies, and findings of Elements 6 and 7. Up to fifteen (15) hard copies and electronic (PDF) versions of the report will be submitted for review by the PAC, FAA, and Sponsor officials.

##### **Responsibilities:**

Consultant: Develop complete narrative and graphics for the Phase III report. Responsible for the distribution of the Phase III report to the PAC, FAA, and Sponsor.

Sponsor: Review and comment.

Product: Up to fifteen (15) hard copies of the Phase III report and electronic (PDF) versions of the report. The chapters will be published on the project website.

#### **Task 7.5 Conduct Planning Advisory Committee Meeting No. 4 and Public Information Workshop No. 3**

Description: Prepare graphic display and/or handout information necessary to adequately explain the Phase III report. Meet with the PAC to review the Phase III report, as well as to review the project schedule, progress, and subsequent work efforts. This task will include holding an open-house style format public information workshop the evening of PAC meeting. The workshop will allow for interested public entities to review project materials and interact with the consultant.

##### **Responsibilities:**

Consultant: Provide presentation and necessary graphics at the meeting.

Sponsor: Distribute meeting notices and arrange for meeting room.

Product: PAC and public workshop meetings for master plan study. A virtual component for the PAC meeting and public coordination may be available, as necessary.

### **ELEMENT 8 – GEOGRAPHICAL INFORMATION SYSTEM (GIS) AND DATA COLLECTION SERVICES**

Data collection for the airport will be conducted to comply with table 2-1 of Advisory Circular 150/5300-18B, column Airport Layout Plan for ADIP submission and used for development of the Airport Layout Plan set defined in Element 10. The process includes collection of high-resolution aerial photography, high precision surveys of safety critical airport data, (runway ends, NAVAIDS, airport elevation, airspace, obstructions and others), and additional feature collection such as pavement areas, paint markings, and fencing used to describe the airport. The objective of this element is for the Consultant to provide the sponsor with a digital dataset of the airport and its surrounding environment in conformance with current Federal Aviation Administration (FAA) standards set forth in the Advisory Circulars 150/5300- 13A, -16B, -17C, and -18B. To provide an updated aerial image, and to conduct airspace analysis for the appropriate 18B and Part 77 surfaces. The data collected in this element will be used for ALP development and submission

into the ADIP portal. This will be a complete data collection of the airport environment.

### **Task 8.1      FAA AIRPORTS-GIS**

**Description:** Table 2-1 of Advisory Circular 150/5300-18B, column Airport Layout Plan will guide the collection of data for the Airports-GIS portion of the project. The dataset is a high precision, digital model of the features of the airport as defined in 18B table 4-1 for Airport Layout Plans. This task includes working with the sponsor to create the project in the ADIP system, submitting and gaining approval of the SOW and all other necessary plans required by ADIP. Next is to collect and format the data, then submit the data and final report to the ADIP site and gain FAA Approval. Compliance with current Federal Aviation Administration (FAA) standards set forth in the Advisory Circulars 150/5300- 16B, -17C, and -18B will be adhered to.

#### **Responsibilities:**

- Consultant: Ensure FAA and airport standards are met for all survey activity on and off airport and aerial photography acquisition. Provide oversight and review as needed.  
*Martinez Geospatial will be responsible for performing the airspace analysis, conducting the ground survey, providing current orthophotography, and assisting in development of a GIS dataset that is acceptable to the FAA.*
- Sponsor: Liaison with survey team to provide access to airport property. Assist in providing any needed information to survey and aerial photography teams. Direct consultants as required to any safety or operational requirements for survey and aerial photography team.
- Product: Approved FAA Airports-GIS Airspace project.

### **Task 8.2 – ALP DATA COLLECTION AND PART 77 AIRSPACE ANALYSES**

**Description:** This task utilizes the safety critical data collected in task 8.1 and adds to it those features required to complete the Airport Layout Plan per the SOP 2.0 checklist. This includes, but is not limited to, additional features such as paint markings, fencing, and pavement boundaries. It also includes obstacle collection so that Part 77 airspace analysis can be conducted on the future condition of the airport as a result of the planning effort.

***If any obstacles are found to penetrate the obstruction standard surfaces or VFR traffic pattern surfaces, and no previous study has been done on the obstacle, then the obstacle will need to be submitted for airspace evaluation (via OEAAA) and the mitigation and aeronautical study number included in the obstacle data tables on this and the inner approach surface drawings.***

***It is assumed that OEAAA will involve up to three days of data entry and follow-up.***

#### **Responsibilities:**

- Consultant: Provide oversight and review as needed. *Martinez Geospatial will be responsible for performing the airspace analysis and providing planimetric data.* Coffman Associates will add to data collection as needed to comply with FAA regulations.

- Sponsor: Assist project team in collection of attribution of data. Work with planning team to establish future condition. Review drawings and data.
- Product: First phase provides topographic and planimetric data. Second phase provides obstruction analyses.

## **ELEMENT 9 – AIRPORT PLANS**

The purpose of this study element is to prepare a new Airport Layout Plan (ALP) set for DTO. All plans will be prepared in a format which complies with the content contained within FAA's current guidelines for the preparation of an airport layout plan as defined by the FAA Airports ARP SOP 2.00 *Standard Procedure for FAA Review and Approval of Airport Layout Plans (October 1, 2013)*, and which is readily acceptable to the FAA and can be utilized by the Sponsor in carrying out implementation. All plans will be produced digitally using the data collected in element 8 and any additional data the sponsor may have or want to include. Element 8 collects all new airport data. The digital plans and PDF files of each sheet will be a deliverable item to the Sponsor at the completion of this project in CAD or GIS format at the sponsors discretion. The ALP will be included as an appendix in the draft master plan documents. A narrative will also be included in the appendix to better describe the intended functions of the proposed development items.

### **Task 9.1 Airport Layout Plan Drawing**

Description: Following the recommended airport master plan concept developed under the preceding elements and FAA AC 150/5070-6B, an ALP drawing for the airport will be prepared. The ALP will reflect updated physical features, location of airfield facilities (runways, taxiways, navigational aids), and existing landside development. Development of recommended landside and airfield facilities, including runways and taxiways; property and runway protection zone boundaries; and revenue support areas will also be shown. Guidelines for the preparation of an airport layout plan as defined by the FAA Airports ARP SOP 2.00 *Standard Procedure for FAA Review and Approval of Airport Layout Plans (October 1, 2013)* will be followed. A Title Sheet and Airport Data Sheet will also be prepared and included with the full Airport Layout Plan set.

#### **Responsibilities:**

- Consultant: Prepare a new ALP for the airport.
- Sponsor: Review and comment.
- Product: A new ALP drawing for the airport which meets federal guidelines.

### **Task 9.2 Terminal Area Drawing(s)**

Description: Prepare Terminal Area Drawing(s) reflecting development resulting from the recommendations of this study. Depending on the future recommended development for the general aviation areas, more than one drawing may be required to adequately reflect the detail of development within the area. The drawing(s) will include detailed planning level information



such as access taxiways, apron areas, hangar layouts, aircraft tie-down areas, customer and employee parking areas, and vehicular circulation and access for the short, intermediate, and long-term planning periods.

**Responsibilities:**

**Consultant:** Prepare Terminal Area Drawing(s).

**Sponsor:** Review and comment.

**Product:** Terminal Area Drawing(s) reflecting the selected development alternative for these facilities at the airport.

**Task 9.3 Part 77, Approach and Inner Approach Surface Plans**

**Description:** Prepare Part 77, Approach and Inner Approach Surface plans in conformance with FAR Part 77 and FAA Airports ARP SOP 2.00 *Standard Procedure for FAA Review and Approval of Airport Layout Plans (October 1, 2013)*. As necessary, height of potential obstructions will be researched and identified on the drawing along with an obstruction chart/table indicating the obstruction description, their top elevation, affected Part 77 surface, the penetration, and disposition or corrective action to eliminate or mitigate the obstruction.

**Responsibilities:**

**Consultant:** Prepare a new Part 77, Approach and Inner Approach Surface plans for the airport.

**Sponsor:** Review and comment.

**Product:** Part 77, Approach and Inner Approach Surface plans for the airport to meet federal guidelines. Product will include aerial photography of the inner approach surfaces and runway protection zones.

**Task 9.4 Departure Surface Drawings**

**Description:** Prepare new departure surface drawings in accordance with guidelines as defined by the FAA Airports ARP SOP 2.00 *Standard Procedure for FAA Review and Approval of Airport Layout Plans (October 1, 2013)*. Obstruction information will be obtained from the Part 77 obstruction analysis completed in Task 10.2, approach plans, and the current Airport Obstruction (OC) chart (as available).

**Responsibilities:**

**Consultant:** Prepare new departure surface drawings for the airport.

**Sponsor:** Review and comment.

**Product:** Departure surface drawings for the airport which meet federal guidelines.

**Task 9.5 Exhibit A – Airport Property Inventory Map**

**Description:** The primary intent of the drawing is to identify and/or delineate all designated airport property owned or to be acquired by the airport owner. The drawing will inventory all parcels, which currently make up the airport, or are proposed for acquisition by the airport

sponsor. In addition, the drawing will also show any property that has been disposed of by the Sponsor in the past. Details will be limited to the depiction of existing and future facilities (i.e., runways, taxiways, runway protection zones, and terminal facilities) which would indicate aeronautical need for airport property. This work effort will utilize information obtained from the current – Exhibit A – Airport Property Inventory Map as well as other sources. The Airport Property Map will be updated in conformance with the guidelines outlined in FAA Airports ARP SOP 3.00 *Standard Operating Procedure (SOP) for FAA Review of Exhibit ‘A’ Airport Property Inventory Maps (October 1, 2013)*. Sponsor will assist Consultant in providing recorded deeds of its property. Additional information requested by the FAA may be added as needed if available and provided by the airport.

**Responsibilities:**

Consultant: Update the Exhibit A – Airport Property Inventory Map for the airport.

Sponsor: Provide appropriate historical data and review Airport Property Map.

Product: Updated Exhibit A – Airport Property Inventory Map for the airport.

## **Task 9.6 On-Airport Land Use Plan**

Description: A Land Use Plan for the area within the boundaries of the airport will be developed based on the identified overall development concept. This will include general aviation areas, terminal complex, air cargo complex, ground access and vehicular circulation system service areas, industrial/commercial development areas, and distinctions between aeronautical and non-aeronautical uses. *The drawing will outline any non-aeronautical land use plans so that future revisions to the ALP are not required should a land use release is requested.*

**Responsibilities:**

Consultant: Prepare On-Airport Land Use Plan.

Sponsor: Review and comment.

Product: On-Airport Land Use Plan and Off-Airport Land Use Plan.

## **Task 9.7 Preparation of Draft ALP and Draft ALP Drawing Set**

Description: Preparation of up to four (4) copies of the “Draft” ALP drawing set for submission to the Sponsor, and subsequent comprehensive agency review by the FAA. The ALP Drawing Set will be prepared in conformance with FAA Airports ARP SOP 2.00 *Standard Procedure for FAA Review and Approval of Airport Layout Plans (October 1, 2013)*. Drawings will be a minimum size of 24” x 36”. FAA review will be concurrent. Drawings will be submitted with or prior to publication of the Draft Final Master Plan.

***THIS TASK INCLUDES TIME REQUIRED TO MAKE CHANGES DURING SPONSOR AND FAA REVIEW AND APPROVAL PROCESS.***

**Responsibilities:**

Consultant: Provide up to four (4) copies of the full Airport Layout Plan drawing sets, depicting

the sponsor selected Recommended Plan for sponsor and FAA use. Per direction from the FAA, the Consultant will also initiate the submittal of the draft ALP set to Obstruction Evaluation/Airport Airspace Analysis (OE/AAA) for FAA Line of Businesses (LOB) review/comment.

- Sponsor: Provide up to four (4) unsigned copies of ALP drawing set to FAA for review. Include signed transmittal letter indicating the changes from the last approved ALP drawing. Provide two (2) full set of drawings to FAA for review.
- Product: Up to four (4) copies of the full ALP drawing set as well as a completed FAA ALP Checklist.

### **Task 9.8 Preparation of Final ALP and Final ALP Drawing Set**

Description: Revise the Draft Airport Layout Plans and Drawings prepared in the previous task to reflect comments received from the FAA review. Upon approval from the Sponsor, provide four (4) copies of the revised full ALP drawing sets to the Sponsor for their signature. The Sponsor will forward the signed drawings to the FAA for final approval.

Responsibilities:

- Consultant: Provide up to four (4) revised copies of the full Airport Layout Plan drawing sets.
- Sponsor: Review and sign all drawings. Forward all drawings to the FAA for final approval.
- Product: Up to four (4) copies of full ALP drawing set.

## **ELEMENT 10 – FINAL REPORTS**

### **Task 10.1 Prepare Draft Final Master Plan Report**

Description: Following the final review period for the Phase III report of the master plan report, a Draft Final Master Plan Report document will be prepared. This document will incorporate appropriate comments and corrections received during the review period. Up to ten (10) hard copies of the Draft Final Report and an electronic (PDF) version will be provided. The FAA will receive one (1) print copy.

Responsibilities:

- Consultant: Prepare and print up to ten (10) hard copies of the Draft Final Master Plan study and an electronic (PDF) version.
- Sponsor: Review and comment.
- Product: Ten (10) Draft Final Master Plan Reports.

### **Task 10.2 Obtain Master Plan Approvals**

Description: Coordinate final approval of master plan with airport administration. This task will include a presentation to the Airport Advisory Board and/or City Council seeking approval of the master plan. The ALP approval will be coordinated with Sponsor and the FAA.

**Responsibilities:**

Consultant: Coordination of final master plan approval.

Sponsor: Review and comment on final documents.

Product: Final master plan and airport layout drawing approvals.

**Task 10.3 Prepare Final Master Plan Report**

Description: Following the final review period for the Draft Final Master Plan Report, a Final Master Plan Report document will be prepared. This document will incorporate appropriate comments and corrections received during the review period. Ten (10) printed copies of the Final Report will be provided, in addition to digital copies of the entire plan (text and graphics) in a PDF format. Two (2) printed copies (and a PDF copy) will be provided to the FAA.

The FAA will also be sent four (4) full sized ALP drawing sets, signed by the sponsor, for signature and circulation. A flash drive containing an electronic (PDF) version of the ALP will also be submitted to the FAA, if requested.

**Responsibilities:**

Consultant: Prepare and print ten (10) copies of the final report (provide two copies to the FAA). Also develop digital copies of the final report in PDF/Word format for submittal to the sponsor and for the FAA.

Sponsor: Coordinate distribution of the final report.

Product: Ten (10) Final Master Plan Reports and electronic (PDF/Word) copies.

**ELEMENT 11 – OPTIONAL COMMERCIAL PASSENGER TERMINAL TASKS**

The project scope includes a presentation of the Phase I study materials, including the potential demand for commercial passenger air service, to City Council. If City Council chooses to move forward with an evaluation of commercial passenger air service facility requirements and alternatives in the master plan, this element covers the necessary tasks.

**Task 11.1 Commercial Passenger Terminal Facility Requirements**

Description: This work effort will consist of a capacity need analysis of a potential passenger service terminal and evaluate potential support (aircraft parking apron, public/employee parking, rental car facilities, administration office, etc.) facility needs based on the new demand forecasts. Facility needs will be based on forecasted potential passenger traffic and peaking characteristics of that traffic. Terminal space modeling will be based on the Airport Cooperative Research Program (ACRP) Report 25, *Airport Passenger Terminal Planning and Design* and FAA AC 150/5360-13A, *Airport Terminal Planning*.

**Responsibilities:**

Consultant: Development of passenger terminal building development facility requirements.

Sponsor: Review.  
Product: Passenger terminal facility needs broken out by functional area, which will be included within the Phase II report.

### **Task 11.2 Commercial Passenger Terminal Alternatives**

Description: This task will identify potential sites for the development of a new passenger terminal facility and support facilities, including vehicle parking lots, access roads, terminal apron and taxilanes, and rental car services.

#### **Responsibilities:**

Consultant: Development of passenger terminal building development alternatives.  
Sponsor: Review.  
Product: A series of development site options, which will be included within the Phase II report.

# **ATTACHMENT 1**

## **SUBCONSULTANT SCOPE**

### **(HubPoint Strategic Advisors)**

## **Denton Enterprise Airport - Air Cargo Market Analysis & Air Cargo Forecasts**

In recent years, the air cargo industry has experienced transformative changes that have impacted supply chains and the way goods are shipped. These include structural changes related to e-commerce and episodic changes due to the pandemic. With these changes, air cargo has taken on a new level of importance and emphasis at airports. The growth in e-commerce has been particularly impactful to the air cargo industry and has led to increasing activity by new and existing operators at U.S. airports of all types. Meanwhile, some smaller airports have proven that they are capable of handling cargo beyond their traditional levels and, therefore, can be viable alternatives to larger airports.

As Denton Enterprise Airport (DTO) considers its development priorities, assessing the feasibility of growing its air cargo business will be important. Airport management must understand how both the internal and external environments influence DTO's air cargo opportunities. An Air Cargo Market Analysis will be designed to assess relevant factors for air cargo at DTO, including the airport's infrastructure, industry trends, the regional market and competitive airports. This analysis will identify any potential air cargo opportunities for DTO and provide advice on the feasibility of growing the airport's air cargo activity from a planning perspective.

Based on the findings and synthesis from the Air Cargo Market Analysis, long-term 20-year air cargo forecasts will be developed for utilization in the Denton Enterprise Airport Master Plan. Given the limited historic air cargo operations at DTO, the consulting team will employ a scenario-based approach for the air cargo forecasts. This approach relies on the definition of specific cargo-related scenarios at airports (including assumptions of operational details and service development over time) and the cargo volumes associated with those scenarios. While this approach can be seen as somewhat prospective, its value from a planning perspective lies in quantifying possible levels of cargo activity should those types of scenarios come to fruition. From this standpoint, it is important to ensure that the scenarios are as realistic as possible, but for planning purposes, also encompass a range of possible air cargo development environments that could be experienced by an airport during the forecast period.

Finally, using the output from the air cargo forecast, Hubpoint will estimate DTO's revenues associated with cargo activity and development. For air cargo operations, airport revenues are typically driven by landing fees and fuel flowage fees from all-cargo aircraft. Additionally, where facilities are required for air cargo operations, ground leases or facility rents from cargo tenants can generate revenue for airports. In coordination with DTO management, Hubpoint will determine the preferred (and likely) facility development approach which, in turn, will inform the analytical assumptions and drive the revenue model.

## **PROPOSED SCOPE OF WORK**

1. Overview of air cargo industry trends
2. Review DTO current situation and air cargo capabilities
  - a. DTO historic aviation / air cargo activity and current service providers
  - b. Existing infrastructure (facilities, runways, apron, equipment, road & highway access)
3. Assess regional air cargo market
  - a. Demand drivers and inbound/outbound shipment activity relevant to DTO
  - b. Competitive airport analysis (AFW, DFW, DAL), including cargo capabilities, services and strategies
4. Synthesis and Conclusions
  - a. Summarize key findings and implications for DTO
  - b. SWOT analysis
  - c. Feasibility assessment
5. DTO 20-year air cargo demand forecasts
  - a. Scenario development for potential DTO cargo services
  - b. Annual air cargo tonnage
  - c. Annual all-cargo aircraft operations
6. DTO air cargo revenue forecast
  - a. Based on air cargo demand forecasts, develop model to estimate cargo-related revenues for DTO
  - b. Estimate landing fees and fuel flowage fees per aircraft type in each forecast scenario
  - c. Determine preferred/likely cargo facility development approach and associated revenues for ground lease or facility rents from cargo tenants
7. Planning Considerations and Recommendations
8. Develop PowerPoint-based report, including analytic output for demand forecasts and revenue forecast

## **PROJECT FEE AND TERMS**

Hubpoint anticipates that the Scope of Work described above can be accomplished for the Project Fee of \$70,000. Any expenses (e.g., travel-related costs) incurred in the conduct of these tasks are in addition to the Project Fee and are to be reimbursed at actual cost based on prior approval from Coffman Associates and the Denton Enterprise Airport.

Should Coffman Associates or the Denton Enterprise Airport elect to engage Hubpoint in substantive additional tasks related to this work, revisions to the Scope of Work and Project Fee will be determined in coordination with the client.

Hubpoint will invoice Coffman Associates on a monthly basis.



**ATTACHMENT 2**  
**SUBCONSULTANT SCOPE**  
**(Jordan Aviation Strategies & Ambrogio**  
**Consulting Services)**

**Denton Enterprise Airport**  
**Master Plan Scope of Work**  
**Jordan Aviation Strategies LLC (JAS) Financial Services**

Jordan Aviation Strategies (JAS) will support Coffman Associates with financing the Preferred Alternative Scenario determined through the planning process and outline the significant capital and operating funds needed to realize the Master Plan's vision.

To complete this task, JAS will take full advantage of all potential sources of funds and minimize financial gaps by identifying all alternative revenue sources available to support the Preferred Alternative Scenario of the master plan. The financial feasibility analysis would also include a forecast of expenses and revenues that can be used to determine whether a baseline level of funds will be available to pay for the local share of the capital development program over the planning period. The initial forecast will determine if the current tenant rents, fees and charges are sufficient to keep pace with inflation and revenues and expenses projected into the future based upon a combination of short historical trends and City policy objectives.

JAS can further assist DTO in their goal to promote aviation growth and development by providing comprehensive financial and strategic business-related airport consulting services that may include:

Strategic Financial and Business Planning – JAS will work with airport management to identify financial metrics that are most relevant for the market that is served by the airport and are achievable given the business structure of key leases and agreements. This task would outline long-term financial trends and potential risk factors that may impact overall financial sustainability, thereby allowing the airport to proactively address these issues. Key components of this task would include:

- Preparation of Financial Feasibility Studies
- Implementing Best Industry Practices
- Generating Peer Airport Comparative Statistics
- Developing A Long-term Financial Plan

Federal Funding Programs - In recent years, the federal funding programs including the Airport Rescue Grants (CARES, CRRSA, ACRGP) and the Bipartisan Infrastructure Law (BIL) programs have offered significant alternative funds to airports who can appropriately justify project funding through stringent grant applications. JAS will work with planners and staff to maximize alternative funding sources including preparation of federal loan and grant applications, and assist in the implementation of processes that are required under federal grant programs.

Commercial Air Service - DTO's desire to explore commercial service aviation which is dependent on the population base and level of economic activity that would generate sufficient passenger demand to make them profitable to air carriers. JAS can assist DTO with key components of the decision-making process including:

- Assist in Airline Discussions
- Developing a Suitable Airline Incentive Program
- Identifying a Rate-Setting Methodology

Cargo and Other Aviation Related Development – JAS can also help DTO explore opportunities for other aviation use services including Cargo and other third-party development. Key components of the task would include:

- Assist DTO with Tenant Negotiations
- Generate Financial Plans with Specific Goals and Key Performance Indicators
- Outline Financial Risk-Sharing Alternatives with Private Parties

**Eric Pfeifer**

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**From:** Sylvia Ambrogio <Sambrogio57@outlook.com>  
**Sent:** Monday, January 23, 2023 12:32 PM  
**To:** Mike Dmyterko; Paula Jordan  
**Cc:** Eric Pfeifer  
**Subject:** RE: JAS scope of work for DTO

Below is our estimate for the MP Task budget. Please review and comment.

Task List	Estimated Hours to Complete	Estimated Fees
Airport Data Gathering and Analysis	35	8,750
Develop Financial Forecast Model	10	2,500
Evaluate Alternative Sources of Funding	10	2,500
Draft Master Plan Financial Section	40	10,000
Staff Interview / Strategy Meetings	10	2,500
<b>TOTAL</b>	<b>105</b>	<b>\$ 26,250</b>

*\*Fees at \$250/hour*

-spa

Sent from [Mail](#) for Windows

# **ATTACHMENT 3 SUBCONSULTANT SCOPE (Martinez Geospatial)**



A GEOSPATIAL SERVICE PROVIDER

## Scope and Fee Proposal

Survey, Photogrammetry & Airports-GIS Services

Denton Enterprise Airport (DTO)

01/05/2023

2915 Waters Road Suite 100 Eagan, Minnesota 55121

Tel: 651-686-8424 • [www.mtzgeo.com](http://www.mtzgeo.com)

Scope and Fee Proposal  
Denton Enterprise Airport (DTO)  
Survey, Photogrammetry & Airports-GIS Services  
01/05/2023

## PROJECT SUMMARY

<b>CLIENT</b>	Coffman Associates
<b>CLIENT CONTACT</b>	Tim Kahmann
<b>CLIENT ADDRESS</b>	12920 Metcalf Ave, Suite 200 Overland Park, KS 66213
<b>PROJECT LOCATION</b>	Denton Enterprise Airport (DTO)

**Martinez Geospatial, Inc. (MTZ)** will provide **Coffman Associates** with remote-sensing and photogrammetry services in support of a Master Plan/ALP and Obstacle Action Plan at **Denton Enterprise Airport (DTO)**. The main objective of this effort will be to fulfill the geospatial data-collection requirements for supporting the update of the ALP.

This proposal also includes tasks required to comply with FAA Airports-GIS program standards. All survey and photogrammetry work will be accomplished in accordance with the following Advisory Circulars:

<b>AC-150/5300-16B (16B)</b>
<b>AC-150/5300-17C (17C)</b>
<b>AC-150/5300-18B (18B)</b>

The Airports-GIS objective for this project includes the collection/survey of both *Safety-Critical* and *Non-Safety-Critical* Data. The Safety-Critical element of the project includes Runway Ends/Thresholds & Profiles Survey, NAVAID Survey, and Airport Airspace Analysis/Obstruction Survey. The Non-Safety-Critical element of this project includes the generation of a planimetric & topographic GIS basemap of the Airport Environment and the generation of ortho-rectified aerial imagery of the Project Area.

MTZ will fulfill the data collection, formatting, and delivery requirements of the FAA Airports-GIS program. In general, MTZ's approach to fulfilling the GIS requirements will be accomplishing those required tasks as outlined in **Table 2-1 (Survey Requirements Matrix)** of **18B, Column "Airport Layout Plan."**

***MTZ will make maximum use of existing data within the ADIP Portal for DTO, including Obstacle Data with FAA-assigned Identifiers.***

## PROJECT SPECIFICATIONS

<b>STATE</b>	TEXAS
<b>COUNTY</b>	DENTON
<b>PROJECT TYPE</b>	AVIATION (AIRPORTS-GIS INCLUDED)
<b>COORDINATE SYSTEM</b>	TEXAS STATE PLANE – NORTH CENTRAL
<b>HORIZONTAL DATUM</b>	NAD83
<b>VERTICAL DATUM</b>	NAVD88 (GEOID18)
<b>FIELD-SURVEY PROVIDED BY</b>	MARTINEZ GEOSPATIAL
<b>MAPPING SCALE</b>	1"=100' & 2' CONTOURS
<b>MAPPING FORMATS REQUIRED</b>	STANDARD CAD w/ DTM and AIRPORTS-GIS
<b>ORTHO RES &amp; PHOTO FORMAT</b>	0.5' GSD, TIF & SID FORMAT



Scope and Fee Proposal  
Denton Enterprise Airport (DTO)  
Survey, Photogrammetry & Airports-GIS Services  
01/05/2023

## PROJECT AREA DEFINITION

The total project area consists of four major components:

<b>AREA A</b>	<b>Planimetric &amp; Topographic Mapping Limit</b> - This area defines the limit for the generation of an AGIS Basemap.
<b>AREA B</b>	<b>Part 77/OCS Airspace Analysis Limits</b> - Horizontal Limits of the applicable Obstruction Identification Surfaces (OIS) as defined by FAR Part 77 and AC-150/5300-13B.
<b>AREA C</b>	<b>Airports-GIS Airspace Analysis Limits</b> - Horizontal Limits of the applicable Obstruction Identification Surfaces (OIS) as defined in AC-150/5300-18B.
<b>AREA D</b>	<b>Raw Obstacle Collection Limit</b> – This area defines the limit for the collection and reporting of all prominent obstacles in support of the Obstacle Action Plan (OAP).

## PROJECT TASKS

### Project Planning/Project Management/FAA Airports-GIS Coordination/Field-Survey Consultation

MTZ will assist Coffman in developing, submitting, and gaining approval of the “Statement of Work” for the project through the **FAA Texas ADO** and the **FAA’s Airport Data Information Portal (ADIP)**. MTZ will develop, submit, and gain approval of the “Aerial Photography Acquisition Report” required by the FAA Airports-GIS Program.

### Aerial Imagery Acquisition

New color aerial imagery will be captured for all areas defined in the **PROJECT AREA DEFINITION** section of this proposal utilizing a high quality digital photogrammetric camera. The aerial imagery acquisition flight mission will be executed in accordance with all guidelines and specifications within FAA AC 150/5300-17C.

The aerial imagery acquisition flight mission will consist of a single “block” of imagery, collected to the following specifications:

<b>IMAGERY RESOLUTION</b>	<b>PURPOSE/USE</b>
10cm	<ul style="list-style-type: none"> <li>- Raw Obstacle Data Collection</li> <li>- Part 77/OCS Obstruction Survey</li> <li>- AGIS Airport Airspace Analysis</li> <li>- Generation of 0.50' GSD orthophotos</li> <li>- Planimetric/Topographic Mapping</li> </ul>

Upon completion of the flight mission, the imagery will be reviewed through in-house Quality Assurance procedures for photogrammetric acceptability and compliance with AC 150/5300-17C requirements.

Scope and Fee Proposal  
Denton Enterprise Airport (DTO)  
Survey, Photogrammetry & Airports-GIS Services  
01/05/2023

### Establish Geodetic Control / Validate Existing PACS & SACS (Field-Survey)

There are one PACS monument and two SACS monuments published by NGS for the airport. This project will validate/utilize these monuments to serve as the project tie to the National Spatial Reference System (NSRS). If the existing PACS/SACS monuments are determined to be damaged or the validation is unsuccessful the surveyors will establish temporary geodetic control points, as required. Geodetic data will be tied to the NSRS using the latest published adjustment (2011).

Following are the specific PACS & SACS locations to be used:

Station Type	Designation	PID	Horizontal Datum	Vertical Datum	GEOID
PACS	DTO D	AB2789	NAD83(2011)	NAVD88	GEOID18
SACS	DTO B	AB5965	NAD83(2011)	NAVD88	GEOID18
SACS	DTO C	AB5964	NAD83(2011)	NAVD88	GEOID18

### Survey Imagery Photo Control (Field-Survey)

Photo-identifiable control points and/or artificial targets will be selected or set/surveyed for use as imagery ground control. Imagery Control will be set, surveyed (properly tied to NSRS), and documented in accordance with AC-150/5300-17C and FAA Airports-GIS requirements. Ground Control data and documentation will be submitted to FAA Airports-GIS along with the AP Acquisition Report. It is anticipated that approximately **28** imagery control points will be required, along with **6** independent OPUS Checkpoints.

### Aero Triangulation

The digital aerial imagery will be imported onto a digital photogrammetric workstation where it will be oriented with field-surveyed ground control. This procedure will establish both horizontal and vertical control for orienting individual photogrammetric models. This orientation will be accomplished using Soft Copy Aerial Triangulation methods.

### Create Digital Ortho Imagery

Digital orthophotos will be produced to meet the requirements of Coffman and the Airport as well as to comply with the requirements of the FAA Airports-GIS Program and AC 150/5300-17C. One set of ortho imagery will be produced, covering the following defined areas and meeting the following specifications:

RESOLUTION	COVERAGE LIMIT
0.50' GSD	AREA C

### Runway Survey (Field-Survey)

Field Surveyors will accomplish survey of both runways at DTO (18R/36L & 18L/36R); survey tasks will include survey of runway-end-points and runway-profiles. For each runway-end-point/threshold a monument will be set (if one is not already present), surveyed, and documented in accordance with AC-150/5300-18B. Runway-centerline profiles will be surveyed utilizing mobile-RTK methodology; final profile data will be extracted at 50-foot stations for FAA Airports-GIS submission. Runway survey data will be utilized for the Obstruction Surveys/Airport Airspace Analysis task. Furthermore, MTZ will identify Airport Reference Point, Airport Elevation, High & Low Elevations of each Runway, and



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Touchdown Zone Elevations for each runway utilizing the newly surveyed Runway Data. Runway survey data will be properly formatted by MTZ and reported in the FAA Airports-GIS deliverable.

### **NAVAID Survey (Field-Survey)**

Surveyors will accomplish field-survey of NAVAIDs serving the DTO airport. Each NAVAID will be surveyed and documented in accordance with AC-150/5300-18B. NAVAID survey data will be properly formatted by MTZ and reported in the FAA Airports-GIS deliverable. The NAVAID Survey will include the following:

<i>Airport Rotating Beacon</i>	<i>18L PAPI</i>
<i>36R PAPI</i>	<i>18L MALSR</i>
<i>18R PAPI</i>	<i>36L PAPI</i>
<i>18L LOC</i>	<i>18L GS</i>
<i>18L OM</i>	<i>PINCK NDB</i>
<i>ASOS</i>	<i>Windcones</i>

### **Airport Airspace Analysis/Obstruction Surveys**

#### **18B/AGIS**

An Airport Airspace Analysis will be performed in accordance with AC 150/5300-18B. This task will be performed in order to comply with the requirements of the FAA Airports-GIS Program for projects involving Airport Layout Plans. All available existing obstacle data for DTO will be obtained & downloaded from ADIP; existing obstacle data (relevant to the AGIS Airspace Analysis) will be validated or updated as necessary and incorporated into this project. Existing obstacle data will be reported back to FAA through ADIP, identifiable by assigned FAA-Obstacle-ID.

The Airport Airspace Analysis will meet the following specifications:

<b>RUNWAY</b>	<b>ANALYSIS TYPE</b>
18L/36R	Runways-With-Vertical-Guidance
18R/36L	Runways-With-Vertical-Guidance

GIS Formatting of final reported 18B/AGIS obstacle data will adhere to the specifications of AC 150/5300-18B, Chapter 5 *Airport Data Features*.

#### **Part 77/Obstacle Clearance Surface (OCS)**

An FAR Part 77 and an OCS Obstruction Survey will be performed for all runway ends. Utilizing the digital 3D stereo imagery, the prescribed Part 77 & OCS Obstruction-Identification-Surfaces will be examined and analyzed to identify natural and manmade objects penetrating the surfaces. The Part 77 Obstruction Survey will meet the following specifications:

<b>RUNWAY</b>	<b>PART 77 ANALYSIS TYPE</b>
18L	Precision-Instrument-Runway (PIR)
36R	Non-Precision-Instrument-D (NPI-D)
18R	Non-Precision-Instrument-D (NPI-D)
36L	Non-Precision-Instrument-C (NPI-C)

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The OCS Obstruction Survey will meet the following specifications (OCS Numbers are taken from AC-13B, Tables 3-2, 3-3, 3-4. and 3-5).

<b>RUNWAY</b>	<b>OCS ANALYSIS TYPE</b>
18L	OCS 5 (< 3/4sm Visibility Minimums)
18L	OCS 6 (Vertical Guidance Surface)
18L	OCS 7 (Departure Surface)
36R	OCS 5 ( $\geq$ 3/4sm Visibility Minimums)
36R	OCS 6 (Vertical Guidance Surface)
36R	OCS 7 (Departure Surface)
18R	OCS 5 ( $\geq$ 3/4sm Visibility Minimums)
18R	OCS 6 (Vertical Guidance Surface)
18R	OCS 7 (Departure Surface)
36L	OCS 5 ( $\geq$ 3/4sm Visibility Minimums)
36L	OCS 6 (Vertical Guidance Surface)
36L	OCS 7 (Departure Surface)

### **Part 77/OCS Collection Criteria**

The obstruction-identification-surfaces, defined in the previous section, will be digitally referenced with the 3D Stereo Imagery. Utilizing the 3D imagery, trained technicians will visually examine all surfaces and collect X-Y-Z point data for objects meeting collection criteria. Collected data will then be mathematically analyzed against the surfaces using custom processes to produce a final dataset. Multiple Quality-Assurance processes are performed for obstruction data through the project life cycle to ensure accuracy and completeness. Data will be collected to fulfill the following criteria:

- 1) A single X-Y-Z point will be collected / analyzed for any manmade or natural object penetrating a surface. The point will be placed on the highest point of the object. The X-Y location will correspond to the horizontal position of the highest portion of the object, not necessarily the geometric center or middle of the object.
- 2) Occasionally with Obstruction Surveys, large group of trees or terrain (obstruction area) are found to penetrate a surface and it is not feasible or possible to collect each individual penetration. In these cases, the obstruction area will be outlined with a bounding polygon in order to represent the horizontal extents of the area. A grid will then be overlaid on the obstructing area. Within each grid sector, the highest object will be collected. Within the primary surface, the transitional surface, and within the first 5,000 feet of the approach surface, 100-foot grid spacing will be used. Within 10,000 feet of the approach surface, but outside 5,000 feet, 200-foot grid spacing will be used. 200-foot grid spacing will also be used within the horizontal surface. Within the conical surface, 500-foot grid spacing will be used.

### **Raw Obstacle Collection – AC-18B Vertically-Guided Approach Surface (OPTIONAL TASK)**

In support of an Obstacle Action Plan (OAP), MTZ will complete raw obstacle data collection for each runway, beyond the reporting requirements of AC 150/5300-18B. The horizontal extents of the collection area are based on the dimensions of the AGIS/18B Vertically-Guided Obstruction Surfaces.

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Within the AGIS/18B Vertically-Guided Approach Surface and within the Transitional Surfaces, MTZ will collect all prominent manmade and natural objects with no regards to penetration value. For manmade objects, all buildings, utility poles, antennas, towers, and prominent objects will be collected (small objects, such as mailboxes, posts, and utility boxes will be ignored). For vegetation, singular trees/shrubs will be collected to the extent possible/feasible. In large areas of dense vegetation, a bounding polygon will be drawn to show the extents of the area. When necessary to reduce data congestion, a 100-foot grid will be applied and the highest vegetation point within each grid-sector.

***Deliverable Format for Obstacle Data***

<b>DELIVERABLE</b>	<b>DESCRIPTION</b>
Shapefile and CAD File	These files will contain the following pieces of data: <ol style="list-style-type: none"> <li>1) Obstruction Surface Linework</li> <li>2) Obstruction X-Y-Z Points</li> <li>3) Obstruction Area Polygon (if applicable)</li> <li>4) Obstruction Area Grid (if applicable)</li> </ol>
Attributes will be included in the Shapefile as Object Data. For the CAD version, attributes will be provided in Spreadsheet Format and can be cross-referenced with the CAD file by Object Number.	Shapefiles will contain the following pieces of object data: <ul style="list-style-type: none"> <li>• Object type</li> <li>• Northing / Easting / Elevation (MSL)</li> <li>• Latitude/Longitude</li> <li>• AGL Height (as able, for penetrating objects only)</li> <li>• Height-Above-Runway-End</li> <li>• Height-Above-Touchdown-Zone</li> <li>• Height-Above-Airport-Elevation</li> <li>• Distance-to-Runway-End</li> <li>• Distance-From-Runway-Centerline (and direction)</li> <li>• Penetration Value (if applicable)</li> <li>• Surface Affected &amp; Slope (if applicable)</li> </ul>

**Planimetric & Topographic Mapping Compilation**

Utilizing the aerotriangulated digital imagery, photographic stereo pairs will be oriented and compiled on digital photogrammetric workstations within **AREA A**. Mapping data will be compiled meeting the following specifications:

<b>PLANIMETRIC DATA SCALE</b>	<b>1"=100' SCALE (CLASS II STANDARDS)</b>
<b>TOPOGRAPHIC DATA SCALE</b>	<b>2' CONTOUR INTERVAL (CLASS II STANDARDS)</b>

<b>MAPPING DELIVERABLE</b>	<b>FORMAT</b>
PLANIMETRIC FILE	AUTOCAD (Other formats available upon request)
CONTOUR FILE	AUTOCAD (Other formats available upon request)
DIGITAL-TERRAIN-MODEL FILE	AUTOCAD (Other formats available upon request)

The CAD products defined above will be delivered directly to **Coffman** for the updating of ALP drawings.

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## Mapping Edit and GIS Formatting

In addition to generating mapping data in CAD formats, all collected data will be edited and formatted in the appropriate AGIS format. In terms of GIS-attributes, MTZ will be responsible for populating all geospatial-related and/or critical attributes required for upload. In general terms, the final AGIS file created by MTZ will include both Safety-Critical and Non-Safety-Critical Data. This includes the following:

### 1) SAFETY-CRITICAL

#### a. Airspace

AC-18B Feature	AC-18B Section
Obstacle	5.5.2
Obstruction Area (if applicable)	5.5.3
Obstruction ID Surface	5.5.4

#### b. Runway

AC-18B Feature	AC-18B Section
Runway End	5.4.26
Runway Profile Points	5.8.6
Centerline Perpendicular Points	5.8.3
Touchdown Zone Elevation	5.8.7
Airport Elevation	5.8.2

#### c. NAVAIDs

AC-18B Feature	AC-18B Section
Navigational Aids	All Applicable - Group 5.10

### 2) NON-SAFETY-CRITICAL

#### a. Planimetric

AC-18B Feature	AC-18B Section
Airfield	All Applicable - Group 5.4
Manmade Structures	All Applicable - Group 5.10
Surface Transportation	All Applicable - Group 5.13
Utilities	All Applicable - Group 5.14

#### b. Topographic

AC-18B Feature	AC-18B Section
Elevation Contour	5.8.10

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Final GIS data will meet the following specifications:

<b>GIS DATA-MODEL UTILIZED</b>	FAA Airports-GIS ( <i>AC 150/5300-18B, Chapter 5</i> )
<b>GIS DELIVERY FORMAT</b>	ArcGIS Shapefile

### **Airports-GIS Data Submission and Final Reporting**

All data will be formatted into compliant Airports-GIS format and prepared for submission. Prior to submission, the survey-files will be tested using the FAA's survey-file-test tool in order to ensure acceptability. A "Final Report" will be generated in accordance with Advisory Circular 150/5300-18B and submitted with the final project file. Project close-out will also consist of ensuring receipt and acceptance of the obstruction survey and digital mapping data by Coffman, the FAA and NGS.

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DELIVERABLE SUMMARY
1) Statement of Work Report (for FAA Airports-GIS approval)
2) Aerial Photography Acquisition Report (for FAA Airports-GIS approval)
3) Part 77 & AC-13B Obstacle-Clearance-Surface Obstruction/Penetration Data
4) Raw Obstacle Data <b>(OPTIONAL TASK)</b>
5) Digital Ortho Imagery of AREA C (0.50' Resolution)
6) Comprehensive FAA Airports-GIS Deliverable, consisting of: A) Safety Critical Data (Runway, NAVAID, and Airport Airspace Analysis Data) B) Non-Safety Critical Data (Planimetric & Topographic Mapping)
7) Final Report (for FAA Airports-GIS approval)

Scope and Fee Proposal  
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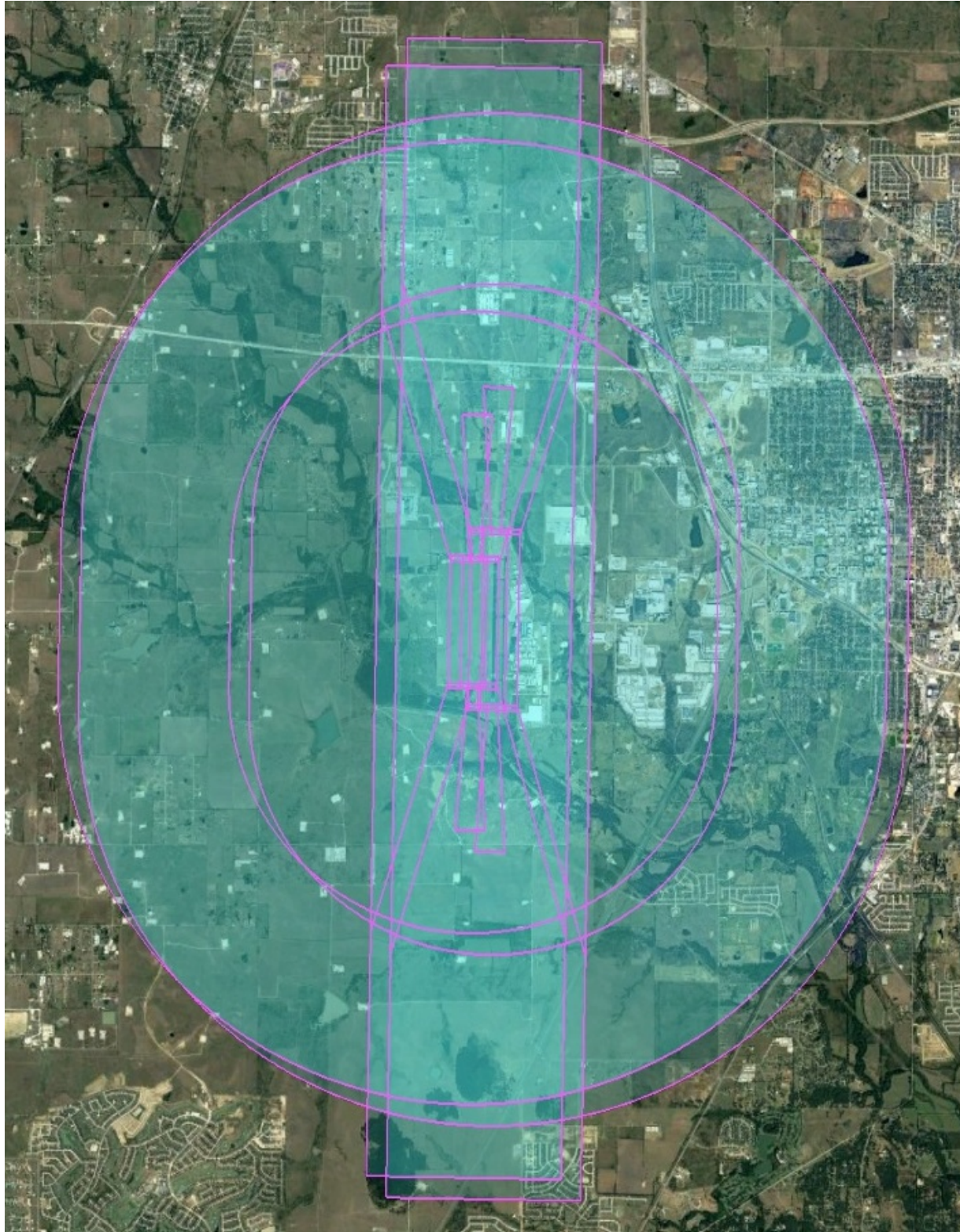
## FEE SCHEDULE

It is understood that compensation for this project will be on a **LUMP SUM** basis. MTZ will invoice Coffman Associates monthly based on percent-complete of each work category below. The following is a proposed fee schedule based on major production processes/work category:

WORK CATEGORY	FEE
Project Management	\$ 7,046.72
Production Management	\$ 5,550.53
Imagery Acquisition / Flight Mission	\$ 10,974.00
Imagery Aero-Triangulation	\$ 5,637.95
Ortho Imagery Production (0.50' GSD)	\$ 8,672.50
Planimetric/Topographic Mapping – Airport Property	\$ 25,130.74
Airspace Analysis / Obstruction Survey	\$ 17,567.44
Data Edit / GIS Formatting / FAA Compliance	\$ 13,259.87
Field-Survey Services	\$33,766.30
<b>TOTAL</b>	<b>\$ 127,606.05</b> <b>(Call it \$127,606)</b>
OPTIONAL TASK – Raw Obstacle Collection (in support of Obstacle Action Plan)	\$7,215.69
<b>TOTAL w/Optional Task</b>	<b>\$134,821.74</b> <b>(Call it \$134,821)</b>



# Airports-GIS Airspace Analysis



Magenta Polygons - 18B/Airports-GIS Obstruction Identification Surfaces (VG)  
Cyan Shaded Area - 0.50' GSD Ortho Imagery Coverage



**MTZ | Martinez Geospatial**  
2915 Waters Road Suite 100  
Eagan, Minnesota 55121  
Tel: 651.686.8424 Fax: 651.686.8389





# Planimetric & Topographic Mapping



Red Polygon - Planimetric & Topographic Mapping Limit

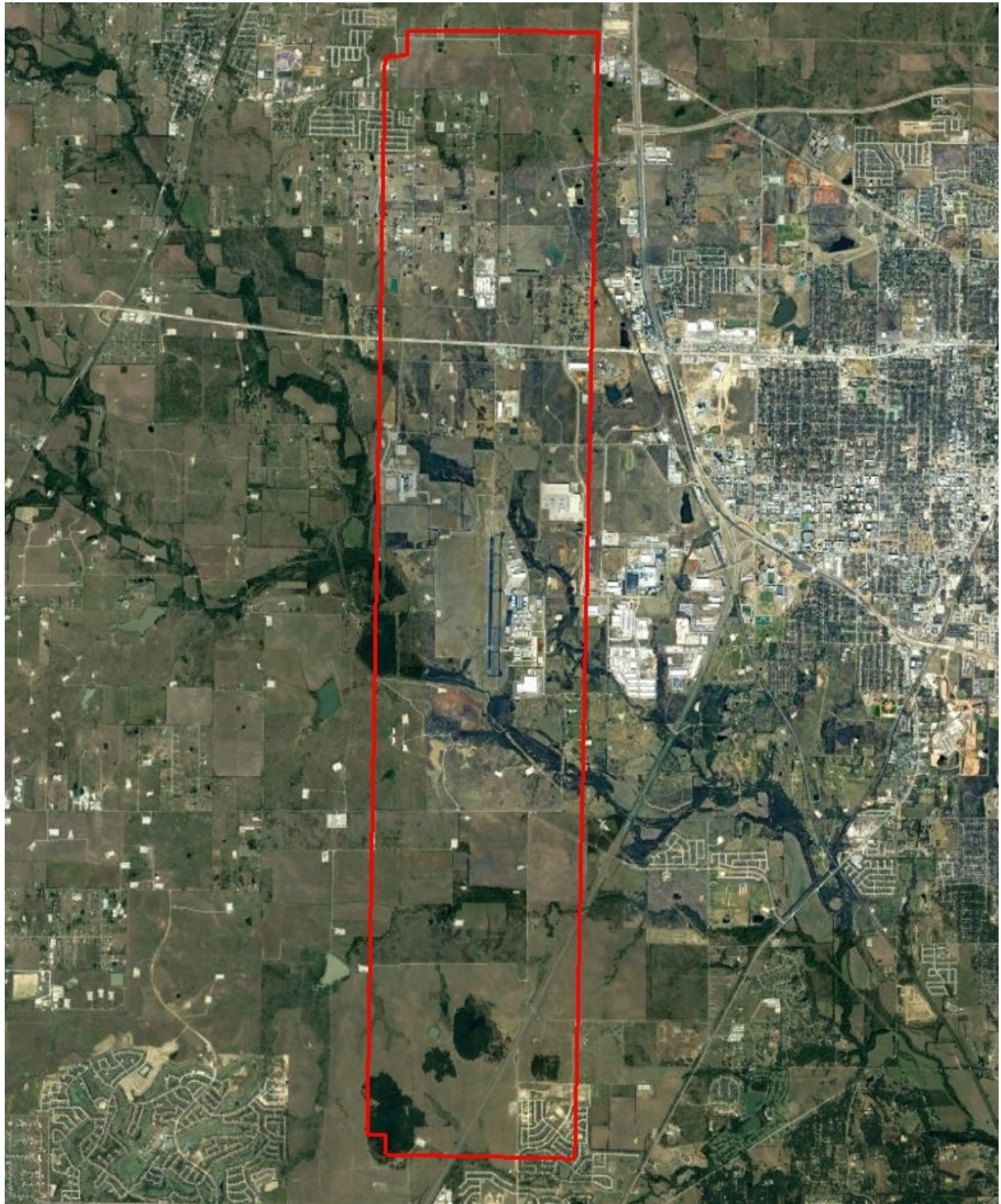


**MTZ | Martinez Geospatial**  
2915 Waters Road Suite 100  
Eagan, Minnesota 55121  
Tel: 651.686.8424 Fax: 651.686.8389





# Raw Obstacle Data Collection



Red Polygon - Raw Obstacle Collection Area



**MTZ | Martinez Geospatial**  
2915 Waters Road Suite 100  
Eagan, Minnesota 55121  
Tel: 651.686.8424 Fax: 651.686.8389



EXHIBIT B - PROJECT COST									
Denton Enterprise Airport (DTO)									
Airport Master Plan									
		Coffman Associates (Hourly Rates)							
		Principal	Senior Professional	Professional	Technical/ Support	Total Labor	Expenses	Total	
		\$303	\$279	\$166	\$118				
ELEMENT 1 – STUDY INITIATION AND ORGANIZATION									
1.1	Study Design	4	4	8	8	\$4,600	\$0	\$4,600	
1.2	Establish Planning Advisory Committee and Kick-Off Meeting	16	16	0	8	\$10,256	\$1,820	\$12,076	
1.3	Develop Project Website	0	8	24	36	\$10,464	\$0	\$10,464	
1.4	Project Management	16	80	60	12	\$38,544	\$0	\$38,544	
Element 1 Subtotal		36	108	92	64	\$63,864	\$1,820	\$65,684	
ELEMENT 2 - INVENOTRY OF EXISTING CONDITIONS									
2.1	Inventory Airport Facilities (On Site Visit Combined with Kick-off)	0	8	16	12	\$6,304	\$0	\$6,304	
2.2	Inventory Air Traffic, and Airspace	0	8	24	12	\$7,632	\$0	\$7,632	
2.3	Inventory Local Plans, Land Uses, and Demographic Data	0	8	16	8	\$5,832	\$0	\$5,832	
2.4	Obtain Tabulated Wind Data	0	0	0	8	\$944	\$0	\$944	
2.5	Environmental Inventory	0	0	24	8	\$4,928	\$0	\$4,928	
Element 2 Subtotal		0	24	80	48	\$25,640	\$0	\$25,640	
ELEMENT 3 - AVIATION DEMAND FORECASTS									
3.1	Review Regional Aviation and Socioeconomic Forecasts	4	8	8	8	\$5,716	\$0	\$5,716	
3.2	Prepare Aviation Demand Forecasts	4	16	8	16	\$8,892	\$0	\$8,892	
3.3	Identify Existing and Future Airport Design Critical Aircraft	4	16	8	8	\$7,948	\$0	\$7,948	
3.4	Prepare Phase I Report (15 Copies with Workbooks)	4	8	8	16	\$6,660	\$1,500	\$8,160	
3.5	Conduct PAC Meeting #2 and Public Workshop #1	16	16	0	16	\$11,200	\$4,220	\$15,420	
3.6	Conduct Phase I City Council Meeting	16	16	0	8	\$10,256	\$1,820	\$12,076	
Element 3 Subtotal		48	80	32	72	\$50,672	\$7,540	\$58,212	
ELEMENT 4 - FACILITY REQUIREMENTS									
4.1	Establish Physical Planning Criteria	4	8	0	0	\$3,444	\$0	\$3,444	
4.2	Determine Airfield Capacity and Delay	8	24	8	8	\$11,392	\$0	\$11,392	
4.3	Prepare Airfield Facility Requirements	8	24	8	8	\$11,392	\$0	\$11,392	
4.4	Prepare Landside Facility Requirements	8	24	8	8	\$11,392	\$0	\$11,392	
Element 4 Subtotal		28	80	24	24	\$37,620	\$0	\$37,620	
ELEMENT 5 - AIRPORT DEVELOPMENT ALTERNATIVES									
5.1	Establish Alternative Development Issues	4	8	8	16	\$6,660	\$0	\$6,660	
5.2	Evalautate Potential Airside Alternatives	8	32	8	32	\$16,456	\$0	\$16,456	
5.3	Identify Potential Landside Alternatives	8	24	24	24	\$15,936	\$0	\$15,936	
5.4	Prepare Phase II Report (15 Copies)	8	32	0	32	\$15,128	\$1,500	\$16,628	
5.5	Conduct PAC Meeting #3 and Public Workshop #2	16	16	0	16	\$11,200	\$4,220	\$15,420	
Element 5 Subtotal		44	112	40	120	\$65,380	\$5,720	\$71,100	
ELEMENT 6 - RECOMMENDED MASTER PLAN CONCEPT									
6.1	Recommended Master Plan Concept	4	24	8	24	\$12,068	\$0	\$12,068	
6.2	Prepare Aircraft Noise Exposure Contours	4	16	64	24	\$19,132	\$0	\$19,132	
6.3	Land Use Controls and Plans	4	16	8	12	\$8,420	\$0	\$8,420	
6.4	Non-compatible Land Use Analysis	4	16	8	16	\$8,892	\$0	\$8,892	
6.5	Land Use Management Techniques	4	16	8	12	\$8,420	\$0	\$8,420	
6.6	Environmental Overview (NEPA)	4	24	24	16	\$13,780	\$0	\$13,780	
6.7	Recycling Plan	0	16	24	16	\$10,336	\$0	\$10,336	
Element 6 Subtotal		24	128	144	120	\$81,048	\$0	\$81,048	
ELEMENT 7 - FINANCIAL MANAGEMENT AND DEVELOPMENT PROGRAM									
7.1	Prepare Airport Development Schedules and Cost Estimates	4	16	16	16	\$10,220	\$15,000	\$25,220	
7.2	Prepare Capital Program and Financial Plan	0	16	8	8	\$6,736	\$0	\$6,736	
7.3	Perform Financial Analysis	0	8	0	8	\$3,176	\$0	\$3,176	
7.4	Prepare Phase III Report (15 Copies)	4	32	8	32	\$15,244	\$1,500	\$16,744	
7.5	Conduct PAC Meeting #4 and Public Workshop #3	16	16	0	16	\$11,200	\$4,220	\$15,420	
Element 7 Subtotal		24	88	32	80	\$46,576	\$20,720	\$67,296	
ELEMENT 8 - GEOGRAPHICAL INFORMATION SYSTEM (GIS) AND DATA COLLECTION SERVICES									
8.1	FAA Airports-GIS	0	16	24	24	\$11,280	\$0	\$11,280	
8.2	ALP Data Collection and Part 77 Airspace Analyses	0	16	24	24	\$11,280	\$0	\$11,280	
Element 8 Subtotal		0	32	48	48	\$22,560	\$0	\$22,560	
ELEMENT 9 - AIRPORT LAYOUT PLANS									
9.1	Airport Layout Plan Drawing	8	8	16	160	\$26,192	\$0	\$26,192	
9.2	Terminal Area Drawing(s)	0	0	8	24	\$4,160	\$0	\$4,160	
9.3	Part 77, Approach and Inner Surface Plan Drawings	0	0	8	64	\$8,880	\$0	\$8,880	
9.4	Departure Surface Drawings	0	0	8	16	\$3,216	\$0	\$3,216	
9.5	Exhibit A - Airport Property Inventory Map (FAA SOP 3.0)	0	0	8	36	\$5,576	\$5,000	\$10,576	
9.6	On-Airport Land Use Plan	0	0	8	16	\$3,216	\$0	\$3,216	
9.7	Preparation of Draft ALP Drawing Set	0	0	8	24	\$4,160	\$800	\$4,960	
9.8	Preparation of Final ALP Drawing Set	0	0	8	24	\$4,160	\$800	\$4,960	
Element 9 Subtotal		8	8	72	364	\$59,560	\$6,600	\$66,160	
ELEMENT 10 - FINAL REPORTS									
10.1	Prepare Draft Final Master Plan Reports (10 Copies)	4	16	24	32	\$13,436	\$3,000	\$16,436	
10.2	Obtain Master Plan Approvals (On-site Presentation)	16	16	0	24	\$12,144	\$1,820	\$13,964	
10.3	Prepare Final Master Plan Reports (10 Copies)	4	16	24	24	\$12,492	\$3,000	\$15,492	
Element 10 Subtotal		24	48	48	80	\$38,072	\$7,820	\$45,892	
ELEMENT 11 - OPTIONAL COMMERCIAL PASSENGER TERMINAL TASKS									
11.1	Commercial Passenger Terminal Facility Requirements	4	8	24	8	\$8,372	\$0	\$8,372	
11.2	Commercial Passenger Terminal Alternatives	4	8	16	16	\$7,988	\$0	\$7,988	
Element 11 Subtotal		8	16	40	24	\$16,360	\$0	\$16,360	
COFFMAN ASSOCIATES PROJECT SUMMARY									
ELEMENT 1 - STUDY DESIGN AND ORGANIZATION		36	108	92	64	\$63,864	\$1,820	\$65,684	
ELEMENT 2 - INVENTORY		0	24	80	48	\$25,640	\$0	\$25,640	
ELEMENT 3 - FORECASTS		48	80	32	72	\$50,672	\$7,540	\$58,212	
ELEMENT 4 - FACILITY REQUIREMENTS		28	80	24	24	\$37,620	\$0	\$37,620	
ELEMENT 5 - ALTERNATIVES		44	112	40	120	\$65,380	\$5,720	\$71,100	
ELEMENT 6 - RECOMMENDED MASTER PLAN CONCEPT		24	128	144	120	\$81,048	\$0	\$81,048	
ELEMENT 7 - FINANCIAL PLAN		24	88	32	80	\$46,576	\$20,720	\$67,296	
ELEMENT 8 - AERIAL MAPPING AND OBSTRUCTION DATA		0	32	48	48	\$22,560	\$0	\$22,560	
ELEMENT 9 - ALP DRAWINGS		8	8	72	364	\$59,560	\$6,600	\$66,160	
ELEMENT 10 - FINAL REPORTS		24	48	48	80	\$38,072	\$7,820	\$45,892	
Coffman Associates, Inc. Subtotal		236	708	612	1,020	\$490,992	\$50,220	\$541,212	
ELEMENT 11 - OPTIONAL COMMERCIAL PASSENGER TERMINAL TASKS		8	16	40	24	\$16,360	\$0	\$16,360	
Coffman Associates, Inc. Total		244	724	652	1,044	\$507,352	\$50,220	\$557,572	
ELEMENT 11 - SUBCONSULTANTS									
JAS/ACS Consulting - Tasks 7.2, 7.3								\$26,250	
MTZ - Element 8								\$127,606	
MTZ - Element 8 (Optional Task)								\$7,216	
HubPoint Strategic Advisors - Tasks 3.2, 3.3, 4.4 (Optional Tasks)								\$70,000	
Subconsultant Total								\$231,072	
PROJECT TEAM TOTAL COSTS - EXCLUDING OPTIONAL TASKS									\$695,068
PROJECT TEAM TOTAL COSTS - WITH OPTIONAL TASKS									\$788,644

**Certificate Of Completion**

Envelope Id: 5CCC0BECA42A4EFCA18AE3BE81427309

Status: Sent

Subject: Please DocuSign: City Council Second Amendment 8133 - Airport Master Plan

Source Envelope:

Document Pages: 53

Signatures: 3

Envelope Originator:

Certificate Pages: 6

Initials: 1

Christina Dormady

AutoNav: Enabled

901B Texas Street

Envelopel Stamping: Enabled

Denton, TX 76209

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

christina.dormady@cityofdenton.com

IP Address: 198.49.140.10

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christina.dormady@cityofdenton.com

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Christina Dormady

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christina.dormady@cityofdenton.com

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Buyer

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



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lori.hewell@cityofdenton.com

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Purchasing Manager

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City of Denton

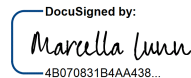
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Security Level: Email, Account Authentication  
(None)

Using IP Address: 198.49.140.10

**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

Marcella Lunn



Sent: 3/6/2024 5:11:10 PM

marcella.lunn@cityofdenton.com

Viewed: 3/7/2024 4:26:17 PM

Senior Deputy City Attorney

Signed: 3/7/2024 4:28:53 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

Mike Dmyterko



Sent: 3/7/2024 4:28:55 PM

Miked@coffmanassociates.com

Viewed: 3/7/2024 4:49:01 PM

Security Level: Email, Account Authentication  
(None)

Signed: 3/7/2024 4:49:20 PM

Signature Adoption: Pre-selected Style


Using IP Address: 174.192.133.53

Signed using mobile

**Electronic Record and Signature Disclosure:**

Accepted: 3/7/2024 4:49:01 PM

ID: 0f848f3a-5ba7-49af-abf2-2366d125cdfa

Signer Events	Signature	Timestamp
Ryan Adams Ryan.adams@cityofdenton.com Director of Airport Security Level: Email, Account Authentication (None)	<div> <div>DocuSigned by:</div> <div>  <div>76544D73C36F499...</div> </div> </div> Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.10	Sent: 3/7/2024 4:49:23 PM Viewed: 3/8/2024 8:10:02 AM Signed: 3/8/2024 8:11:07 AM

**Electronic Record and Signature Disclosure:**  
 Accepted: 3/8/2024 8:10:02 AM  
 ID: e2150438-32b2-4406-9732-740a72983b6b

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

Sent: 3/8/2024 8:11:11 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: 3/8/2024 11:37:38 AM  
 ID: 30ffdfa7-246d-49ae-b1f7-6cee5953ec99

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

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

COPIED

Sent: 3/6/2024 1:15:21 PM

**Electronic Record and Signature Disclosure:**  
 Not Offered via DocuSign



Carbon Copy Events	Status	Timestamp
Gretna Jones gretna.jones@cityofdenton.com Legal Secretary City of Denton Security Level: Email, Account Authentication (None) <b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign  City Secretary Office citysecretary@cityofdenton.com Security Level: Email, Account Authentication (None) <b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign  Leanne Alexander leanne.alexander@cityofdenton.com Security Level: Email, Account Authentication (None) <b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign	<div>COPIED</div>	Sent: 3/8/2024 8:11:10 AM Viewed: 3/8/2024 3:42:32 PM

Witness Events	Signature	Timestamp
Notary Events	Signature	Timestamp
Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	3/6/2024 1:14:02 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](mailto: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](mailto: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](mailto: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](mailto:purchasing@cityofdenton.com) and in the body of such request you must state your e-mail, full name, IS 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"><li>•Allow per session cookies</li><li>•Users accessing the internet behind a Proxy Server must enable HTTP 1.1 settings via proxy connection</li></ul>

\*\* 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](http://www.cityofdenton.com)

## Legislation Text

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**File #:** ID 24-647, **Version:** 1

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### **AGENDA CAPTION**

Consider adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, for the approval of a pre-qualified professional services list for operations and management of the Denton Community Shelter; and providing an effective date (RFQ 8268 - for a three (3) year term).



# City of Denton

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

## AGENDA INFORMATION SHEET

**DEPARTMENT:** Procurement  
**ACM:** Cassey Ogden  
**DATE:** April 2, 2024

### **SUBJECT**

Consider adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, for the approval of a pre-qualified professional services list for operations and management of the Denton Community Shelter; and providing an effective date (RFQ 8268 – for a three (3) year term).

### **STRATEGIC ALIGNMENT**

This action supports Key Focus Area: Strengthen Community and Quality of Life.

### **INFORMATION/BACKGROUND**

The purpose of this pre-qualified list is to establish a pool of well-qualified homeless service agencies to provide listed services specific to the operations and management of the Denton Community Shelter. The City of Denton owns a property, 909 North Loop 288 Denton, TX 76205, that is currently in use to provide day services, emergency shelter services, and other beneficial services for people experiencing literal homelessness and living unsheltered to meet the basic needs of our community's most vulnerable residents and that helps people become and remain independent. In an ongoing commitment to ensure the smooth and continuous provision of services, the City is prioritizing preparedness should issues arise.

Request for Qualifications (RFQ) for professional shelter operations and management services was sent to 170 prospective firms for these services, including 23 Denton firms. In addition, the RFQ was placed on the Procurement website for prospective respondents to download and advertised in the local newspaper. One (1) statement of qualifications (SOQ) was received. The SOQs were evaluated based on published criteria including qualifications, experience, and project team. The evaluation team is recommending approval of the list with one (1) qualified firm.

NIGP Code Used for Solicitation:	952 - (Service Only) - Human Services
Notifications sent for Solicitation sent in IonWave:	170
Number of Suppliers that viewed Solicitation in IonWave:	21
HUB-Historically Underutilized Business Invitations sent out:	26
SBE-Small Business Enterprise Invitations sent out:	75
Responses from Solicitation:	1

## **RECOMMENDATION**

Recommend approval of a pre-qualified professional services list for operations and management of the Denton Community Shelter, as reviewed and qualified by City staff.

## **ESTIMATED SCHEDULE OF PROJECT**

This is a three (3) year contract.

## **FISCAL INFORMATION**

No funds are requested or required to be spent as part of this approval. Individual contracts will be negotiated with vendors and purchasing orders will be issued as needed.

## **EXHIBITS**

Exhibit 1: Agenda Information Sheet

Exhibit 2: Ordinance

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

For information concerning this acquisition, contact: Megan Ball, 940-349-7234.

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, FOR THE APPROVAL OF A PRE-QUALIFIED PROFESSIONAL SERVICES LIST FOR OPERATIONS AND MANAGEMENT OF THE DENTON COMMUNITY SHELTER; AND PROVIDING AN EFFECTIVE DATE (RFQ 8268 – FOR A THREE (3) YEAR TERM).

WHEREAS, the City of Denton, Texas (the “City”) desires to have a pool of professional firms ready to serve as contractors to provide the City with project management services on a continuing contract basis; and

WHEREAS, on November 24, 2023, the City issued a *Request for Qualifications No. 8268, Prequalification for Denton Community Shelter Operations* (“RFQ”) for a pre-qualified professional services list for operations and management of the Denton Community Shelter, as detailed in the RFQ; and

WHEREAS, in response to the RFQ, which was in accordance with the provisions of Texas Government Code, Chapter 2254, the City evaluated each submission in accordance with selection criteria in order to determine the most qualified firms to provide the services; and

WHEREAS, the City staff has prepared a list attached as Exhibit “A” representing those firms whose qualifications and references demonstrated to be the most advantageous to the City; and

WHEREAS, awards to a professional firm on the list, which exceed the City Manager’s delegation authority, will be brought to the City Council in compliance with all procurement statutes and local ordinances, considering the importance of price and other evaluation factors in the RFQ; and

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

WHEREAS, the City Council finds that the selection of firms for the provision of services, pursuant to the terms, conditions, and specifications contained in the RFQ, should be approved and is in the best interest of the citizens of the City of Denton; NOW, THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The City Council of the City of Denton, Texas, hereby approves the selection of professional contractors, which pre-qualified list is attached hereto as Exhibit “A” and incorporated by reference herein, for the provision of social services on a continuing contract basis with the City of Denton, and pursuant to the *Request for Qualifications No. 8268, Prequalification for Denton Community Shelter Operations*.

SECTION 2. Any formal written agreement as a result of the acceptance, approval, and

awarding of the proposals from the RFQ must be done in accordance with the procurement statues and local ordinances; provided that, the City Manager, or their designee, may take any actions that may be required or permitted to be performed within their previously delegated authority.

SECTION 3. 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 [\_\_\_\_ - \_\_\_\_]:

	<b>Aye</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>
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:	_____	_____	_____	_____

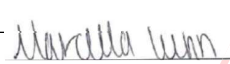
PASSED AND APPROVED this the \_\_\_\_\_ day of \_\_\_\_\_, 2024.

\_\_\_\_\_  
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: dc=com, dc=cityofdenton,  
dc=codad, ou=Department Users  
and Groups, ou=General  
Government, ou=Legal,  
cn=Marcella Lunn,  
email=Marcella.Lunn@cityofdenton.com  
Date: 2024.03.12 12:18:41 -05'00'

**EXHIBIT A**

**RFQ 8268 – Prequalification for Denton Community Shelter Operations**

**Project/Program Management**

Family Endeavors, Inc., dba Endeavors	1
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# City of Denton

City Hall  
215 E. McKinney St.  
Denton, Texas 76201  
[www.cityofdenton.com](http://www.cityofdenton.com)

## Legislation Text

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**File #:** ID 24-648, **Version:** 1

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### **AGENDA CAPTION**

Consider 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 Nelson/Nygaard Consulting Associates, Inc., for a Citywide Parking Study for the Engineering Department as set forth in the contract; providing for the expenditure of funds therefor; and providing an effective date (RFP 8360 - Professional Services Agreement for Citywide Parking Study awarded to Nelson/Nygaard Consulting Associates, Inc., in the not-to-exceed amount of \$109,967.00).





## AGENDA INFORMATION SHEET

**DEPARTMENT:** Procurement

**ACM:** Cassey Ogden

**DATE:** April 2, 2024

### **SUBJECT**

Consider 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 Nelson/Nygaard Consulting Associates, Inc., for a Citywide Parking Study for the Engineering Department as set forth in the contract; providing for the expenditure of funds therefor; and providing an effective date (RFP 8360 – Professional Services Agreement for Citywide Parking Study awarded to Nelson/Nygaard Consulting Associates, Inc., in the not-to-exceed amount of \$109,967.00).

### **STRATEGIC ALIGNMENT**

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

### **INFORMATION/BACKGROUND**

The City of Denton is currently updating its' Downtown Master Plan and is completing a comprehensive study of Downtown Parking as part of the overall Downtown Master Plan. This Citywide Parking study will be completed in conjunction with the Downtown Parking study and will make overall recommendations for the City as a whole as it relates to parking policies and regulations, enforcement practices, planning and engineering standards, and loading zones.

The City receives numerous complaints and requests from residents and businesses regarding "No Parking" signage on residential streets, around the University of North Texas (UNT) and Texas Woman's University (TWU) campuses; receives requests for new commercial loading zones in the Downtown and Fry Street areas; and receives complaints about personal vehicles and commercial truck storage alongside city and Texas Department of Transportation (TxDOT) roadways.

As a result, the City has decided to review its current policies and receive input and recommendations from a consultant on best practices to improve overall parking around the City.

Requests for Proposals was sent to 945 prospective suppliers, including 35 Denton firms, of this item. In addition, specifications were placed on the Procurement website for prospective suppliers to download and advertised in the local newspaper. Three (3) proposals were received and evaluated based upon published criteria including quality and feasibility of the proposed project method and approach, relevant project experience, qualifications of proposed team, and price. Best and Final Offers (BAFO) were requested from the top firm. Based upon this evaluation, Nelson/Nygaard Consulting Associates, Inc. was ranked the highest and determined to be the best value for the City.

## **RECOMMENDATION**

Award a contract with Nelson/Nygaard Consulting Associates, Inc., for a Citywide Parking Study for the Engineering Department, in a not-to-exceed amount of \$109,967.

## **PRINCIPAL PLACE OF BUSINESS**

Nelson/Nygaard Consulting Associates, Inc.  
Austin, TX

## **ESTIMATED SCHEDULE OF PROJECT**

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

## **FISCAL INFORMATION**

These services will be funded from Citywide Parking Lot Study account 250135469. Requisition #164286 has been entered into the Purchasing software system in the amount of \$109,967. The budgeted amount for this item is \$109,967.

## **EXHIBITS**

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

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

For information concerning this acquisition, contact: Brett Bourgeois, 940-349-8952.

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

**Exhibit 2****RFP 8360 - Pricing Evaluation for the Citywide Parking Study**

Respondent's Business Name:		<b>Nelson\Nygaard Consulting Associates, Inc.</b>	Walker Consultants, Inc.	Studio Davis, LLC
Principal Place of Business (City and State):		<b>San Francisco, CA</b>	Houston, TX	Audubon, NJ
<b>Line #</b>	<b>Description</b>			
1	Total Cost for Base Scope of Work	<b>\$71,745.00</b>	\$119,680.00	\$22,101.00
2	Total Cost for Optional Additional Services	<b>\$38,222.00</b>	\$57,930.00	\$13,384.00
<b>Total:</b>		<b>\$109,967.00</b>	\$177,610.00	\$35,485.00

<b>Evaluation</b>				
<b>Item #</b>	<b>Evaluation Criteria</b>	<b>Nelson\Nygaard Consulting Associates, Inc.</b>	Walker Consultants, Inc.	Studio Davis, LLC
1	Project Experience - 30%	<b>28.50</b>	27.00	18.00
2	Team Qualifications & Probable Performance - 20%	<b>18.00</b>	20.00	11.00
3	Method & Project Approach - 25%	<b>22.50</b>	20.00	13.75
4	Price, Total Cost of Ownership - 25%	<b>8.07</b>	4.99	25.00
<b>Total Score:</b>		<b>77.07</b>	71.99	67.75

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 NELSON/NYGAARD CONSULTING ASSOCIATES, INC., FOR A CITYWIDE PARKING STUDY FOR THE ENGINEERING DEPARTMENT AS SET FORTH IN THE CONTRACT; PROVIDING FOR THE EXPENDITURE OF FUNDS THEREFOR; AND PROVIDING AN EFFECTIVE DATE (RFP 8360 – PROFESSIONAL SERVICES AGREEMENT FOR CITYWIDE PARKING STUDY AWARDED TO NELSON/NYGAARD CONSULTING ASSOCIATES, INC., IN THE NOT-TO-EXCEED AMOUNT OF \$109,967.00).

WHEREAS, Nelson/Nygaard Consulting Associates, Inc., the professional services provider (the “Provider”) set forth 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 [Transporation systems]; 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 authorized to enter into the service contract attached hereto with Nelson/Nygaard Consulting Associates, Inc., for a Citywide Parking Study for the Engineering Department.

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, Texas 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 \_\_\_\_\_, 2024.

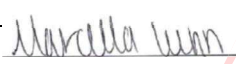
\_\_\_\_\_  
GERARD HUDSPETH, MAYOR

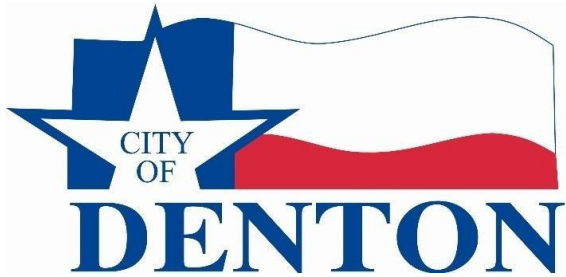
ATTEST:  
JESUS SALAZAR, CITY SECRETARY

BY: \_\_\_\_\_

APPROVED AS TO LEGAL FORM:  
MACK REINWAND, CITY ATTORNEY

BY: \_\_\_\_\_

  
Digitally signed by Marcella Lunn  
DN: dc=com, dc=cityofdenton,  
dc=codad, ou=Department Users  
and Groups, ou=General  
Government, ou=Legal,  
cn=Marcella Lunn,  
email=Marcella.Lunn@cityofdent  
on.com  
Date: 2024.03.12 21:50:52 -05'00'



Docusign City Council Transmittal Coversheet

PSA	8360
File Name	Citywide Parking Study
Purchasing Contact	Cori Power
City Council Target Date	
Piggy Back Option	Not Applicable
Contract Expiration	
Ordinance	

**PROFESSIONAL SERVICES AGREEMENT  
FOR CONSULTING SERVICES  
FILE 8360**

STATE OF TEXAS           §

COUNTY OF DENTON       §

THIS AGREEMENT (the "Agreement") is made and entered into on \_\_\_\_\_, by and between the City of Denton, Texas, a Texas municipal corporation, with its principal office at 215 East McKinney Street, Denton, Denton County, Texas 76201, hereinafter called "OWNER" and Nelson\Nygaard Consulting Associates, Inc., with its corporate office at 621 SW Morrison St, Suite 1450, Portland OR 97205, hereinafter called "CONSULTANT," acting herein, by and through their duly authorized representatives.

WITNESSETH, that in consideration of the covenants and agreements herein contained, the parties hereto do mutually agree as follows:

**ARTICLE I  
CONSULTANT AS INDEPENDENT CONTRACTOR**

The OWNER has selected CONSULTANT on the basis of demonstrated competence and qualifications to perform the services herein described for a fair and reasonable price pursuant to Chapter 2254 of the Texas Government Code. The OWNER hereby contracts with the CONSULTANT as an independent contractor and not as an employee, and as such, the OWNER will not assert control over the day-to-day operations of the CONSULTANT. The CONSULTANT is customarily engaged to provide services as described herein independently and on a nonexclusive basis in the course of its business. This Agreement does not in any way constitute a joint venture between OWNER and CONSULTANT. The CONSULTANT hereby agrees to perform the services described herein based on the skills required for the scope of work in connection with the Project as stated in the sections to follow, with diligence and in accordance with the professional standards customarily obtained for such services in the State of Texas by similar professionals providing similar services. The professional services set out herein are in connection with the following described project:

The Project shall include, without limitation, Citywide Parking Study, as described in Exhibit A, which is on file at the purchasing office and incorporated herein (the "Project").

**ARTICLE II  
SCOPE OF BASIC SERVICES**

The CONSULTANT shall perform the following services in a professional manner:

- A. The CONSULTANT shall perform all those services as necessary and as described in the OWNER's RFQ 8360 – Citywide Parking Study, which is on file at the purchasing office and made a part hereof as Exhibit A as if written word for word herein.

- B. To perform all those services set forth in CONSULTANT's proposal, which proposal is attached hereto and made a part hereof as **Exhibit B** as if written word for word herein.
- C. CONSULTANT shall perform all those services set forth in individual task orders, as described in **Exhibit B**, which shall be attached to this Agreement and made a part hereof.
- D. If there is any conflict between the terms of this Agreement and the exhibits attached to this Agreement, the terms and conditions of this Agreement will control over the terms and conditions of the attached exhibits or task orders.

### **ARTICLE III** **ADDITIONAL SERVICES**

Additional services to be performed by the CONSULTANT, if authorized by the OWNER, which are not included in the above-described Basic Services, may be negotiated as needed, per rates included in **Exhibit B**.

- A. Preparing applications and supporting documents for government grants, loans, or planning advances and providing data for detailed applications.
- B. Preparing data and reports for assistance to OWNER in preparation for hearings before regulatory agencies, courts, arbitration panels or mediator, giving testimony, personally or by deposition, and preparations therefore before any regulatory agency, court, arbitration panel or mediator.
- C. Assisting OWNER in preparing for, or appearing at litigation, mediation, arbitration, dispute review boards, or other legal and/or administrative proceedings in the defense or prosecution of claims disputes with Contractor(s).
- D. Assisting OWNER in the defense or prosecution of litigation in connection with or in addition to those services contemplated by this AGREEMENT. Such services, if any, shall be furnished by CONSULTANT on a fee basis negotiated by the respective parties outside of and in addition to this AGREEMENT.
- E. Visits to the site in excess of the number of trips included in **Exhibit B**.
- F. Preparing statements for invoicing or other documentation for billing other than for the standard invoice for services attached to this professional services agreement.



## **ARTICLE IV**

### **TIME OF COMPLETION**

CONSULTANT is authorized to commence work under this contract upon execution of this AGREEMENT. CONSULTANT shall perform and complete its obligations herein in a prompt and continuous manner, so as to not delay the completion of the Project in accordance with the schedules as described in **Exhibit B**. The contract shall remain effective for a period which may reasonably be required for the completion of the Project, acceptance by an authorized representative of the OWNER, exhaustion of authorized funds, or termination as provided in this Agreement, whichever occurs first.

## **ARTICLE V**

### **COMPENSATION**

#### **A. COMPENSATION TERMS:**

1. "Subcontract Expense" is defined as expenses incurred by the CONSULTANT in employment of others in outside firms for services related to this agreement.
2. "Direct Non-Labor Expense" is defined as that expense for any assignment incurred by the CONSULTANT for supplies, transportation and equipment, travel, communications, subsistence, and lodging away from home, and similar incidental expenses in connection with that assignment.

#### **B. BILLING AND PAYMENT:** For and in consideration of the professional services to be performed by the CONSULTANT herein, the OWNER agrees to pay, based on the cost estimate detail at an hourly rate shown in **Exhibit B** which is attached hereto and made a part of this Agreement as if written word for word herein, a total fee, including reimbursement for direct non-labor expenses not to exceed **\$109,967.00**.

Partial payments to the CONSULTANT will be made on the basis of detailed monthly statements rendered to and approved by the OWNER through its City Manager or his designee; however, under no circumstances shall any monthly statement for services exceed the value of the work performed at the time a statement is rendered.

Nothing contained in this Article shall require the OWNER to pay for any work which is unsatisfactory, as reasonably determined by the City Manager or his designee, or which is not submitted in compliance with the terms of this Agreement. The OWNER shall not be required to make any payments to the CONSULTANT when the CONSULTANT is in default under this Agreement.

It is specifically understood and agreed that the CONSULTANT shall not be authorized to undertake any work pursuant to this Agreement which would require additional payments by the OWNER for any charge, expense, or reimbursement above the maximum not to exceed fee as stated, without first having obtained written authorization from the OWNER. The CONSULTANT shall not proceed to perform the services listed in Article III "Additional Services," without obtaining prior written authorization from the OWNER.

- C. **ADDITIONAL SERVICES:** For additional services authorized in writing by the OWNER in Article III, the CONSULTANT shall be paid based on the Schedule of Charges at an hourly rate shown in **Exhibit B**. Payments for additional services shall be due and payable upon submission by the CONSULTANT and approval by the City staff, and shall be in accordance with subsection B hereof. Statements shall not be submitted more frequently than monthly.
- D. **PAYMENT:** If the OWNER fails to make payments due the CONSULTANT for services and expenses within thirty (30) days after receipt of the CONSULTANT's undisputed statement thereof, the amounts due the CONSULTANT will be paid interest in accordance with the Texas Government Code 2251.025. Additionally, the CONSULTANT may, after giving seven (7) days' written notice to the OWNER, suspend services under this Agreement until the CONSULTANT has been paid in full all amounts due for services, expenses, and charges. Nothing herein shall require the OWNER to pay the late charge if the OWNER reasonably determines that the work is unsatisfactory, in accordance with this Article V, "Compensation," there is a bona fide dispute concerning the amount due, or the invoice was not mailed to the address or in the form as described in this Agreement. The OWNER will notify CONSULTANT of any disputes within twenty-one (21) days of receipt of the invoice.
- E. **Invoices** shall be sent directly to the City of Denton Accounts Payable Department, 215 E McKinney St, Denton, TX, 76201-4299. A pro-forma invoice shall be sent to the contract administrator. It is the intention of the City of Denton to make payment on completed orders within thirty days after receipt of invoice or items; whichever is later, unless unusual circumstances arise. **Invoices must be fully documented as to labor, materials, and equipment provided, if applicable, and must reference the City of Denton Purchase Order Number in order to be processed. No payments shall be made on invoices not listing a Purchase Order Number.**

## **ARTICLE VI** **OBSERVATION AND REVIEW OF THE WORK**

The CONSULTANT will exercise reasonable care and due diligence in discovering and promptly reporting to the OWNER any defects or deficiencies in the work of the CONSULTANT or any subcontractors or subconsultants.

## **ARTICLE VII** **OWNERSHIP OF DOCUMENTS**

All documents prepared or furnished by the CONSULTANT (and CONSULTANT's subcontractors or subconsultants) pursuant to this Agreement are instruments of service, and shall become the property of the OWNER upon the termination of this Agreement. The CONSULTANT is entitled to retain copies of all such documents. The documents prepared and furnished by the CONSULTANT are intended only to be applicable to this Project, and OWNER's use of these documents in other projects shall be at OWNER's sole risk and expense. In the event the OWNER uses any of the information or materials developed pursuant to this Agreement in another project or for other purposes than specified herein, CONSULTANT is released from any and all liability relating to their use in that project.

## **ARTICLE VIII**

### **INDEMNITY AGREEMENT**

**THE CONSULTANT SHALL INDEMNIFY AND SAVE AND HOLD HARMLESS THE OWNER AND ITS OFFICERS, OFFICIALS, AND EMPLOYEES FROM AND AGAINST LIABILITY, DAMAGES, LOSSES, AND EXPENSES, INCLUDING, BUT NOT LIMITED TO COURT COSTS AND REASONABLE ATTORNEY FEES INCURRED BY THE OWNER, AND INCLUDING, WITHOUT LIMITATION, DAMAGES FOR BODILY AND PERSONAL INJURY, DEATH AND PROPERTY DAMAGE, TO THE EXTENT CAUSED BY THE NEGLIGENT ACTS OR OMISSIONS OF THE CONSULTANT OR ITS OFFICERS, SHAREHOLDERS, AGENTS, OR EMPLOYEES INCIDENTAL TO, RELATED TO, AND IN THE EXECUTION, OPERATION, OR PERFORMANCE OF THIS AGREEMENT.**

Nothing in this Agreement shall be construed to create a liability to any person who is not a party to this Agreement, and nothing herein shall waive any of the parties' defenses, both at law or equity, to any claim, cause of action, or litigation filed by anyone not a party to this Agreement, including the defense of governmental immunity, which defenses are hereby expressly reserved.

## **ARTICLE IX**

### **INSURANCE**

During the performance of the services under this Agreement, CONSULTANT shall maintain insurance in compliance with the requirements of **Exhibit C** which is attached hereto and made a part of this Agreement as if written word for word herein.

## **ARTICLE X**

### **ALTERNATIVE DISPUTE RESOLUTION**

The parties may agree to settle any disputes under this Agreement by submitting the dispute to mediation with each party bearing its own costs of mediation. No mediation arising out of or relating to this Agreement, involving one party's disagreement may include the other party to the disagreement without the other's approval. Mediation will not be a condition precedent to suit.

## **ARTICLE XI**

### **TERMINATION OF AGREEMENT**

- A. Notwithstanding any other provision of this Agreement, either party may terminate by giving thirty (30) days' advance written notice to the other party.
- B. This Agreement may be terminated in whole or in part in the event of either party substantially failing to fulfill its obligations under this Agreement. No such termination will be affected unless the other party is given (1) written notice (delivered by certified mail, return receipt requested) of intent to terminate and setting forth the reasons specifying the non-performance, and not less than fifteen (15) calendar days to cure the failure; and (2) an opportunity for consultation with the terminating party prior to termination.
- C. If the Agreement is terminated prior to completion of the services to be provided hereunder, CONSULTANT shall immediately cease all services and shall render a final bill for

services to the OWNER within thirty (30) days after the date of termination. The OWNER shall pay CONSULTANT for all services properly rendered and satisfactorily performed and for reimbursable expenses to termination incurred prior to the date of termination, in accordance with Article V "Compensation." Should the OWNER subsequently contract with a new consultant for the continuation of services on the Project, CONSULTANT shall cooperate in providing information. The CONSULTANT shall turn over all documents prepared or furnished by CONSULTANT pursuant to this Agreement to the OWNER on or before the date of termination, but may maintain copies of such documents for its use.

## **ARTICLE XII**

### **RESPONSIBILITY FOR CLAIMS AND LIABILITIES**

Approval by the OWNER shall not constitute, nor be deemed a release of the responsibility and liability of the CONSULTANT, its employees, associates, agents, subcontractors, and subconsultants for the accuracy and competency of their designs or other work; nor shall such approval be deemed to be an assumption of such responsibility by the OWNER for any defect in the design or other work prepared by the CONSULTANT, its employees, subcontractors, agents, and consultants.

## **ARTICLE XIII**

### **NOTICES**

All notices, communications, and reports required or permitted under this Agreement shall be personally delivered or mailed to the respective parties by depositing same in the United States mail to the address shown below, certified mail, return receipt requested, unless otherwise specified herein. Mailed notices shall be deemed communicated as of three (3) days' mailing:

#### **To CONSULTANT:**

Nelson\Nygaard Consulting Associates, Inc.  
Jonathan Watts  
621 SW Morrison St, Suite 1450  
Portland OR 97205

#### **To OWNER:**

City of Denton  
Purchasing Manager –File 8360  
901B Texas Street  
Denton, Texas 76209

All notices shall be deemed effective upon receipt by the party to whom such notice is given, or within three (3) days' mailing.

## **ARTICLE XIV**

### **ENTIRE AGREEMENT**

This Agreement and related exhibits constitute the complete and final expression of this Agreement of the parties, and is intended as a complete and exclusive statement of the terms of their agreements, and supersedes all prior contemporaneous offers, promises, representations, negotiations, discussions, communications, and agreements which may have been made in connection with the subject matter hereof.

## **ARTICLE XV** **SEVERABILITY**

If any provision of this Agreement is found or deemed by a court of competent jurisdiction to be invalid or unenforceable, it shall be considered severable from the remainder of this Agreement and shall not cause the remainder to be invalid or unenforceable. In such event, the parties shall reform this Agreement to replace such stricken provision with a valid and enforceable provision which comes as close as possible to expressing the intention of the stricken provision.

## **ARTICLE XVI** **COMPLIANCE WITH LAWS**

The CONSULTANT shall comply with all federal, state, and local laws, rules, regulations, and ordinances applicable to the work covered hereunder as those laws may now read or hereinafter be amended.

## **ARTICLE XVII** **DISCRIMINATION PROHIBITED**

In performing the services required hereunder, the CONSULTANT shall not discriminate against any person on the basis of race, color, religion, sex, sexual orientation, national origin or ancestry, age, or physical handicap.

## **ARTICLE XVIII** **PERSONNEL**

- A. The CONSULTANT represents that it has or will secure, at its own expense, all personnel required to perform all the services required under this Agreement. Such personnel shall not be employees or officers of, or have any contractual relations with the OWNER. CONSULTANT shall inform the OWNER of any conflict of interest or potential conflict of interest that may arise during the term of this Agreement.
- B. All services required hereunder will be performed by the CONSULTANT or under its supervision. All personnel engaged in work shall be qualified, and shall be authorized and permitted under state and local laws to perform such services.

## **ARTICLE XIX** **ASSIGNABILITY**

The CONSULTANT acknowledges that this Agreement is based on the demonstrated competence and specific qualifications of the CONSULTANT and is therefore personal as to the CONSULTANT. Therefore, the CONSULTANT shall not assign any interest in this Agreement, and shall not transfer any interest in this Agreement (whether by assignment, novation, or otherwise) without the prior written consent of the OWNER.

## **ARTICLE XX** **MODIFICATION**

No waiver or modification of this Agreement or of any covenant, condition, or limitation herein contained shall be valid unless in writing and duly executed by the party to be charged therewith, and no evidence of any waiver or modification shall be offered or received in evidence in any proceeding arising between the parties hereto out of or affecting this Agreement, or the rights or obligations of the parties hereunder, and unless such waiver or modification is in writing and duly executed; and the parties further agree that the provisions of this section will not be waived unless as set forth herein.

## **ARTICLE XXI** **MISCELLANEOUS**

A. The following exhibits are attached to and made a part of this Agreement:

Exhibit A – RFP 8360 – Citywide Parking Study for the City of Denton (on file at the purchasing office)

Exhibit B – Consultant’s Scope of Services Offer, Project Schedule, and Compensation Rate Sheet

Exhibit C – Consultant’s Insurance Requirements

What is called for by one exhibit shall be as binding as if called for by all. In the event of an inconsistency or conflict in this Agreement and any of the provisions of the exhibits, the inconsistency or conflict shall be resolved by giving precedence first to this Agreement then to the exhibits in the order in which they are listed above.

B. This Agreement shall be governed by, construed, and enforced in accordance with, and subject to, the laws of the State of Texas or federal law, where applicable, without regard to the conflict of law principles of any jurisdiction. In the event there shall be any dispute arising out of the terms and conditions of, or in connection with, this Agreement, the party seeking relief shall submit such dispute to the District Courts of Denton County or if federal diversity or subject matter jurisdiction exists, to the United States District Court for the Eastern District of Texas-Sherman Division.

C. For the purpose of this Agreement, the key persons who will perform most of the work hereunder shall be Iain Banks. However, nothing herein shall limit CONSULTANT from using other equally qualified and competent members of its firm to perform the services required herein.

D. CONSULTANT shall commence, carry on, and complete any and all projects with all applicable dispatch, in a sound, economical, and efficient manner and in accordance with the provisions hereof. In accomplishing the projects, CONSULTANT shall take such steps as are appropriate to ensure that the work involved is properly coordinated with related work being carried on by the OWNER.

E. The OWNER shall assist the CONSULTANT by placing at the CONSULTANT’s disposal all available information pertinent to the Project, including previous reports, any other data relative to the Project, and arranging for the access thereto, and make all provisions for the

CONSULTANT to enter in or upon public and private property as required for the CONSULTANT to perform services under this Agreement. CONSULTANT may reasonably rely on the accuracy and completeness of information provided by OWNER; provided, however, if OWNER is providing the CONSULTANT third-party information that OWNER cannot independently verify or recreate CONSULTANT uses that information at their own risk.

- F. The captions of this Agreement are for informational purposes only, and shall not in any way affect the substantive terms or conditions of this Agreement.
- G. 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.

## **ARTICLE XXII**

### **INDEPENDENT CONTRACTOR**

CONSULTANT shall provide services to OWNER as an independent contractor, not as an employee of the OWNER. CONSULTANT shall not have or claim any right arising from employee status.

## **ARTICLE XXIII**

### **RIGHT TO AUDIT**

The OWNER shall have the right to audit and make copies of the books, records and computations pertaining to this agreement. The CONTRACTOR shall retain such books, records, documents and other evidence pertaining to this agreement during the contract period and five years thereafter, except if an audit is in progress or audit findings are yet unresolved, in which case records shall be kept until all audit tasks are completed and resolved. These books, records, documents and other evidence shall be available, within 10 business days of written request. Further, the CONTRACTOR shall also require all Subcontractors, material suppliers, and other payees to retain all books, records, documents and other evidence pertaining to this agreement, and to allow the OWNER similar access to those documents. All books and records will be made available within a 50 mile radius of the City of Denton. The cost of the audit will be borne by the OWNER unless the audit reveals an overpayment of 3% or greater. If an overpayment of 3% or greater occurs, the reasonable cost of the audit, including any travel costs, must be borne by the CONTRACTOR which must be payable within five business days of receipt of an invoice.

Failure to comply with the provisions of this section shall be a material breach of this contract and shall constitute, in the OWNER'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.

## **ARTICLE XXIV**

## **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.

### **ARTICLE XXV**

## **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.

### **ARTICLE XXVI**

## **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.

### **ARTICLE XXVII**

## **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.

### **ARTICLE XXVIII**

#### **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.

### **ARTICLE XXIX**

#### **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](mailto:purchasing@cityofdenton.com) with the contract number in the subject line.  
(EX: Contract 1234 – Form 1295)

The OWNER 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.

### **ARTICLE XXX**

#### **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 Consultant shall complete and submit the City's Conflict of Interest Questionnaire.

**ARTICLE XXXI**  
**CHANGES TO RFP PROVISIONS.**

The parties agree that there are no provisions for liquidated damages included in this Agreement. The parties also agree that in the silence of specifications ordinary commercial practices shall be inferred.

**ARTICLE XXXII**  
**CONSEQUENTIAL DAMAGES.**

The parties mutually waive consequential damages, including but not limited to damages for loss of profits, loss of revenues, loss of business and of business opportunities, for claims, disputes or other matters in question arising out of or relating to this Agreement.

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 HEREOF, the City of Denton, Texas has caused this Agreement to be executed by its duly authorized City Manager, and CONSULTANT has executed this Agreement through its duly authorized undersigned officer on this date\_\_\_\_\_.

CONSULTANT

DocuSigned by:  
BY: Jonathan Watts  
AUTHORIZED SIGNATURE

Printed Name: Jonathan Watts

Title: Director of Operations

202.624.8366  
PHONE NUMBER

jwatts@nelsonnygaard.com  
EMAIL ADDRESS

2024-1129244  
TEXAS ETHICS COMMISSION  
1295 CERTIFICATE NUMBER

CITY OF DENTON, TEXAS

BY: \_\_\_\_\_  
SARA HENSLEY  
CITY MANAGER

ATTEST:  
JESUS SALAZAR, CITY SECRETARY

BY: \_\_\_\_\_

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:  
Cassandra Ogden Cassandra Ogden  
SIGNATURE PRINTED NAME

Assistant City Manager  
TITLE

City Manager's Office  
DEPARTMENT

Exhibit A  
RFQ 8360 – Citywide Parking Study for the City of Denton  
(on file in the purchasing office)



Proposal by:



Exhibit B



CITY OF DENTON

# Citywide Parking Study

November 15, 2023

In association with:  
Fehr & Peers



November 15, 2023

City of Denton  
Attn: Cori Power  
901-B Texas Street  
Denton, TX 76209

**RE: Citywide Parking Study**

Dear Cori Power and members of the selection committee,

Nelson\Nygaard specializes in developing comprehensive parking strategies that address the unique needs of each community for a broad range of municipal clients. Our plans recognize that parking demand and behavior are directly affected by land use and travel behavior, presenting distinct challenges in growing cities like Denton. Nelson\Nygaard specializes in the review and assessment of parking systems and mobility conditions in dynamic, high-growth settings like Denton, going beyond single-issue parking studies to solve complex challenges via innovative, effective, fiscally responsible parking and curb regulation, policies, and practices. We believe that Denton is the type of place that stands to gain significantly from our approach to these kinds of studies.

In the past 25 years, Nelson\Nygaard staff has successfully prepared dozens of parking studies for cities, towns, and public agencies of all sizes. We have assembled a team that combines national expertise with recent, relevant regional Texas knowledge to complete the study. Leading this project will be our most experienced parking staff, with **Iain Banks as Project Manager/Point of Contact, Thomas Brown as Principal-in-Charge, and Jackson Archer as Deputy Project Manager**. Iain and Thomas each have more than a decade of transportation planning experience with an emphasis on parking as the key component to unlocking a city's vitality. Project Manager Iain Banks has just completed the Fairfax County Parking Reimagined project, right-sizing parking requirements for the County's diverse community types. Principal-In-Charge Thomas Brown was also PIC for that study and is currently wrapping up a curb management study in Dublin, OH. Both studies analyzed and improved parking policies and regulations to advance clear community and economic development goals. Deputy Project Manager Jackson Archer is currently leading the mobility component of the Downtown Denton Master Plan Update.

Nelson\Nygaard's team includes Fehr & Peers, who alongside Nelson\Nygaard, is a leader in the transportation planning and parking sector. Fehr & Peers is currently serving the City of Denton on the Downtown Denton Parking Study.

We hope you will recognize the strengths of our proposal, staff capabilities, and firm experience as indications of our capacity to carry out this project. We submit our proposal in accordance with the terms and conditions outlined in the request for proposal. Our offer will remain in effect for at least ninety (90) days from the date of submittal, November 15, 2023. Please contact Iain Banks at 202-454-3178 or [ibanks@nelsonnygaard.com](mailto:ibanks@nelsonnygaard.com) if you have any questions regarding our proposal.

Sincerely,

Iain Banks  
Project Manager

Citywide Parking Study  
City of Denton

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**Appendix A: Full Resumes**  
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# METHODOLOGY AND APPROACH

## Project Understanding

Through the 2022 Mobility Plan, the City of Denton has made clear its vision of a multimodal city that relies on a diversified mobility network, robust transit system, and safe and efficient movement of people and goods. A right-sized parking policy not only complements this mobility vision, but is necessary to make the vision a reality. The effective regulation and management of parking has long been one of the most critical and challenging aspects of urban mobility planning, however one that can uniquely deliver community-serving improvements, including better and more equitable access to goods, services, and social connection; sustainable growth and economic development; and affordable housing and economic opportunity.

Denton is a changing city with a mix of long-standing assets and new areas of regional interest. From destinations like the University of North Texas and Texas Woman's University, the downtown square, the Downtown Denton Transit Center, Quakertown Park, Rayzor Ranch, Discovery Park, and the city's growing commercial districts, our team's comprehensive approach considers how Denton's diverse assets have a variety of parking policy needs. Our approach is based on our experience with this type of work; however, if selected, our first task would be to refine and confirm the scope, schedule, study areas and facilities to be studied, and budget to make sure it aligns with the goals and the resources available for this study.

## Approach

Nelson\Nygaard brings a distinctive approach to parking management plans, an approach framed around the following guiding principles:



**Ask the right questions** from beginning to end, and answer them clearly.



**Present answers and information directly, but respectfully** letting data and key measurables address questions of supply sufficiency, while also respecting user and stakeholder experiences and perceptions.



**Remain nimble and solution-agnostic** to see where findings lead us, ensuring our survey of improvement opportunities is wide to capture best-fit recommendations for our clients.



**Consider city and policy values.** Parking is about more than productivity—how we supply and manage this urban infrastructure shapes a community's livability and goals.



**Look ahead.** We must not only manage what is occurring today but acknowledge the trendlines suggesting the new/transformed management challenges that parking plans must anticipate.

We have structured our approach to remain focused and disciplined, as well as curious and creative, to ensure that essential opportunities are explored fully and supported by a view toward implementation, while also seeking opportunities to bring more transformative improvement opportunities.



## Primary Scope of Work

Our team's approach to the scope of services in the RFP is outlined below, inclusive of the optional tasks and all proposed deliverables. Our approach is based on our deep experience with zoning code regulations and municipal parking policies and practices; however, if selected, our first task will be to refine and confirm the scope, schedule, and deliverables with the City. Unless otherwise requested, we propose providing a single draft of all deliverables, with a final version to be provided once a set of consolidated client comments and change requests is provided. All datasets and GIS files created in the process will be provided to the City at the project's end.

## Task 1 Project Initiation and Management

Below is our proposed plan for initiating and managing the project and staying coordinated with City staff from the day we receive a notice to proceed through final work product delivery and presentations.

### 1.1 Project Kickoff Meeting

Nelson\Nygaard will facilitate a kickoff meeting with the City's project team as well as representatives from City Administration, the Denton Police Department, and other departments as appropriate. The first objective of this meeting will be to develop, finalize, and confirm our project approach including work plan, schedule, goals, and key outcomes. This coordination will lay a foundation that will be crucial in achieving the 6-month completion date set by the City.

The team will also refine and confirm the study area and key parking facilities/challenges and situations. This meeting will be followed by collectively exploring and observing key conditions within the study area. Time will be spent discussing issues, opportunities, and key considerations with Staff.



### 1.2 Draft Project Work Plan

Following the project kickoff meeting, Project Manager Iain Banks will coordinate with the City's project manager to outline the optimal approach to achieving this level of strategic collaboration for the proposed study. The following aspects of project management, communication, and coordination will be finalized within a draft Project Work Plan that reflects discussions and decisions made during the kickoff meeting:

- A final, confirmed project organization, approach, scope, and schedule
- Identification of any gaps in the data, information, or processes necessary to project success
- A schedule and process for biweekly project check-in meetings/calls with the City's project manager
- Protocols and timelines for delivery and review of key project deliverables, as well as meeting agendas and summary notes
- File-sharing and draft review/development platforms available to expedite document review and deliverable development processes

Citywide Parking Study  
City of Denton

### 1.3 Review of Existing Materials and Information

We will review all available relevant plans, policies, data, and other key documentation to build upon our understanding of the study context. Beginning our work by reviewing previous work will allow us to streamline efforts by effectively leveraging the value provided by past and concurrent efforts, findings, and recommendations. The start of this work will be led by the previous review undertaken by our partners, Fehr & Peers, as a part of the ongoing Downtown Parking Study.

### 1.4 Stakeholder Outreach

To help inform the project, we propose to conduct stakeholder interviews to deepen the project team's understanding of key issues, potential opportunities, constraints to implementation, and perception of different future solutions. This typically includes groups such as residents, business owners, visitors, and employees as well as key planners, engineers, parking managers, and policy makers. Specific interviewees or key stakeholders will be identified during the kickoff meeting or before.

#### DELIVERABLES

- Kickoff Meeting Agenda and Notes
- Stakeholder Meeting Materials
- Tech Memo: Summary of Existing Materials Review
- Project Work Plan
- Agenda, Notes, and Supporting Documents for any other meetings

## Task 2 Policy and Practice Review

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### 2.1 Regulatory Review

This subtask will focus on deepening our understanding of the City's regulatory tools for privately developed/maintained parking facilities, to include, at a minimum, relevant sections of the following:

- City Code of Ordinances
- Denton Development Code
- Transportation Criteria Manual
- Site Design Criteria Manual
- Public Infrastructure Construction Standard Details

We will also have access to similar reviews completed for the Downtown Parking Study, picking up from and expanding upon the relevant findings specific to citywide parking regulations. This review will include how policies and practices address opportunities for private development to improve, enhance, and/or expand curb parking/loading/access infrastructure; and if/how they mitigate against unnecessary loss of curbside capacities from proposals that include excessive driveways and/or private parking carveouts along the curb.

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Charlotte Code requires creation of public curbside parking in key mixed-use districts

## 2.2 Policies and Practices

This subtask will focus on the City's current policies and practices for maintaining, regulating, and managing City-controlled curbsides, not limited to a review of the process for assigning curbside regulations/restrictions (generally and in response to requests), tracking the effectiveness of these regulations, and making periodic updates as contexts, needs, and opportunities evolve. Our review of available documentation will be complemented by discussions with key City staff to learn the intent of key policies and practice and to gain insight into the historic and current performance of key policies and practices in terms of delivering intended results, as well as aligning with related City goals and objectives.

**DELIVERABLE:** Technical Memo: Summary of Policy and Practice Review



## Task 3 Performance Indicators Review

### 3.1 Review of Received Complaints and Requests

Our team will work with the City's project manager to access and review documented complaints, requests, and other observations regarding the Policies and Practices summarized in Task 2.2, as well as general parking conditions, user experiences, and stakeholder impacts. This review will allow us to compare the established policies and practices, and City staff input on their intent and effectiveness, with the perspectives being expressed in these stakeholders' comments to the City.

### 3.2 Review Campus Parking Spillover Impacts

We will review available data, reporting, and timestamped aerial imagery to gain an understanding of the locations and extent of parking demand "spillover" impacts on Denton neighborhoods. Our team will also consult with University of North Texas (UNT) and Texas Woman's University (TWU) representatives to understand campus parking policies and practices for mitigating these impacts – including a review of any available commuter surveys or other data pieces. Recent work in the area generated stakeholder observations that UNT parking demand had recently increased due to reduced campus-serving bus service. Combining this kind of stakeholder input with a check of aerial imagery before and after recent changes in campus transportation and/or parking policies, practices, or conditions will allow us to better advise the City of the nature and scale of impacts to on-street parking in campus-area neighborhoods.



Timestamped aerial imagery can capture the extent of peak campus-parking impacts on neighborhoods

Building from our work in Task 2, our team will assess how existing parking regulations, policies, and practices may be affecting the neighborhood impacts, as well as opportunities for developing new tools—such as Resident Permit Parking regulations—scaled and scheduled to appropriately address impacts and where and when they impact neighborhood parking conditions.

### 3.3 Coordinate with Downtown Parking Study

Many of the above tasks and subtasks will benefit from ongoing and completed work on the Downtown Parking Study. Fehr & Peers are leading that study, allowing our team to streamline coordination to leverage the full benefit of relevant findings and deliverables from the downtown study, therefore coordination is easily facilitated.

Citywide Parking Study  
City of Denton

Fehr & Peers will share findings from the Downtown Parking Study as they become available, such as:

- Travel behavior observed through their Big Data analysis
- Observed parking supply and demand, as well as turnover for downtown on-street and off-street parking as well as private parking lots
- Feedback from public outreach events and online survey
- Feedback from City stakeholder committee
- Strategies being considered to improve parking management practices in downtown
- The final approved toolbox of Downtown parking management strategies, as well as a prioritized list of actions to improve parking utilization and management in downtown Denton

**Deliverable:** Conditions Assessment: Tech Memo summarizing Task 3 findings

## Task 4 Preliminary Recommendations

The Nelson\Nygaard team will synthesize findings from completed tasks and begin to identify recommendations to address key issues and act upon improvement opportunities. Recommendations will be developed for regulatory tools used to influence privately developed, maintained, and managed parking, with a distinct set of recommendations developed for City-controlled parking policies and practices.

### 4.1 Codes, Ordinances, and Standards Recommendations

The Nelson\Nygaard team will develop initial recommendations for changes to City of Denton codes, ordinances, and standards. This may include recommendations for the following, based on previous task findings:

- **Minimum parking requirements:** Adjusting or removing requirement-ratios linked to land use categories
- **On-street parking credits:** Crediting available on-street parking toward a project's parking requirement for retail, restaurant, or other uses with high-turnover parking patterns
- **Off-site parking allowances:** Crediting leased, existing but underutilized off-site parking toward a project's parking requirement
- **Flexible parking requirements:** Providing opportunities to reduce parking requirements based on contextual conditions or development characteristics that will reduce parking supply needs, including transit proximity, on-site mobility amenities like bike-share or car-share, and/or parking management practices (unbundling, shared parking)
- **Bike parking standards:** Minimum requirements and design standards
- **TDM Standards:** Incentives or requirements, including strategies to encourage increased use of transit and other driving alternatives
- **Code-Supportive Parking Management Policies & Practices:** Curb management regulations, policies, and practices that can address parking-demand spillover impacts to enable the City code to reduce or eliminate parking requirements without negatively impacting on-street availability on adjacent streets

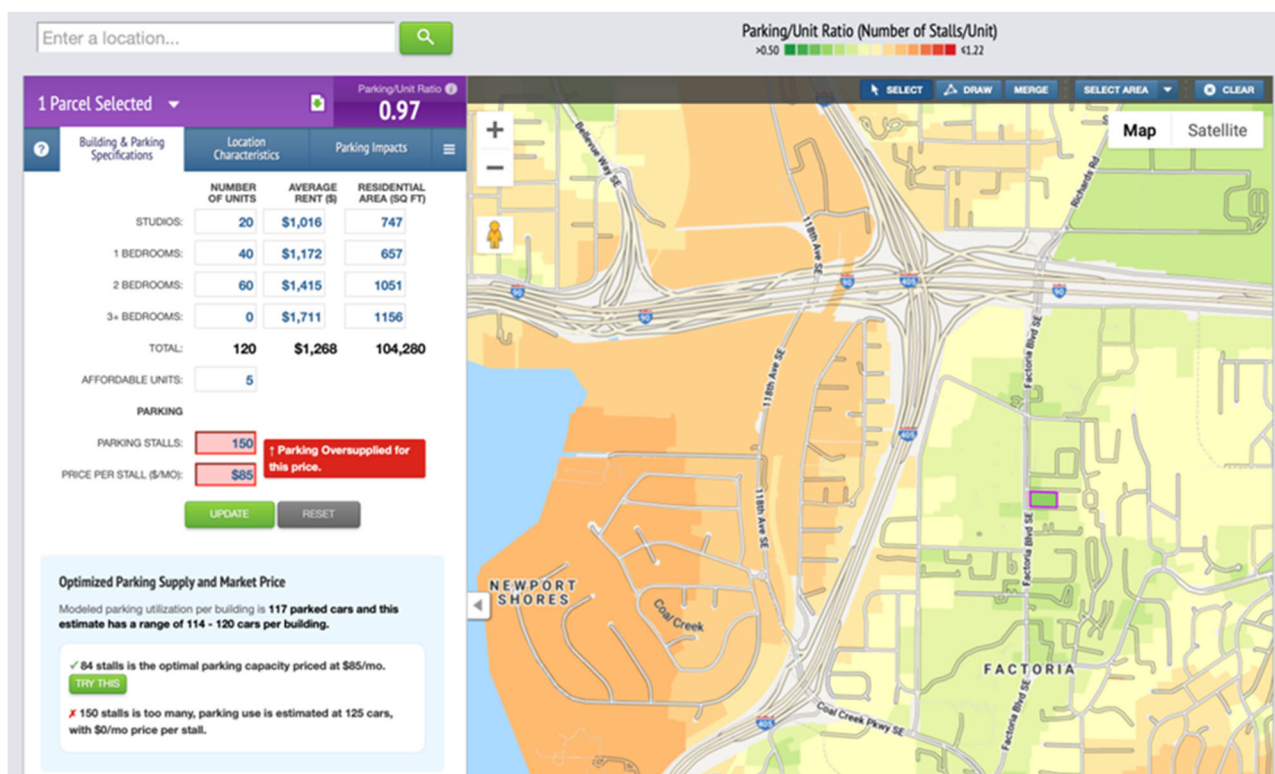
Citywide Parking Study  
City of Denton

## 4.2 Policies and Practices Recommendations

Based on the review of City policy, the review (and City feedback on) other City policies, and on review of existing parking conditions in downtown and adjacent to UNT and TWU, our team will present a toolbox of strategies for City consideration. Advantages and disadvantages of each will be provided along with how they might be implemented in Denton. The strategies will be categorized as follows:

- Curbside space allocation and prioritization
- Parking supply determination practices and estimation tools (e.g., Parking+ Tool illustrated below)
- Shared parking, time-delimited parking, paid parking, and residential parking permit programs
- On- and off-street parking design, wayfinding and access control
- Parking capacity addition
- Alternative modes of transportation
- Enforcement strategies

This parking strategies “toolbox” will be documented in a memorandum.

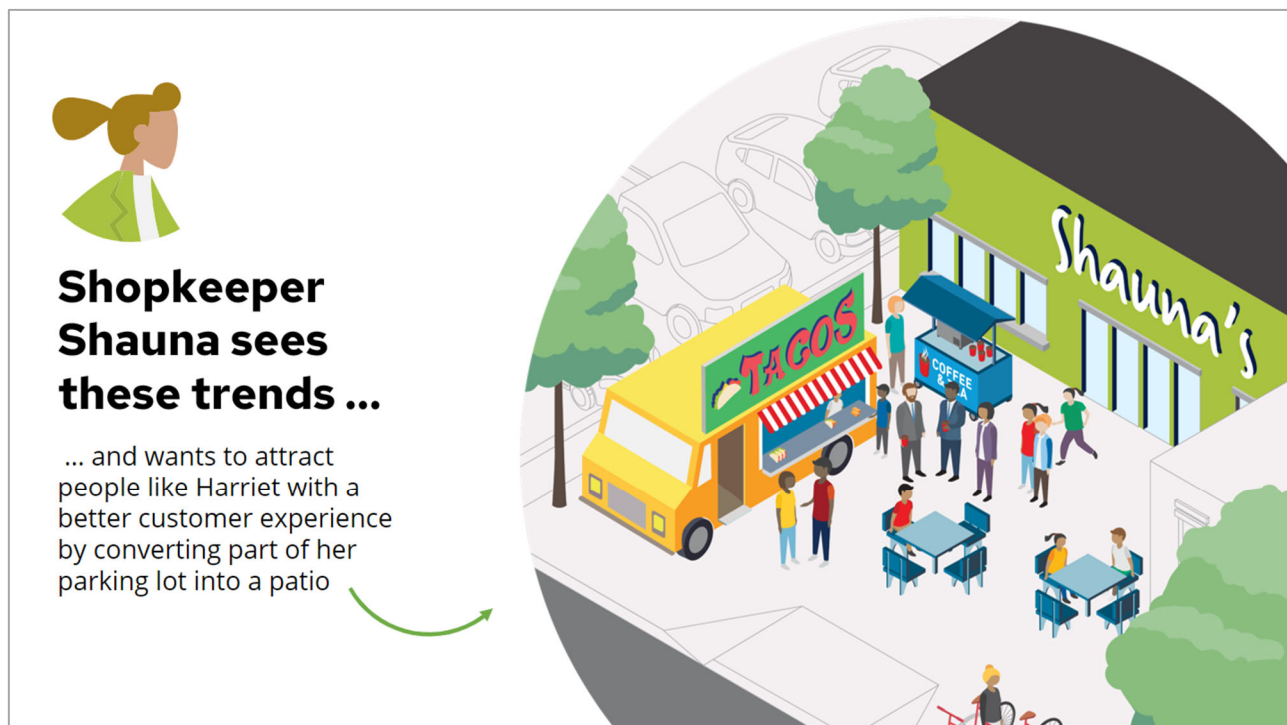


Fehr & Peers Parking+ helps clients understand tradeoffs between adding parking versus accommodating travel with other modes, incorporates shared parking concepts, and shows the impact pricing can have on parking demand

**Deliverable:** Preliminary Recommendations: Tech Memo presenting preliminary recommendations

## Task 5 Final Report

Our team will compile all task findings into a comprehensive report, presented in a concise and clear style that will emphasize effective visual graphics to provide a document for the public and decision makers. This will be complemented by appendices that present the final version of all previous task deliverables. We will submit a draft report for the project team's review, to be revised into a final report based on a single set of non-conflicting comments as presented to Nelson\Nygaard by City staff.



Code-Update Explainer Image from Fairfax County Study

**Deliverable:** Final Report: Summary of all Task findings and final recommendations

## Task 6 Presentation

Project Manager Iain Banks will prepare and present a slide deck summarizing the completed study processes, key findings, and final recommendations to the City Council for their feedback.

**Deliverable:** Preparation and presentation of study final report



## Optional Scope of Work:

### Assessing Viability of Removing Parking Minimums

Below is a series of proposed tasks, organized and designed to assess the viability of removing minimum parking requirements within the City of Denton Zoning Code. If approved, these tasks would be scheduled to inform the recommendations identified above for Task 4.1.

## Zoning Code Parking Requirements: A State of the Practice Review

### Peer Code Review

Nelson\Nygaard will review the parking standards from a set of peer jurisdictions (confirmed in Task 1). Current codes and practices for off-street parking and loading requirements and standards will be summarized, while also highlighting examples of innovative code practices that may be found (e.g., removal of parking requirements, establishment of parking maximums, bike parking requirements, etc.). Key code supportive practices will also be identified to include curbside management regulations on development adjacent and neighboring blocks, as well as TDM policies and programs that facilitate/encourage reduced parking supplies in key growth districts.

### Best Practices Survey

Our team will complement the peer code overview with a survey of established and emerging best practices for parking codes and code complementary practices, highlighting practices to address specific issues and opportunities identified in previous tasks. These best practices may go beyond merely responding to current demand generation rates for right-sizing parking, seeking to influence the future parking needs of new development projects in ways that provide critical support for the City's vision, goals, and growth priorities. Codes and practices for off-street parking, loading, queuing/stacking, and mobility—carshare and bike parking, for example—will be highlighted, as well as code supportive practices related to curbside management and TDM.

This review will also include a review of recent study reports and literature documenting the economic and housing impacts, and key and lessons learned, particularly those document outcomes from [Buffalo, New York](#), and [Seattle, Washington](#) – two major cities in which the impact on development patterns and on-site parking provision of broad elimination of parking requirements has been studied and results published.

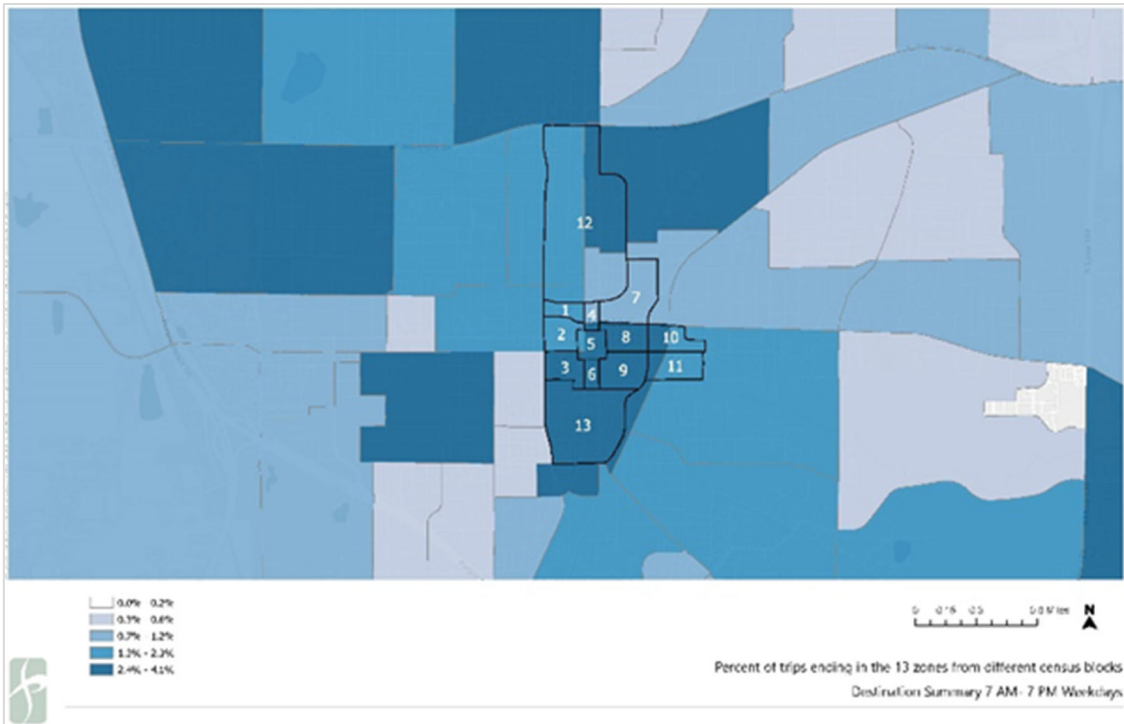
**Deliverable:** State of the Practice Technical Memorandum



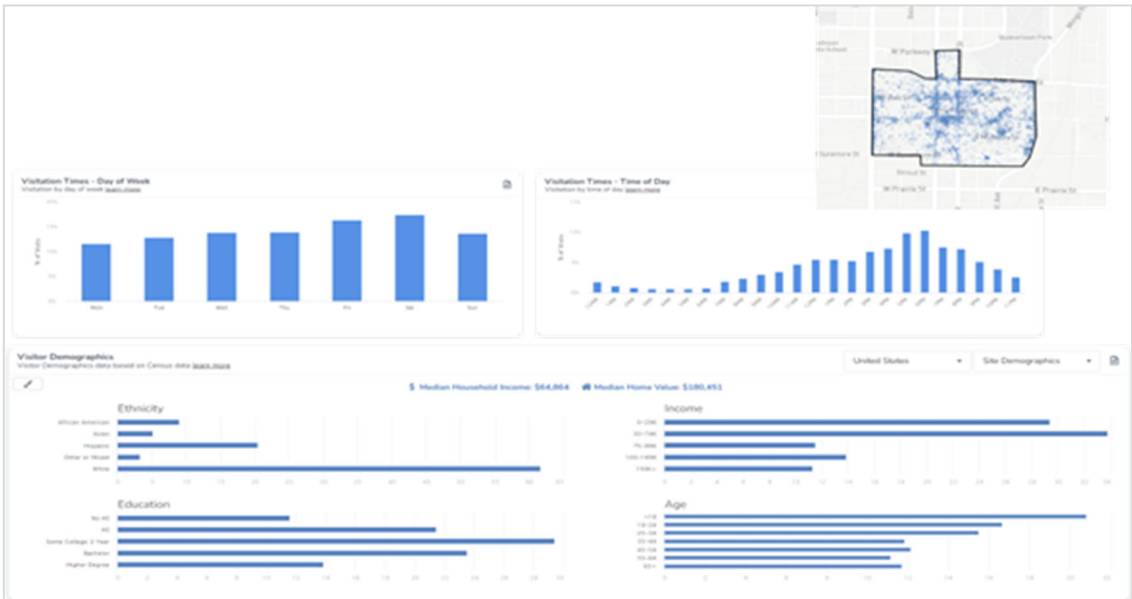
# Travel and Mode Share Conditions Review

## Internal Commuting and Travel Patterns

Fehr & Peers, as part of the Downtown Parking Survey, has already completed an analysis of internal commuting and travel patterns, focused on several Census tracts in the Downtown Denton area. Under this task, Fehr & Peers will expand that analysis citywide, utilizing StreetLight Data, as well as analyzing specific travel behavior for up to five specific sites of interest in Denton. Illustrations of StreetLight Data and Near Data analysis are provided below.



StreetLight Data illustrating travel to Denton's downtown



Near Data illustrating visits to Downtown by time of day and socioeconomic factors

## Citywide Parking Study City of Denton

The results of this analysis will be documented in the form of a presentation to City staff. The presentation will document, in a matrix style format, the percentage of trips to and from each census tract, the most common type of trip in Denton, busiest travel days and times, and what the implications are for parking planning in Denton.

**Deliverable:** Big Data analysis results and Presentation (Draft and Final)

### Non-Driving Mode Conditions and Trends

Parking demand can be reduced through the provision of non-auto travel options for residents, employees, and visitors to Denton. Denton's 2022 Mobility Plan examined citywide travel patterns and mode share, and makes recommendations for improvements to the auto, bike, and pedestrian networks. Under this task we will examine Denton's 2022 Mobility Plan and how its proposed improvements to the auto, pedestrian, and bicycle networks could reduce—or increase—the share of auto-based travel (and thus parking demand) previously identified in Denton.

Denton's Mobility Plan does not propose transit improvements—as Denton does not operate transit—so our team will hold a series (up to three) meetings with DCTA and their consultants to understand what is being considered for DCTA's rail, bus and on-demand microtransit service in Denton. We will also collaborate with Denton's Downtown Master Plan team to understand what is being proposed to improve multimodal options.

Findings from this analysis will be presented in a graphic based memorandum that overlays travel behavior data with modal improvements that are planned.

**Deliverable:** Technical Memorandum summarizing task findings (Draft and Final)

### Parking Supply and Availability Conditions

Much of what is described and anticipated under this task (code amendments, parking permit programs) will be covered elsewhere in this project (e.g., Task 7 of base scope) or other projects. Under this task we will focus our efforts as such:

- Facilitate a series of (virtual) meetings with members of the Parking Reform Network, a non-profit organization advocating for changes to parking policy, such as removal of parking minimums.
- We will also engage with Texas cities such as Austin and College Station, who have recently removed parking minimums in their city ordinances.
- Create a Travel Demand Management (TDM) toolbox and make recommendations and prioritize for what could work best, most quickly, in Denton.

**Deliverable:** Technical Memorandum summarizing task findings (Draft and Final)

## Recommendations (See also Task 4.1)

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Findings from any and all of the above tasks that are approved by the City will be used to inform and expand upon the recommendations proposed for Task 4.1 above. Recommendations will reflect these findings and their implications for the viability of removing minimum parking requirements, selectively or entirely from the City's zoning code. The full set of recommendations will include:

- **Minimum parking requirements:** Adjusting or removing requirement-ratios linked to land use categories
- **On-street parking credits:** Crediting available on-street parking toward a project's parking requirement for retail, restaurant, or other uses with high-turnover parking patterns
- **Off-site parking allowances:** Crediting leased, existing but underutilized, off-site parking toward a project's parking requirement

## Citywide Parking Study City of Denton

- **Flexible parking requirements:** Providing opportunities to reduce parking requirements, based on contextual conditions or development characteristics that will reduce parking supply needs, including transit proximity, on-site mobility amenities like bikeshare or carshare, and/or parking management practices (unbundling, shared parking)
- **Bike parking standards:** Minimum requirements and design standards
- **TDM Standards:** Incentives or requirements, including strategies to encourage increased use of transit and other driving alternatives
- **Code-Supportive Parking Management Policies & Practices:** Curb management regulations, policies, and practices that can address parking-demand spillover impacts to enable the City code to reduce or eliminate parking requirements without negatively impacting on-street availability on adjacent streets

### Deliverables:

- Preliminary Code Update Recommendations: Tech Memo presenting preliminary recommendations
- Tech Memo: Summarizing key findings from all Optional Tasks completed

## Periodic Updates

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Our team will update the Citywide Parking Study, its recommendations and implementation outcomes two years after key recommendations have been implemented, and at least one more time within five years of key recommendations being implemented. These updates will document the original recommendations on the following.

- Have been implemented, fully or partially
  - With good results
  - With underperforming results
  - With poor results, but retain some promise
  - With poor results, and should have been or should be dropped as recommendations
- Have not been implemented
  - Due to barriers and challenges that should be addressed
  - Because they are no longer relevant
  - Because the time has not been right, but should remain a priority
- Updated Opportunities & Barriers
  - New ideas and strategies to be considered, particularly anything that has been discussed, considered, explored, or even implemented outside the study recommendations
  - Changes since the original study that present new challenges to code update opportunities

### Deliverable: Updated Code Change Recommendations

Citywide Parking Study  
City of Denton

DETAILED PROJECT BUDGET

The fee for this project is \$71,745. A separate budget has been developed for the optional task and is provided on the following page. The detailed budget includes team members and their billing rates and totals by task, team members, and firms.

Task Description	Nelson\Nygaard Labor Costs								Subconsultant Costs								Total Labor Hours	Total Labor Costs	Total Direct Expenses	Total Costs		
	Banks, Iain	Archer, Jackson	Brown, Thomas	Constantine, Sophia	Trevino, Anna	Ergina, Samuel	NN Labor		Fehr & Peers													
									Anjum Bawa	Spencer Reed	Natalie Daugherty	Wayne Powell	Maria Vyas	Tory Gibler	Fehr & Peers							
															Principal	Technical Oversight					Planner / Engineer	Planner Support
Total Billing Rate	\$215.00	\$175.00	\$235.00	\$140.00	\$140.00	\$140.00	Hours	Cost	\$280.00	\$240.00	\$170.00	\$160.00	\$280.00	\$175.00	Hours	Cost						
1 Project Initiation and Management																						
1.1 Kickoff Meeting	4	4					8	1,560	2		2				4	900	12	2,460	600	3,060		
1.2 Draft Project Work Plan	2	2					4	780	1						1	280	5	1,060		1,060		
1.3 Review of Existing Materials and Information	2	4				8	8	3,370			2	4			6	980	28	4,350		4,350		
1.4 Stakeholder Outreach	4	6				6	6	2,750	4		4				8	1,800	24	4,550		4,550		
Task Total	12	16	-	-		14	8	50	8,460	7	-	8	4	-	19	3,960	69	12,420	600	13,020		
2 Policy and Practice Review																						
2.1 Regulatory Review	2	4	2	8	4	4	24	3,840	2		2				4	900	28	4,740		4,740		
2.2 Policies & Practices	2	4	2		4	8	20	3,280	2		4				6	1,240	26	4,520		4,520		
Task Total	4	8	4	8	8	12	44	7,120	4	-	6	-	-	-	10	2,140	54	9,260	-	9,260		
3 Performance Indicators Review																						
3.1 Review of Received Complaints & Requests	2	4			8	8	22	3,370	2		2				4	900	26	4,270		4,270		
3.2 Review Campus Parking Spillover Impacts	4	6	2		8	12	32	5,180	2		8	8			4	22	3,900	54	9,080	9,080		
3.3 Coordinate with Downtown Parking Study	2	2				4	4	1,900	2		4	6			4	16	2,900	28	4,800	4,800		
Task Total	8	12	2	-	20	24	66	10,450	6	-	14	14	-		8	42	7,700	108	18,150	18,150		
4 Preliminary Recommendations																						
4.1 Codes, Ordinances, and Standards Recommendations	8	8	8	4	-	4	32	6,120	2	2	4	4	2	-	14	2,920	46	9,040		9,040		
4.2 Policies & Practices Recommendations	8	8	8	4	8	4	40	7,240	2	2	6	12	2	6	30	5,590	70	12,830		12,830		
Task Total	16	16	16	8	8	8	72	13,360	4	4	10	16	4	6	44	8,510	116	21,870	-	21,870		
5 Final Report																						
5 Final Report	4	4	1	8		8	25	4,035	2		2	2		2	8	1,570	33	5,605		5,605		
Task Total	4	4	1	8	-	8	25	4,035	2	-	2	2	-	2	8	1,570	33	5,605	-	5,605		
6 Presentation																						
6 Presentation	4	4			-	4	12	2,120	4						4	1,120	16	3,240	600	3,840		
Task Total	4	4	-	-	-	4	12	2,120	4	-	-	-	-	-	4	1,120	16	3,240	600	3,840		
TOTAL HOURS	48	60	23	24	50	64	269		27	4	40	36	4	16	127		396					
TOTAL LABOR COST	10,320	10,500	5,405	3,360	7,000	8,960		45,545	7,560	960	6,800	5,760	1,120	2,800		25,000		70,545	1,200	71,745		
TOTAL COSTS																25,000				71,745		

Citywide Parking Study  
City of Denton

Optional Task Detailed Budget

The total fee for optional tasks detailed in the scope of work section of this proposal is \$38,222.

	NelsonNygaard Labor Costs								Subconsultant Costs								Total Labor Hours	Total Labor Costs	Total Direct Expenses	Total Costs
	Banks, Iain		Archer, Jackson	Brown, Thomas	Constantine, Sophia	Trevino, Anna	Ergina, Samuel	Fehr & Peers												
								Anjum Bawa				Spencer Reed		Natalie Daugherty		Wayne Powell				
	Principal 1	Senior Associate 2	Principal 2	Associate 2	Associate 2	Associate 2	NN Labor		Principal	Technical Oversight	Planner / Engineer	Planner Support	Curb Management Oversight	Curb Management Lead	Labor					
Total Billing Rate	\$215.00	\$175.00	\$235.00	\$140.00	\$140.00	\$140.00			\$280.00	\$240.00	\$170.00	\$160.00	\$280.00	\$175.00			Hours	Cost		
OPTIONAL TASKS																				
Task Description																				
1 A State of the Practice Review	4	4	4	8	0	8	28	\$4,740	2		2	2			6	\$1,220	34	\$5,960		\$5,960
2 Internal Commuting and Travel Patterns	2	4		4		4	14	\$2,250	2		6	8			16	\$2,860	30	\$5,110		\$5,110
3 Non-Driving Mode Conditions & Trends	2	4		8	0	8	22	\$3,370	2		4				6	\$1,240	28	\$4,610		\$4,610
4 Parking Supply & Availability Conditions	2	4	2	8		16	32	\$4,960	2	2	4			4	12	\$2,420	44	\$7,380		\$7,382
5 Recommendations	4	4	4	2		2	16	\$3,060	2		6	4	2	8	22	\$4,180	38	\$7,240		\$7,240
6 Periodic Updates	8	8	8		0		24	\$5,000	4		4		4		12	\$2,920	36	\$7,920		\$7,920
TOTAL OPTIONAL TASK HOURS	22	28	18	30	0	38	136		14	2	26	14	6	12	74		210			
TOTAL OPTIONAL TASK COST	\$4,730	\$4,900	\$4,230	\$4,200	\$0	\$5,320		\$23,380	\$3,920	\$480	\$4,420	\$2,240	\$1,680	\$2,100		\$14,840		\$38,220	0	\$38,222

# RELEVANT EXPERIENCE

## Nelson\Nygaard

Nelson\Nygaard Consulting Associates, Inc. is an internationally recognized firm committed to developing transportation systems that promote vibrant, sustainable, and accessible communities. Founded by two women in 1987, Nelson\Nygaard has grown from its roots in transit planning to a full-service transportation firm with over 150 people in offices across the United States.

In keeping with the values set by our founders, Nelson\Nygaard puts people first. We recognize that transportation is not an end by itself but a platform for achieving broader community goals of mobility, equity, economic development, and healthy living. Our hands-on, national experience informs but doesn't dictate local solutions. Built on consensus and a multimodal approach, our plans are renowned as practical and implementable.

### Nelson\Nygaard specializes in:



#### Transit

Designing and developing great transit services for people



#### Cities and Streets

Balancing the mobility needs of everyone to create thriving places



#### Mobility Management, Access, and Policy

Creating strategies, policies, and systems that promote equitable access and mobility for all



#### Urban Corridors

Building vibrant, equitable communities with high-quality transit at the center



#### Parking and Demand Management

Creating livable places with better management of parking supply and demand



#### Active Transportation and Safety

Making places better for people to walk, bike, and gather

# Parking Consulting Expertise

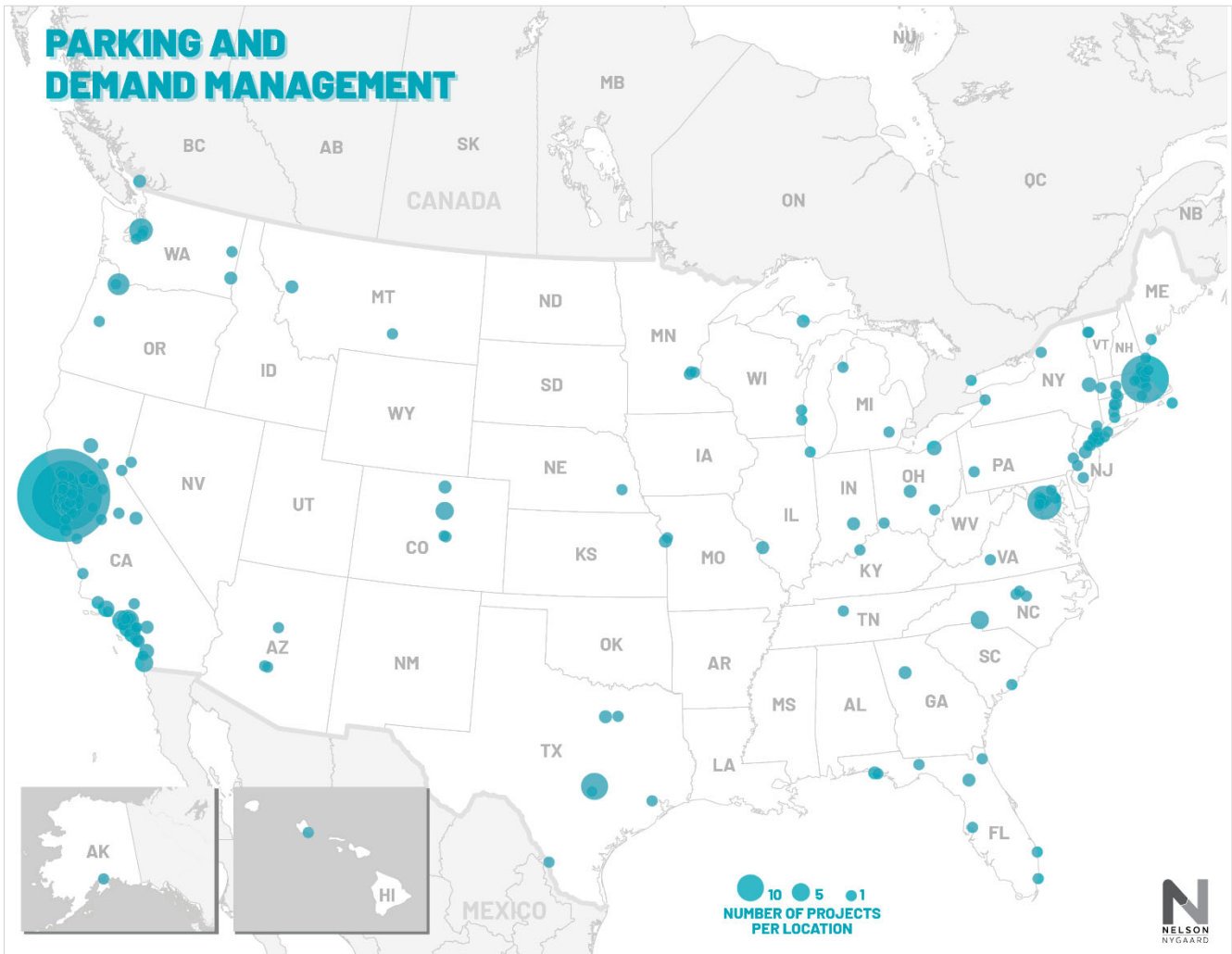


Nelson\Nygaard sees innovative management of parking supply and demand as an opportunity to create livable places.

We have pioneered an approach that demystifies the real costs of parking and develops strategies for sharing resources, reducing trips, integrating new technology, and appropriately pricing parking. Our multimodal skillset also helps us to proactively and flexibly respond to the mobility impacts of emerging technologies.

Our approach is to find a cost-effective blend of solutions specific to local needs. We challenge perceptions, build consensus, and win community support for policies, regulations, and plans that put parking needs in the context of desired outcomes. In doing so, we help communities save money, conserve resources, and achieve their larger goals for economic development and improved quality of life.

We have worked with cities across the country whose downtown areas continue to grow and thrive and ensure parking supports economic growth and vitality of the community. Our extensive parking planning experience is demonstrated in the project map below.



## Fehr & Peers

With Fehr & Peers' extensive knowledge of industry best practices and experience solving complex parking problems, they will dive deep and identify unique patterns, evolving mobility and parking trends, specific hot spots of demand, and any core issues related to land use and associated parking requirements. A key feature in their approach is our use of big data and custom tools and models to analyze how current trends related to auto ownership, transit access, and how parking fees influence parking demand.

### Internal Research & Development, and Custom Tools

Fehr & Peers invest their time to stay on top of changing standards and emerging trends to offer state-of-the-practice advice. They develop our own tools, evaluate emerging technologies, and coordinate with our clients and technology partners to understand data options and limitations. They listen to the needs of their clients to develop efficient analysis methods and tools that are content appropriate and derived from a robust research process. Their suite of advanced tools is designed to provide accurate, data-driven performance metrics in a quick-response format that can easily be customized to local conditions including:

- Proprietary tools such as Parking Revenue and TDM+ tools, which are based on their self-funded research. These tools can quantify the efficacy of parking management strategies and the reduction in parking that can be expected from TDM strategies.
- Parking demand modelling using GIS and other visual communication tools to analyze and communicate the parking issues from various different perspectives.
- Parking pricing tools that estimate how increasing the price of parking affects parking demand and revenue.

### National Experts

Fehr & Peers has national experts in many specialty areas including parking, federal research, safety, freight, climate, and equity. These experts offer insight into the best approach and the most current development in their fields.

### Data Experts

Fehr & Peers includes data scientists and experts that work in specialized software like GIS, Python, and AutoCAD. Their data science experts frequently speak at conferences nationwide to share their insights on the very latest innovative tools and techniques. They pride themselves on presenting complex technical data and concepts in easy to understand, visually compelling, and approachable formats.



Citywide Parking Study  
City of Denton

## Project Manager

### Iain Banks, PTP

Availability: 30%, Estimated Hours: 48



**My ethos is that a city's parking system is vital to the planning of a sustainable transportation network, which supports community goals of mobility, economic vitality, and healthy living. Helping the City of Denton enhance their transportation goals through the lens of parking policy and programs is an exciting opportunity.**

With 20 years of public- and private-sector experience, Iain is the head of Nelson\Nygaard's Washington, D.C. office. He plays an integral role in the firm's parking and transportation demand management practice, including citywide and campus master plans, downtown parking programs, and corridor planning. Iain has helped dozens of municipalities, campus planners, downtown development organizations, and private developers craft parking and transportation policies, programs, and practices that achieve defined sustainability goals.

## Key Staff

### Jackson Archer, Deputy Project Manager

Availability: 30%, Estimated Hours: 60



**I can't wait to use the knowledge of parking solutions I've gained through my living and working in Texas to help shift Denton's parking policy and shape the future of parking in the city.**

Jackson's passion for multimodal transportation and shared parking guides his approach to transportation projects—Jackson firmly believes that a shared parking analysis is a key lever to prevent overbuilding parking supply. He enjoys working with local public agencies to advise on deployment of TDM and parking tools to meet project and city goals. Jackson's experience with local TDM and parking projects have typically involved circulation details (transit, bike, pedestrian, and complete streets) and close coordination with traffic engineers, land use attorneys, site designers, public agencies, and development and owner teams. Jackson's strength is understanding the varied needs of these stakeholders and producing solutions that just make sense.

Citywide Parking Study  
City of Denton

## Tom Brown, Principal-In-Charge

Availability: 15%, Estimated Hours: 23



I am excited to bring my nearly 20 years of parking management planning experience to help Denton address its most pressing challenges and promising opportunities. I learn something new on each project and love working with new partners to develop unique solutions for their communities. As the principal-in-charge, I also get to work with the best project managers and planning leads our firm has to offer to ensure we bring the right blend of national expertise and local understanding to each project.

Urban parking management has been a special focus for Tom as a principal at Nelson\Nygaard. In his experience, nothing undermines the best of planning and design efforts as quickly or significantly as failing to get the parking right. Getting it right, however, invariably involves negotiating challenging and consequential tradeoffs. Years of engaging diverse, passionate, and thoughtful stakeholders on all aspects of parking, in a wide variety of contexts and opportunity environments, has afforded Tom the capacity to offer his clients a clear assessment of best available options, the essential pros and cons of each, and a viable path forward in serving transportation, growth, and broader community goals and objectives.

## Sophia Constantine, Project Planner

Availability: 30%, Estimated Hours: 24



I'm passionate about right-sizing parking, and excited to use my experience working on parking studies across North America to best fit the needs of the City of Denton and all community members.

Sophia believes that all community members should have safe, accessible, non-driving mobility choices. Her background in smart mobility planning and policy informs all her projects. At Nelson\Nygaard, Sophia focuses on parking studies and code updates, transportation demand management, multimodal planning for downtowns and universities, and emerging mobility planning. She's led equitable parking strategies, transportation-focused code updates, and community engagement efforts across the United States.

Citywide Parking Study  
City of Denton

## Anna Trevino, Project Planner

Availability: 30%, Estimated Hours: 50



**I am excited to take the knowledge and experience I've gained through my planning work and my passion for equitable transportation solutions to support shaping the future of parking in the City of Denton, my hometown.**

Anna believes mobility is about creating opportunities to creatively connect people to the places they want to go. Anna specializes in multimodal transportation projects, transportation demand management, and curb management. Anna is passionate about helping people feel empowered to get around without a personal vehicle. She has brought her practical knowledge and skills to projects like curb management plans, downtown parking plans, TDM plans, and station area planning. Born and raised in Denton, Anna is familiar with the city's unique transportation landscape and has an intimate understand of the community's needs and goals.

## Sam Ergina, Project Planner

Availability: 30%, Estimated Hours: 64



**I am excited to take the knowledge I've gained through my planning work on parking studies and my passion for equitable transportation solutions to support in shaping the future of parking in the City of Denton.**

Sam contributes to developing spaces that prioritize collaboration, equity, and inclusion. His multidisciplinary background informs a planning approach that focuses on creativity, critical thinking, and accessibility. Sam has worked on both land use and transportation planning in the United States and abroad. His past work includes working with cities to create equitable community engagement processes and producing existing conditions analysis and evaluation. He has worked on parking studies in a variety of urban areas, from the Phoenix metropolitan area to the City of Martinez in California, and has previously worked on parking in Denton through the Denton Downtown Master Plan Update.

## Anjum Bawa, Principal-In-Charge

Availability: 30%, Estimated Hours: 27



**I look forward to using big data, GIS, and other statistical tools to develop creative, cost-effective, and results-oriented solutions for the City of Denton.**

Anjum has over 20 years of successfully delivering transportation planning and engineering projects throughout the USA. He has managed and assisted with various parking studies, community plans, special-event planning, and traffic engineering. He has completed several parking and circulation studies for large mixed-use districts, and developments and has contributed to many community-scale and institutional master plan efforts in the technology, education, and health industries.

Citywide Parking Study  
City of Denton

## Spencer Reed, Technical Oversight

Availability: 40%, Estimated Hours: 4



**Using a combination of experience, data, and innovative, I will provide thoughtful solutions to benefit the City of Denton.**

Spencer has more than 10 years of experience in transportation engineering and planning. He brings a wide variety of skills and an innovative analytical perspective to all his projects. His project and technical experience include parking demand studies, parking management plans, microsimulation modeling, traffic impact studies, travel demand modeling, conceptual design, and bicycle and pedestrian planning. Spencer understands that various projects have a wide range of needs, and he maintains a steadfast commitment to the efficiency and reliability of results.

## Natalie Daugherty, Lead Engineer

Availability: 60%, Estimated Hours: 40



**I am excited to bring my experience and passion for accessible transportation to the City of Denton.**

Natalie is a transportation engineer and planner in the Fehr & Peers Dallas office, and is leading the Denton Downtown Parking Study. Natalie has led multimodal transportation engineering and planning studies across the USA, and has a thorough approach that leads to success on a myriad of projects including parking, multimodal corridor planning, bike feasibility studies, and signal design plans.

## Project Experience

Our team has extensive experience developing citywide parking studies and we are proud of our record of positive relationships with our clients. We have included our most relevant project experience conducting parking studies with similar scope to the City of Denton's.





## Austin, TX

### Downtown Austin Parking Strategy

As one of the fastest growing cities in the U.S., Austin is experiencing a significant increase in high-density development in its downtown. Austin's strong grid street network and substantial investments in creating a walkable and attractive environment offer the ideal framework for shared parking, yet its legacy parking management system undermined Austin's desirable urban qualities.

The Downtown Austin Alliance hired Nelson\Nygaard to rethink parking in downtown through detailed technical analysis, facilitation of productive dialogue and integration of community values and priorities, and development of innovative recommendations. By identifying the downtown's future parking need within the context of numerous planning efforts and specific development projects, Nelson\Nygaard developed an **integrated set of 19 parking recommendations** that ensures parking facilitates future growth and supports transit and multimodal investments, while making it easier to find parking.

Bloomberg Philanthropies awarded the City of Austin with an American Cities Climate Challenge, granting the city up to \$2.5 million in technical assistance and support to reach its aggressive environmental goal of being carbon neutral by 2020. City officials utilized a portion of the funds to advance a key recommendation of the strategy – implementing a new performance-based pricing program to reduce vehicle emissions.

*The project was also selected for 2017 Project Planning Award from the APA, Texas Chapter.*



## Austin, TX

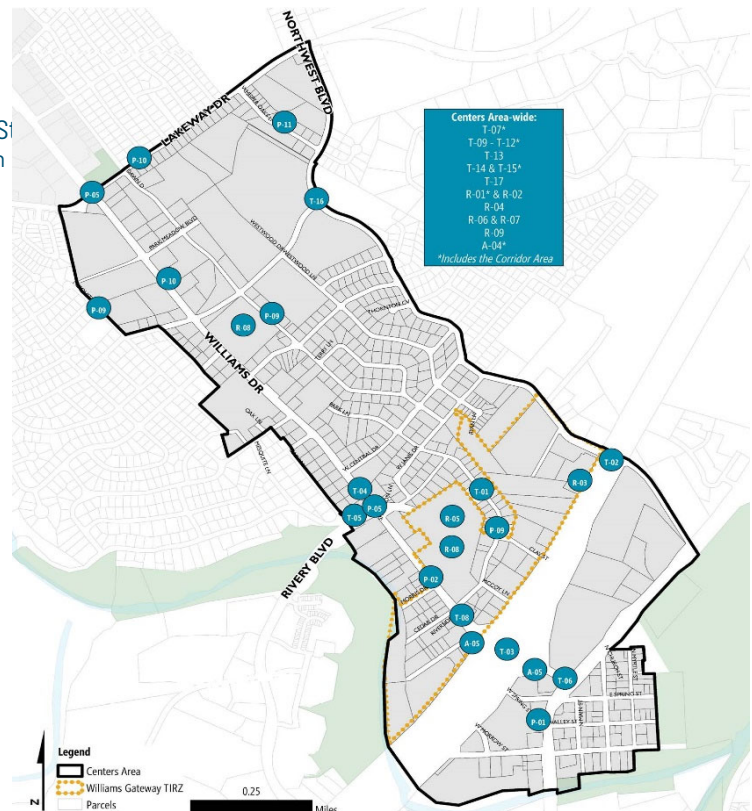
### South Congress Parking Strategy

Parking has been a long-standing challenge in Austin's renowned South Congress (SoCo) district. Competition for the curb is fierce as parking needs vary for an increasing number of residents, businesses, employees, and visitors. Sporadic attempts to fix parking have resulted in uncoordinated solutions that improve parking for a few, but do not holistically address the district's systemic problems. The **South Congress Parking Strategy** tackled these challenges head-on. Through a data-driven process, the Strategy provides a new vision and approach for parking in SoCo.

Nelson\Nygaard led all aspects of the study, including the creation of a robust and dynamic data dashboard for the inventory and occupancy of SoCo's 5,400 public and private parking spaces. We also collaborated with the SoCo community to go "beyond the data" and understand the nuances of parking activity along South Congress Avenue and in adjacent neighborhoods. The Strategy focused on the evolving nature of the SoCo curb and how to maximize the benefits of new rapid transit service, mitigate impacts of shared mobility services and commercial loading, and ensure equitable parking access for SoCo's service workers.

The final **Parking Toolkit** provides flexible package of solutions that can be implemented quickly yet modified over time as South Congress Avenue and its adjacent neighborhoods grow and evolve. The Austin Transportation Department has begun to implement the Toolkit, prioritizing the formation of a new management district in SoCo to advance demand-based pricing and reinvestment of net revenue into parking management, TDM services, and shared parking.





## Georgetown, TX

### Williams Drive Study

In recent years, the City of Georgetown and its community members have undertaken a number of studies to spur the redevelopment of the Williams Drive corridor, both as a gateway and as an entire corridor. This study was the first to consider both transportation and catalytic development sites, prioritizing the safe and convenient travel of vehicles, transit riders, bicyclists, and pedestrians along with development visions. It is the culmination of a year-long community planning process. It proposes context-sensitive multimodal operational improvements, streetscape changes, and mixed-use development concepts that will transform how people travel and live within and along the corridor.

The recommended concepts for corridor improvements are expected to provide optimal benefits in terms of multimodal mobility, safety, economic vitality, and urban design along Williams Drive. For the purpose of this study, the corridor was divided into two separate zones: the corridor and the center area. This enabled the creation of concept plans more tailored to the unique needs of different segments of Williams Drive.

Full implementation of the corridor improvements will take place over time. In some cases, designs need to be further refined and developed, and several recommendations require additional study. Nevertheless, the City is prioritizing multimodal improvements and development initiatives for Williams Drive and is planning to implement various aspects of the recommendations as soon as possible. A phased implementation plan was developed to guide this process, but the plan should be adjusted over time as conditions evolve and funding becomes available.

*This project won the APA Central Texas Chapter Planning Award for Best Plan in 2017.*



## San Antonio, TX

### Bandera Road Corridor Plan

A total of twelve multimodal improvements within ½-mile of Bandera Road were identified that better connect the corridor to top destinations while also supporting disadvantaged populations in the area. These improvements were assigned a prioritization score based on a number of metrics centered on demographics and proximity. Additionally, a section examining twelve potential arterial extensions and expansions (previously identified by the Texas Department of Transportation [TxDOT]) is included in this memorandum, accompanied by an analysis detailing the potential benefits and impacts of each arterial opportunity.

While developing the network surrounding Bandera Road is crucial to achieving the goals of this plan, the impact of direct improvements to the corridor itself should not be understated. As a primary thoroughfare in the region, positive multimodal impacts in the region begin with Bandera Road.

Nelson\Nygaard conducted a multimodal analysis that included identifying active transportation network gaps for sidewalks, trails, and on-street bicycle network within a half mile of Bandera Road using existing spatial data, mapping trip generators that generate demand for multimodal access, and prioritizing projects based on the benefit of the new connection to the existing network, potential to connect destinations along the corridor, and provide equitable access.

The existing right-of-way and lane configuration of Bandera Road leaves ample room for a number of multimodal improvements to the corridor. The proposed improvements include priority bicycle, trail projects, and sidewalk projects. Future multimodal improvements on Bandera Road are under consideration as part of TxDOT's parallel transportation study of the roadway.

Our team also proposed improvements to Bandera Road itself, as a primary thoroughfare through the region, would provide a pathway to a safer and less congested network with support for multimodal transportation options.





## Toronto, ON

### Toronto Citywide Parking Strategy

As one of the best cities in the world to live, to visit and to do business, the City of Toronto recognizes that “managing parking effectively is essential to successfully implementing major city building objectives, including climate change adaptation and mitigation, affordability and congestion management. Partnering with Access, Nelson\Nygaard are part of a multi-disciplined team to update the strategy to enhance the City’s parking program.

Public interest and attention to parking matters has always been and continues to be high, making public and Council engagement a crucial component of the policy development process. Many policy and management decisions at play today – from those related to electrification to those related to land development – have parking considerations. We have proposed an approach to comprehensively review how the City manages parking across all areas of responsibility and impacts – to create a City wide blueprint to address current and future needs and re-imagine how parking decisions are governed. This strategy is not only a significant opportunity to bring alignment across City departments and agencies but also an opportunity to establish shared objectives for all aspects of parking that are bold and supportive of Toronto’s building goals.

The City has advanced many important policy areas impacting parking over the last several years, providing a strong launching point for this strategy. With this policy foundation as a starting point, together with our team’s strong understanding of the City’s technical and stakeholder context, we are progressing through strategic policy development.





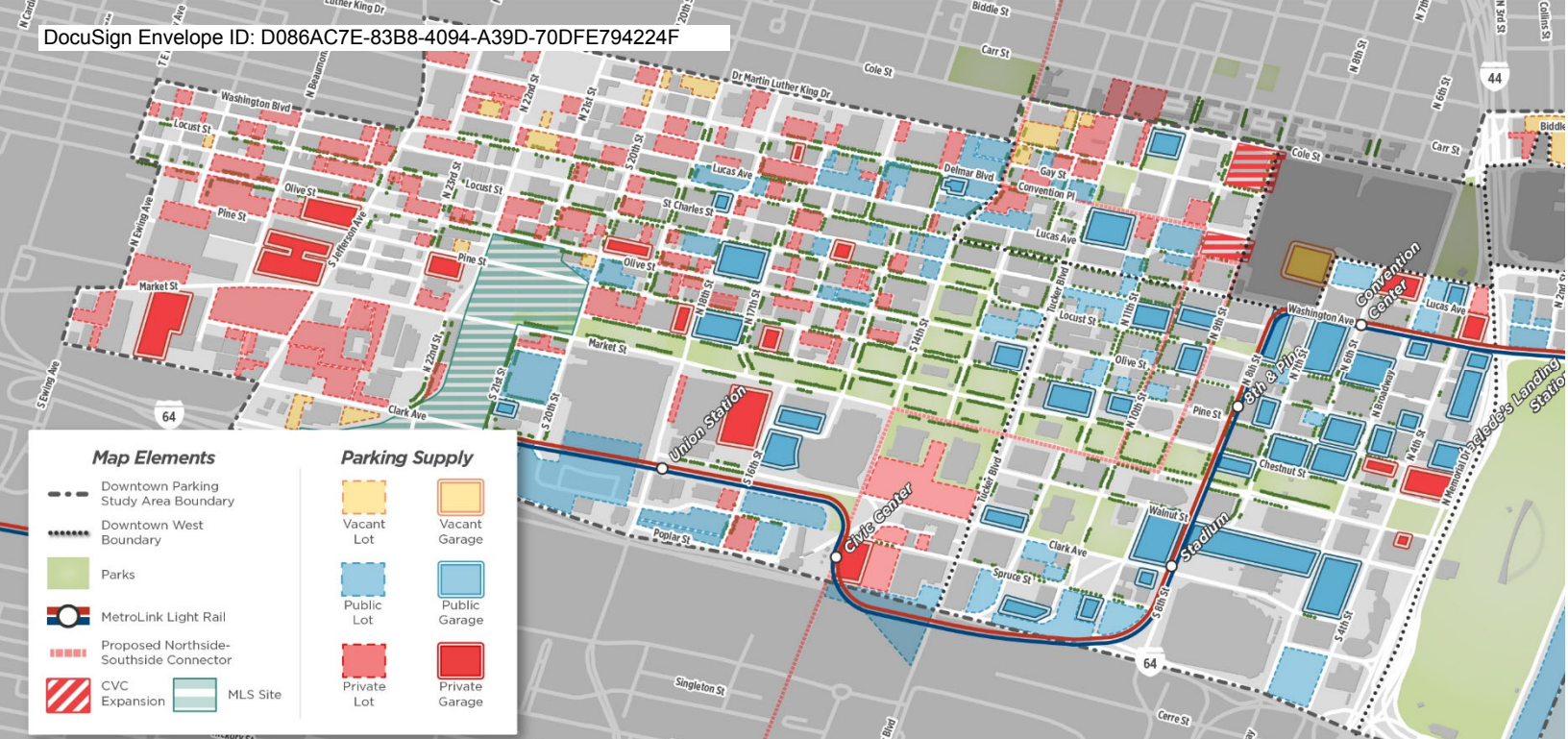
## Memphis, TN

### Downtown Memphis Parking Study

Memphis is a culturally rich city with a vibrant and historic downtown that offers a mix of land uses, transportation options, and a walkable environment. Well known for its strong local and regional brand of arts, culture, food, and music, the downtown has added more than 4,000 new residents over the last two decades and is growing nearly three times faster than the rest of Shelby County.

With millions of square feet of office and residential projects in the pipeline, the Downtown Memphis Commission and Memphis Medical District Collaborative hired Nelson\Nygaard to provide technical analysis to identify areas of high parking demand, facilitate productive dialogue, and develop actionable recommendations. We comprehensively documented the more than 71,000 existing public and private parking spaces, from individual blocks to large private garages, as well as how parking assets in eight downtown neighborhoods are utilized at different times of day. By identifying each neighborhood's future parking need within the context of numerous planning efforts and specific development projects, Nelson\Nygaard developed an integrated set of 10 parking and management recommendations that ensures parking facilitates continued growth across downtown. We also created a parking investment mapping tool to identify a clear decision-making framework for where and how to invest in public parking facilities.

DMC staff, in coordination with the Memphis Medical District Collaborative, Memphis Area Transit Authority, and the City, have begun to implement the plan. In September 2019, the Downtown Parking Authority adopted a change in bylaws to become the Downtown Mobility Authority, enabling a larger focus on transit and multimodal investments. The DMC has begun brokering shared parking agreements in their own and private garages to allow residential access after-hours. The DMC and MMDC launched a park-and-ride shuttle route through Downtown and are working to establish a Transportation Management Association for downtown and Medical District employees and residents.



## St. Louis, MO

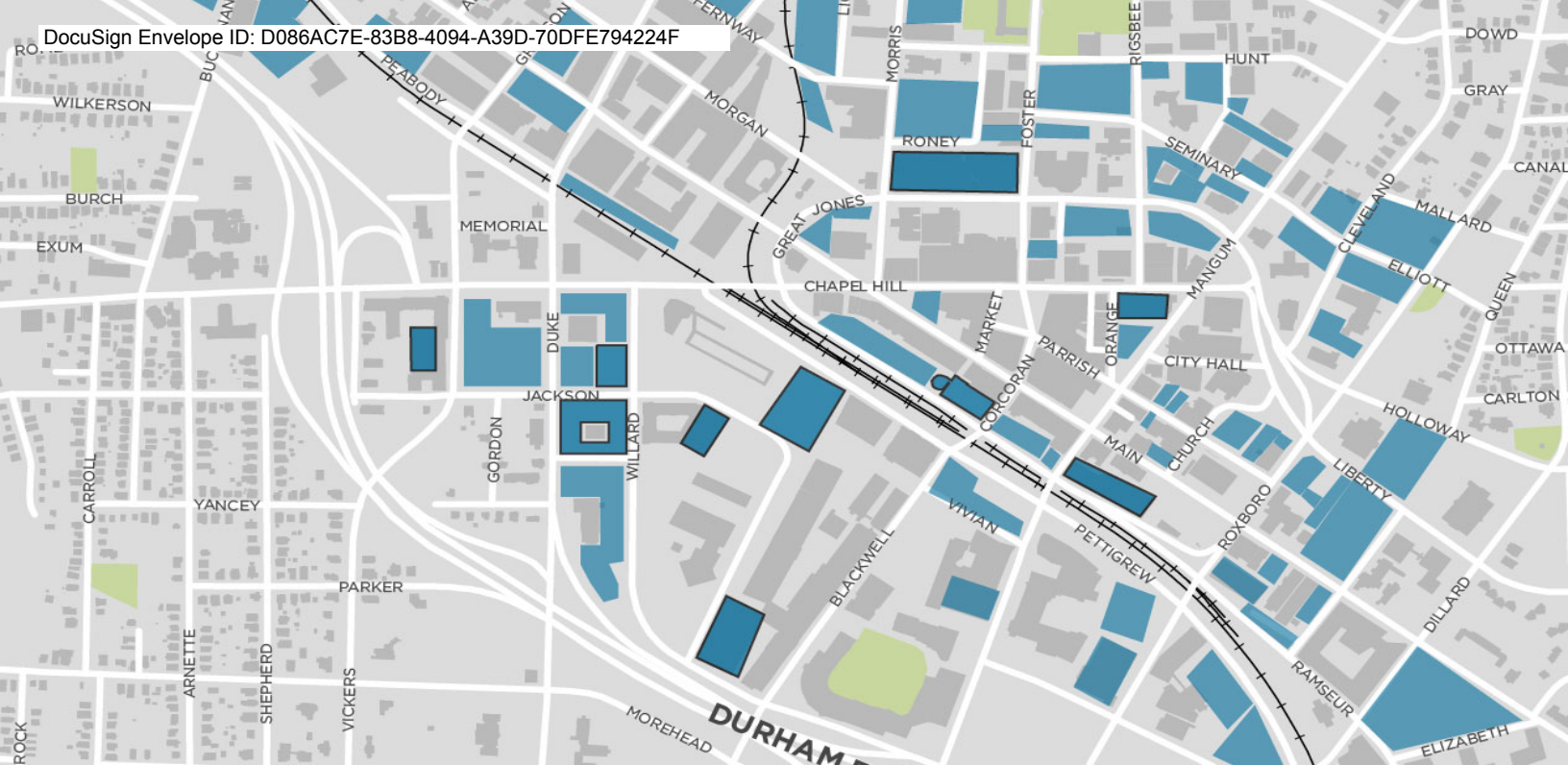
### St. Louis Downtown Parking Study

Recently connected to the Jefferson National Expansion Memorial and the Mississippi waterfront by the CityArchRiver project, Downtown St. Louis is experiencing an influx of public and private investment that will further establish the area as one of the region's preeminent places to live, work, and visit. With new recreational assets, residences, and commercial developments opening Downtown, visitors flocking to the area for conventions, dining, nightlife, and Cardinals and Blues games now have a number of new transportation options available. Demands on the City's parking system will be affected by ridesharing and micromobility services, plans for a North-South Metrolink line, and a redesigned Metro network that will bring frequent bus service to the City's center.

St. Louis City leaders understand that a comprehensive Downtown Parking Study with smart parking policies will not only make Downtown growth sustainable and functional but will also maximize parking assets without compromising local character, thus fostering long-term success and growth. The St. Louis Development Corporation hired Nelson\Nygaard to provide technical analysis to identify areas of high parking demand, facilitate productive dialogue, and develop actionable recommendations. We documented the more than 62,000 existing public and private parking spaces, from individual blocks to large private garages, along with how parking assets are utilized at different times of day in the four downtown sub-areas.

By identifying each sub-area's future parking need in the context of multiple planning efforts and specific development projects, Nelson\Nygaard developed an integrated set of parking and management recommendations to ensure that parking will facilitate continued growth throughout downtown.





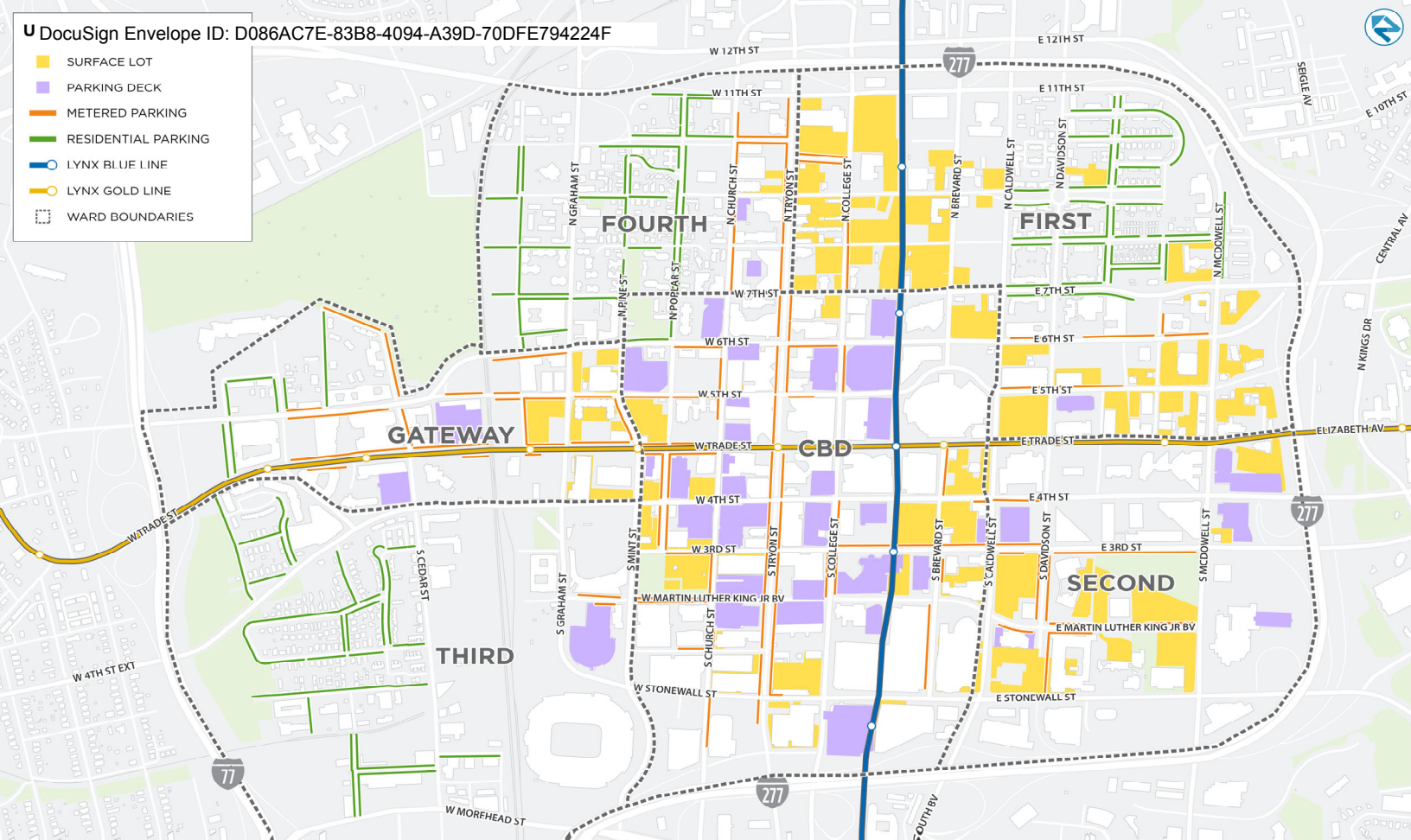
## Durham, NC

### Downtown Durham Parking Study

Durham has experienced dramatic growth in the last decade, with infrastructure improvements that have resulted in continued investment in the City. Effective parking management of the downtown is a key component to support the City's long-term economic vitality—without impinging on the character that makes Durham a regional attraction.

Nelson\Nygaard led a parking analysis of the downtown area to help the City understand the nature of parking in light of emerging trends, as well as plan for Durham's needs over the next ten years. These included a comprehensive understanding of parking supply and demand in both on-street and off-street and public and private facilities, along with a clear assessment of the dynamics between these assets and a complete understanding of the users who frequent them. The study approach emphasized the importance of understanding all potential travel options, as well as the most current parking management strategies, as part of the projections for future parking needs in the City.

The firm's recommendations include taking advantage of smart parking management opportunities, incentives for sharing existing resources, and potential synergies with other modes of travel, including walking, biking, and transit.



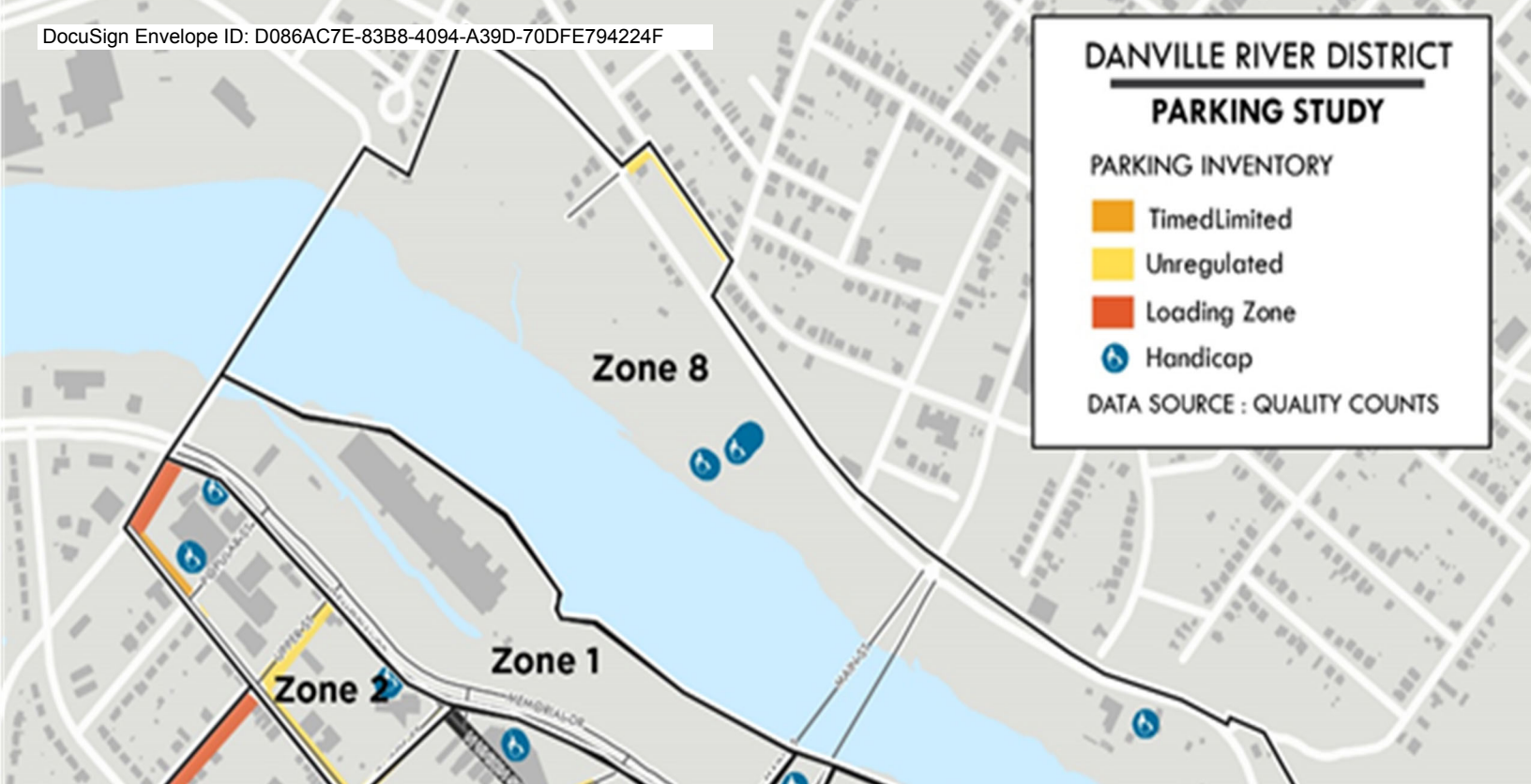
## Charlotte, NC

### Charlotte Uptown Parking Study

Charlotte has experienced dramatic growth in the last decade, with infrastructure improvements that have resulted in continued investment in the City. Effective parking management of Uptown is a key component to support the City's long-term economic vitality—without inhibiting on the regional draw that makes Uptown successful.

Nelson\Nygaard is currently undertaking a parking analysis of the Uptown area to help Charlotte Center City Partners and stakeholders understand the nature of parking in light of emerging trends, as well as plan for Uptown's needs over the next twenty years. These include an understanding of parking supply and demand in both on-street and off-street and public and private facilities, along with a clear assessment of the dynamics between these assets and a complete understanding of the users who frequent them. The study approach emphasizes the importance of understanding all potential travel options, as well as the most current parking management strategies, as part of the projections for future parking needs in the City.

The firm's recommendations include taking advantage of smart parking management opportunities, incentives for sharing existing resources, and potential synergies with other modes of travel, including walking, biking, and transit.



## Danville, VA

### Danville River District Strategic Parking Plan

The River District is well poised with its mix of land uses, transportation options, and a walkable environment. The district's amenities, including excellent public schools, beautiful parks, and strong economy make the city, and River District in particular, a very desirable place to live, work, and visit. To continue on a successful path of quality as a desirable place to be, The River District is addressing the often-contentious issue of parking at an opportune time.

Using existing and new data, input from the city, key stakeholders, and the public, the team developed parking management options for the future through a mix of parking management strategies, technology, design, and regulations. This study focused on developing innovative, cost-effective, sustainable solutions that are responsive to concerns from various district user groups. Changes to the district's (and City's) parking management will only be successful with support from business owners, employees, residents, commuters, and other key audiences.

Nelson\Nygaard performed a parking analysis of the River District area to help the City understand the nature of parking in light of emerging trends, as well as plan for Danville's needs over the next ten years. These included a comprehensive understanding of parking supply and demand in both on-street and off-street and public and private facilities, along with a clear assessment of the dynamics between these assets and a complete understanding of the users who frequent them. The study approach emphasized the importance of understanding all potential travel options, as well as the most current parking management strategies, as part of the projections for future parking needs in the City.





# Why Updating the Fairfax County Parking Code is Kind of a BIG DEAL



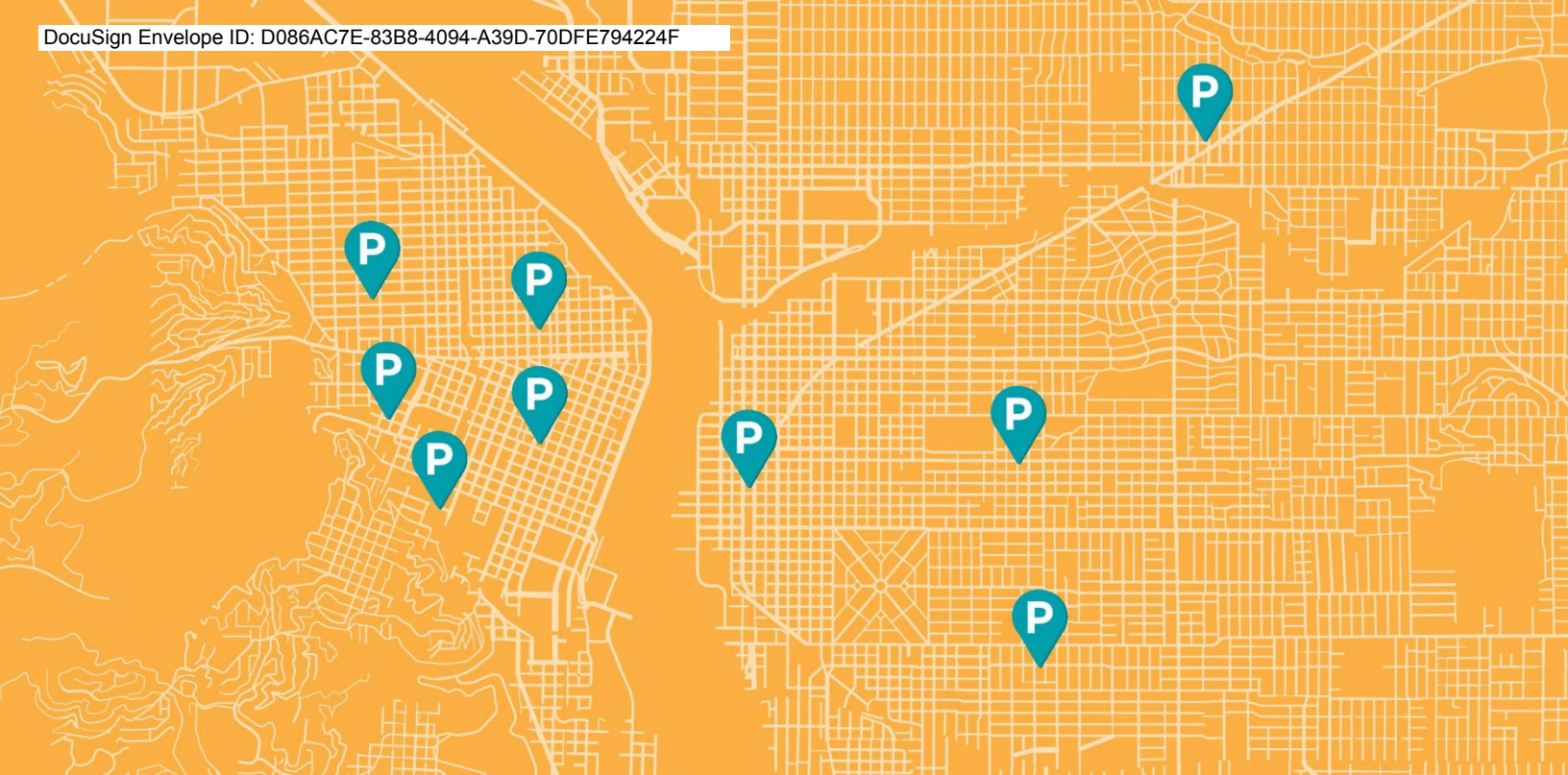
## Fairfax County, VA

### Fairfax County Zoning Ordinance and Off-Street Parking

Fairfax County has perhaps the most complex mix of development patterns of any jurisdiction in the country. The downtown intensity of Tysons, the planned town center in Reston, the strip commercial of Annandale and Richmond Highway and Baileys Crossroads, the malls in Fair Oaks and Springfield – each contains very different development and travel patterns, and parking needs, despite very similar mixes of land uses. Modernizing parking requirements in such a context required a blend of right-sizing parking ratios, offering flexibility to adjust for context and character, and referencing community values and goals to reshape the narrative around the role of parking in the County's growth districts.

For the off-street parking review, Nelson\Nygaard is conducting a review of best practices in peer and non-peer communities to identify strategies, tools, and practices for consideration. We are also observing local travel and development patterns and evaluating strategy options in relation to community goals for congestion management, orderly development, and community/economic vibrancy.

Along with the zoning experts at Clarion Associates, Nelson\Nygaard developed an updated zoning code for the County. We diagnosed specific issues with the existing code, analyzed potential fixes, researched practices from similar communities in the region and beyond, and recommended specific code language to address them. The focus within both the subdivision and zoning elements of the code was to promote walkable, bikeable, transit-friendly development where applicable while also understanding the differing suburban and rural areas in the County and their requirements. This paragraph should answer the "so what?" question—why was our work important? Was this plan implemented? What were the results of the implementation? Is there data we can include or a quote from the client about how it was received by the public? Did the project win an award? All these questions should be addressed here. Most of all, we need to leave the reader with a sense of what's at stake—why our work is so vital to the community or study area. You can think about this paragraph as zooming back out to look at the big picture and how our work is impacting that big picture. In particular, please include any equity considerations/impacts of the project.



## Portland, OR

### Citywide Parking Strategy

As the City of Portland grows, parking has become a source of tension and opportunity. Changes in land use and travel patterns directly affect parking demand and behavior. As residents and businesses adjust to growth and change, so too must the City's approach to the supply, management, and pricing of parking. Doing nothing is not an option. There is a growing recognition that tackling parking head-on will present Portland with direct avenues to address some of the city's most pressing challenges.

Nelson/Nygaard was hired by the Portland Bureau of Transportation (PBOT) to create the *Citywide Parking Strategy* (CPS). The CPS links all the different threads that touch on parking in Portland and articulates a cohesive vision for the future. Stakeholder feedback was instrumental in this effort with over 30 public events held. A highlight was the Parking Symposium in July 2015. Over 160 stakeholders participated in the daylong event giving Portlanders a chance to ask their toughest parking questions and get detailed and nuanced discussion about them.

The CPS identifies a set of goals, policies, and tools to guide the future growth of Portland in a comprehensive five-year action plan. The plan outlines key initiatives with timelines, as well as action steps for implementation. These include the expansion of the Parking Permit program to address area growth, the development and adoption of new parking technology, and the development of guidelines for new public parking supply.

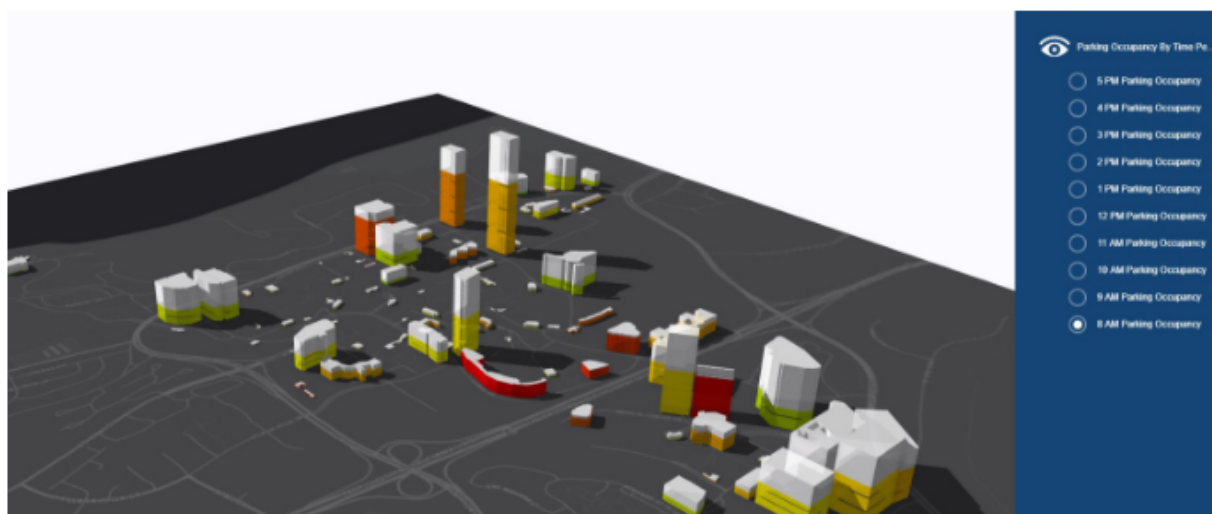
With the adoption and implementation of these steps and others outlined in the plan, PBOT will be on the road to a parking strategy that takes into account the city's growth in relation to changing mobility trends.



# Anaheim Center City District Parking Study

that was calibrated to the unique mix of uses in the Center City District. The existing parking demand model was incorporated within the parking tool to allow City staff to track parking demand and ratios vis-à-vis existing and proposed new development in the Center City District. In addition, the parking tool provides an estimation for parking demand in each facility with assignment of new development parking to specific facilities. The data collection and parking tool have been used to document existing parking demand and estimated parking demand with new projects in the Center City District.

For the UCSD parking study, we developed a new data visualization strategy using Esri's CityEngine to produce a web-based, interactive 3D model of parking utilization data. In the image shown, the shapes represent parking areas; the height of the "bars" total capacity; and the colors and fill levels the amount of utilization.



## San Diego, CA

### UCSD Parking Operations Study

Fehr & Peers assisted the University of California, San Diego (UCSD) with a comprehensive parking study for their main campus in La Jolla. This study took a detailed look at overall parking operations of all facilities, including lots, structures, and on-street spaces, serving a variety of users. The study reviewed parking supply and demand from both a high-level program strategy perspective as well as from a micro-level operations perspective, which supported the identification of custom solutions for individual parking resources and users. The goal of the study was to develop and validate a set of strategies, which made use of historic trends, data, and technology to optimize use of existing and future parking resources. The study also included a series of policy recommendations to help better manage the parking supply and provide flexibility for existing and future student, faculty, staff and visitor users.

Citywide Parking Study  
City of Denton

# **APPENDIX A**

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## **Complete Resumes**

## Iain Banks, PTP Project Manager



I bring experience in both the public and private sectors, previously serving as transportation planner for Annapolis, MD where I led the parking program and its integration into the mobility system.

### Education

M.S., Transportation Engineering and Planning, University of Southampton, England  
B.A., Geography, University of Portsmouth, England

### Experience

- **Citywide Parking Strategy, City of Toronto (Toronto, ON) 2023–Ongoing.** Project Task Manager. The Citywide Parking Strategy is developing a new way of thinking and programing parking in the City of Toronto including amongst other policies, equity, operations & management, pricing and curb management.
- **Downtown St. Louis Parking Study, City of St Louis (St. Louis, MO) 2020–2021.** Project Manager. Comprehensive parking management plan to implement strategies for on- and off-street parking resources to ensure economic vitality, land-use development and improve overall mobility in the city leveraging the multimodal networks in Downtown St Louis.
- **Charlotte-Uptown Parking Plan, Charlotte Center City Partners (Charlotte, NC) 2019–2021.** Comprehensive parking study for Charlotte's Uptown District. Led stakeholder engagement, occupancy data analysis, growth projections, and mobility surveys, leading to the drafting of a Parking Management Plan.
- **Fairfax County Parking Code Update (Fairfax County, VA) 2021 – 2023.** Project Manager. Following on from the County's Zoning Code modification, Nelson\Nygaard are leading the County through a reform of their parking code regulations. The code update is reimagining the code regulations throughout the various County district that ranges from rural areas to planned transit communities.
- **Downtown Memphis Parking Study, City of Memphis (Memphis, TN) 2018–2019.** Project Manager. Comprehensive parking management plan to recommend strategies for on- and off-street parking resources to minimize congestion, maximize access, and improve overall mobility in the Downtown area and the Memphis Medical District.
- **Downtown Durham Parking Study, City of Durham (Durham, NC) 2016–2018.** Project Manager. Comprehensive parking management plan to implement strategies for on- and off-street parking resources to maximize access and improve overall mobility in the city leveraging the multimodal networks and in Downtown Durham.
- **Williams Drive Study, Capital Area MPO (Georgetown, TX) 2017.** Project Manager. This study was the first to consider both transportation and catalytic development sites along the corridor, prioritizing the safe and convenient travel of vehicles, transit riders, bicyclists, and pedestrians along with development visions. It proposes context sensitive multimodal operational improvements, streetscape changes, and mixed-use development concepts that will transform how people travel and live within and along the corridor.



## Jackson Archer

### Deputy Project Manager



I bring a comprehensive understanding of multimodal mobility that is useful in crafting solutions to problems without a clear answer, especially among varied stakeholders.

## Education

M.S.C.R.P., University of Texas, Austin, TX

B.A., Government, Special Honors, University of Texas, Austin, TX

## Experience

- **Denton Downtown Master Plan (Denton, TX) 2023-Ongoing.** The City of Denton's Master Plan Update is Denton's first major plan to address its downtown in over 20 years. Jackson's team is leading the mobility portion of this project, which aims to provide bicycle, pedestrian, transit, and other mobility solutions to this Texas downtown destination.
- **Bandera Road Corridor Plan (San Antonio, TX) 2021-Ongoing.** Jackson worked with the Nelson\Nygaard team to lead development of the work product in the firm's role as the transportation analysis lead for the City of San Antonio's Bandera Road Corridor Plan. The Corridor Plan will provide the city with a blueprint for integrating land use, economic development, and mobility improvements to transform the corridor from a "through" place to a "to" place. Bandera Road is also State Highway 16, and the study area overlaps with a TxDOT-led initiative to develop mobility improvements along the facility, necessitating strategic coordination between the teams to ensure that recommendations benefit all users of this critical regional artery.
- **Intermodal Transportation Hubs for Colleges and Universities (Denton, TX) 2022-2023.** With Nelson\Nygaard as the lead firm among a team of consultants, Jackson is helping the North Central Texas Council of Governments develop a campus mobility hub strategy for 63 colleges and universities in the North Central Texas region. When completed, the project will help guide mobility hub implementation and design, better connect campuses to regional transportation resources, and provide a better sense of place for campus affiliates through placemaking opportunities.
- **Las Vegas Trail Neighborhood Transformation Plan (Fort Worth, TX) 2021-2022.** Las Vegas Trail is an historically underserved neighborhood located in west Fort Worth. In a team led by urban design firm Interface Studio, Nelson\Nygaard is helping provide better and more connected multimodal infrastructure and transit services in the neighborhood. Jackson leads all transportation components of the plan and works closely with Trinity Metro and Transportation and Public Works Department staff to achieve the vision of a transformed Las Vegas Trail.
- **Dougherty Arts Center Relocation Parking Analysis and TDM Strategies (Austin, TX) 2021-Ongoing.** Jackson is currently leading the Phase 2 analysis of the Dougherty Arts Center (DAC) relocation plan in south/central Austin. This plan primarily revolves around shared parking and coordination with local entities, but TDM recommendations are included throughout the overall project.
- **Downtown Fort Worth Strategic Action Plan 2033 (Fort Worth, TX) 2022-Ongoing.** As part of a team led by Interface Studio, Nelson\Nygaard is helping develop the transportation recommendations for Downtown Fort Worth Initiative's 10-year downtown strategic action plan. Jackson is leading the project, which involves heavy coordination between DFWI, Trinity Metro, NCTCOG, and the City of Fort Worth. The Strategic Action Plan (SAP) initiative supports an updated Action Plan every 10 years – Jackson and his team is building off of the 2023 SAP and an ever-changing local context to provide a multimodal and transit-friendly downtown experience for downtown Fort Worth.

## Tom Brown

### Principal-In-Charge



I have helped dozens of governments, campus planners, economic-development organizations, and private developers craft parking policies, programs, and practices that achieve defined goals.

## Education

M.S., Urban Planning, Hunter College, New York, NY  
B.A., History, Ohio State University

## Experience

- **Martinez Downtown Parking Study, City of Martinez (Martinez, CA) 2021 – ongoing.** Principal-in-Charge for this study of parking conditions, challenges, and opportunities in downtown Martinez. This study has focused on addressing perceptions of insufficient parking supply through peak-hour utilization surveys combined with significant stakeholder engagement. This included modifying our standard occupancy-survey approach to account for lingering COVID-19 impacts on downtown activity – using timestamped pre-COVID aerial imagery to provide peak-hour count data from 2019 that was then compared to Fall 2021 counts completed at comparable times. Solutions focused on leveraging opportunities to shift parking activity to utilize more of the available downtown inventory, and creating more Park Once options for visitors, while also outlining supply-expansion/replacement opportunities – including site selection, capacity estimates, cost projections, and funding/partnership options.
- **Parking + Study, Kalamazoo Downtown Partnership (Kalamazoo, MI) 2018–2019, and City of Kalamazoo, 2022–23.** Led a downtown plan to develop a management plan for on- and off-street parking, including demand-management strategies, capacity-optimization opportunities, management organization/structure best practices, technological solutions, and non-driving mobility-improvement opportunities. Currently updating the plan, following the impacts of the COVID-19 pandemic on downtown parking demand, and the City takeover of the downtown parking systems. Also, currently advising the City on plans for a new City parking garage that will be jointly developed with Kalamazoo County, to function as County parking while also serving the adjacent regional transit center (Amtrak and Metro Bus hub) and providing public parking.
- **Travel Demand Management (TDM) Study, City of Traverse (Traverse City, MI) 2022**  
Managed a study of mobility-improvement and demand-management opportunities to reduce parking needs for Traverse City's thriving downtown district. Final strategies were framed around a Seasonal TDM concept that takes advantage of downtown's summer-based supply constraints to emphasize TDM during peak- and shoulder-season months – when non-driving commute options are far more viable and appealing compared to December–February. This seasonal TDM approach takes advantage of this, using variable parking rates (highest when alternatives are most viable, lowest when driving seems like the only option to most) + alternative-commute incentives to target mode shifts when they are most needed. This avoids the common, northern-city barrier to TDM success – Winter when parking demand tends to spike precisely because the appeal of all other options falls off. Traverse City's TDM plan takes advantage of an inverse cycle of parking demand that will allow it to reduce its downtown parking needs, without requiring 12-month mode-shift commitments from its commuters.



## Sophia Constantine Project Planner



I develop solutions and strategies that balance long-standing land uses, like parking, with new and emerging mobility options to give city residents options beyond driving.

## Education

B.A., Urban Studies and Political Science, University of Pittsburgh, PA

## Experience

- **Toronto Parking Strategy (Toronto, ON) 2023 – Ongoing.** Project Planner. Nelson\Nygaard is supporting the City of Toronto in creation of the city's first parking strategy. Sophia is leading the equitable parking policy subtask. This includes research on other equitable parking strategies and review of Toronto's draft strategy through an equity lens.
- **Fairfax County Parking Code Update (Fairfax County, VA) 2021 – On going.** Project Planner. Following on from the County's Zoning Code modification, Nelson\Nygaard are leading the County through a reform of their parking code regulations. The code update is reimagining the code regulations throughout the various County districts that range from rural areas to planned transit communities.
- **Town of Vienna Zoning Code Update (Vienna, VA) 2021–2023.** Project Planner. Nelson\Nygaard led an update to the Town of Vienna's parking and subdivision code sections. The project produced three technical memorandums that analyzed existing Vienna zoning ordinance parking standards, peer parking regulatory reform, and assessed policy and program alternatives for reform of Vienna's existing code requirements.
- **Town of Vienna Parking Study (Vienna, VA) 2022–Ongoing.** Lead Project Planner. Nelson\Nygaard is leading a parking study for the Town of Vienna. This parking study builds on previous zoning work and recommends solutions and strategies for parking management in Vienna.
- **City of San Mateo TDM Ordinance (San Mateo, CA) 2023–Ongoing.** Lead Project Planner. Nelson\Nygaard is supporting the City of San Mateo in creating a new transportation demand management ordinance.
- **Lexington Hartwell-Bedford Corridor Plan TDM District Update (Lexington, MA) 2021–2023.** Project Planner. Nelson\Nygaard led an update to the Lexington Hartwell-Bedford Corridor Plan TDM District Update. The plan consisted of policy and plan analysis, consideration of proposed zoning and potential development, and plan updates.
- **County of San Mateo and City of Half Moon Bay Midcoast Transportation Demand Management Plan (San Mateo, CA) 2023–Ongoing.** Lead Project Planner. Nelson\Nygaard is developing a transportation demand management plan for the Midcoast region of San Mateo County. The plan focuses on farmworker and visitor travel – a unique approach to transportation demand management.
- **Affordable Dwelling Unit Ordinance (Prince William County, VA) 2023 – Ongoing.** Deputy Project Manager. Nelson\Nygaard is leading the creation of a new affordable dwelling unit ordinance for Prince William County.



## Anna Trevino Project Planner



I understand the need for balancing modal priorities on constrained city streets, and work to ensure that parking policy meets the needs of residents, business owners, and visitors to Denton's vibrant neighborhoods.

## Education

B.A., Government; B.A., French, University of Texas at Austin, Austin, TX  
M.U.P., Transportation, University of Washington, Seattle, WA

## Experience

- **Bellevue Curb Management Plan, City of Bellevue, (Bellevue, WA) 2022-2023.** The Bellevue Curb Management Plan provided a comprehensive roadmap for prioritizing and improving the allocation of curb space in the city's urban core. As a project planner, Anna analyzed data, conducted research, and developed an existing conditions report. She also developed policy recommendations on pricing, demand management, and right of way allocation for the final curb management plan report.
- **Parking Communications Consultation, Ulupono Initiative (Honolulu, HI) 2023-Ongoing.** The Ulupono Initiative, an impact investment firm, is dedicated to supporting sustainable transportation initiatives in Hawaii. The goal of the project is to develop a communications toolbox to help elected officials increase public understanding and support for best practice approaches to coordinating the management of curbside spaces and off-street parking facilities, including reductions to on-street parking. As a project planner, Anna researched national and international best practices and examples of communications campaigns related to parking, TDM, and curb management. Anna also conducted interviews with parking, curb management, and TDM staff at cities and MPOs across the country to gain insight on their communications efforts. The findings from the best practices research and interviews will inform a reference manual for city staff to use to effectively communicate with the public about parking.
- **Dublin Curbspace Plan, City of Dublin (Dublin, OH) 2022-Ongoing.** As a project planner, Anna researched best practices for curbside management, analyzed survey data, developed materials and facilitated stakeholder engagement meetings, developed recommendations for improved parking and curb management practices, and collaborated on the deployment and monitoring of parking-focused technology pilots.
- **Martinez Downtown Parking Study, City of Martinez (Martinez, CA) 2023-ongoing.** Project planner for this study of parking conditions, challenges, and opportunities in downtown Martinez. This study has focused on addressing perceptions of insufficient parking supply through peak-hour utilization surveys combined with significant stakeholder engagement. As a project planner, Anna attended stakeholder meetings to gather feedback on community parking needs, and drafted updated parking and curb policy recommendations.



## Sam Ergina Project Planner



I build connections through the creation of accessible graphics, maps, and interactive materials that center the needs of Denton's communities.

### Education

Master of Urban Planning (M.U.P.), University of Melbourne, Australia  
B.S., Linguistics & Economics, Tulane University

### Experience

- **Denver Moves Phase 2 Implementation Plan (Denver, CO) 2022.** Helped create maps and a summary of Phase 2 for RTD's Denver Moves strategy. Contributed towards writing the implementation plan.
- **Capital Metro Service Standards and Guidelines (Austin, TX) 2022-2023.** Contributed towards a database of best practices surrounding service standards and bus stop design guidelines by researching other plans and studies. Supported the development of an equity-focused framework to prioritize the distribution of amenities over the CapMetro transit system.
- **Capital Metro Equitable Transit Oriented Development (Austin, TX) 2022-2023.** Conducted data analysis on existing conditions surrounding future transit station areas. Produced maps and a dashboard providing information and insight into metrics and indicators related to equitable development.
- **Central Maui Transportation Study (Maui, HI) 2022-2023.** Worked with the project team to identify a new street typology that prioritizes public and active transportation and mapped the new typology to be used in the study.
- **Nashville Connect Downtown (Nashville, TN) 2022-2023.** Helped develop white papers for best practice of transportation solutions for Downtown Nashville, particularly on construction management strategies. Developed a project website using ArcGIS StoryMaps for public education and engagement.
- **DART Value of Transit (Dallas, TX) 2023.** Performed geospatial data analysis to determine access to transit for different groups and build spider maps representing origin-destination data for trips made throughout DART service area.
- **Pflugerville Existing Conditions Report (Pflugerville, TX) 2023.** Conducted research of surround policy and planning context for transportation in Pflugerville, distilling key takeaways and relevant strategy alignment with Pflugerville's upcoming Transit Development Plan.
- **Capital Metro Bus Stop Design Guidelines (Austin, TX) 2023.** Designed amenity enhancement process for transit stops that prioritizes equitable distribution of resources. Built database that scores and prioritizes bus stop amenity upgrades based on amenity enhancement process, needs, and costs to optimize Capital Metro processes.

## Anjum Bawa, AICP

### Fehr & Peers Principal-In-Charge



I have completed several parking and circulation studies for large mixed-use districts and developments, and has contributed to many community-scale and institutional master plans efforts.

## Education

B.S., Southeastern Missouri State University  
Registrations

American Institute of Certified Planners (AICP) 2007 (021624)

## Affiliations

American Planning Association

## Expertise

- Transportation Planning and Engineering
- Transportation Impact Analysis
- Transportation and Parking Demand Management Planning
- Parking Planning
- Parking Layout Design
- Site Circulation and Access
- Special Event Parking and Circulation

## Experience

- Southwest LRT Corridor Station Area Urban Planning and Design, Portland, OR
- Emerging Trends Study, Oregon Metro, OR
- Emerging Technology Implementation Plan, Oregon Metro, OR
- TriMet Integrated Mobility Innovation, TriMet, OR
- Parking Guidance and Management Strategies for TriMet TOD Plan, OR
- Impact of Disruptive Transportation Trends and New Mobility Solutions on Parking Demand – White Paper for City of Hood River, OR
- Stevenson Downtown Plan, Stevenson, WA
- Utah Parking Modernization Guidebook, Wasatch Front Regional Council, UT (on-going)

## Spencer Reed, PE Technical Oversight



I bring technical experience in microsimulation modeling, traffic impact studies, travel demand modeling, conceptual design, and bicycle and pedestrian planning.

### Education

B.S., Civil Engineering, California Polytechnic State University, San Luis Obispo

### Registrations

Licensed Civil Engineer: California (83432), Texas (143590), Florida (93668)

### Affiliations

American Society of Civil Engineers (ASCE)  
Institute of Transportation Engineers (ITE)

### Expertise

- Traffic Operations Analysis
- Microsimulation Analysis
- LOS Transportation Analysis
- VMT Transportation Analysis
- Parking Demand Analysis
- Parking Management Strategies
- Parking Circulation and Design
- Transportation Planning
- Specific and Master Plan Analysis
- Campus Planning
- Conceptual Design

### Experience

- Anaheim Center City District Parking Study
- Downtown Garden Grove Strategic Management Plan
- Rancho Cucamonga Shared Parking Tool and Manual
- Downtown Santa Ana Parking Study
- Old Towne Orange Parking Study
- BARN Parking Study
- Orange County Fair Event Center Parking
- Rancho Mission Viejo Lagoon Parking Study
- Harbor Plaza Parking Assessment

## Natalie Daugherty, EIT

### Lead Engineer



I am proficient in Visum, Vistro, Syncho, AutoCAD, ParkCAD, AGi32, Illustrator, and Streetmix and can interface with communities in a way that makes sense to nonexperts.

### Education

B.S., Civil Engineering, Georgia Institute of Technology  
Registrations

Licensed EIT, Civil Engineering, California (172053)

### Affiliations

Vice Chair for Administration, Young Professionals in Transportation

### Expertise

- Bicycle and Pedestrian Planning
- Complete Streets
- Traffic Operations & Capacity Analysis
- Travel Demand Modeling & Forecasting
- Traffic Signal Design
- Signing/Striping Design
- Roadway Safety Lighting Design
- Site Access/Circulation

### Experience

- East Blithedale Avenue Pavement Rehabilitation Program (Mill Valley, CA)
- Downtown West Design (San José, CA)
- Sam Rafael Crossing Improvements (San Rafael, CA)
- Habitat Redwood Boulevard Project Transportation Impact Study (Novato, CA)
- Portola Valley Evaluation Study (Portola Valley, CA)
- Stonestown Galleria Mixed-Use Project (San Francisco, CA)
- Brisbane Baylands Environmental Impact Report (Brisbane, CA)
- Bayview Multimodal Community Corridor Active Transportation Plan Grant Application (San Francisco, CA)

## **APPENDIX B**

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### **Sample Invoice**



November 9, 2023  
Project No: 9XXXXXX.XXX  
Invoice # XXXXXX

CLIENT NAME  
1 City Hall Ave  
City Hall, Room 7  
Clty, State 99999

Project XXXXXX.XXX Short project name  
Long Project Name

Contract ID: XXXXXX, PO XXXXXX

Email invoices to Jane.Doe@client.com

Professional Services from September 30, 2023 to October 27, 2023

Phase	00.11	General Engineering & Technical Support
Sub-phase	1.00	1.1 - General Project Management

Labor

	Hours	Rate	Amount	
Black, Theresa	13.00	86.54	1,125.02	
White, Tien-Tien	14.25	75.48	1,075.59	
Yellow, Jennifer	7.00	30.29	212.03	
Orange, Katherine	9.00	70.91	638.19	
Red, Ian	2.00	39.90	79.80	
Totals	45.25		3,130.63	
	2.7531 times	3,130.63	8,618.94	
	1.1 times	8,618.94	9,480.83	
Subtotal Labor				9,480.83
		Subtotal this Sub-phase:		\$9,480.83

REMITTANCE ADVICE

BY REGULAR MAIL OR COURIER:

Pay to: Nelson Nygaard Consulting Assoc., Inc.  
PO BOX 71181  
Chicago, IL 60694  
Tel: 415-284-1544 Tax ID: 58-2592493

ACH WIRE INSTRUCTIONS:

Beneficiary Bank: BMO Harris Bank  
Routing Number: 071000288 Account Number: 3543154  
Beneficiary: Nelson Nygaard Consulting Assoc., Inc.  
Beneficiary Info: Invoice & Project No. Advice e-mail: cash.receipts@perkinswill.com

Project

Invoice

&lt;Draft&gt;

timesheet comment					
White, Tien-Tien	10/2/2023	.25	75.48	18.87	
timesheet comment					
White, Tien-Tien	10/3/2023	1.00	75.48	75.48	
White, Tien-Tien	10/4/2023	1.00	75.48	75.48	
timesheet comment					
White, Tien-Tien	10/5/2023	2.25	75.48	169.83	
timesheet comment					
White, Tien-Tien	10/6/2023	.50	75.48	37.74	
timesheet comment					
White, Tien-Tien	10/9/2023	1.25	75.48	94.35	
timesheet comment					
White, Tien-Tien	10/10/2023	1.25	75.48	94.35	
timesheet comment					
White, Tien-Tien	10/11/2023	1.00	75.48	75.48	
timesheet comment					
White, Tien-Tien	10/12/2023	1.00	75.48	75.48	
timesheet comment					
White, Tien-Tien	10/13/2023	1.00	75.48	75.48	
timesheet comment					
White, Tien-Tien	10/14/2023	.50	75.48	37.74	
timesheet comment					
White, Tien-Tien	10/16/2023	1.00	75.48	75.48	
timesheet comment					
White, Tien-Tien	10/17/2023	1.75	75.48	132.09	
timesheet comment					
White, Tien-Tien	10/18/2023	1.25	75.48	94.35	
timesheet comment					
White, Tien-Tien	10/19/2023	2.00	75.48	150.96	
timesheet comment					
Black, Theresa	10/24/2023	1.00	86.54	86.54	
timesheet comment					
White, Tien-Tien	10/25/2023	.25	75.48	18.87	
timesheet comment					
White, Tien-Tien	10/26/2023	1.25	75.48	94.35	
timesheet comment					
White, Tien-Tien	10/27/2023	.50	75.48	37.74	
timesheet comment					
Totals		21.50		1,633.88	
		2.7531 times	1,633.88	4,498.24	
		1.1 times	4,498.24	4,948.06	
<b>Subtotal Labor</b>					<b>4,948.06</b>
				<b>Subtotal this Sub-phase:</b>	<b>\$4,948.06</b>
				<b>Total this Phase</b>	<b>\$15,259.52</b>
				<b>Total this Project</b>	<b>\$15,259.52</b>

**REMITTANCE ADVICE****BY REGULAR MAIL OR COURIER:**

Pay to: Nelson Nygaard Consulting Assoc., Inc.  
 PO BOX 71181  
 Chicago, IL 60694  
 Tel: 415-284-1544 Tax ID: 58-2592493

**ACH WIRE INSTRUCTIONS:**

Beneficiary Bank: BMO Harris Bank  
 Routing Number: 071000288 Account Number: 3543154  
 Beneficiary: Nelson Nygaard Consulting Assoc., Inc.  
 Beneficiary Info: Invoice & Project No. Advice e-mail: cash.receipts@perkinswill.com

## **APPENDIX C**

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### **Conflict of Interest Questionnaire**



## CONFLICT OF INTEREST QUESTIONNAIRE

### CONFLICT OF INTEREST QUESTIONNAIRE -

### FORM CIQ

**For vendor or other person doing business with local governmental entity**

**This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.**

This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a).

By law this questionnaire must be filed with the records administrator of the local government entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. *See* Section 176.006(a-1), Local Government Code.

A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.

**1 Name of vendor who has a business relationship with local governmental entity.**

Nelson\Nygaard Consulting Associates, Inc.

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

(The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7<sup>th</sup> 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.**

None

\_\_\_\_\_  
Name of Officer

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

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

N/A ☐ 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?

N/A ☐ Yes ☐ No

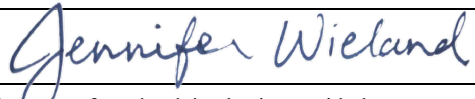
C. Is the filer of this questionnaire employed by a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership of one percent or more?

N/A ☐ Yes ☐ No

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

N/A

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

**5**   
Signature of vendor doing business with the governmental entity

November 13, 2023  
Date



## Exhibit C

**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 additional insured or waiver of subrogation 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 reasonably 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; 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:
  - General liability and auto liability shall name as Additional Insured the City

of Denton, its Officials, Agents, Employees and volunteers.

- That such general liability and auto liability 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.
- Except with respect to Professional 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 nonrenewed before the expiration date, except 10 days written notice for non-payment of premium.***
- 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 the general liability 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, subject to the

policy terms, conditions, and exclusions, 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 and \$2,000,000 products/completed operations 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: \$500,000.00 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 accident.

**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

damages for which the CONTRACTOR becomes legally obligated to pay arising out of negligent acts, errors, or omissions in the performance of professional services 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 general liability and automobile 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.

**Certificate Of Completion**

Envelope Id: D086AC7E83B84094A39D70DFE794224F

Status: Sent

Subject: Please DocuSign: City Council Contract 8360 Citywide Parking Study

Source Envelope:

Document Pages: 73

Signatures: 3

Envelope Originator:

Certificate Pages: 6

Initials: 1

Cori Power

AutoNav: Enabled

901B Texas Street

Envelopel Stamping: Enabled

Denton, TX 76209

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

cori.power@cityofdenton.com

IP Address: 198.49.140.104

**Record Tracking**

Status: Original

Holder: Cori Power

Location: DocuSign

2/27/2024 7:27:20 PM

cori.power@cityofdenton.com

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

Cori Power

**Completed**

Sent: 2/27/2024 7:30:02 PM

cori.power@cityofdenton.com

Viewed: 2/27/2024 7:32:25 PM

Purchasing Supervisor

Signed: 2/27/2024 7:39:21 PM

City of Denton

Using IP Address: 198.49.140.104

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

Not Offered via DocuSign

Lori Hewell



Sent: 2/27/2024 7:39:24 PM

lori.hewell@cityofdenton.com

Viewed: 2/28/2024 8:06:39 AM

Purchasing Manager

Signed: 2/28/2024 8:14:21 AM

City of Denton

Signature Adoption: Pre-selected Style

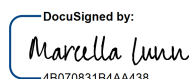
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(None)

Using IP Address: 198.49.140.10

**Electronic Record and Signature Disclosure:**

Not Offered via DocuSign

Marcella Lunn



Sent: 2/28/2024 8:14:24 AM

marcella.lunn@cityofdenton.com

Viewed: 2/29/2024 5:24:04 PM

Senior Deputy City Attorney

Signed: 2/29/2024 5:26:06 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

Jonathan Watts



Sent: 2/29/2024 5:26:09 PM

jwatts@nelsonnygaard.com

Viewed: 3/1/2024 9:04:40 AM

Director of Operations

Signed: 3/1/2024 1:06:29 PM

Connectics Transportation Group Inc

Signature Adoption: Pre-selected Style

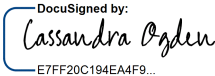
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**Electronic Record and Signature Disclosure:**

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Signer Events	Signature	Timestamp
Cassandra Ogden cassandra.ogden@cityofdenton.com Assistant City Manager City of Denton Security Level: Email, Account Authentication (None)  <b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign	<div>DocuSigned by:  E7FF20C194EA4F9...</div> Signature Adoption: Pre-selected Style Using IP Address: 198.49.140.10	Sent: 3/1/2024 1:06:33 PM Viewed: 3/1/2024 3:35:56 PM Signed: 3/1/2024 3:38:17 PM
Cori Power cori.power@cityofdenton.com Purchasing Supervisor City of Denton Security Level: Email, Account Authentication (None)  <b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign	<b>Completed</b>  Using IP Address: 198.49.140.104	Sent: 3/1/2024 3:38:23 PM Viewed: 3/11/2024 2:18:42 PM Signed: 3/11/2024 2:18:58 PM
Cheyenne Defee cheyenne.defee@cityofdenton.com Procurement Administration Supervisor City of Denton Security Level: Email, Account Authentication (None)  <b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign		Sent: 3/11/2024 2:19:03 PM
Sara Hensley sara.hensley@cityofdenton.com Security Level: Email, Account Authentication (None)  <b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign		
Jesus Salazar jesus.salazar@cityofdenton.com Security Level: Email, Account Authentication (None)  <b>Electronic Record and Signature Disclosure:</b> Accepted: 3/8/2024 11:37:38 AM ID: 30ffdfa7-246d-49ae-b1f7-6cee5953ec99		

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)	<div>COPIED</div>	Sent: 2/27/2024 7:39:24 PM



Carbon Copy Events	Status	Timestamp
<b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign		
Gretna Jones gretna.jones@cityofdenton.com Legal Secretary City of Denton Security Level: Email, Account Authentication (None)	<div>COPIED</div>	Sent: 3/1/2024 3:38:21 PM
<b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign		
City Secretary Office citysecretary@cityofdenton.com Security Level: Email, Account Authentication (None)		
<b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign		
Brett Bourgeois Brett.Bourgeois@cityofdenton.com Security Level: Email, Account Authentication (None)		
<b>Electronic Record and Signature Disclosure:</b> Accepted: 2/7/2024 2:33:32 PM ID: 43ce50b7-95f7-463b-82c0-28858f31943c		
Chandra Muruganandham Chandrakanth.Muruganandham@cityofdenton.com Security Level: Email, Account Authentication (None)		
<b>Electronic Record and Signature Disclosure:</b> Accepted: 8/31/2021 10:08:53 AM ID: 538b5e90-3ed8-4249-8ea6-115b012b7aef		
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Notary Events	Signature	Timestamp
Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	2/27/2024 7:30:02 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](mailto: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](mailto: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](mailto: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](mailto: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"><li>•Allow per session cookies</li><li>•Users accessing the internet behind a Proxy Server must enable HTTP 1.1 settings via proxy connection</li></ul>

\*\* 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](http://www.cityofdenton.com)

## Legislation Text

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**File #:** ID 24-649, **Version:** 1

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### **AGENDA CAPTION**

Consider adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the City Manager to execute a contract with T.G. Whitton Company, for welding and fabrication services for various City of Denton Departments; providing for the expenditure of funds therefor; and providing an effective date (RFP 8437 - awarded to T.G. Whitton Company, for one (1) year, with the option for four (4) additional one (1) year extensions, in the total five (5) year not-to-exceed amount of \$600,000.00).



# City of Denton

City Hall  
215 E. McKinney Street  
Denton, Texas  
[www.cityofdenton.com](http://www.cityofdenton.com)

## AGENDA INFORMATION SHEET

**DEPARTMENT:** Procurement  
**ACM:** Cassey Ogden  
**DATE:** April 2, 2024

### **SUBJECT**

Consider adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the City Manager to execute a contract with T.G. Whitton Company, for welding and fabrication services for various City of Denton Departments; providing for the expenditure of funds therefor; and providing an effective date (RFP 8437 – awarded to T.G. Whitton Company, for one (1) year, with the option for four (4) additional one (1) year extensions, in the total five (5) year not-to-exceed amount of \$600,000.00).

### **STRATEGIC ALIGNMENT**

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

### **INFORMATION/BACKGROUND**

This bid is to establish an annual agreement for fabrication and welding services on an as-needed basis to supplement the Fleet Services Department with repairs, retrofitting, and custom fabrication of parts and weldments on City vehicles and equipment. This bid may be used with other departments within the City of Denton as needed during the five years.

This bid will be utilized for heavy gauge structural repairs, loader and excavator bucket repair, trailer frame, jack and hitch repair or replacement, refuse truck body repair, and any safety-sensitive welding repair requiring a certified welder. The bid amount covers anticipated work requirements on all City of Denton department assets as needed during the five (5) year period.

T.G. Whitton Company has provided services to the City for many years, providing exceptional quality, low cost, and quick response. They also have the rare ability to repair all types of refuse collection bodies and equipment.

<b>Project Description</b>	<b>Estimated 5-Year Expenditure</b>
Historical Spend (Five Years)	\$400,000
Contingency (due to increase in rates)	200,000
<b>Total</b>	<b>\$600,000</b>

Request for Proposals was sent to 838 prospective suppliers, including 65 Denton firms. In addition, specifications were placed on the Procurement website for prospective suppliers to download and advertised in the local newspaper. Three (3) proposals were received, references were checked, and proposals were

evaluated based upon published criteria including work plan, compliance with specifications, probable performance, and price. Best and Final Offers (BAFO) were requested from all firms. Based upon this evaluation, T.G. Whitton Company was ranked the highest and determined to be the best value for the City.

NIGP Code Used for Solicitation:	914, 928, and 929
Notifications sent for Solicitation sent in IonWave:	838
Number of Suppliers that viewed Solicitation in IonWave:	6
HUB-Historically Underutilized Business Invitations sent out:	85
SBE-Small Business Enterprise Invitations sent out:	281
Responses from Solicitation:	3

### **RECOMMENDATION**

Award a contract with T.G. Whitton Company, for welding and fabrication services for various City of Denton Departments, in a one (1) year, with the option for four (4) additional one (1) year extensions, in the total five (5) year not-to-exceed amount of \$600,000.

### **PRINCIPAL PLACE OF BUSINESS**

T.G. Whitton Company  
Valley View, TX

### **ESTIMATED SCHEDULE OF PROJECT**

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

### **FISCAL INFORMATION**

These services will be funded from the Fleet Services operating account. Requisitions will be entered on an as-needed basis. The budgeted amount for this item is \$600,000.

### **EXHIBITS**

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

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

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

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

**Exhibit 2**
**RFP 8437 - Pricing Evaluation for Welding and Fabrication Services**

Respondent's Business Name:				<b>T.G. Whitton Company</b>		Rockstar Welding (RS Welding LLC)		J&B Five Point Construction	
Principal Place of Business (City and State):				<b>Valley View, TX</b>		Pilot Point, TX		Justin, TX	
Line #	Description	QTY	UOM	Unit	Extended	Unit	Extended	Unit	Extended
<b>1</b>	<b>On Site Welder Service Work- Hourly Rates</b>								
2	Regular Working Hours	2,000	Per Hr	<b>\$95.00</b>	<b>\$190,000.00</b>	\$125.00	\$250,000.00	\$125.00	\$250,000.00
3	After Regular Working Hours	500	Per Hr	<b>\$125.00</b>	<b>\$62,500.00</b>	\$135.00	\$67,500.00	\$150.00	\$75,000.00
4	Emergency Call- Regular Working Hours	1	Per Hr	<b>\$95.00</b>	<b>\$95.00</b>	\$135.00	\$135.00	\$145.00	\$145.00
5	Emergency Call- After Regular Working Hours	1	Per Hr	<b>\$125.00</b>	<b>\$125.00</b>	\$135.00	\$135.00	\$145.00	\$145.00
6	Weekends/Holidays	1	Per Hr	<b>\$125.00</b>	<b>\$125.00</b>	\$135.00	\$135.00	\$225.00	\$225.00
<b>7</b>	<b>Off Site Work- Hourly Rates</b>								
8	Regular Working Hours	2,000	Per Hr	<b>\$115.00</b>	<b>\$190,000.00</b>	\$95.00	\$190,000.00	\$125.00	\$250,000.00
9	After Regular Working Hours	500	Per Hr	<b>\$125.00</b>	<b>\$62,500.00</b>	\$105.00	\$52,500.00	\$180.00	\$90,000.00
10	Emergency Call- Regular Working Hours	1	Per Hr	<b>\$115.00</b>	<b>\$95.00</b>	\$105.00	\$105.00	\$195.00	\$195.00
11	Emergency Call- After Regular Working Hours	1	Per Hr	<b>\$125.00</b>	<b>\$125.00</b>	\$105.00	\$105.00	\$225.00	\$225.00
12	Weekends/Holidays	1	Per Hr	<b>\$125.00</b>	<b>\$125.00</b>	\$105.00	\$105.00	\$180.00	\$180.00
<b>Total:</b>				<b>\$505,690.00</b>		\$560,720.00		\$666,115.00	

<b>Evaluation</b>				
Item #	Scoring Criteria	T.G. Whitton Company	Rockstar Welding (RS Welding LLC)	J&B Five Point Construction
1	Work Plan- 10%	7.33	8.67	6.00
2	Compliance with Specifications-30%	24.00	24.00	20.00
3	Probable Performance-10%	8.67	7.33	9.33
4	Price, Total Cost of Ownership-50%	50.00	45.09	37.96
<b>Total Score:</b>		<b>90.00</b>	85.09	73.29



ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF DENTON, A TEXAS HOME-RULE MUNICIPAL CORPORATION, AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT WITH T.G. WHITTON COMPANY, FOR WELDING AND FABRICATION SERVICES FOR VARIOUS CITY OF DENTON DEPARTMENTS; PROVIDING FOR THE EXPENDITURE OF FUNDS THEREFOR; AND PROVIDING AN EFFECTIVE DATE (RFP 8437 – AWARDED TO T.G. WHITTON COMPANY, FOR ONE (1) YEAR, WITH THE OPTION FOR FOUR (4) ADDITIONAL ONE (1) YEAR EXTENSIONS, IN THE TOTAL FIVE (5) YEAR NOT-TO-EXCEED AMOUNT OF \$600,000.00).

WHEREAS, the City has solicited, received, and evaluated competitive proposals for welding and fabrication services for various City of Denton Departments; 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 request for 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 request for proposal for materials, equipment, supplies, or services shown in the “Request 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 request for proposals.

<u>RFP NUMBER</u>	<u>CONTRACTOR</u>	<u>AMOUNT</u>
8437	T.G. Whitton Company	\$600,000.00

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 [\_\_\_ - \_\_\_]:

	<b>Aye</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>
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:	_____	_____	_____	_____

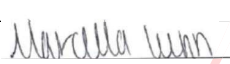
PASSED AND APPROVED this the \_\_\_\_\_ day of \_\_\_\_\_, 2024.

\_\_\_\_\_  
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: dc=com, dc=cityofdenton,  
dc=codad, ou=Department Users  
and Groups, ou=General  
Government, ou=Legal,  
cn=Marcella Lunn,  
email=Marcella.Lunn@cityofdenton.com  
Date: 2024.03.12 12:23:33 -05'00'



Docusign City Council Transmittal Coversheet

RFP	8437
File Name	Welding and Fabrication Services
Purchasing Contact	Gabby Leeper
City Council Target Date	
Piggy Back Option	Yes
Contract Expiration	
Ordinance	

**CONTRACT BY AND BETWEEN  
CITY OF DENTON, TEXAS AND T.G. WHITTON COMPANY  
(CONTRACT 8437)**

**THIS CONTRACT** is made and entered into this date \_\_\_\_\_, by and between T.G. Whitton Company a Texas Corporation, whose address is 13770 S FM 372 Valley View, Texas 76272 hereinafter referred to as "Contractor," and the **CITY OF DENTON, TEXAS**, a home rule municipal corporation, hereinafter referred to as "City," to be effective upon approval of the Denton City Council and subsequent execution of this Contract by the Denton City Manager or their duly authorized designee.

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

**SCOPE OF SERVICES**

Contractor shall provide products and/or services in accordance with the City's document RFP 8437- Welding and Fabrication Services, a copy of which is on file at the office of Purchasing Agent and incorporated herein for all purposes. The Contract consists of this written agreement and the following items which are attached hereto and incorporated herein by reference:

- (a) Special Terms and Conditions (**Exhibit "A"**);
- (b) City of Denton's RFP 8437 (**Exhibit "B" on File at the Office of the Purchasing Agent**);
- (c) City of Denton Standard Terms and Conditions (**Exhibit "C"**);
- (d) Certificate of Interested Parties Electronic Filing (**Exhibit "D"**);
- (e) Insurance Requirements (**Exhibit "E"**);
- (f) Contractor's Proposal (**Exhibit "F"**);
- (g) Form CIQ – Conflict of Interest Questionnaire (**Exhibit "G"**);

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

**Prohibition on Contracts with Companies Boycotting Israel**

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

**Prohibition on Contracts with Companies Boycotting Certain Energy Companies**

Contractor acknowledges that in accordance with Chapter 2274 of the Texas Government Code, City is  
Contract # 8437

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.

Contract # 8437

CONTRACTOR

DocuSigned by:  
BY: Tim Whitton  
AUTHORIZED SIGNATURE

Printed Name: Tim whitton

Title: Owner

214-502-9335  
PHONE NUMBER

tgwhittonco@hotmail.com  
EMAIL ADDRESS

2024-1130424  
TEXAS ETHICS COMMISSION  
1295 CERTIFICATE NUMBER

CITY OF DENTON, TEXAS

BY: \_\_\_\_\_  
SARA HENSLEY, CITY MANAGER

ATTEST:  
JESUS SALAZAR, CITY SECRETARY

BY: \_\_\_\_\_

APPROVED AS TO LEGAL FORM:  
MACK REINWAND, CITY ATTORNEY

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

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

DocuSigned by:  
Tom Gramer  
SIGNATURE PRINTED NAME

Director  
TITLE

Fleet  
DEPARTMENT

## **Exhibit A**

### **Special Terms and Conditions**

#### **1. Total Contract Amount**

The contract total for services shall not exceed \$600,000. Pricing shall be per Exhibit F attached.

#### **2. The Quantities**

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

#### **3. Contract Terms**

The contract term will be one (1) year, effective from date of award. The City and the Supplier shall have the option to renew this contract for an additional four (4) one-year periods.

The Contract shall commence upon the issuance of a Notice of Award by the City of Denton and shall automatically renew each year, from the date of award by City Council. The Supplier's request to not renew the contract must be submitted in writing to the Purchasing Manager at least 60 days prior to the contract renewal date for each year. 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.

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

On Supplier's request in the form stated herein, the City will implement an escalation/de-escalation price adjustment annually based on these special terms. Any request for price adjustment must be based on the, U.S Department of Labor, Bureau of Labor Statistics, Producer Price Index (PPI) or the manufacturer published pricing list. The maximum escalation will not exceed +/- 8% for any individual year. The escalation will be determined annually at the renewal date. The price will be increased or decreased based upon the annual percentage change in the PPI or the percentage change in the manufacturer's price list. Should the PPI or manufacturer price list change exceed a minimum threshold value of +/-1%, then the stated eligible bid prices shall be adjusted in accordance with the percent change not to exceed the 8% limit per year. The supplier should provide documentation as percentage of each cost associated with the unit prices quoted for consideration.

Request must be submitted in writing with supporting evidence for need of such increase to the Purchasing Manager at least 60 days prior to contract expiration of each year. Respondent must also provide supporting documentation as justification for the request. If no request is made, then it will be assumed that the current contract price will be in effect.



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

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

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

## **5. Performance Liquidated Damages**

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

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

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

## **Exhibit C**

### **Standard Purchase Terms and Conditions**

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

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

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

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

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

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

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

**6. DELIVERY TERMS AND TRANSPORTATION CHARGES:** Deliverables shall be

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

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

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

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

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

## **10. WORKFORCE**

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

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

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

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

C. If the City or the City's representative notifies the Contractor that any worker is incompetent, disorderly or disobedient, has knowingly or repeatedly violated safety regulations, has possessed

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any firearms, or has possessed or was under the influence of alcohol or drugs on the job, the Contractor shall immediately remove such worker from Contract services, and may not employ such worker again on Contract services without the City's prior written consent.

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

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

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

## **12. INVOICES:**

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

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

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

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

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

The City will furnish a tax exemption certificate upon request.

## **13. PAYMENT:**

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

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in Accounts Payable, whichever is later.

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

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

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

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

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

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

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

**14. TRAVEL EXPENSES:** All travel, lodging and per diem expenses in connection with the Contract shall be paid by the Contractor, unless otherwise stated in the contract terms. During the term of this contract, the contractor shall bill and the City shall reimburse contractor for all reasonable and approved out of pocket expenses which are incurred in the connection with the performance of duties hereunder. Notwithstanding the foregoing, expenses for the time spent by the contractor in traveling to and from City facilities shall not be reimbursed, unless otherwise negotiated.

**15. FINAL PAYMENT AND CLOSE-OUT:**

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

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

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

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

**17. RIGHT TO AUDIT:**

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

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

**18. SUBCONTRACTORS:**

A. If the Contractor identified Subcontractors in a DBE/MBE/WBE agreed to Plan, the Contractor shall comply with all requirements approved by the City. The Contractor shall not initially employ any Subcontractor except as provided in the Contractor's Plan. The Contractor shall not substitute any Subcontractor identified in the Plan, unless the substitute has been accepted by the City in writing. No acceptance by the City of any Subcontractor shall constitute a waiver of any rights or remedies of the City with respect to defective deliverables provided by a Subcontractor. If a Plan has been approved, the Contractor is additionally required to submit a monthly Subcontract Contract # 8437

Awards and Expenditures Report to the Procurement Manager, no later than the tenth calendar day of each month.

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

Contract, and shall contain provisions that:

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

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

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

#### **19. WARRANTY-PRICE:**

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

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

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

**20. WARRANTY – TITLE:** The Contractor warrants that it has good and indefeasible title to all deliverables furnished under the Contract, and that the deliverables are free and clear of all liens, claims, security interests and encumbrances. The Contractor shall indemnify and hold the City harmless from and against all adverse title claims to the deliverables.

**21. WARRANTY – DELIVERABLES:** The Contractor warrants and represents that all deliverables sold the City under the Contract shall be free from defects in design, workmanship or manufacture, and conform in all material respects to the specifications, drawings, and descriptions

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in the Solicitation, to any samples furnished by the Contractor, to the terms, covenants and conditions of the Contract, and to all applicable State, Federal or local laws, rules, and regulations, and industry codes and standards. Unless otherwise stated in the Solicitation, the deliverables shall be new or recycled merchandise, and not used or reconditioned.

A. Recycled deliverables shall be clearly identified as such.

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

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

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

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

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

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

B. Unless otherwise specified in the Contract, the warranty period shall be at least one year from the Acceptance Date. If during the warranty period, one or more of the above warranties are breached, the Contractor shall promptly upon receipt of demand perform the services again in accordance with above standard at no additional cost to the City. All costs incidental to such additional performance shall be borne by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach warranty, but failure to give timely notice shall not impair the City's rights under this section.

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

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shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such services from another source.

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

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

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

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

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

**28. TERMINATION WITHOUT CAUSE:** The City shall have the right to terminate the Contract, in whole or in part, without cause any time upon thirty (30) calendar days' prior written notice. Upon receipt of a notice of termination, the Contractor shall promptly cease all further work pursuant to the Contract, with such exceptions, if any, specified in the notice of termination. The Contract # 8437

City shall pay the Contractor, to the extent of funds Appropriated or otherwise legally available for such purposes, for all goods delivered and services performed and obligations incurred prior to the date of termination in accordance with the terms hereof.

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

**30. DELAYS:**

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

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

**31. INDEMNITY:**

**A. Definitions:**

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

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

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**CONTRACT. NOTHING HEREIN SHALL BE DEEMED TO LIMIT THE RIGHTS OF THE CITY OR THE CONTRACTOR (INCLUDING, BUT NOT LIMITED TO, THE RIGHT TO SEEK CONTRIBUTION) AGAINST ANY THIRD PARTY WHO MAY BE LIABLE FOR AN INDEMNIFIED CLAIM.**

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

**A. General Requirements:**

- i. The Contractor shall at a minimum carry insurance in the types and amounts indicated and agreed to, as submitted to the City and approved by the City within the procurement process, for the duration of the Contract, including extension options and hold over periods, and during any warranty period.
- ii. The Contractor shall provide Certificates of Insurance with the coverage's and endorsements required to the City as verification of coverage prior to contract execution and within fourteen (14) calendar days after written request from the City. Failure to provide the required Certificate of Insurance may subject the Offer to disqualification from consideration for award. The Contractor must also forward a Certificate of Insurance to the City whenever a previously identified policy period has expired, or an extension option or hold over period is exercised, as verification of continuing coverage.
- iii. The Contractor shall not commence work until the required insurance is obtained and until such insurance has been reviewed by the City. Approval of insurance by the City shall not relieve or decrease the liability of the Contractor hereunder and shall not be construed to be a limitation of liability on the part of the Contractor.
- iv. The Contractor must submit certificates of insurance to the City for all subcontractors prior to the subcontractors commencing work on the project.
- v. The Contractor's and all subcontractors' insurance coverage shall be written by companies licensed to do business in the State of Texas at the time the policies are issued and shall be written by companies with A.M. Best ratings of **A- VII or better**. The City will accept workers' compensation coverage written by the Texas Workers' Compensation Insurance Fund.
- vi. All endorsements naming the City as additional insured, waivers, and notices of cancellation endorsements as well as the Certificate of Insurance shall contain the solicitation number and the following information:  
City of Denton  
Materials Management Department  
901B Texas Street  
Denton, Texas 76209
- vii. The "other" insurance clause shall not apply to the City where the City is an additional insured shown on any policy. It is intended that policies required in the Contract, covering both the City and the Contractor, shall be considered primary coverage as applicable.
- viii. If insurance policies are not written for amounts agreed to with the City, the Contractor shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.
- ix. The City shall be entitled, upon request, at an agreed upon location, and without expense, to review certified copies of policies and endorsements thereto and may make any

reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the parties hereto or the underwriter on any such policies.

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

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

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

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

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

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

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

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

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

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

**37. CONFIDENTIALITY:** In order to provide the deliverables to the City, Contractor may require access to certain of the City's and/or its licensors' confidential information (including inventions, employee information, trade secrets, confidential know-how, confidential business information, and other information which the City or its licensors consider confidential) (collectively, "Confidential Information"). Contractor acknowledges and agrees that the Confidential Information is the valuable property of the City and/or its licensors and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information will substantially injure the City and/or its licensors. The Contractor (including its employees, subcontractors, agents, or representatives) agrees that it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate, or otherwise use the Confidential Information without the prior written consent of the City or in a manner not expressly permitted under this Agreement, unless the Confidential Information is required to be disclosed by law or an order of any court or other governmental authority with proper jurisdiction, provided the Contractor promptly notifies the City before disclosing such information so as to permit the City reasonable time to seek an appropriate protective order. The Contractor agrees to use protective measures no less stringent than the Contractor uses within its own business to protect its own most valuable information, which protective measures shall under all circumstances be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.

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

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

the City, to the City upon request by the City.

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

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

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

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

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

42. **GRATUITIES:** The City may, by written notice to the Contractor, cancel the Contract without liability if it is determined by the City that gratuities were offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the City of Denton with Contract # 8437

a view toward securing the Contract or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performing of such contract. In the event the Contract is canceled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the Contractor in providing such gratuities.

**43. PROHIBITION AGAINST PERSONAL INTEREST IN CONTRACTS:** No officer, employee, independent consultant, or elected official of the City who is involved in the development, evaluation, or decision-making process of the performance of any solicitation shall have a financial interest, direct or indirect, in the Contract resulting from that solicitation as defined in the City's Ethic Ordinance 18-757 and in the City Charter chapter 2 article XI(Ethics). Any willful violation of this section shall constitute impropriety in office, and any officer or employee guilty thereof shall be subject to disciplinary action up to and including dismissal. Any violation of this provision, with the knowledge, expressed or implied, of the Contractor shall render the Contract voidable by the City. The Contractor shall complete and submit the City's Conflict of Interest Questionnaire.

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

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

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

**46. WAIVER:** No claim or right arising out of a breach of the Contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is

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supported by consideration and is in writing signed by the aggrieved party. No waiver by either the Contractor or the City of any one or more events of default by the other party shall operate as, or be construed to be, a permanent waiver of any rights or obligations under the Contract, or an express or implied acceptance of any other existing or future default or defaults, whether of a similar or different character.

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

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

**49. DISPUTE RESOLUTION:**

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

B. If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within thirty (30) calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option; the City and the Contractor agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in the Contract prevents the parties from relying on the skills of a person who is trained in the subject matter of the dispute or a contract interpretation expert. If the parties fail to agree on a mediator within thirty (30) calendar days of initiation of the mediation process, the mediator shall be selected by the Denton County Alternative Dispute Resolution Program (DCAP). The parties agree to participate in mediation in good faith for up to thirty (30) calendar days from the date of the first mediation session. The City and the Contractor will share the mediator's fees equally and the parties will bear their own costs of participation such as fees for any consultants or attorneys they may utilize to represent them or otherwise assist them in the mediation.

**50. JURISDICTION AND VENUE:** The Contract is made under and shall be governed by the laws of the State of Texas, including, when applicable, the Uniform Commercial Code as adopted

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in Texas, V.T.C.A., Bus. & Comm. Code, Chapter 1, excluding any rule or principle that would refer to and apply the substantive law of another state or jurisdiction. All issues arising from this Contract shall be resolved in the courts of Denton County, Texas and the parties agree to submit to the exclusive personal jurisdiction of such courts. The foregoing, however, shall not be construed or interpreted to limit or restrict the right or ability of the City to seek and secure injunctive relief from any competent authority as contemplated herein.

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

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

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

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

53. **SURVIVABILITY OF OBLIGATIONS:** All provisions of the Contract that impose continuing obligations on the parties, including but not limited to the warranty, indemnity, and confidentiality obligations of the parties, shall survive the expiration or termination of the Contract.

54. **NON-SUSPENSION OR DEBARMENT CERTIFICATION:**

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

**55. EQUAL OPPORTUNITY**

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

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

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

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

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

ii. "Cost of components" means -

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

iii. "Domestic end product" means-

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

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

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

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

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

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

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

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

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

**58. LICENSE FEES OR TAXES:** Provided the solicitation requires an awarded contractor or Contract # 8437

supplier to be licensed by the State of Texas, any and all fees and taxes are the responsibility of the respondent.

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

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

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

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

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

**64. FORCE MAJEURE:** The City of Denton, any Customer, and the Respondent shall not be responsible for performance under the Contract should it be prevented from performance by an act of war, order of legal authority, act of God, or other unavoidable cause not attributable to the fault or negligence of the City of Denton. In the event of an occurrence under this Section, the Respondent will be excused from any further performance or observance of the requirements so affected for as long as such circumstances prevail and the Respondent continues to use Contract # 8437

commercially reasonable efforts to recommence performance or observance whenever and to whatever extent possible without delay. The Respondent shall immediately notify the City of Denton Procurement Manager by telephone (to be confirmed in writing within five (5) calendar days of the inception of such occurrence) and describe at a reasonable level of detail the circumstances causing the non-performance or delay in performance.

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

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

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

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

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

**Exhibit D**  
**Certificate of Interested Parties 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](mailto: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.

## Exhibit E

**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: \$500,000.00 Each Accident

Bodily Injury by Disease: \$500,000.00 Each Employee

Bodily Injury by Disease: \$500,000.00 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 \$1,000,000.00 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.

**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 F- Contractor's Proposal

TG WHITTON CO  
INC

Line #	Description	UOM	Unit
1	On Site Welder Service Work- Hourly Rates		
2	Regular Working Hours	Per Hr	\$95.00
3	After Regular Working Hours	Per Hr	\$125.00
4	Emergency Call- Regular Working Hours	Per Hr	\$95.00
5	Emergency Call- After Regular Working Hours	Per Hr	\$125.00
6	Weekends/Holidays	Per Hr	\$125.00
7	Off Site Work- Hourly Rates		
8	Regular Working Hours	Per Hr	\$115.00
9	After Regular Working Hours	Per Hr	\$125.00
10	Emergency Call- Regular Working Hours	Per Hr	\$115.00
11	Emergency Call- After Regular Working Hours	Per Hr	\$125.00
12	Weekends/Holidays	Per Hr	\$125.00
13	Additional Pricing		
14	Materials Mark-up	Percent	25.0%
15	Equipment rental mark-up	Percent	25.0%
16	Warranty on Parts- Manufacturer Warranty	Days	365.00
17	Warranty on Services	Days	365.00

**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.**

T.G. Whitton 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 7<sup>th</sup> 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:

Tim Whitton

3/6/2024

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 3<sup>rd</sup> 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: 3B5DF71F71714CB9A4390538A6F5F708

Status: Sent

Subject: Please DocuSign: City Council Contract 8437 Welding and Fabrication Services

Source Envelope:

Document Pages: 33

Signatures: 4

Envelope Originator:

Certificate Pages: 6

Initials: 1

Gabby Leeper

AutoNav: Enabled

901B Texas Street

Enveloped Stamping: Enabled

Denton, TX 76209

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

Gabby.Leeper@cityofdenton.com

IP Address: 198.49.140.10

**Record Tracking**

Status: Original

Holder: Gabby Leeper

Location: DocuSign

3/4/2024 7:56:48 AM

Gabby.Leeper@cityofdenton.com

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

Gabby Leeper

**Completed**

Sent: 3/4/2024 4:18:32 PM

gabby.leeper@cityofdenton.com

Viewed: 3/4/2024 4:18:50 PM

Buyer

Signed: 3/4/2024 4:20:52 PM

City of Denton

Using IP Address: 198.49.140.10

Security Level: Email, Account Authentication  
(None)**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

Lori Hewell



Sent: 3/4/2024 4:20:54 PM

lori.hewell@cityofdenton.com

Viewed: 3/5/2024 8:42:22 AM

Purchasing Manager

Signed: 3/5/2024 8:43:40 AM

City of Denton

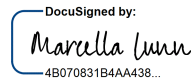
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**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

Marcella Lunn



Sent: 3/5/2024 8:43:43 AM

marcella.lunn@cityofdenton.com

Viewed: 3/6/2024 10:28:25 AM

Senior Deputy City Attorney

Signed: 3/6/2024 10:33:04 AM

City of Denton

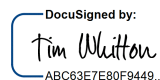
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**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

Tim Whitton



Sent: 3/6/2024 10:33:07 AM

tgwhittonco@hotmail.com

Viewed: 3/6/2024 1:52:57 PM

Owner

Signed: 3/6/2024 5:04:12 PM

TG Whitton Co

Signature Adoption: Pre-selected Style

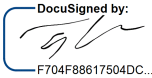
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**Electronic Record and Signature Disclosure:**

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Signer Events	Signature	Timestamp
Tom Gramer Tom.Gramer@cityofdenton.com Director Facilities and Fleet Security Level: Email, Account Authentication (None)  <b>Electronic Record and Signature Disclosure:</b> Accepted: 3/6/2024 5:18:09 PM ID: 3a72a7ec-afa4-40d4-8c2b-18c59cf30ed0	 F704F88617504DC...  Signature Adoption: Drawn on Device Using IP Address: 174.224.11.211 Signed using mobile	Sent: 3/6/2024 5:04:16 PM Viewed: 3/6/2024 5:18:25 PM Signed: 3/6/2024 5:18:25 PM
Cheyenne Defee cheyenne.defee@cityofdenton.com Procurement Administration Supervisor City of Denton Security Level: Email, Account Authentication (None)  <b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign		Sent: 3/6/2024 5:18:28 PM
Sara Hensley sara.hensley@cityofdenton.com Security Level: Email, Account Authentication (None)  <b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign		
Jesus Salazar jesus.salazar@cityofdenton.com Security Level: Email, Account Authentication (None)  <b>Electronic Record and Signature Disclosure:</b> Accepted: 3/6/2024 1:10:06 PM ID: da891825-f76a-4433-8e64-4a86d2a4a868		

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)  <b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign	<div>COPIED</div>	Sent: 3/4/2024 4:20:54 PM

Carbon Copy Events	Status	Timestamp
Gretna Jones gretna.jones@cityofdenton.com Legal Secretary City of Denton Security Level: Email, Account Authentication (None) <b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign  City Secretary Office citysecretary@cityofdenton.com Security Level: Email, Account Authentication (None) <b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign  Robin Melendez-Martin robin.melendez-martin@cityofdenton.com Security Level: Email, Account Authentication (None) <b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign	<div>COPIED</div>	Sent: 3/6/2024 5:18:28 PM

Witness Events	Signature	Timestamp
Notary Events	Signature	Timestamp
Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	3/4/2024 4:18:32 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](mailto: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](mailto: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](mailto: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;
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**Required hardware and software**

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

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

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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.

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# City of Denton

City Hall  
215 E. McKinney St.  
Denton, Texas 76201  
[www.cityofdenton.com](http://www.cityofdenton.com)

## Legislation Text

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**File #:** ID 24-650, **Version:** 1

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### **AGENDA CAPTION**

Consider adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the City Manager to execute a contract with Reeder Distributors, Inc., through the Buy Board Cooperative Purchasing Network Contract # 715-23, for the purchase of new equipment, as well as repairs, inspections, and replacement of existing shop equipment for the Fleet Services Department; providing for the expenditure of funds therefor; and providing an effective date (File 8485 - awarded to Reeder Distributors, Inc., for one (1) year, with the option for four (4) additional one (1) year extensions, in the total five (5) year not-to-exceed amount of \$2,000,000.00).



# City of Denton

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

## AGENDA INFORMATION SHEET

**DEPARTMENT:** Procurement  
**ACM:** Cassey Ogden  
**DATE:** April 2, 2024

### **SUBJECT**

Consider adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the City Manager to execute a contract with Reeder Distributors, Inc., through the Buy Board Cooperative Purchasing Network Contract # 715-23, for the purchase of new equipment, as well as repairs, inspections, and replacement of existing shop equipment for the Fleet Services Department; providing for the expenditure of funds therefor; and providing an effective date (File 8485 – awarded to Reeder Distributors, Inc., for one (1) year, with the option for four (4) additional one (1) year extensions, in the total five (5) year not-to-exceed amount of \$2,000,000.00).

### **STRATEGIC ALIGNMENT**

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

### **INFORMATION/BACKGROUND**

The City of Denton Fleet Services Department has identified numerous replacement needs for the Fleet Maintenance Shop, that will end their service life in the next five (5) years, as well as equipment additions that will enhance the services of the department. The proposed contract will allow for the repairs, replacement, inspection, and purchase of items including, but not limited to, vehicle lifts, pumps, compressors, and rotary leverless tire changers. Assets purchased on this contract will be used by the Fleet Department for repairs and maintenance of vehicles for all City departments.

Pricing obtained through the Buy Board Cooperative Purchasing Network has been competitively bid and meets the statutory requirements of Texas Local Government Code 271.102.

### **PRIOR ACTION/REVIEW (COUNCIL, BOARDS, COMMISSIONS)**

On February 1, 2005, City Council approved the interlocal agreement with the Buy Board Cooperative Purchasing Network (Ordinance 2005-034).

### **RECOMMENDATION**

Award a contract with Reeder Distributors, Inc., for the purchase of new equipment, as well as repairs, inspections, and replacement of existing shop equipment for the Fleet Services Department, in a one (1) year, with the option for four (4) additional one (1) year extensions, in the total five (5) year not-to-exceed amount of \$2,000,000.

## **PRINCIPAL PLACE OF BUSINESS**

Reeder Distributors, Inc.  
Fort Worth, TX

## **ESTIMATED SCHEDULE OF PROJECT**

This is an initial one (1) year contract with options to extend the contract for four (4) additional one (1) year periods, with all terms and conditions remaining the same. This Buy Board contract expires on November 30, 2026.

## **FISCAL INFORMATION**

These products and services will be funded through Capital Fund accounts. 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: Cooperative Pricing  
Exhibit 3: Ordinance and Contract

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

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

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

**1 Section I: Automotive Parts, Equipment, and Supplies**

Discount (%) off catalog/pricelist for **Automotive Original Equipment Manufacturer (OEM) Parts.**

Catalog/Pricelist **MUST** be included or proposal will not be considered.

**No Bid**

Item Notes: **PROPOSAL NOTE:** Vendors shall submit catalog(s)/pricelist(s) with their Proposal response or the Proposal will not be considered. Vendors shall submit catalog(s)/pricelist(s) with the Proposal in a readily available and readable electronic format, with Excel or searchable PDF preferred. **No paper catalogs or manufacturer/vendor websites will be accepted.**

Vendors proposing multiple manufacturer product lines and/or catalog/pricelist per line item must submit the information as follows or proposal may not be considered:

- Select **"Add Alternate"** for each additional manufacturer product line and/or catalog/pricelist proposed
- Vendor's must list one specific percentage discount for each manufacturer and/or catalog/pricelist listed

**Item Attributes**

**1. State Name of Catalog/Pricelist Proposed with Discount Percentage**

**NOTE:** Do not include SKU, Reference Numbers, Websites, and/or "See Attached/Enclosed".

No response

## 2 **Section I: Automotive Parts, Equipment, and Supplies**

Discount (%) off catalog/pricelist for **Automotive Non-Original Equipment Manufacturer (Non-OEM) Parts**.  
Catalog/Pricelist **MUST** be included or proposal will not be considered.

**No Bid**

Item Notes: **PROPOSAL NOTE:** Vendors shall submit catalog(s)/pricelist(s) with their Proposal response or the Proposal will not be considered. Vendors shall submit catalog(s)/pricelist(s) with the Proposal in a readily available and readable electronic format, with Excel or searchable PDF preferred. **No paper catalogs or manufacturer/vendor websites will be accepted.**

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- Vendor's must list one specific percentage discount for each manufacturer and/or catalog/pricelist listed

### **Item Attributes**

#### **1. State Name of Catalog/Pricelist Proposed with Discount Percentage**

**NOTE:** Do not include SKU, Reference Numbers, Websites, and/or "See Attached/Enclosed".

No response

**3 Section I: Automotive Parts, Equipment, and Supplies**

Discount (%) off catalog/pricelist for **Batteries** (All Types of Automotive and Marine). **Catalog/Pricelist MUST be included or proposal will not be considered.**

**No Bid**

Item Notes: **PROPOSAL NOTE:** Vendors shall submit catalog(s)/pricelist(s) with their Proposal response or the Proposal will not be considered. Vendors shall submit catalog(s)/pricelist(s) with the Proposal in a readily available and readable electronic format, with Excel or searchable PDF preferred. **No paper catalogs or manufacturer/vendor websites will be accepted.**

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- Vendor's must list one specific percentage discount for each manufacturer and/or catalog/pricelist listed

**Item Attributes**

**1. State Name of Catalog/Pricelist Proposed with Discount Percentage**

**NOTE:** Do not include SKU, Reference Numbers, Websites, and/or "See Attached/Enclosed".

No response



**4 Section I: Automotive Parts, Equipment, and Supplies**

Discount (%) off catalog/pricelist for **Mobile Lift Systems, Support Stands, and Jacks**. **Catalog/Pricelist MUST be included or proposal will not be considered.**

Total:

Item Notes: **PROPOSAL NOTE:** Vendors shall submit catalog(s)/pricelist(s) with their Proposal response or the Proposal will not be considered. Vendors shall submit catalog(s)/pricelist(s) with the Proposal in a readily available and readable electronic format, with Excel or searchable PDF preferred. **No paper catalogs or manufacturer/vendor websites will be accepted.**

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**Item Attributes**

**1. State Name of Catalog/Pricelist Proposed with Discount Percentage**

**NOTE:** Do not include SKU, Reference Numbers, Websites, and/or "See Attached/Enclosed".

**5 Section I: Automotive Parts, Equipment, and Supplies**

Discount (%) off catalog/pricelist for **Automotive Hand Tools**. **Catalog/Pricelist MUST be included or proposal will not be considered.**

**No Bid**

Item Notes: **PROPOSAL NOTE:** Vendors shall submit catalog(s)/pricelist(s) with their Proposal response or the Proposal will not be considered. Vendors shall submit catalog(s)/pricelist(s) with the Proposal in a readily available and readable electronic format, with Excel or searchable PDF preferred. **No paper catalogs or manufacturer/vendor websites will be accepted.**

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**Item Attributes**

**1. State Name of Catalog/Pricelist Proposed with Discount Percentage**

**NOTE:** Do not include SKU, Reference Numbers, Websites, and/or "See Attached/Enclosed".

No response

**6 Section I: Automotive Parts, Equipment, and Supplies**

Discount (%) off catalog/pricelist for **Alternative Fuel and/or Electric Engine Conversion Kits for Fleet Vehicles and Buses** (All Makes/Models, domestic and foreign). **Catalog/Pricelist MUST be included or proposal will not be considered.**

**No Bid**

Item Notes: **PROPOSAL NOTE:** Vendors shall submit catalog(s)/pricelist(s) with their Proposal response or the Proposal will not be considered. Vendors shall submit catalog(s)/pricelist(s) with the Proposal in a readily available and readable electronic format, with Excel or searchable PDF preferred. **No paper catalogs or manufacturer/vendor websites will be accepted.**

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- Select **"Add Alternate"** for each additional manufacturer product line and/or catalog/pricelist proposed
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**Item Attributes**

**1. State Name of Catalog/Pricelist Proposed with Discount Percentage**

**NOTE:** Do not include SKU, Reference Numbers, Websites, and/or "See Attached/Enclosed".

No response

**7 Section I: Automotive Parts, Equipment, and Supplies**

Discount (%) off catalog/pricelist for **Fleet Maintenance/Work Order Systems**. **Catalog/Pricelist MUST be included or proposal will not be considered.**

**No Bid**

Item Notes: **PROPOSAL NOTE:** Vendors shall submit catalog(s)/pricelist(s) with their Proposal response or the Proposal will not be considered. Vendors shall submit catalog(s)/pricelist(s) with the Proposal in a readily available and readable electronic format, with Excel or searchable PDF preferred. **No paper catalogs or manufacturer/vendor websites will be accepted.**

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- Vendor's must list one specific percentage discount for each manufacturer and/or catalog/pricelist listed

**Item Attributes**

**1. State Name of Catalog/Pricelist Proposed with Discount Percentage**

**NOTE:** Do not include SKU, Reference Numbers, Websites, and/or "See Attached/Enclosed".

No response

**8 Section I: Automotive Parts, Equipment, and Supplies**

Discount (%) off catalog/pricelist for **All Other Automotive Related Parts**. **Catalog/Pricelist MUST be included or proposal will not be considered.**

Total:  20%

Item Notes: **PROPOSAL NOTE:** Vendors shall submit catalog(s)/pricelist(s) with their Proposal response or the Proposal will not be considered. Vendors shall submit catalog(s)/pricelist(s) with the Proposal in a readily available and readable electronic format, with Excel or searchable PDF preferred. **No paper catalogs or manufacturer/vendor websites will be accepted.**

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- Vendor's must list one specific percentage discount for each manufacturer and/or catalog/pricelist listed

**Item Attributes**

**1. State Name of Catalog/Pricelist Proposed with Discount Percentage**

NOTE: Do not include SKU, Reference Numbers, Websites, and/or "See Attached/Enclosed".

RDI - Rotary Lift Price List

**9 Section II: Automotive Grease, Oils, Lubricants, and Transmission Fluids**

Discount (%) off catalog/pricelist for **All Automotive Oils** (gear oils, motor oils, miscellaneous oils, and other related automotive oils for diesel/gas engines and alternative fuel motors). **Catalog/Pricelist MUST be included or proposal will not be considered.**

**No Bid**

Item Notes: **PROPOSAL NOTE:** Vendors shall submit catalog(s)/pricelist(s) with their Proposal response or the Proposal will not be considered. Vendors shall submit catalog(s)/pricelist(s) with the Proposal in a readily available and readable electronic format, with Excel or searchable PDF preferred. **No paper catalogs or manufacturer/vendor websites will be accepted.**

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**Item Attributes**

**1. State Name of Catalog/Pricelist Proposed with Discount Percentage**

**NOTE:** Do not include SKU, Reference Numbers, Websites, and/or "See Attached/Enclosed".

No response

## Section II: Automotive Grease, Oils, Lubricants, and Transmission Fluids

Discount (%) off catalog/pricelist for **All Automotive Fluids** (brake fluids, power steering fluids, transmission fluids, and other related automotive fluids for diesel/gas engines, and alternative fuel motors). **Catalog/Pricelist MUST be included or proposal will not be considered.**

**No Bid**

Item Notes: **PROPOSAL NOTE:** Vendors shall submit catalog(s)/pricelist(s) with their Proposal response or the Proposal will not be considered. Vendors shall submit catalog(s)/pricelist(s) with the Proposal in a readily available and readable electronic format, with Excel or searchable PDF preferred. **No paper catalogs or manufacturer/vendor websites will be accepted.**

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- Vendor's must list one specific percentage discount for each manufacturer and/or catalog/pricelist listed

### Item Attributes

#### 1. State Name of Catalog/Pricelist Proposed with Discount Percentage

**NOTE:** Do not include SKU, Reference Numbers, Websites, and/or "See Attached/Enclosed".

No response

**Section II: Automotive Grease, Oils, Lubricants, and Transmission Fluids**

Discount (%) off catalog/pricelist for **All Automotive Grease Products** (for diesel/gas engines and alternative fuel motors). **Catalog/Pricelist MUST be included or proposal will not be considered.**

**No Bid**

Item Notes: **PROPOSAL NOTE:** Vendors shall submit catalog(s)/pricelist(s) with their Proposal response or the Proposal will not be considered. Vendors shall submit catalog(s)/pricelist(s) with the Proposal in a readily available and readable electronic format, with Excel or searchable PDF preferred. **No paper catalogs or manufacturer/vendor websites will be accepted.**

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**Item Attributes****1. State Name of Catalog/Pricelist Proposed with Discount Percentage**

**NOTE:** Do not include SKU, Reference Numbers, Websites, and/or "See Attached/Enclosed".

No response



**Section II: Automotive Grease, Oils, Lubricants, and Transmission Fluids**

Discount (%) off catalog/pricelist for **All Automotive Additive and Lubricant Products** (fuel additives, diesel exhaust fluid, and engine penetrating lubricants for diesel/gas engines and alternative fuel motors).

**Catalog/Pricelist MUST be included or proposal will not be considered.**

**No Bid**

Item Notes: **PROPOSAL NOTE:** Vendors shall submit catalog(s)/pricelist(s) with their Proposal response or the Proposal will not be considered. Vendors shall submit catalog(s)/pricelist(s) with the Proposal in a readily available and readable electronic format, with Excel or searchable PDF preferred. **No paper catalogs or manufacturer/vendor websites will be accepted.**

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**Item Attributes****1. State Name of Catalog/Pricelist Proposed with Discount Percentage**

**NOTE:** Do not include SKU, Reference Numbers, Websites, and/or "See Attached/Enclosed".

No response

**Section II: Automotive Grease, Oils, Lubricants, and Transmission Fluids**

Discount (%) off catalog/pricelist for **All Other Automotive Grease, Oils, Lubricants, and Transmission Fluids**. **Catalog/Pricelist MUST be included or proposal will not be considered.**

**No Bid**

Item Notes: **PROPOSAL NOTE:** Vendors shall submit catalog(s)/pricelist(s) with their Proposal response or the Proposal will not be considered. Vendors shall submit catalog(s)/pricelist(s) with the Proposal in a readily available and readable electronic format, with Excel or searchable PDF preferred. **No paper catalogs or manufacturer/vendor websites will be accepted.**

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**Item Attributes****1. State Name of Catalog/Pricelist Proposed with Discount Percentage**

**NOTE:** Do not include SKU, Reference Numbers, Websites, and/or "See Attached/Enclosed".

No response

**Section III: Automotive Services**

Discount (%) off catalog/pricelist for **Oil Collection, Refining, Recycling, and Cleaning Services**.  
Catalog/Pricelist **MUST** be included or proposal will not be considered.

**No Bid**

Item Notes: **PROPOSAL NOTE:** Vendors shall submit catalog(s)/pricelist(s) with their Proposal response or the Proposal will not be considered. Vendors shall submit catalog(s)/pricelist(s) with the Proposal in a readily available and readable electronic format, with Excel or searchable PDF preferred. **No paper catalogs or manufacturer/vendor websites will be accepted.**

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**Item Attributes****1. State Name of Catalog/Pricelist Proposed with Discount Percentage**

**NOTE:** Do not include SKU, Reference Numbers, Websites, and/or "See Attached/Enclosed".

No response

1  
5**Section III: Automotive Services**

Discount (%) off catalog/pricelist for **Automotive Maintenance and Services** (oil change, battery replacement, radiator flush, and related services). **Catalog/Pricelist MUST be included or proposal will not be considered.**

**No Bid**

Item Notes: **PROPOSAL NOTE:** Vendors shall submit catalog(s)/pricelist(s) with their Proposal response or the Proposal will not be considered. Vendors shall submit catalog(s)/pricelist(s) with the Proposal in a readily available and readable electronic format, with Excel or searchable PDF preferred. **No paper catalogs or manufacturer/vendor websites will be accepted.**

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**Item Attributes****1. State Name of Catalog/Pricelist Proposed with Discount Percentage**

**NOTE:** Do not include SKU, Reference Numbers, Websites, and/or "See Attached/Enclosed".

No response

1  
6**Section IV: Installation and Repair Service**

**Hourly Labor Rate for Installation/Repair Service of Automotive Equipment and Products - Not to Exceed** hourly labor rate for Installation/Repair Service of Equipment and Products.

Quantity: 1 UOM: Hourly Labor Rate Price: \$149.00 Total: \$149.00

1  
7**Section IV: Installation and Repair Service**

**Hourly Labor Rate for Automotive/Fleet Maintenance Services, - Not to Exceed** hourly labor rate for Repair Service of Automotive/Fleet Maintenance Services.

Quantity: 1 UOM: Hourly Labor Rate Price: \$149.00 Total: \$149.00

1  
8**Section IV: Installation and Repair Service**

**Hourly Labor Rate for Automotive Paint and Body Repair, - Not to Exceed** hourly labor rate for Repair Service of Paint and Body Repair.

Quantity: 1 UOM: Hourly Labor Rate

**No Bid**

**Section V: Bus and Car Wash Systems, Equipment, and Supplies**

Discount (%) off catalog/pricelist for **Bus and Car Wash Systems, Equipment, and Related Products** (equipment and products necessary for a properly functioning Bus and Car Wash system). **Catalog/Pricelist MUST be included or proposal will not be considered.**

**No Bid**

Item Notes: **PROPOSAL NOTE:** Vendors shall submit catalog(s)/pricelist(s) with their Proposal response or the Proposal will not be considered. Vendors shall submit catalog(s)/pricelist(s) with the Proposal in a readily available and readable electronic format, with Excel or searchable PDF preferred. **No paper catalogs or manufacturer/vendor websites will be accepted.**

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- Vendor's must list one specific percentage discount for each manufacturer and/or catalog/pricelist listed

**Item Attributes****1. State Name of Catalog/Pricelist Proposed with Discount Percentage**

**NOTE:** Do not include SKU, Reference Numbers, Websites, and/or "See Attached/Enclosed".

No response

**Section V: Bus and Car Wash Systems, Equipment, and Supplies**

Discount (%) off catalog/pricelist for **Bus and Car Wash Supplies, Equipment, and Parts**. **Catalog/Pricelist MUST be included or proposal will not be considered.**

**No Bid**

Item Notes: **PROPOSAL NOTE:** Vendors shall submit catalog(s)/pricelist(s) with their Proposal response or the Proposal will not be considered. Vendors shall submit catalog(s)/pricelist(s) with the Proposal in a readily available and readable electronic format, with Excel or searchable PDF preferred. **No paper catalogs or manufacturer/vendor websites will be accepted.**

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- Vendor's must list one specific percentage discount for each manufacturer and/or catalog/pricelist listed

**Item Attributes****1. State Name of Catalog/Pricelist Proposed with Discount Percentage**

**NOTE:** Do not include SKU, Reference Numbers, Websites, and/or "See Attached/Enclosed".

No response

**Section V: Bus and Car Wash Systems, Equipment, and Supplies**

Discount (%) off catalog/pricelist for **All Other Bus and Car Wash Equipment and Related Products**.  
Catalog/Pricelist **MUST** be included or proposal will not be considered.

**No Bid**

Item Notes: **PROPOSAL NOTE:** Vendors shall submit catalog(s)/pricelist(s) with their Proposal response or the Proposal will not be considered. Vendors shall submit catalog(s)/pricelist(s) with the Proposal in a readily available and readable electronic format, with Excel or searchable PDF preferred. **No paper catalogs or manufacturer/vendor websites will be accepted.**

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**Item Attributes****1. State Name of Catalog/Pricelist Proposed with Discount Percentage**

**NOTE:** Do not include SKU, Reference Numbers, Websites, and/or "See Attached/Enclosed".

No response

**Section V: Bus and Car Wash Systems, Equipment, and Supplies**

Discount (%) off catalog/pricelist for **Bus and Car Wash Systems and Equipment Maintenance/Warranty Agreements**. **Catalog/Pricelist MUST be included or proposal will not be considered.**

**No Bid**

Item Notes: **PROPOSAL NOTE:** Vendors shall submit catalog(s)/pricelist(s) with their Proposal response or the Proposal will not be considered. Vendors shall submit catalog(s)/pricelist(s) with the Proposal in a readily available and readable electronic format, with Excel or searchable PDF preferred. **No paper catalogs or manufacturer/vendor websites will be accepted.**

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**Item Attributes****1. State Name of Catalog/Pricelist Proposed with Discount Percentage**

**NOTE:** Do not include SKU, Reference Numbers, Websites, and/or "See Attached/Enclosed".

No response



2  
3

## **Section V: Bus and Car Wash Systems, Equipment, and Supplies**

Discount (%) off catalog/pricelist for **Fleet Vehicle Mobile Washing Services** (on-site mobile services for washing and cleaning cars, trucks, vans, buses, and other fleet vehicles.) **Catalog/Pricelist MUST be included or proposal will not be considered.**

**No Bid**

Item Notes: **PROPOSAL NOTE:** Vendors shall submit catalog(s)/pricelist(s) with their Proposal response or the Proposal will not be considered. Vendors shall submit catalog(s)/pricelist(s) with the Proposal in a readily available and readable electronic format, with Excel or searchable PDF preferred. **No paper catalogs or manufacturer/vendor websites will be accepted.**

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- Vendor's must list one specific percentage discount for each manufacturer and/or catalog/pricelist listed

### **Item Attributes**

#### **1. State Name of Catalog/Pricelist Proposed with Discount Percentage**

**NOTE:** Do not include SKU, Reference Numbers, Websites, and/or "See Attached/Enclosed".

No response

2  
4

## **Section VI: Bus and Car Wash Installation and Repair Service**

**Hourly Labor Rate for Installation/Repair of Bus and Car Wash Systems, Equipment, and Products - Not to Exceed** hourly labor rate for Installation/Repair Service of Equipment and Products.

Quantity: 1 UOM: Hourly Labor Rate

**No Bid**

**Response Total: \$298.00**

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF DENTON, A TEXAS HOME-RULE MUNICIPAL CORPORATION, AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT WITH REEDER DISTRIBUTORS, INC., THROUGH THE BUY BOARD COOPERATIVE PURCHASING NETWORK CONTRACT # 715-23, FOR THE PURCHASE OF NEW EQUIPMENT, AS WELL AS REPAIRS, INSPECTIONS, AND REPLACEMENT OF EXISTING SHOP EQUIPMENT FOR THE FLEET SERVICES DEPARTMENT; PROVIDING FOR THE EXPENDITURE OF FUNDS THEREFOR; AND PROVIDING AN EFFECTIVE DATE (FILE 8485 – AWARDED TO REEDER DISTRIBUTORS, INC., FOR ONE (1) YEAR, WITH THE OPTION FOR FOUR (4) ADDITIONAL ONE (1) YEAR EXTENSIONS, IN THE TOTAL FIVE (5) YEAR NOT-TO-EXCEED AMOUNT OF \$2,000,000.00).

WHEREAS, pursuant to Ordinance 2005-034, the Buy Board Cooperative Purchasing Network has solicited, received, and tabulated competitive bids for the purchase of necessary materials, equipment, supplies, or services in accordance with the procedures of state law and city ordinances; and

WHEREAS, the City Manager, or a designated employee, has reviewed and recommended that the herein described materials, equipment, supplies, or services can be purchased by the City through the Buy Board Cooperative Purchasing Network programs at less cost than the City would expend if bidding these items individually; 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 shown in the “File Number” referenced herein and on file in the office of the Purchasing Agent, are hereby accepted and approved as being the lowest responsible bids for such items:

<u>FILE NUMBER</u>	<u>VENDOR</u>	<u>AMOUNT</u>
8485	Reeder Distributors, Inc.	\$2,000,000.00

SECTION 2. By the acceptance and approval of the items set forth in the referenced file number, the City accepts the offer of the persons submitting the bids to the Buy Board Cooperative Purchasing Network for such items and agrees to purchase the materials, equipment, supplies, or services in accordance with the terms, conditions, specifications, standards,

quantities, and for the specified sums contained in the bid documents and related documents filed with the Buy Board Cooperative Purchasing Network and the purchase orders issued by the City.

**SECTION 3.** Should the City and persons submitting approved and accepted items set forth in the referenced file number wish to enter into a formal written agreement as a result of the City's ratification of bids awarded by the Buy Board Cooperative Purchasing Network, 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, and standards contained in the Proposal submitted to the Buy Board Cooperative Purchasing Network, and the quantities and specified sums contained in the City's purchase orders and related documents referenced herein are 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 items set forth in the referenced file number, the City Council hereby authorizes the expenditure of funds therefor in the amount and in accordance with the approval of purchase orders or pursuant to a written contract made pursuant thereto as authorized herein.

**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 [\_\_\_ - \_\_\_]:

	<b>Aye</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>
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:	_____	_____	_____	_____

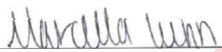
PASSED AND APPROVED this the \_\_\_\_\_ day of \_\_\_\_\_, 2024.

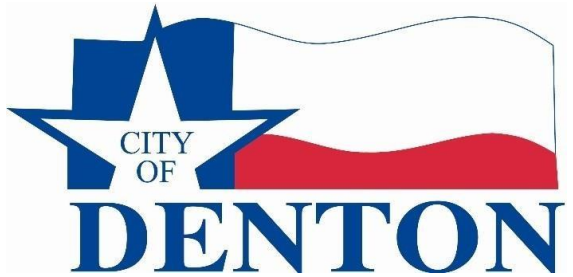
\_\_\_\_\_  
GERARD HUDSPETH, MAYOR

ATTEST:  
JESUS SALAZAR, CITY SECRETARY

BY: \_\_\_\_\_

APPROVED AS TO LEGAL FORM:  
MACK REINWAND, CITY ATTORNEY

BY:  \_\_\_\_\_  
Digitally signed by Marcella Lunn  
DN: dc=com, dc=cityofdenton,  
dc=codad, ou=Department  
Users and Groups, ou=General  
Government, ou=Legal,  
cn=Marcella Lunn,  
email=Marcella.Lunn@cityofden  
ton.com  
Date: 2024.03.08 13:10:17 -06'00'



Docusign City Council Transmittal Coversheet

FILE	8485
File Name	Shop Equipment
Purchasing Contact	Gabby Leeper
City Council Target Date	
Piggy Back Option	Not Applicable
Contract Expiration	
Ordinance	

**CONTRACT BY AND BETWEEN  
CITY OF DENTON, TEXAS AND REEDER DISTRIBUTORS, INC.  
(FILE # 8485)**

**THIS CONTRACT** is made and entered into this date \_\_\_\_\_, by and between Reeder Distributors, Inc. a Texas corporation, whose address is 5450 Wilbarger St. Fort Worth, TX 76119 hereinafter referred to as "Contractor," and the **CITY OF DENTON, TEXAS**, a home rule municipal corporation, hereinafter referred to as "City," to be effective upon approval of the Denton City Council and subsequent execution of this Contract by the Denton City Manager or their 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 Supplier's quote, a copy of which is attached hereto and incorporated herein for all purposes as Exhibit "B". 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) Buyboard Cooperative Purchasing Contract #715-23 with Reeder Distributors, Inc. (**Exhibit "B" on file at the office of the Purchasing Agent**);
- (c) City of Denton Standard Terms and Conditions (**Exhibit "C"**);
- (d) Certificate of Interested Parties Electronic Filing (**Exhibit "D"**);
- (e) Insurance Requirements (**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."

**Prohibition on Contracts with Companies Boycotting Israel**

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

**Prohibition on Contracts with Companies Boycotting Certain Energy Companies**

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

Contract # 8485

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

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

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

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

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

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

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

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

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

**CONTRACTOR**

DocuSigned by:  
BY: Chris Bussey  
AUTHORIZED SIGNATURE

Printed Name: Chris Bussey

Title: VP Equipment Sales

817-682-4958

PHONE NUMBER

chris@rdinc.us

EMAIL ADDRESS

20224-1131146

TEXAS ETHICS COMMISSION

1295 CERTIFICATE NUMBER

**CITY OF DENTON, TEXAS**

BY: \_\_\_\_\_  
SARA HENSLEY, CITY MANAGER

ATTEST:  
JESUS SALAZAR, CITY SECRETARY

BY: \_\_\_\_\_

APPROVED AS TO LEGAL FORM:  
MACK REINWAND, CITY ATTORNEY

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

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

DocuSigned by:  
Tom Gramer  
SIGNATURE PRINTED NAME

Director  
TITLE

Fleet  
DEPARTMENT



## **Exhibit A**

### **Special Terms and Conditions**

#### **1. Total Contract Amount**

The contract total for services shall not exceed \$2,000,000.

#### **2. Contract Terms**

The contract term will be one (1) year, effective from date of award. The City and the Supplier shall have the option to renew this contract for an additional four (4) one-year periods.

The contract shall commence upon the issuance of a Notice of Award by the City of Denton and shall automatically renew each year, from the date of award by City Council. 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.

## **Exhibit C**

### **Standard Purchase Terms and Conditions**

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

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

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

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

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

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

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

**6. DELIVERY TERMS AND TRANSPORTATION CHARGES:** Deliverables shall be

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

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

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

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

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

## **10. WORKFORCE**

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

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

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

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

C. If the City or the City's representative notifies the Contractor that any worker is incompetent, disorderly or disobedient, has knowingly or repeatedly violated safety regulations, has possessed

Contract # 8485

any firearms, or has possessed or was under the influence of alcohol or drugs on the job, the Contractor shall immediately remove such worker from Contract services, and may not employ such worker again on Contract services without the City's prior written consent.

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

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

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

## **12. INVOICES:**

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

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

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

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

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

The City will furnish a tax exemption certificate upon request.

## **13. PAYMENT:**

A. All proper invoices need to be sent to Accounts Payable. Approved invoices will be paid within thirty (30) calendar days of the City's receipt of the deliverables or of the invoice being received  
Contract # 8485

in Accounts Payable, whichever is later.

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

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

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

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

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

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

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

**14. TRAVEL EXPENSES:** All travel, lodging and per diem expenses in connection with the Contract shall be paid by the Contractor, unless otherwise stated in the contract terms. During the term of this contract, the contractor shall bill and the City shall reimburse contractor for all reasonable and approved out of pocket expenses which are incurred in the connection with the performance of duties hereunder. Notwithstanding the foregoing, expenses for the time spent by the contractor in traveling to and from City facilities shall not be reimbursed, unless otherwise negotiated.

**15. FINAL PAYMENT AND CLOSE-OUT:**

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

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

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

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

**17. RIGHT TO AUDIT:**

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

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

**18. SUBCONTRACTORS:**

A. If the Contractor identified Subcontractors in a DBE/MBE/WBE agreed to Plan, the Contractor shall comply with all requirements approved by the City. The Contractor shall not initially employ any Subcontractor except as provided in the Contractor's Plan. The Contractor shall not substitute any Subcontractor identified in the Plan, unless the substitute has been accepted by the City in writing. No acceptance by the City of any Subcontractor shall constitute a waiver of any rights or remedies of the City with respect to defective deliverables provided by a Subcontractor. If a Plan has been approved, the Contractor is additionally required to submit a monthly Subcontract Contract # 8485

Awards and Expenditures Report to the Procurement Manager, no later than the tenth calendar day of each month.

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

Contract, and shall contain provisions that:

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

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

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

#### **19. WARRANTY-PRICE:**

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

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

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

**20. WARRANTY – TITLE:** The Contractor warrants that it has good and indefeasible title to all deliverables furnished under the Contract, and that the deliverables are free and clear of all liens, claims, security interests and encumbrances. The Contractor shall indemnify and hold the City harmless from and against all adverse title claims to the deliverables.

**21. WARRANTY – DELIVERABLES:** The Contractor warrants and represents that all deliverables sold the City under the Contract shall be free from defects in design, workmanship or manufacture, and conform in all material respects to the specifications, drawings, and descriptions

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in the Solicitation, to any samples furnished by the Contractor, to the terms, covenants and conditions of the Contract, and to all applicable State, Federal or local laws, rules, and regulations, and industry codes and standards. Unless otherwise stated in the Solicitation, the deliverables shall be new or recycled merchandise, and not used or reconditioned.

A. Recycled deliverables shall be clearly identified as such.

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

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

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

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

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

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

B. Unless otherwise specified in the Contract, the warranty period shall be at least one year from the Acceptance Date. If during the warranty period, one or more of the above warranties are breached, the Contractor shall promptly upon receipt of demand perform the services again in accordance with above standard at no additional cost to the City. All costs incidental to such additional performance shall be borne by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach warranty, but failure to give timely notice shall not impair the City's rights under this section.

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

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shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such services from another source.

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

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

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

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

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

**28. TERMINATION WITHOUT CAUSE:** The City shall have the right to terminate the Contract, in whole or in part, without cause any time upon thirty (30) calendar days' prior written notice. Upon receipt of a notice of termination, the Contractor shall promptly cease all further work pursuant to the Contract, with such exceptions, if any, specified in the notice of termination. The Contract # 8485

City shall pay the Contractor, to the extent of funds Appropriated or otherwise legally available for such purposes, for all goods delivered and services performed and obligations incurred prior to the date of termination in accordance with the terms hereof.

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

**30. DELAYS:**

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

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

**31. INDEMNITY:**

**A. Definitions:**

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

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

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**CONTRACT. NOTHING HEREIN SHALL BE DEEMED TO LIMIT THE RIGHTS OF THE CITY OR THE CONTRACTOR (INCLUDING, BUT NOT LIMITED TO, THE RIGHT TO SEEK CONTRIBUTION) AGAINST ANY THIRD PARTY WHO MAY BE LIABLE FOR AN INDEMNIFIED CLAIM.**

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

**A. General Requirements:**

- i. The Contractor shall at a minimum carry insurance in the types and amounts indicated and agreed to, as submitted to the City and approved by the City within the procurement process, for the duration of the Contract, including extension options and hold over periods, and during any warranty period.
- ii. The Contractor shall provide Certificates of Insurance with the coverage's and endorsements required to the City as verification of coverage prior to contract execution and within fourteen (14) calendar days after written request from the City. Failure to provide the required Certificate of Insurance may subject the Offer to disqualification from consideration for award. The Contractor must also forward a Certificate of Insurance to the City whenever a previously identified policy period has expired, or an extension option or hold over period is exercised, as verification of continuing coverage.
- iii. The Contractor shall not commence work until the required insurance is obtained and until such insurance has been reviewed by the City. Approval of insurance by the City shall not relieve or decrease the liability of the Contractor hereunder and shall not be construed to be a limitation of liability on the part of the Contractor.
- iv. The Contractor must submit certificates of insurance to the City for all subcontractors prior to the subcontractors commencing work on the project.
- v. The Contractor's and all subcontractors' insurance coverage shall be written by companies licensed to do business in the State of Texas at the time the policies are issued and shall be written by companies with A.M. Best ratings of **A- VII or better**. The City will accept workers' compensation coverage written by the Texas Workers' Compensation Insurance Fund.
- vi. All endorsements naming the City as additional insured, waivers, and notices of cancellation endorsements as well as the Certificate of Insurance shall contain the solicitation number and the following information:  
City of Denton  
Materials Management Department  
901B Texas Street  
Denton, Texas 76209
- vii. The "other" insurance clause shall not apply to the City where the City is an additional insured shown on any policy. It is intended that policies required in the Contract, covering both the City and the Contractor, shall be considered primary coverage as applicable.
- viii. If insurance policies are not written for amounts agreed to with the City, the Contractor shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.
- ix. The City shall be entitled, upon request, at an agreed upon location, and without expense, to review certified copies of policies and endorsements thereto and may make any

reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the parties hereto or the underwriter on any such policies.

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

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

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

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

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

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

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

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

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

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

**37. CONFIDENTIALITY:** In order to provide the deliverables to the City, Contractor may require access to certain of the City's and/or its licensors' confidential information (including inventions, employee information, trade secrets, confidential know-how, confidential business information, and other information which the City or its licensors consider confidential) (collectively, "Confidential Information"). Contractor acknowledges and agrees that the Confidential Information is the valuable property of the City and/or its licensors and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information will substantially injure the City and/or its licensors. The Contractor (including its employees, subcontractors, agents, or representatives) agrees that it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate, or otherwise use the Confidential Information without the prior written consent of the City or in a manner not expressly permitted under this Agreement, unless the Confidential Information is required to be disclosed by law or an order of any court or other governmental authority with proper jurisdiction, provided the Contractor promptly notifies the City before disclosing such information so as to permit the City reasonable time to seek an appropriate protective order. The Contractor agrees to use protective measures no less stringent than the Contractor uses within its own business to protect its own most valuable information, which protective measures shall under all circumstances be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.

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

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

the City, to the City upon request by the City.

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

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

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

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

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

42. **GRATUITIES:** The City may, by written notice to the Contractor, cancel the Contract without liability if it is determined by the City that gratuities were offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the City of Denton with Contract # 8485

a view toward securing the Contract or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performing of such contract. In the event the Contract is canceled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the Contractor in providing such gratuities.

**43. PROHIBITION AGAINST PERSONAL INTEREST IN CONTRACTS:** No officer, employee, independent consultant, or elected official of the City who is involved in the development, evaluation, or decision-making process of the performance of any solicitation shall have a financial interest, direct or indirect, in the Contract resulting from that solicitation as defined in the City's Ethic Ordinance 18-757 and in the City Charter chapter 2 article XI(Ethics). Any willful violation of this section shall constitute impropriety in office, and any officer or employee guilty thereof shall be subject to disciplinary action up to and including dismissal. Any violation of this provision, with the knowledge, expressed or implied, of the Contractor shall render the Contract voidable by the City. The Contractor shall complete and submit the City's Conflict of Interest Questionnaire.

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

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

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

**46. WAIVER:** No claim or right arising out of a breach of the Contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is Contract # 8485

supported by consideration and is in writing signed by the aggrieved party. No waiver by either the Contractor or the City of any one or more events of default by the other party shall operate as, or be construed to be, a permanent waiver of any rights or obligations under the Contract, or an express or implied acceptance of any other existing or future default or defaults, whether of a similar or different character.

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

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

**49. DISPUTE RESOLUTION:**

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

B. If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within thirty (30) calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option; the City and the Contractor agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in the Contract prevents the parties from relying on the skills of a person who is trained in the subject matter of the dispute or a contract interpretation expert. If the parties fail to agree on a mediator within thirty (30) calendar days of initiation of the mediation process, the mediator shall be selected by the Denton County Alternative Dispute Resolution Program (DCAP). The parties agree to participate in mediation in good faith for up to thirty (30) calendar days from the date of the first mediation session. The City and the Contractor will share the mediator's fees equally and the parties will bear their own costs of participation such as fees for any consultants or attorneys they may utilize to represent them or otherwise assist them in the mediation.

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

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

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

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

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

**53. SURVIVABILITY OF OBLIGATIONS:** All provisions of the Contract that impose continuing obligations on the parties, including but not limited to the warranty, indemnity, and confidentiality obligations of the parties, shall survive the expiration or termination of the Contract.

**54. NON-SUSPENSION OR DEBARMENT CERTIFICATION:**

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

**55. EQUAL OPPORTUNITY**

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

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

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

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

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

ii. "Cost of components" means -

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

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

iii. "Domestic end product" means-

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

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

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

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

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

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

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

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

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

**58. LICENSE FEES OR TAXES:** Provided the solicitation requires an awarded contractor or Contract # 8485

supplier to be licensed by the State of Texas, any and all fees and taxes are the responsibility of the respondent.

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

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

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

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

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

**64. FORCE MAJEURE:** The City of Denton, any Customer, and the Respondent shall not be responsible for performance under the Contract should it be prevented from performance by an act of war, order of legal authority, act of God, or other unavoidable cause not attributable to the fault or negligence of the City of Denton. In the event of an occurrence under this Section, the Respondent will be excused from any further performance or observance of the requirements so affected for as long as such circumstances prevail and the Respondent continues to use Contract # 8485

commercially reasonable efforts to recommence performance or observance whenever and to whatever extent possible without delay. The Respondent shall immediately notify the City of Denton Procurement Manager by telephone (to be confirmed in writing within five (5) calendar days of the inception of such occurrence) and describe at a reasonable level of detail the circumstances causing the non-performance or delay in performance.

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

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

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

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

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

**Exhibit D**  
**Certificate of Interested Parties 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](mailto: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.

## Exhibit E

**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: \$500,000.00 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.

**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.

**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.**

Reeder Distributor's, Inc.

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

(The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7<sup>th</sup> 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?

☐

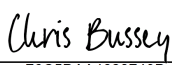
Yes

☒

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:  
  
76C5DAA4628740D  
Signature of vendor doing business with the governmental entity

3/6/2024

\_\_\_\_\_  
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 3<sup>rd</sup> 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: 05B713E889144D249B54D6E20EF89970

Status: Sent

Subject: Please DocuSign: City Council Contract 8485 Shop Equipment

Source Envelope:

Document Pages: 31

Signatures: 4

Envelope Originator:

Certificate Pages: 6

Initials: 1

Gabby Leeper

AutoNav: Enabled

901B Texas Street

Enveloped Stamping: Enabled

Denton, TX 76209

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

Gabby.Leeper@cityofdenton.com

IP Address: 198.49.140.10

**Record Tracking**

Status: Original

Holder: Gabby Leeper

Location: DocuSign

3/4/2024 11:29:41 AM

Gabby.Leeper@cityofdenton.com

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

Gabby Leeper

**Completed**

Sent: 3/4/2024 11:36:39 AM

gabby.leeper@cityofdenton.com

Viewed: 3/4/2024 11:37:04 AM

Buyer

Signed: 3/4/2024 11:37:45 AM

City of Denton

Using IP Address: 198.49.140.10

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

Not Offered via DocuSign

Lori Hewell



Sent: 3/4/2024 11:37:47 AM

lori.hewell@cityofdenton.com

Viewed: 3/4/2024 3:40:07 PM

Purchasing Manager

Signed: 3/4/2024 3:41:12 PM

City of Denton

Signature Adoption: Pre-selected Style

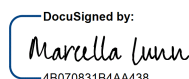
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**Electronic Record and Signature Disclosure:**

Not Offered via DocuSign

Marcella Lunn



Sent: 3/4/2024 3:41:15 PM

marcella.lunn@cityofdenton.com

Viewed: 3/6/2024 10:33:19 AM

Senior Deputy City Attorney

Signed: 3/6/2024 10:35:44 AM

City of Denton

Signature Adoption: Pre-selected Style

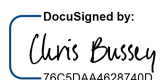
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**Electronic Record and Signature Disclosure:**

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Chris Bussey



Sent: 3/6/2024 10:35:47 AM

chris@rdinc.us

Viewed: 3/6/2024 5:49:30 PM

HD Regional Sales Manager

Signed: 3/6/2024 5:54:15 PM

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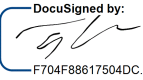
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**Electronic Record and Signature Disclosure:**

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Signer Events	Signature	Timestamp
Tom Gramer Tom.Gramer@cityofdenton.com Director Facilities and Fleet Security Level: Email, Account Authentication (None)	<div> DocuSigned by:    F704F88617504DC... </div> Signature Adoption: Drawn on Device Using IP Address: 174.224.11.211 Signed using mobile	Sent: 3/6/2024 5:54:18 PM Viewed: 3/6/2024 5:54:50 PM Signed: 3/6/2024 5:55:02 PM
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Cheyenne Defee cheyenne.defee@cityofdenton.com Procurement Administration Supervisor City of Denton Security Level: Email, Account Authentication (None)		Sent: 3/6/2024 5:55:05 PM
<b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign		
Sara Hensley sara.hensley@cityofdenton.com Security Level: Email, Account Authentication (None)		
<b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign		
Jesus Salazar jesus.salazar@cityofdenton.com Security Level: Email, Account Authentication (None)		
<b>Electronic Record and Signature Disclosure:</b> Accepted: 3/6/2024 1:10:06 PM ID: da891825-f76a-4433-8e64-4a86d2a4a868		

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)	<div>COPIED</div>	Sent: 3/4/2024 11:37:47 AM
<b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign		

Carbon Copy Events	Status	Timestamp
Gretna Jones gretna.jones@cityofdenton.com Legal Secretary City of Denton Security Level: Email, Account Authentication (None) <b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign  City Secretary Office citysecretary@cityofdenton.com Security Level: Email, Account Authentication (None) <b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign  Robin Melendez-Martin robin.melendez-martin@cityofdenton.com Security Level: Email, Account Authentication (None) <b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign	<div>COPIED</div>	Sent: 3/6/2024 5:55:05 PM Viewed: 3/7/2024 9:07:19 AM
Witness Events	Signature	Timestamp
Notary Events	Signature	Timestamp
Envelope Summary Events	Status	Timestamps
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Payment Events	Status	Timestamps
Electronic Record and Signature Disclosure		

## **ELECTRONIC RECORD AND SIGNATURE DISCLOSURE**

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

### **Getting paper copies**

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

### **Withdrawing your consent**

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

### **Consequences of changing your mind**

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

### **All notices and disclosures will be sent to you electronically**

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

**How to contact City of Denton:**

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

To contact us by email send messages to: [purchasing@cityofdenton.com](mailto: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](mailto: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](mailto: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](mailto: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"><li>•Allow per session cookies</li><li>•Users accessing the internet behind a Proxy Server must enable HTTP 1.1 settings via proxy connection</li></ul>

\*\* 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](http://www.cityofdenton.com)

## Legislation Text

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**File #:** ID 24-651, **Version:** 1

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### **AGENDA CAPTION**

Consider adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the City Manager to execute a contract with Frazer, LTD, through the Buy Board Cooperative Purchasing Network Contract Number 650-21, and through the Houston-Galveston Area Council of Governments (H-GAC) Cooperative Purchasing Program Contract Numbers AM10-20 & AM10-23, for the purchase of ambulances for the Fleet Services Department; providing for the expenditure of funds therefor; and providing an effective date (File 8495 - awarded to Frazer, LTD, for one (1) year, with the option for four (4) additional one (1) year extensions, in the total five (5) year not-to-exceed amount of \$4,200,000.00).



# City of Denton

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

## AGENDA INFORMATION SHEET

**DEPARTMENT:** Procurement  
**ACM:** Cassey Ogden  
**DATE:** April 2, 2024

### **SUBJECT**

Consider adoption of an ordinance of the City of Denton, a Texas home-rule municipal corporation, authorizing the City Manager to execute a contract with Frazer, LTD, through the Buy Board Cooperative Purchasing Network Contract Number 650-21, and through the Houston-Galveston Area Council of Governments (H-GAC) Cooperative Purchasing Program Contract Numbers AM10-20 & AM10-23, for the purchase of ambulances for the Fleet Services Department; providing for the expenditure of funds therefor; and providing an effective date (File 8495 – awarded to Frazer, LTD, for one (1) year, with the option for four (4) additional one (1) year extensions, in the total five (5) year not-to-exceed amount of \$4,200,000.00).

### **STRATEGIC ALIGNMENT**

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

### **INFORMATION/BACKGROUND**

The City of Denton Fleet Services Department has identified six (6) ambulances that will end their service life in the next five (5) years. The acquisition of new ambulances is accomplished through the coordinated efforts of Fleet Services and the Fire Department staff to ensure emergency vehicles and equipment are acquired and replaced promptly. Efficient replacement enhances the safe and efficient response capability of the Denton Fire Department. Ambulances are replaced based on a 10-point scale that takes into account asset age, maintenance costs, and mileage. Assets purchased on this contract will be used by the Fire Department for the health and welfare of Denton residents and visitors. Frazer, LTD provides a turn-key solution for the City's ambulance purchases.

Fleet Services anticipates purchasing two (2) replacement vehicles per year over the life of the five (5) year contract. The requested amount will take into consideration market price increases and any unforeseen emergency replacements of the vehicles.

Contract Usage	Projected Expenditures
Scheduled Vehicle Replacements	\$3,800,000
Contingency	400,000
<b>Total</b>	<b>\$4,200,000</b>

Pricing obtained through the Buy Board Cooperative Purchasing Network and Houston-Galveston Area Council of Governments (H-GAC) Cooperative Purchasing Program have been competitively bid and meet the statutory requirements of Texas Local Government Code 271.102.

### **PRIOR ACTION/REVIEW (COUNCIL, BOARDS, COMMISSIONS)**

On February 1, 2005, City Council approved the interlocal agreement with the Buy Board Cooperative Purchasing Network (Ordinance 2005-034).

On June 6, 1995, City Council approved the interlocal agreement with the H-GAC Cooperative Purchasing Network (Ordinance 1995-107).

### **RECOMMENDATION**

Award a contract with Frazer, LTD, for the purchase of ambulances for the Fleet Services Department, in a one (1) year, with the option for four (4) additional one (1) year extensions, in a total five (5) year not-to-exceed amount of \$4,200,000.

### **PRINCIPAL PLACE OF BUSINESS**

Frazer, LTD  
Houston, TX

### **ESTIMATED SCHEDULE OF PROJECT**

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

### **FISCAL INFORMATION**

These items will be funded through Capital Fund accounts. Requisitions will be entered on an as-needed basis. The budgeted amount for this item is \$4,200,000. 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: Cooperative Pricing Sheets  
Exhibit 3: Ordinance and Contract

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

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

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

**Section I: Ambulances complete with Chassis - Type I Ambulance** - Conventional truck, cab-chassis with modular ambulance body on various chassis (Ford, Chevrolet, GMC, Freightliner, Navistar, Dodge, International, Peterbilt, Kenworth, or other similar chassis), complete with all manufacturer's standard equipment. Include separate sheet with upgrade options to include all manufacturer options including alternative fuel choice equipment (CNG, LPG, etc.)

Quantity: 1 UOM: Each Price: \$449,400.00 Total: \$449,400.00

Manufacturer: Mobile Health or Command Vehicle 18' on International MV Diesel 4x2 Crew Cab

Manufacturer #: AM20HC31

Item Notes:

**NOTE 1:** Vendors should propose direct replacement models if a model type specified below has been discontinued by the manufacturer. All ambulances must meet or exceed all requirements of the latest version of KKK-A-1822F and also comply with or exceed all Federal Motor Vehicle Safety Standards, FMVSS. All vehicle fees to be charged for any purchase from this contract with the exception of delivery fees (i.e. pre delivery inspection, make ready, applicable state inspection fee, manufacturer destination fees, etc.) are to be included in the base price(s). Vehicle fees not included in the base price(s) will not be allowed. The Cooperative service fee for ambulances is not a "vehicle fee" and is not to be included in the base pricing.

**NOTE 2:** An awarded Vendor must be approved by the manufacturer to sell, install, and service the brand of equipment submitted. Proposers responding to this Proposal Invitation should submit an approval letter from each manufacturer. Manufacturer authorization letters must include the regions and/or states in which equipment may be sold.

**NOTE 3:** Vendors must provide a copy of their Franchise Motor Vehicle Dealer Certificate from Texas Department of Motor Vehicles and Manufacturer certificate from the Texas Department of Motor Vehicles or, if vendor proposes to serve states outside of the State of Texas, the applicable dealer license(s) for such state(s).

### Item Attributes

#### 1. State Brand of Chassis and Body

Frazer/Piller Interntl

### Alternate 1

**Section I: Ambulances complete with Chassis - Type I Ambulance** - Conventional truck, cab-chassis with modular ambulance body on various chassis (Ford, Chevrolet, GMC, Freightliner, Navistar, Dodge, International, Peterbilt, Kenworth, or other similar chassis), complete with all manufacturer's standard equipment. Include separate sheet with upgrade options to include all manufacturer options including alternative fuel choice equipment (CNG, LPG, etc.)

Quantity: 1 UOM: Each Price: \$449,400.00 Total: \$449,400.00

Manufacturer: Mobile Health or Command Vehicle 18' on Freightliner M2 Diesel 4x2 Crew Cab

Manufacturer #: AM20HC32

## Item Attributes

### 1. State Brand of Chassis and Body

Frazer/Hou Freightliner

## Alternate 2

**Section I: Ambulances complete with Chassis - Type I Ambulance** - Conventional truck, cab-chassis with modular ambulance body on various chassis (Ford, Chevrolet, GMC, Freightliner, Navistar, Dodge, International, Peterbilt, Kenworth, or other similar chassis), complete with all manufacturer's standard equipment. Include separate sheet with upgrade options to include all manufacturer options including alternative fuel choice equipment (CNG, LPG, etc.)

Quantity: 1 UOM: Each Price: \$455,820.00 Total: \$455,820.00

Manufacturer: Mobile Stroke Unit 14' on International MV Diesel 4x2 Reg Cab

Manufacturer #: AM20HC33

## Item Attributes

### 1. State Brand of Chassis and Body

Frazer/Piller Interntl

## Alternate 3

**Section I: Ambulances complete with Chassis - Type I Ambulance** - Conventional truck, cab-chassis with modular ambulance body on various chassis (Ford, Chevrolet, GMC, Freightliner, Navistar, Dodge, International, Peterbilt, Kenworth, or other similar chassis), complete with all manufacturer's standard equipment. Include separate sheet with upgrade options to include all manufacturer options including alternative fuel choice equipment (CNG, LPG, etc.)

Quantity: 1 UOM: Each Price: \$455,820.00 Total: \$455,820.00

Manufacturer: Mobile Stroke Unit 14' on Freightliner M2 Diesel 4x2 Crew Cab

Manufacturer #: AM20HC34

## Item Attributes

### 1. State Brand of Chassis and Body

Frazer/Hou Freightliner

## Alternate 4

**Section I: Ambulances complete with Chassis - Type I Ambulance** - Conventional truck, cab-chassis with modular ambulance body on various chassis (Ford, Chevrolet, GMC, Freightliner, Navistar, Dodge, International, Peterbilt, Kenworth, or other similar chassis), complete with all manufacturer's standard equipment. Include separate sheet with upgrade options to include all manufacturer options including alternative fuel choice equipment (CNG, LPG, etc.)

Quantity: 1 UOM: Each Price: \$185,110.00 Total: \$185,110.00

Manufacturer: Type I 12' on Chevy C3500 Diesel 4x2 Reg Cab

Manufacturer #: AM20HD01

## Item Attributes

### 1. State Brand of Chassis and Body

Frazer/Knapp Chevrolet

## Alternate 5

**Section I: Ambulances complete with Chassis - Type I Ambulance** - Conventional truck, cab-chassis with modular ambulance body on various chassis (Ford, Chevrolet, GMC, Freightliner, Navistar, Dodge, International, Peterbilt, Kenworth, or other similar chassis), complete with all manufacturer's standard equipment. Include separate sheet with upgrade options to include all manufacturer options including alternative fuel choice equipment (CNG, LPG, etc.)

Quantity: 1 UOM: Each Price: \$170,130.00 Total: \$170,130.00

Manufacturer: Type I 12' on Chevy C3500 Gas 4x2 Reg Cab

Manufacturer #: AM20HD02

## Item Attributes

### 1. State Brand of Chassis and Body

Frazer/Knapp Chevrolet

## Alternate 6

**Section I: Ambulances complete with Chassis - Type I Ambulance** - Conventional truck, cab-chassis with modular ambulance body on various chassis (Ford, Chevrolet, GMC, Freightliner, Navistar, Dodge, International, Peterbilt, Kenworth, or other similar chassis), complete with all manufacturer's standard equipment. Include separate sheet with upgrade options to include all manufacturer options including alternative fuel choice equipment (CNG, LPG, etc.)

Quantity: 1 UOM: Each Price: \$214,000.00 Total: \$214,000.00

Manufacturer: Type I 14' on Chevy C4500 Diesel 4X2 Reg Cab

Manufacturer #: AM20HD03

## Item Attributes

### 1. State Brand of Chassis and Body

Frazer/Knapp Chevrolet

## Alternate 7

**Section I: Ambulances complete with Chassis - Type I Ambulance** - Conventional truck, cab-chassis with modular ambulance body on various chassis (Ford, Chevrolet, GMC, Freightliner, Navistar, Dodge, International, Peterbilt, Kenworth, or other similar chassis), complete with all manufacturer's standard equipment. Include separate sheet with upgrade options to include all manufacturer options including alternative fuel choice equipment (CNG, LPG, etc.)

Quantity: 1 UOM: Each Price: \$184,040.00 Total: \$184,040.00

Manufacturer: Type I 12' on Ford F-350 Diesel 4x2 Reg Cab

Manufacturer #: AM20HD04

## Item Attributes

### 1. State Brand of Chassis and Body

Frazer/Sterl McCall Ford

## Alternate 8

**Section I: Ambulances complete with Chassis - Type I Ambulance** - Conventional truck, cab-chassis with modular ambulance body on various chassis (Ford, Chevrolet, GMC, Freightliner, Navistar, Dodge, International, Peterbilt, Kenworth, or other similar chassis), complete with all manufacturer's standard equipment. Include separate sheet with upgrade options to include all manufacturer options including alternative fuel choice equipment (CNG, LPG, etc.)

Quantity: 1 UOM: Each Price: \$173,340.00 Total: \$173,340.00

Manufacturer: Type I 12' on Ford F-350 Gas 4x2 Reg Cab

Manufacturer #: AM20HD05

## Item Attributes

### 1. State Brand of Chassis and Body

Frazer/Sterl McCall Ford

## Alternate 9

**Section I: Ambulances complete with Chassis - Type I Ambulance** - Conventional truck, cab-chassis with modular ambulance body on various chassis (Ford, Chevrolet, GMC, Freightliner, Navistar, Dodge, International, Peterbilt, Kenworth, or other similar chassis), complete with all manufacturer's standard equipment. Include separate sheet with upgrade options to include all manufacturer options including alternative fuel choice equipment (CNG, LPG, etc.)

Quantity: 1 UOM: Each Price: \$189,390.00 Total: \$189,390.00

Manufacturer: Type I 12' on Ford F-450 Diesel 4x2 Reg Cab

Manufacturer #: AM20HD06

## Item Attributes

### 1. State Brand of Chassis and Body

Frazer/Sterl McCall Ford

## Alternate 10

**Section I: Ambulances complete with Chassis - Type I Ambulance** - Conventional truck, cab-chassis with modular ambulance body on various chassis (Ford, Chevrolet, GMC, Freightliner, Navistar, Dodge, International, Peterbilt, Kenworth, or other similar chassis), complete with all manufacturer's standard equipment. Include separate sheet with upgrade options to include all manufacturer options including alternative fuel choice equipment (CNG, LPG, etc.)

Quantity: 1 UOM: Each Price: \$178,690.00 Total: \$178,690.00

Manufacturer: Type I 12' on Ford F-450 Gas 4x2 Reg Cab

Manufacturer #: AM20HD07



## Item Attributes

### 1. State Brand of Chassis and Body

Frazer/Sterl McCall Ford

## Alternate 11

**Section I: Ambulances complete with Chassis - Type I Ambulance** - Conventional truck, cab-chassis with modular ambulance body on various chassis (Ford, Chevrolet, GMC, Freightliner, Navistar, Dodge, International, Peterbilt, Kenworth, or other similar chassis), complete with all manufacturer's standard equipment. Include separate sheet with upgrade options to include all manufacturer options including alternative fuel choice equipment (CNG, LPG, etc.)

Quantity: 1 UOM: Each Price: \$178,690.00 Total: \$178,690.00

Manufacturer: Type I 12' on RAM 3500 Diesel 4x2 Reg Cab

Manufacturer #: AM20HD08

## Item Attributes

### 1. State Brand of Chassis and Body

Frazer/Mac Haik Dodge

## Alternate 12

**Section I: Ambulances complete with Chassis - Type I Ambulance** - Conventional truck, cab-chassis with modular ambulance body on various chassis (Ford, Chevrolet, GMC, Freightliner, Navistar, Dodge, International, Peterbilt, Kenworth, or other similar chassis), complete with all manufacturer's standard equipment. Include separate sheet with upgrade options to include all manufacturer options including alternative fuel choice equipment (CNG, LPG, etc.)

Quantity: 1 UOM: Each Price: \$167,990.00 Total: \$167,990.00

Manufacturer: Type I 12' on RAM 3500 Gas 4x2 Reg Cab

Manufacturer #: AM20HD09

## Item Attributes

### 1. State Brand of Chassis and Body

Frazer/Mac Haik Dodge

## Alternate 13

**Section I: Ambulances complete with Chassis - Type I Ambulance** - Conventional truck, cab-chassis with modular ambulance body on various chassis (Ford, Chevrolet, GMC, Freightliner, Navistar, Dodge, International, Peterbilt, Kenworth, or other similar chassis), complete with all manufacturer's standard equipment. Include separate sheet with upgrade options to include all manufacturer options including alternative fuel choice equipment (CNG, LPG, etc.)

Quantity: 1 UOM: Each Price: \$184,040.00 Total: \$184,040.00

Manufacturer: Type I 12' on RAM 4500 Diesel 4x2 Reg Cab

Manufacturer #: AM20HD10

## Item Attributes

### 1. State Brand of Chassis and Body

Frazer/Mac Haik Dodge

## Alternate 14

**Section I: Ambulances complete with Chassis - Type I Ambulance** - Conventional truck, cab-chassis with modular ambulance body on various chassis (Ford, Chevrolet, GMC, Freightliner, Navistar, Dodge, International, Peterbilt, Kenworth, or other similar chassis), complete with all manufacturer's standard equipment. Include separate sheet with upgrade options to include all manufacturer options including alternative fuel choice equipment (CNG, LPG, etc.)

Quantity: 1 UOM: Each Price: \$173,340.00 Total: \$173,340.00

Manufacturer: Type I 12' on RAM 4500 Gas 4x2 Reg Cab

Manufacturer #: AM20HD11

## Item Attributes

### 1. State Brand of Chassis and Body

Frazer/Mac Haik Dodge

## Alternate 15

**Section I: Ambulances complete with Chassis - Type I Ambulance** - Conventional truck, cab-chassis with modular ambulance body on various chassis (Ford, Chevrolet, GMC, Freightliner, Navistar, Dodge, International, Peterbilt, Kenworth, or other similar chassis), complete with all manufacturer's standard equipment. Include separate sheet with upgrade options to include all manufacturer options including alternative fuel choice equipment (CNG, LPG, etc.)

Quantity: 1 UOM: Each Price: \$196,880.00 Total: \$196,880.00

Manufacturer: Type I 14' on Ford F-450 Gas 4x2 Reg Cab

Manufacturer #: AM20HD12

## Item Attributes

### 1. State Brand of Chassis and Body

Frazer/Sterl McCall Ford

## Alternate 16

**Section I: Ambulances complete with Chassis - Type I Ambulance** - Conventional truck, cab-chassis with modular ambulance body on various chassis (Ford, Chevrolet, GMC, Freightliner, Navistar, Dodge, International, Peterbilt, Kenworth, or other similar chassis), complete with all manufacturer's standard equipment. Include separate sheet with upgrade options to include all manufacturer options including alternative fuel choice equipment (CNG, LPG, etc.)

Quantity: 1 UOM: Each Price: \$207,580.00 Total: \$207,580.00

Manufacturer: Type I 14' on Ford F-450 Diesel 4x2 Reg Cab

Manufacturer #: AM20HD13

## Item Attributes

### 1. State Brand of Chassis and Body

Frazer/Sterl McCall Ford

## Alternate 17

**Section I: Ambulances complete with Chassis - Type I Ambulance** - Conventional truck, cab-chassis with modular ambulance body on various chassis (Ford, Chevrolet, GMC, Freightliner, Navistar, Dodge, International, Peterbilt, Kenworth, or other similar chassis), complete with all manufacturer's standard equipment. Include separate sheet with upgrade options to include all manufacturer options including alternative fuel choice equipment (CNG, LPG, etc.)

Quantity: 1 UOM: Each Price: \$208,650.00 Total: \$208,650.00

Manufacturer: Type I 14' on Ford F-550 Diesel 4X2 Reg Cab

Manufacturer #: AM20HD14

## Item Attributes

### 1. State Brand of Chassis and Body

Frazer/Sterl McCall Ford

## Alternate 18

**Section I: Ambulances complete with Chassis - Type I Ambulance** - Conventional truck, cab-chassis with modular ambulance body on various chassis (Ford, Chevrolet, GMC, Freightliner, Navistar, Dodge, International, Peterbilt, Kenworth, or other similar chassis), complete with all manufacturer's standard equipment. Include separate sheet with upgrade options to include all manufacturer options including alternative fuel choice equipment (CNG, LPG, etc.)

Quantity: 1 UOM: Each Price: \$202,230.00 Total: \$202,230.00

Manufacturer: Type I 14' on RAM 4500 Diesel 4x2 Reg Cab

Manufacturer #: AM20HD15

## Item Attributes

### 1. State Brand of Chassis and Body

Frazer/Mac Haik Dodge

## Alternate 19

**Section I: Ambulances complete with Chassis - Type I Ambulance** - Conventional truck, cab-chassis with modular ambulance body on various chassis (Ford, Chevrolet, GMC, Freightliner, Navistar, Dodge, International, Peterbilt, Kenworth, or other similar chassis), complete with all manufacturer's standard equipment. Include separate sheet with upgrade options to include all manufacturer options including alternative fuel choice equipment (CNG, LPG, etc.)

Quantity: 1 UOM: Each Price: \$191,530.00 Total: \$191,530.00

Manufacturer: Type I 14' on RAM 4500 Gas 4x2 Reg Cab

Manufacturer #: AM20HD16

## Item Attributes

### 1. State Brand of Chassis and Body

Frazer/Mac Haik Dodge

## Alternate 20

**Section I: Ambulances complete with Chassis - Type I Ambulance** - Conventional truck, cab-chassis with modular ambulance body on various chassis (Ford, Chevrolet, GMC, Freightliner, Navistar, Dodge, International, Peterbilt, Kenworth, or other similar chassis), complete with all manufacturer's standard equipment. Include separate sheet with upgrade options to include all manufacturer options including alternative fuel choice equipment (CNG, LPG, etc.)

Quantity: 1 UOM: Each Price: \$203,300.00 Total: \$203,300.00

Manufacturer: Type I 14' on RAM 5500 Diesel 4x2 Reg Cab

Manufacturer #: AM20HD17

## Item Attributes

### 1. State Brand of Chassis and Body

Frazer/Mac Haik Dodge

## Alternate 21

**Section I: Ambulances complete with Chassis - Type I Ambulance** - Conventional truck, cab-chassis with modular ambulance body on various chassis (Ford, Chevrolet, GMC, Freightliner, Navistar, Dodge, International, Peterbilt, Kenworth, or other similar chassis), complete with all manufacturer's standard equipment. Include separate sheet with upgrade options to include all manufacturer options including alternative fuel choice equipment (CNG, LPG, etc.)

Quantity: 1 UOM: Each Price: \$191,530.00 Total: \$191,530.00

Manufacturer: Type I 14' on RAM 5500 Gas 4x2 Reg Cab

Manufacturer #: AM20HD18

## Item Attributes

### 1. State Brand of Chassis and Body

Frazer/Mac Haik Dodge

## Alternate 22

**Section I: Ambulances complete with Chassis - Type I Ambulance** - Conventional truck, cab-chassis with modular ambulance body on various chassis (Ford, Chevrolet, GMC, Freightliner, Navistar, Dodge, International, Peterbilt, Kenworth, or other similar chassis), complete with all manufacturer's standard equipment. Include separate sheet with upgrade options to include all manufacturer options including alternative fuel choice equipment (CNG, LPG, etc.)

Quantity: 1 UOM: Each Price: \$295,320.00 Total: \$295,320.00

Manufacturer: Type I 14' on International MV Diesel 4x2 Reg Cab

Manufacturer #: AM20HD19

## Item Attributes

### 1. State Brand of Chassis and Body

Frazer/Piller Interntl

## Alternate 23

**Section I: Ambulances complete with Chassis - Type I Ambulance** - Conventional truck, cab-chassis with modular ambulance body on various chassis (Ford, Chevrolet, GMC, Freightliner, Navistar, Dodge, International, Peterbilt, Kenworth, or other similar chassis), complete with all manufacturer's standard equipment. Include separate sheet with upgrade options to include all manufacturer options including alternative fuel choice equipment (CNG, LPG, etc.)

Quantity: 1 UOM: Each Price: \$295,320.00 Total: \$295,320.00

Manufacturer: Type I 14' on Freightliner M2 Diesel 4x2 Reg Cab

Manufacturer #: AM20HD20

## Item Attributes

### 1. State Brand of Chassis and Body

Frazer/Hou Freightliner

## Alternate 24

**Section I: Ambulances complete with Chassis - Type I Ambulance** - Conventional truck, cab-chassis with modular ambulance body on various chassis (Ford, Chevrolet, GMC, Freightliner, Navistar, Dodge, International, Peterbilt, Kenworth, or other similar chassis), complete with all manufacturer's standard equipment. Include separate sheet with upgrade options to include all manufacturer options including alternative fuel choice equipment (CNG, LPG, etc.)

Quantity: 1 UOM: Each Price: \$124,120.00 Total: \$124,120.00

Manufacturer: Type I 12' on Customer Provided Chassis

Manufacturer #: AM20HD25

## Item Attributes

### 1. State Brand of Chassis and Body

Frazer Ltd

## Alternate 25

**Section I: Ambulances complete with Chassis - Type I Ambulance** - Conventional truck, cab-chassis with modular ambulance body on various chassis (Ford, Chevrolet, GMC, Freightliner, Navistar, Dodge, International, Peterbilt, Kenworth, or other similar chassis), complete with all manufacturer's standard equipment. Include separate sheet with upgrade options to include all manufacturer options including alternative fuel choice equipment (CNG, LPG, etc.)

Quantity: 1 UOM: Each Price: \$141,240.00 Total: \$141,240.00

Manufacturer: Type I 14' on Customer Provided Chassis

Manufacturer #: AM20HD26

## Item Attributes

### 1. State Brand of Chassis and Body

Frazer Ltd

## Alternate 26

**Section I: Ambulances complete with Chassis - Type I Ambulance** - Conventional truck, cab-chassis with modular ambulance body on various chassis (Ford, Chevrolet, GMC, Freightliner, Navistar, Dodge, International, Peterbilt, Kenworth, or other similar chassis), complete with all manufacturer's standard equipment. Include separate sheet with upgrade options to include all manufacturer options including alternative fuel choice equipment (CNG, LPG, etc.)

Quantity: 1 UOM: Each Price: \$89,880.00 Total: \$89,880.00

Manufacturer: Remount of 12' Module on Chevy C3500 Diesel 4x2 Reg Cab

Manufacturer #: AM20HE01

## Item Attributes

### 1. State Brand of Chassis and Body

Frazer/Knapp Chevrolet

## Alternate 27

**Section I: Ambulances complete with Chassis - Type I Ambulance** - Conventional truck, cab-chassis with modular ambulance body on various chassis (Ford, Chevrolet, GMC, Freightliner, Navistar, Dodge, International, Peterbilt, Kenworth, or other similar chassis), complete with all manufacturer's standard equipment. Include separate sheet with upgrade options to include all manufacturer options including alternative fuel choice equipment (CNG, LPG, etc.)

Quantity: 1 UOM: Each Price: \$75,970.00 Total: \$75,970.00

Manufacturer: Remount of 12' Module on Chevy C3500 Gas 4x2 Reg Cab

Manufacturer #: AM20HE02

## Item Attributes

### 1. State Brand of Chassis and Body

Frazer/Knapp Chevrolet

## Alternate 28

**Section I: Ambulances complete with Chassis - Type I Ambulance** - Conventional truck, cab-chassis with modular ambulance body on various chassis (Ford, Chevrolet, GMC, Freightliner, Navistar, Dodge, International, Peterbilt, Kenworth, or other similar chassis), complete with all manufacturer's standard equipment. Include separate sheet with upgrade options to include all manufacturer options including alternative fuel choice equipment (CNG, LPG, etc.)

Quantity: 1 UOM: Each Price: \$101,650.00 Total: \$101,650.00

Manufacturer: Remount of 14' Module on Chevy C4500 Diesel 4X2 Reg Cab

Manufacturer #: AM20HE03

## Item Attributes

### 1. State Brand of Chassis and Body

Frazer/Knapp Chevrolet

## Alternate 29

**Section I: Ambulances complete with Chassis - Type I Ambulance** - Conventional truck, cab-chassis with modular ambulance body on various chassis (Ford, Chevrolet, GMC, Freightliner, Navistar, Dodge, International, Peterbilt, Kenworth, or other similar chassis), complete with all manufacturer's standard equipment. Include separate sheet with upgrade options to include all manufacturer options including alternative fuel choice equipment (CNG, LPG, etc.)

Quantity: 1 UOM: Each Price: \$88,810.00 Total: \$88,810.00

Manufacturer: Remount of 12' Module on Ford F-350 Diesel 4x2 Reg Cab

Manufacturer #: AM20HE04

## Item Attributes

### 1. State Brand of Chassis and Body

Frazer/Sterl McCall Ford

## Alternate 30

**Section I: Ambulances complete with Chassis - Type I Ambulance** - Conventional truck, cab-chassis with modular ambulance body on various chassis (Ford, Chevrolet, GMC, Freightliner, Navistar, Dodge, International, Peterbilt, Kenworth, or other similar chassis), complete with all manufacturer's standard equipment. Include separate sheet with upgrade options to include all manufacturer options including alternative fuel choice equipment (CNG, LPG, etc.)

Quantity: 1 UOM: Each Price: \$79,180.00 Total: \$79,180.00

Manufacturer: Remount of 12' on Ford F-350 Gas 4x2 Reg Cab

Manufacturer #: AM20HE05

## Item Attributes

### 1. State Brand of Chassis and Body

Frazer/Sterl McCall Ford

## Alternate 31

**Section I: Ambulances complete with Chassis - Type I Ambulance** - Conventional truck, cab-chassis with modular ambulance body on various chassis (Ford, Chevrolet, GMC, Freightliner, Navistar, Dodge, International, Peterbilt, Kenworth, or other similar chassis), complete with all manufacturer's standard equipment. Include separate sheet with upgrade options to include all manufacturer options including alternative fuel choice equipment (CNG, LPG, etc.)

Quantity: 1 UOM: Each Price: \$95,230.00 Total: \$95,230.00

Manufacturer: Remount of 12' Module on Ford F-450 Diesel 4x2 Reg Cab

Manufacturer #: AM20HE06



## Item Attributes

### 1. State Brand of Chassis and Body

Frazer/Sterl McCall Ford

## Alternate 32

**Section I: Ambulances complete with Chassis - Type I Ambulance** - Conventional truck, cab-chassis with modular ambulance body on various chassis (Ford, Chevrolet, GMC, Freightliner, Navistar, Dodge, International, Peterbilt, Kenworth, or other similar chassis), complete with all manufacturer's standard equipment. Include separate sheet with upgrade options to include all manufacturer options including alternative fuel choice equipment (CNG, LPG, etc.)

Quantity: 1 UOM: Each Price: \$83,460.00 Total: \$83,460.00

Manufacturer: Remount of 12' on Ford F-450 Gas 4x2 Reg Cab

Manufacturer #: AM20HE07

## Item Attributes

### 1. State Brand of Chassis and Body

Frazer/Sterl McCall Ford

## Alternate 33

**Section I: Ambulances complete with Chassis - Type I Ambulance** - Conventional truck, cab-chassis with modular ambulance body on various chassis (Ford, Chevrolet, GMC, Freightliner, Navistar, Dodge, International, Peterbilt, Kenworth, or other similar chassis), complete with all manufacturer's standard equipment. Include separate sheet with upgrade options to include all manufacturer options including alternative fuel choice equipment (CNG, LPG, etc.)

Quantity: 1 UOM: Each Price: \$83,460.00 Total: \$83,460.00

Manufacturer: Remount of 12' Module on RAM 3500 Diesel 4x2 Reg Cab

Manufacturer #: AM20HE08

## Item Attributes

### 1. State Brand of Chassis and Body

Frazer/Mac Haik Dodge

## Alternate 34

**Section I: Ambulances complete with Chassis - Type I Ambulance** - Conventional truck, cab-chassis with modular ambulance body on various chassis (Ford, Chevrolet, GMC, Freightliner, Navistar, Dodge, International, Peterbilt, Kenworth, or other similar chassis), complete with all manufacturer's standard equipment. Include separate sheet with upgrade options to include all manufacturer options including alternative fuel choice equipment (CNG, LPG, etc.)

Quantity: 1 UOM: Each Price: \$72,760.00 Total: \$72,760.00

Manufacturer: Remount of 12' Module on RAM 3500 Gas 4x2 Reg Cab

Manufacturer #: AM20HE09



## Item Attributes

### 1. State Brand of Chassis and Body

Frazer/Mac Haik Dodge

## Alternate 35

**Section I: Ambulances complete with Chassis - Type I Ambulance** - Conventional truck, cab-chassis with modular ambulance body on various chassis (Ford, Chevrolet, GMC, Freightliner, Navistar, Dodge, International, Peterbilt, Kenworth, or other similar chassis), complete with all manufacturer's standard equipment. Include separate sheet with upgrade options to include all manufacturer options including alternative fuel choice equipment (CNG, LPG, etc.)

Quantity: 1 UOM: Each Price: \$88,810.00 Total: \$88,810.00

Manufacturer: Remount of 12' Module on RAM 4500 Diesel 4x2 Reg Cab

Manufacturer #: AM20HE10

## Item Attributes

### 1. State Brand of Chassis and Body

Frazer/Mac Haik Dodge

## Alternate 36

**Section I: Ambulances complete with Chassis - Type I Ambulance** - Conventional truck, cab-chassis with modular ambulance body on various chassis (Ford, Chevrolet, GMC, Freightliner, Navistar, Dodge, International, Peterbilt, Kenworth, or other similar chassis), complete with all manufacturer's standard equipment. Include separate sheet with upgrade options to include all manufacturer options including alternative fuel choice equipment (CNG, LPG, etc.)

Quantity: 1 UOM: Each Price: \$78,110.00 Total: \$78,110.00

Manufacturer: Remount of 12' Module on RAM 4500 Gas 4x2 Reg Cab

Manufacturer #: AM20HE11

## Item Attributes

### 1. State Brand of Chassis and Body

Frazer/Mac Haik Dodge

## Alternate 37

**Section I: Ambulances complete with Chassis - Type I Ambulance** - Conventional truck, cab-chassis with modular ambulance body on various chassis (Ford, Chevrolet, GMC, Freightliner, Navistar, Dodge, International, Peterbilt, Kenworth, or other similar chassis), complete with all manufacturer's standard equipment. Include separate sheet with upgrade options to include all manufacturer options including alternative fuel choice equipment (CNG, LPG, etc.)

Quantity: 1 UOM: Each Price: \$84,530.00 Total: \$84,530.00

Manufacturer: Remount of 14' Module on Ford F-450 Diesel 4x2 Reg Cab

Manufacturer #: AM20HE12

## Item Attributes

### 1. State Brand of Chassis and Body

Frazer/Sterl McCall Ford

## Alternate 38

**Section I: Ambulances complete with Chassis - Type I Ambulance** - Conventional truck, cab-chassis with modular ambulance body on various chassis (Ford, Chevrolet, GMC, Freightliner, Navistar, Dodge, International, Peterbilt, Kenworth, or other similar chassis), complete with all manufacturer's standard equipment. Include separate sheet with upgrade options to include all manufacturer options including alternative fuel choice equipment (CNG, LPG, etc.)

Quantity: 1 UOM: Each Price: \$96,300.00 Total: \$96,300.00

Manufacturer: Remount of 14' Module on Ford F-550 Diesel 4X2 Reg Cab

Manufacturer #: AM20HE14

## Item Attributes

### 1. State Brand of Chassis and Body

Frazer/Sterl McCall Ford

## Alternate 39

**Section I: Ambulances complete with Chassis - Type I Ambulance** - Conventional truck, cab-chassis with modular ambulance body on various chassis (Ford, Chevrolet, GMC, Freightliner, Navistar, Dodge, International, Peterbilt, Kenworth, or other similar chassis), complete with all manufacturer's standard equipment. Include separate sheet with upgrade options to include all manufacturer options including alternative fuel choice equipment (CNG, LPG, etc.)

Quantity: 1 UOM: Each Price: \$88,810.00 Total: \$88,810.00

Manufacturer: Remount of 14' Module on RAM 4500 Diesel 4x2 Reg Cab

Manufacturer #: AM20HE15

## Item Attributes

### 1. State Brand of Chassis and Body

Frazer/Mac Haik Dodge

## Alternate 40

**Section I: Ambulances complete with Chassis - Type I Ambulance** - Conventional truck, cab-chassis with modular ambulance body on various chassis (Ford, Chevrolet, GMC, Freightliner, Navistar, Dodge, International, Peterbilt, Kenworth, or other similar chassis), complete with all manufacturer's standard equipment. Include separate sheet with upgrade options to include all manufacturer options including alternative fuel choice equipment (CNG, LPG, etc.)

Quantity: 1 UOM: Each Price: \$78,110.00 Total: \$78,110.00

Manufacturer: Remount of 14' Module on RAM 4500 Gas 4x2 Reg Cab

Manufacturer #: AM20HE16

## Item Attributes

### 1. State Brand of Chassis and Body

Frazer/Mac Haik Dodge

## Alternate 41

**Section I: Ambulances complete with Chassis - Type I Ambulance** - Conventional truck, cab-chassis with modular ambulance body on various chassis (Ford, Chevrolet, GMC, Freightliner, Navistar, Dodge, International, Peterbilt, Kenworth, or other similar chassis), complete with all manufacturer's standard equipment. Include separate sheet with upgrade options to include all manufacturer options including alternative fuel choice equipment (CNG, LPG, etc.)

Quantity: 1 UOM: Each Price: \$89,880.00 Total: \$89,880.00

Manufacturer: Remount of 14' Module on RAM 5500 Diesel 4x2 Reg Cab

Manufacturer #: AM20HE17

## Item Attributes

### 1. State Brand of Chassis and Body

Frazer/Mac Haik Dodge

## Alternate 42

**Section I: Ambulances complete with Chassis - Type I Ambulance** - Conventional truck, cab-chassis with modular ambulance body on various chassis (Ford, Chevrolet, GMC, Freightliner, Navistar, Dodge, International, Peterbilt, Kenworth, or other similar chassis), complete with all manufacturer's standard equipment. Include separate sheet with upgrade options to include all manufacturer options including alternative fuel choice equipment (CNG, LPG, etc.)

Quantity: 1 UOM: Each Price: \$79,180.00 Total: \$79,180.00

Manufacturer: Remount of 14' on RAM 5500 Gas 4x2 Reg Cab

Manufacturer #: AM20HE18

## Item Attributes

### 1. State Brand of Chassis and Body

Frazer/Mac Haik Dodge

## Alternate 43

**Section I: Ambulances complete with Chassis - Type I Ambulance** - Conventional truck, cab-chassis with modular ambulance body on various chassis (Ford, Chevrolet, GMC, Freightliner, Navistar, Dodge, International, Peterbilt, Kenworth, or other similar chassis), complete with all manufacturer's standard equipment. Include separate sheet with upgrade options to include all manufacturer options including alternative fuel choice equipment (CNG, LPG, etc.)

Quantity: 1 UOM: Each Price: \$181,900.00 Total: \$181,900.00

Manufacturer: Remount of 14' Module on International MV Diesel 4x2 Reg Cab

Manufacturer #: AM20HE19

## Item Attributes

### 1. State Brand of Chassis and Body

Frazer/Piller Interntl

## Alternate 44

**Section I: Ambulances complete with Chassis - Type I Ambulance** - Conventional truck, cab-chassis with modular ambulance body on various chassis (Ford, Chevrolet, GMC, Freightliner, Navistar, Dodge, International, Peterbilt, Kenworth, or other similar chassis), complete with all manufacturer's standard equipment. Include separate sheet with upgrade options to include all manufacturer options including alternative fuel choice equipment (CNG, LPG, etc.)

Quantity: 1 UOM: Each Price: \$181,900.00 Total: \$181,900.00

Manufacturer: Remount of 14' Module on Freightliner M2 Diesel 4x2 Reg Cab

Manufacturer #: AM20HE20

## Item Attributes

### 1. State Brand of Chassis and Body

Frazer/Hou Freightliner

## Alternate 45

**Section I: Ambulances complete with Chassis - Type I Ambulance** - Conventional truck, cab-chassis with modular ambulance body on various chassis (Ford, Chevrolet, GMC, Freightliner, Navistar, Dodge, International, Peterbilt, Kenworth, or other similar chassis), complete with all manufacturer's standard equipment. Include separate sheet with upgrade options to include all manufacturer options including alternative fuel choice equipment (CNG, LPG, etc.)

Quantity: 1 UOM: Each Price: \$28,890.00 Total: \$28,890.00

Manufacturer: Remount of 12' Module on Customer Provided Chassis

Manufacturer #: AM20HE43

## Item Attributes

### 1. State Brand of Chassis and Body

Frazer Ltd

## Alternate 46

**Section I: Ambulances complete with Chassis - Type I Ambulance** - Conventional truck, cab-chassis with modular ambulance body on various chassis (Ford, Chevrolet, GMC, Freightliner, Navistar, Dodge, International, Peterbilt, Kenworth, or other similar chassis), complete with all manufacturer's standard equipment. Include separate sheet with upgrade options to include all manufacturer options including alternative fuel choice equipment (CNG, LPG, etc.)

Quantity: 1 UOM: Each Price: \$28,890.00 Total: \$28,890.00

Manufacturer: Remount of 14' Module on Customer Provided Chassis

Manufacturer #: AM20HE44

## Item Attributes

### 1. State Brand of Chassis and Body

Frazer Ltd

2

**Section I: Ambulances complete with Chassis - Type II Ambulance** - Standard van, integral cab-body ambulance on various chassis (Ford, Chevrolet, GMC, Freightliner, Navistar, Dodge, International, Peterbilt, Kenworth, or other similar chassis), complete with all manufacturer's standard equipment. Include separate sheet with upgrade options to include all manufacturer options including alternative fuel choice equipment (CNG, LPG, etc.)

Quantity: 1 UOM: Each

**No Bid**

Manufacturer: No response

Manufacturer #: No response

Item Notes:

**NOTE 1:** Vendors should propose direct replacement models if a model type specified below has been discontinued by the manufacturer. All ambulances must meet or exceed all requirements of the latest version of KKK-A-1822F and also comply with or exceed all Federal Motor Vehicle Safety Standards, FMVSS. All vehicle fees to be charged for any purchase from this contract with the exception of delivery fees (i.e. pre delivery inspection, make ready, applicable state inspection fee, manufacturer destination fees, etc.) are to be included in the base price(s). Vehicle fees not included in the base price(s) will not be allowed. The Cooperative service fee for ambulances is not a "vehicle fee" and is not to be included in the base pricing.

**NOTE 2:** An awarded Vendor must be approved by the manufacturer to sell, install, and service the brand of equipment submitted. Proposers responding to this Proposal Invitation should submit an approval letter from each manufacturer. Manufacturer authorization letters must include the regions and/or states in which equipment may be sold.

**NOTE 3:** Vendors must provide a copy of their Franchise Motor Vehicle Dealer Certificate from Texas Department of Motor Vehicles and Manufacturer certificate from the Texas Department of Motor Vehicles or, if vendor proposes to serve states outside of the State of Texas, the applicable dealer license(s) for such state(s).

## Item Attributes

### 1. State Brand of Chassis and Body

No response

**Section I: Ambulances complete with Chassis - Type III Ambulance** - Cutaway van, cab-chassis with integral or containerized modular body ambulance on various chassis (Ford, Chevrolet, GMC, Freightliner, Navistar, Dodge, International, Peterbilt, Kenworth, or other similar chassis), complete with all manufacturer's standard equipment. Include separate sheet with upgrade options to include all manufacturer options including alternative fuel choice equipment (CNG, LPG, etc.)

Quantity: 1 UOM: Each Price: \$167,990.00 Total: \$167,990.00

Manufacturer: Type III 12' on Chevy G3500 Gas 4x2 Reg Cab

Manufacturer #: AM20HD21

Item Notes:

**NOTE 1:** Vendors should propose direct replacement models if a model type specified below has been discontinued by the manufacturer. All ambulances must meet or exceed all requirements of the latest version of KKK-A-1822F and also comply with or exceed all Federal Motor Vehicle Safety Standards, FMVSS. All vehicle fees to be charged for any purchase from this contract with the exception of delivery fees (i.e. pre delivery inspection, make ready, applicable state inspection fee, manufacturer destination fees, etc.) are to be included in the base price(s). Vehicle fees not included in the base price(s) will not be allowed. The Cooperative service fee is for ambulances not a "vehicle fee" and is not to be included in the base pricing.

**NOTE 2:** An awarded Vendor must be approved by the manufacturer to sell, install, and service the brand of equipment submitted. Proposers responding to this Proposal Invitation should submit an approval letter from each manufacturer. Manufacturer authorization letters must include the regions and/or states in which equipment may be sold.

**NOTE 3:** Vendors must provide a copy of their Franchise Motor Vehicle Dealer Certificate from Texas Department of Motor Vehicles and Manufacturer certificate from the Texas Department of Motor Vehicles or, if vendor proposes to serve states outside of the State of Texas, the applicable dealer license(s) for such state(s).

### Item Attributes

#### 1. State Brand of Chassis and Body

Frazer/Knapp Chevrolet

### Alternate 1

**Section I: Ambulances complete with Chassis - Type III Ambulance** - Cutaway van, cab-chassis with integral or containerized modular body ambulance on various chassis (Ford, Chevrolet, GMC, Freightliner, Navistar, Dodge, International, Peterbilt, Kenworth, or other similar chassis), complete with all manufacturer's standard equipment. Include separate sheet with upgrade options to include all manufacturer options including alternative fuel choice equipment (CNG, LPG, etc.)

Quantity: 1 UOM: Each Price: \$173,340.00 Total: \$173,340.00

Manufacturer: Type III 12' on Ford E-350 Gas 4x2 Reg Cab

Manufacturer #: AM20HD22

## Item Attributes

### 1. State Brand of Chassis and Body

Frazer/Sterl McCall Ford

## Alternate 2

**Section I: Ambulances complete with Chassis - Type III Ambulance** - Cutaway van, cab-chassis with integral or containerized modular body ambulance on various chassis (Ford, Chevrolet, GMC, Freightliner, Navistar, Dodge, International, Peterbilt, Kenworth, or other similar chassis), complete with all manufacturer's standard equipment. Include separate sheet with upgrade options to include all manufacturer options including alternative fuel choice equipment (CNG, LPG, etc.)

Quantity: 1 UOM: Each Price: \$173,340.00 Total: \$173,340.00

Manufacturer: Type III 12' on Ford E-350 Gas 4x2 Reg Cab

Manufacturer #: AM20HD22

## Item Attributes

### 1. State Brand of Chassis and Body

Frazer/Sterl McCall Ford

## Alternate 3

**Section I: Ambulances complete with Chassis - Type III Ambulance** - Cutaway van, cab-chassis with integral or containerized modular body ambulance on various chassis (Ford, Chevrolet, GMC, Freightliner, Navistar, Dodge, International, Peterbilt, Kenworth, or other similar chassis), complete with all manufacturer's standard equipment. Include separate sheet with upgrade options to include all manufacturer options including alternative fuel choice equipment (CNG, LPG, etc.)

Quantity: 1 UOM: Each Price: \$188,320.00 Total: \$188,320.00

Manufacturer: Type III 14' on Chevy G4500 Gas 4x2 Reg Cab

Manufacturer #: AM20HD23

## Item Attributes

### 1. State Brand of Chassis and Body

Frazer/Knapp Chevrolet

## Alternate 4

**Section I: Ambulances complete with Chassis - Type III Ambulance** - Cutaway van, cab-chassis with integral or containerized modular body ambulance on various chassis (Ford, Chevrolet, GMC, Freightliner, Navistar, Dodge, International, Peterbilt, Kenworth, or other similar chassis), complete with all manufacturer's standard equipment. Include separate sheet with upgrade options to include all manufacturer options including alternative fuel choice equipment (CNG, LPG, etc.)

Quantity: 1 UOM: Each Price: \$193,670.00 Total: \$193,670.00

Manufacturer: Type III 14' on Ford E-450 Gas 4x2 Reg Cab

Manufacturer #: AM20HD24



## Item Attributes

### 1. State Brand of Chassis and Body

Frazer/Sterl McCall Ford

## Alternate 5

**Section I: Ambulances complete with Chassis - Type III Ambulance** - Cutaway van, cab-chassis with integral or containerized modular body ambulance on various chassis (Ford, Chevrolet, GMC, Freightliner, Navistar, Dodge, International, Peterbilt, Kenworth, or other similar chassis), complete with all manufacturer's standard equipment. Include separate sheet with upgrade options to include all manufacturer options including alternative fuel choice equipment (CNG, LPG, etc.)

Quantity: 1 UOM: Each Price: \$128,400.00 Total: \$128,400.00

Manufacturer: Type III 12' on Customer Provided Chassis

Manufacturer #: AM20HD27

## Item Attributes

### 1. State Brand of Chassis and Body

Frazer Ltd

## Alternate 6

**Section I: Ambulances complete with Chassis - Type III Ambulance** - Cutaway van, cab-chassis with integral or containerized modular body ambulance on various chassis (Ford, Chevrolet, GMC, Freightliner, Navistar, Dodge, International, Peterbilt, Kenworth, or other similar chassis), complete with all manufacturer's standard equipment. Include separate sheet with upgrade options to include all manufacturer options including alternative fuel choice equipment (CNG, LPG, etc.)

Quantity: 1 UOM: Each Price: \$146,590.00 Total: \$146,590.00

Manufacturer: Type III 14' on Customer Provided Chassis

Manufacturer #: AM20HD28

## Item Attributes

### 1. State Brand of Chassis and Body

Frazer Ltd

## Alternate 7

**Section I: Ambulances complete with Chassis - Type III Ambulance** - Cutaway van, cab-chassis with integral or containerized modular body ambulance on various chassis (Ford, Chevrolet, GMC, Freightliner, Navistar, Dodge, International, Peterbilt, Kenworth, or other similar chassis), complete with all manufacturer's standard equipment. Include separate sheet with upgrade options to include all manufacturer options including alternative fuel choice equipment (CNG, LPG, etc.)

Quantity: 1 UOM: Each Price: \$67,410.00 Total: \$67,410.00

Manufacturer: Remount of 12' Module on Chevy G3500 Gas 4x2 Reg Cab

Manufacturer #: AM20HE21



## Item Attributes

### 1. State Brand of Chassis and Body

Frazer/Knapp Chevrolet

## Alternate 8

**Section I: Ambulances complete with Chassis - Type III Ambulance** - Cutaway van, cab-chassis with integral or containerized modular body ambulance on various chassis (Ford, Chevrolet, GMC, Freightliner, Navistar, Dodge, International, Peterbilt, Kenworth, or other similar chassis), complete with all manufacturer's standard equipment. Include separate sheet with upgrade options to include all manufacturer options including alternative fuel choice equipment (CNG, LPG, etc.)

Quantity: 1 UOM: Each Price: \$72,760.00 Total: \$72,760.00

Manufacturer: Remount of 12' Module on Ford E-350 Gas 4x2 Reg Cab

Manufacturer #: AM20HE22

## Item Attributes

### 1. State Brand of Chassis and Body

Frazer/Sterl McCall Ford

## Alternate 9

**Section I: Ambulances complete with Chassis - Type III Ambulance** - Cutaway van, cab-chassis with integral or containerized modular body ambulance on various chassis (Ford, Chevrolet, GMC, Freightliner, Navistar, Dodge, International, Peterbilt, Kenworth, or other similar chassis), complete with all manufacturer's standard equipment. Include separate sheet with upgrade options to include all manufacturer options including alternative fuel choice equipment (CNG, LPG, etc.)

Quantity: 1 UOM: Each Price: \$70,620.00 Total: \$70,620.00

Manufacturer: Remount of 14' Module on Chevy G4500 Gas 4x2 Reg Cab

Manufacturer #: AM20HE23

## Item Attributes

### 1. State Brand of Chassis and Body

Frazer/Knapp Chevrolet

## Alternate 10

**Section I: Ambulances complete with Chassis - Type III Ambulance** - Cutaway van, cab-chassis with integral or containerized modular body ambulance on various chassis (Ford, Chevrolet, GMC, Freightliner, Navistar, Dodge, International, Peterbilt, Kenworth, or other similar chassis), complete with all manufacturer's standard equipment. Include separate sheet with upgrade options to include all manufacturer options including alternative fuel choice equipment (CNG, LPG, etc.)

Quantity: 1 UOM: Each Price: \$74,900.00 Total: \$74,900.00

Manufacturer: Remount of 14' Module on Ford E-450 Gas 4x2 Reg Cab

Manufacturer #: AM20HE24

## Item Attributes

### 1. State Brand of Chassis and Body

Frazer/Sterl McCall Ford

4

**Section I: Ambulances complete with Chassis - Type VII Ambulance** - Cutaway van, cab-chassis with integral or containerized modular body ambulance on various chassis (Ford, Chevrolet, GMC, Freightliner, Navistar, Dodge, International, Peterbilt, Kenworth, or other similar chassis), complete with all manufacturer's standard equipment. Include separate sheet with upgrade options to include all manufacturer options including alternative fuel choice equipment (CNG, LPG, etc.)

Quantity: 1 UOM: Each

**No Bid**

Manufacturer: No response

Manufacturer #: No response

Item Notes:

**NOTE 1:** Vendors should propose direct replacement models if a model type specified below has been discontinued by the manufacturer. All ambulances must meet or exceed all requirements of the latest version of KKK-A-1822F and also comply with or exceed all Federal Motor Vehicle Safety Standards, FMVSS. All vehicle fees to be charged for any purchase from this contract with the exception of delivery fees (i.e. pre delivery inspection, make ready, applicable state inspection fee, manufacturer destination fees, etc.) are to be included in the base price(s). Vehicle fees not included in the base price(s) will not be allowed. The Cooperative service fee for ambulances is not a "vehicle fee" and is not to be included in the base pricing.

**NOTE 2:** An awarded Vendor must be approved by the manufacturer to sell, install, and service the brand of equipment submitted. Proposers responding to this Proposal Invitation should submit an approval letter from each manufacturer. Manufacturer authorization letters must include the regions and/or states in which equipment may be sold.

**NOTE 3:** Vendors must provide a copy of their Franchise Motor Vehicle Dealer Certificate from Texas Department of Motor Vehicles and Manufacturer certificate from the Texas Department of Motor Vehicles or, if vendor proposes to serve states outside of the State of Texas, the applicable dealer license(s) for such state(s).

## Item Attributes

### 1. State Brand of Chassis and Body

No response

**Section I: Ambulances complete with Chassis - Type IX Ambulance** - Cutaway van, cab-chassis with integral or containerized modular body ambulance on various chassis (Ford, Chevrolet, GMC, Freightliner, Navistar, Dodge, International, Peterbilt, Kenworth, or other similar chassis), complete with all manufacturer's standard equipment. Include separate sheet with upgrade options to include all manufacturer options including alternative fuel choice equipment (CNG, LPG, etc.)

Quantity: 1 UOM: Each

**No Bid**

Manufacturer: No response

Manufacturer #: No response

Item Notes:

**NOTE 1:** Vendors should propose direct replacement models if a model type specified below has been discontinued by the manufacturer. All ambulances must meet or exceed all requirements of the latest version of KKK-A-1822F and also comply with or exceed all Federal Motor Vehicle Safety Standards, FMVSS. All vehicle fees to be charged for any purchase from this contract with the exception of delivery fees (i.e. pre delivery inspection, make ready, applicable state inspection fee, manufacturer destination fees, etc.) are to be included in the base price(s). Vehicle fees not included in the base price(s) will not be allowed. The Cooperative service fee for ambulances is not a "vehicle fee" and is not to be included in the base pricing.

**NOTE 2:** An awarded Vendor must be approved by the manufacturer to sell, install, and service the brand of equipment submitted. Proposers responding to this Proposal Invitation should submit an approval letter from each manufacturer. Manufacturer authorization letters must include the regions and/or states in which equipment may be sold.

**NOTE 3:** Vendors must provide a copy of their Franchise Motor Vehicle Dealer Certificate from Texas Department of Motor Vehicles and Manufacturer certificate from the Texas Department of Motor Vehicles or, if vendor proposes to serve states outside of the State of Texas, the applicable dealer license(s) for such state(s).

### Item Attributes

#### 1. State Brand of Chassis and Body

No response

**Section II: OPTIONAL EQUIPMENT and PARTS** - Discount (%) off catalog/pricelist for **Original Equipment Manufacturer (OEM) Options**. Catalog/Pricelist MUST be included or proposal will not be considered.

Total:

Item Notes:

Options will be selected by the Cooperative member at the time of order. A COMPLETE LIST OF ALL OPTIONAL EQUIPMENT AND PARTS MUST BE SUBMITTED WITH PROPOSAL FOR PROPOSAL TO BE CONSIDERED!

Vendors proposing various manufacturer product lines per line item must submit the information as follows or proposal may not be considered:

- Vendor's must list one specific percentage discount for each Manufacturer listed.
- Additional/Alternate Manufacturer lines must submitted by selecting "Add Alternate."

**Item Attributes**

**1. State Name of Catalog/Pricelist**

**Section II: OPTIONAL EQUIPMENT and PARTS** - Discount (%) off catalog/pricelist for **Third Party (not OEM) and Unpublished Options and Equipment**. Catalog/Pricelist MUST be included or proposal will not be considered.

**No Bid**

Item Notes:

Options will be selected by the Cooperative member at the time of order. A COMPLETE LIST OF ALL OPTIONAL EQUIPMENT AND PARTS MUST BE SUBMITTED WITH PROPOSAL FOR PROPOSAL TO BE CONSIDERED!

Vendors proposing various manufacturer product lines per line item must submit the information as follows or proposal may not be considered:

- Vendor's must list one specific percentage discount for each Manufacturer listed.
- Additional/Alternate Manufacturer lines must submitted by selecting "Add Alternate."

## Item Attributes

### 1. State Name of Catalog/Pricelist

No response

## 8 **Section II: OPTIONAL EQUIPMENT and PARTS**- Discount (%) off catalog/pricelist for **Original Equipment Manufacturer (OEM) Parts**.

Total:

### Item Notes:

Options will be selected by the Cooperative member at the time of order. A COMPLETE LIST OF ALL OPTIONAL EQUIPMENT AND PARTS MUST BE SUBMITTED WITH PROPOSAL FOR PROPOSAL TO BE CONSIDERED!

Vendors proposing various manufacturer product lines per line item must submit the information as follows or proposal may not be considered:

- Vendor's must list one specific percentage discount for each Manufacturer listed.
- Additional/Alternate Manufacturer lines must submitted by selecting "Add Alternate."

## Item Attributes

### 1. State Name of Catalog/Pricelist

BuyBoard 2021

## 9 **Section II: OPTIONAL EQUIPMENT and PARTS** - Discount (%) off catalog/pricelist for **Extended Service Maintenance Agreements**. Catalog/Pricelist MUST be included or proposal will not be considered.

Total:

### Item Notes:

Options will be selected by the Cooperative member at the time of order. A COMPLETE LIST OF ALL OPTIONAL EQUIPMENT AND PARTS MUST BE SUBMITTED WITH PROPOSAL FOR PROPOSAL TO BE CONSIDERED!

Vendors proposing various manufacturer product lines per line item must submit the information as follows or proposal may not be considered:

- Vendor's must list one specific percentage discount for each Manufacturer listed.
- Additional/Alternate Manufacturer lines must submitted by selecting "Add Alternate."

## Item Attributes

### 1. State Name of Catalog/Pricelist

BuyBoard 2021

1  
0

**Section II: OPTIONAL EQUIPMENT and PARTS** - Discount (%) off catalog/pricelist for **Floor Plan Insurance and Lot Insurance (dealer inventory ambulance)**. Catalog/Pricelist MUST be included or proposal will not be considered.

**No Bid**

#### Item Notes:

Options will be selected by the Cooperative member at the time of order. A COMPLETE LIST OF ALL OPTIONAL EQUIPMENT AND PARTS MUST BE SUBMITTED WITH PROPOSAL FOR PROPOSAL TO BE CONSIDERED!

Vendors proposing various manufacturer product lines per line item must submit the information as follows or proposal may not be considered:

- Vendor's must list one specific percentage discount for each Manufacturer listed.
- Additional/Alternate Manufacturer lines must submitted by selecting "Add Alternate."

## Item Attributes

### 1. State Name of Catalog/Pricelist

No response

1  
1

**Section II: OPTIONAL EQUIPMENT and PARTS** - Discount (%) off catalog/pricelist for **Other Ambulance Products and Services** (refurbishing, modification, uplifting, remounting services and equipment). Catalog/Pricelist MUST be included or proposal will not be considered.

Total:  0%

Item Notes:

Options will be selected by the Cooperative member at the time of order. A COMPLETE LIST OF ALL OPTIONAL EQUIPMENT AND PARTS MUST BE SUBMITTED WITH PROPOSAL FOR PROPOSAL TO BE CONSIDERED!

Vendors proposing various manufacturer product lines per line item must submit the information as follows or proposal may not be considered:

- Vendor's must list one specific percentage discount for each Manufacturer listed.
- Additional/Alternate Manufacturer lines must submitted by selecting "Add Alternate."

**Item Attributes****1. State Name of Catalog/Pricelist** BuyBoard 20211  
2

**Section III: Delivery Fees and Labor Rate for Installation and Repair Service of Ambulances - Hourly Labor Rate for Installation/Repair Service of Ambulance Equipment and Products**- not to exceed hourly labor rate for Installation/Repair Service of Equipment and Products.

Quantity:   1   UOM: Hour Price:  \$150.00 Total:  \$150.001  
3

**Section III: Delivery Fees and Labor Rate for Installation and Repair Service of Ambulances- Hourly Labor Rate for Paint and Body Repair of Ambulances** - not to exceed labor rate for Paint and Body Repair.

Quantity:   1   UOM: Hour Price:  \$150.00 Total:  \$150.001  
4

**Section III: Delivery Fees and Labor Rate for Installation and Repair Service of Ambulances - Per Mile Delivery Fee for Ambulances** - state the per mile delivery fee for Ambulances.

Quantity:   1   UOM: Mile Price:  \$5.00 Total:  \$5.00**Response Total: \$617,695.00**

**Attachment A**  
**Frazer, Ltd.**  
**Ambulances, EMS & Special Service Vehicles**  
**Contract No.: AM10-23**

Manufacturer	Product	Item Description	Offered List Price	HGACBuy Discount
		<b>Category A - Ambulance</b>		
Frazer, Ltd.	Type I - 12'	Ram 3500 Diesel 4x2 Reg Cab-84"CA w/ Steel wheels	\$ 208,500.00	0%
Frazer, Ltd.	Type I - 12'	Ram 3500 Gas 4x2 Reg Cab-84"CA w/ Steel wheels	\$ 189,000.00	0%
Frazer, Ltd.	Type I - 12'	Ram 3500 Diesel 4x4 Reg Cab-84"CA w/ Steel wheels	\$ 215,750.00	0%
Frazer, Ltd.	Type I - 12'	Ram 3500 Gas 4x4 Reg Cab-84"CA w/ Steel wheels	\$ 206,500.00	0%
Frazer, Ltd.	Type I - 12'	Ram 4500 Diesel 4x4 Reg Cab-84"CA w/ Aluminum wheels	\$ 223,500.00	0%
Frazer, Ltd.	Type I - 12'	Ram 4500 Diesel 4x2 Reg Cab-84"CA w/ Aluminum wheels	\$ 219,250.00	0%
Frazer, Ltd.	Type I - 12'	Ram 4500 Diesel 4x2 Reg Cab-84"CA w/ Steel wheels	\$ 217,000.00	0%
Frazer, Ltd.	Type I - 12'	Ram 4500 Gas 4x4 Reg Cab-84"CA w/ Aluminum wheels	\$ 212,250.00	0%
Frazer, Ltd.	Type I - 12'	Ram 4500 Gas 4x2 Reg Cab-84"CA w/ Aluminum wheels	\$ 208,000.00	0%
Frazer, Ltd.	Type I - 12'	Ram 4500 Gas 4x2 Reg Cab-84"CA w/ Steel wheels	\$ 205,750.00	0%
Frazer, Ltd.	Type I - 12'	Ram 4500 Diesel 4x4 Reg Cab-84"CA w/ Steel wheels	\$ 221,500.00	0%
Frazer, Ltd.	Type I - 12'	Ram 4500 Gas 4x4 Reg Cab-84"CA w/ Steel wheels	\$ 210,250.00	0%
Frazer, Ltd.	Type I - 12'	Ram 5500 Diesel 4x2 Reg Cab-84"CA w/ Steel wheels	\$ 218,250.00	0%
Frazer, Ltd.	Type I - 12'	Ram 5500 Diesel 4x2 Reg Cab-84"CA w/ Aluminum wheels	\$ 220,500.00	0%
Frazer, Ltd.	Type I - 12'	Ram 5500 Diesel 4x4 Reg Cab-84"CA w/ Steel wheels	\$ 222,750.00	0%
Frazer, Ltd.	Type I - 12'	Ram 5500 Diesel 4x4 Reg Cab-84"CA w/ Aluminum wheels	\$ 224,750.00	0%
Frazer, Ltd.	Type I - 12'	Ram 5500 Gas 4x2 Reg Cab-84"CA w/ Steel wheels	\$ 207,000.00	0%
Frazer, Ltd.	Type I - 12'	Ram 5500 Gas 4x2 Reg Cab-84"CA w/ Aluminum wheels	\$ 209,250.00	0%
Frazer, Ltd.	Type I - 12'	Ram 5500 Gas 4x4 Reg Cab-84"CA w/ Steel wheels	\$ 211,000.00	0%
Frazer, Ltd.	Type I - 12'	Ram 5500 Gas 4x4 Reg Cab-84"CA w/ Aluminum wheels	\$ 213,250.00	0%
Frazer, Ltd.	Type I - 12'	Chevy 3500 Gas 4x2 Reg Cab-84"CA w/ Steel wheels	\$ 195,250.00	0%
Frazer, Ltd.	Type I - 12'	Chevy 3500 Diesel 4x2 Reg Cab-84"CA w/ Steel wheels	\$ 206,000.00	0%
Frazer, Ltd.	Type I - 12'	Chevy 3500 Gas 4x4 Reg Cab-84"CA w/ Steel wheels	\$ 197,750.00	0%
Frazer, Ltd.	Type I - 12'	Chevy 3500 Diesel 4x4 Reg Cab-84"CA w/ Steel wheels	\$ 208,750.00	0%
Frazer, Ltd.	Type I - 12'	Chevy 4500 MD Diesel 4x2 Reg Cab-84"CA w/ Aluminum wheels	\$ 211,250.00	0%
Frazer, Ltd.	Type I - 12'	Chevy 4500 MD Diesel 4x2 Reg Cab-84"CA w/ Steel wheels	\$ 209,500.00	0%
Frazer, Ltd.	Type I - 12'	Chevy 4500 MD Diesel 4x4 Reg Cab-84"CA w/ Aluminum wheels	\$ 214,500.00	0%
Frazer, Ltd.	Type I - 12'	Chevy 4500 MD Diesel 4x4 Reg Cab-84CA" w/ Steel wheels	\$ 212,750.00	0%
Frazer, Ltd.	Type I - 12'	Ford F-350 Gas 4x4 Reg Cab-84"CA w/ Aluminum wheels	\$ 209,000.00	0%
Frazer, Ltd.	Type I - 12'	Ford F-350 Gas 4x4 Reg Cab-84"CA w/ Steel wheels	\$ 208,250.00	0%
Frazer, Ltd.	Type I - 12'	Ford F-450 Gas 4x2 Reg Cab-84"CA w/ AL wheels	\$ 204,750.00	0%
Frazer, Ltd.	Type I - 12'	Ford F-450 Diesel 4x2 Reg Cab-84"CA w/ AL wheels	\$ 215,750.00	0%



Frazer, Ltd.	Type I - 12'	Ford F-450 Diesel 4x2 Reg Cab-84"CA w/ Steel wheels	\$ 214,500.00	0%
Frazer, Ltd.	Type I - 12'	Ford F-450 Diesel 4x4 Super Cab-84"CA w/ Steel wheels	\$ 220,250.00	0%
Frazer, Ltd.	Type I - 12'	Ford F-450 Diesel 4x2 Super Cab-84"CA w/ Steel wheels	\$ 216,500.00	0%
Frazer, Ltd.	Type I - 12'	Ford F-450 Diesel 4x2 Super Cab-84"CA w/ Aluminum wheels	\$ 217,750.00	0%
Frazer, Ltd.	Type I - 12'	Ford F-450 Diesel 4x4 Reg Cab-84"CA w/ AL wheels	\$ 219,000.00	0%
Frazer, Ltd.	Type I - 12'	Ford F-450 Diesel 4x4 Super Cab-84"CA w/ AL wheels	\$ 221,500.00	0%
Frazer, Ltd.	Type I - 12'	Ford F-450 Diesel 4x4 Reg Cab-84"CA w/ Steel wheels	\$ 217,750.00	0%
Frazer, Ltd.	Type I - 12'	Ford F-450 Gas 4x2 Reg Cab-84"CA w/ Steel wheels	\$ 203,500.00	0%
Frazer, Ltd.	Type I - 12'	Ford F-450 Gas 4x4 Super Cab-84"CA w/ Steel wheels	\$ 209,500.00	0%
Frazer, Ltd.	Type I - 12'	Ford F-450 Gas 4x4 Super Cab-84"CA w/ Aluminum wheels	\$ 210,500.00	0%
Frazer, Ltd.	Type I - 12'	Ford F-450 Gas 4x4 Reg Cab-84"CA w/ AL wheels	\$ 208,000.00	0%
Frazer, Ltd.	Type I - 12'	Ford F-450 Gas 4x4 Reg Cab-84"CA w/ Steel wheels	\$ 206,750.00	0%
Frazer, Ltd.	Type I - 12'	Ford F-550 Diesel 4x2 Reg Cab-84"CA w/ AL wheels	\$ 217,000.00	0%
Frazer, Ltd.	Type I - 12'	Ford F-550 Diesel 4x2 Reg Cab-84"CA w/ Steel wheels	\$ 215,750.00	0%
Frazer, Ltd.	Type I - 12'	Ford F-550 Diesel 4x4 Reg Cab-84"CA w/ AL wheels	\$ 220,250.00	0%
Frazer, Ltd.	Type I - 12'	Ford F-550 Diesel 4x4 Reg Cab-84"CA w/ Steel wheels	\$ 219,000.00	0%
Frazer, Ltd.	Type I - 12'	Ford F-550 Gas 4x2 Reg Cab-84"CA w/ AL wheels	\$ 209,250.00	0%
Frazer, Ltd.	Type I - 12'	Ford F-550 Gas 4x2 Reg Cab-84"CA w/ Steel wheels	\$ 204,750.00	0%
Frazer, Ltd.	Type I - 12'	Ford F-550 Gas 4x4 Reg Cab-84"CA w/ AL wheels	\$ 206,000.00	0%
Frazer, Ltd.	Type I - 12'	Ford F-550 Gas 4x4 Reg Cab-84"CA w/ Steel wheels	\$ 208,000.00	0%
Frazer, Ltd.	Type I - 12'	Ford F-550 Diesel 4x2 Super Cab-84"CA w/ Aluminum wheels	\$ 217,750.00	0%
Frazer, Ltd.	Type I - 12'	Ford F-550 Diesel 4x2 Super Cab-84"CA w/ Steel wheels	\$ 219,000.00	0%
Frazer, Ltd.	Type I - 12'	Ford F-550 Gas 4x4 Super Cab-84"CA w/ Steel wheels	\$ 210,500.00	0%
Frazer, Ltd.	Type I - 12'	Ford F-550 Diesel 4x4 Super Cab-84"CA w/ Steel wheels	\$ 221,500.00	0%
Frazer, Ltd.	Type I - 12'	Ford F-550 Gas 4x4 Super Cab-84"CA w/ Aluminum wheels	\$ 211,750.00	0%
Frazer, Ltd.	Type I - 12'	Ford F-550 Diesel 4x4 Super Cab-84"CA w/ Aluminum wheels	\$ 222,750.00	0%
Frazer, Ltd.	Type I - 12'	International CV515 Diesel 4x2 Cab-84CA w/ Aluminum wheels	\$ 232,250.00	0%
Frazer, Ltd.	Type I - 12'	International CV515 Diesel 4x4 Cab-84CA w/ Aluminum wheels	\$ 234,000.00	0%
Frazer, Ltd.	Type I - 12'XT	Ram 3500 Diesel 4x2 Reg Cab-84"CA w/ Steel wheels	\$ 214,500.00	0%
Frazer, Ltd.	Type I - 12'XT	Ram 3500 Gas 4x2 Reg Cab-84"CA w/ Steel wheels	\$ 195,000.00	0%
Frazer, Ltd.	Type I - 12'XT	Ram 3500 Diesel 4x4 Reg Cab-84"CA w/ Steel wheels	\$ 221,750.00	0%
Frazer, Ltd.	Type I - 12'XT	Ram 3500 Gas 4x4 Reg Cab-84"CA w/ Steel wheels	\$ 212,500.00	0%
Frazer, Ltd.	Type I - 12'XT	Ram 4500 Diesel 4x4 Reg Cab-84"CA w/ Aluminum wheels	\$ 229,500.00	0%
Frazer, Ltd.	Type I - 12'XT	Ram 4500 Diesel 4x2 Reg Cab-84"CA w/ Aluminum wheels	\$ 225,250.00	0%
Frazer, Ltd.	Type I - 12'XT	Ram 4500 Diesel 4x2 Reg Cab-84"CA w/ Steel wheels	\$ 223,000.00	0%
Frazer, Ltd.	Type I - 12'XT	Ram 4500 Gas 4x4 Reg Cab-84"CA w/ Aluminum wheels	\$ 218,250.00	0%
Frazer, Ltd.	Type I - 12'XT	Ram 4500 Gas 4x2 Reg Cab-84"CA w/ Aluminum wheels	\$ 214,000.00	0%
Frazer, Ltd.	Type I - 12'XT	Ram 4500 Gas 4x2 Reg Cab-84"CA w/ Steel wheels	\$ 211,750.00	0%

Frazer, Ltd.	Type I - 12'XT	Ram 4500 Diesel 4x4 Reg Cab-84"CA w/ Steel wheels	\$ 227,500.00	0%
Frazer, Ltd.	Type I - 12'XT	Ram 4500 Gas 4x4 Reg Cab-84"CA w/ Steel wheels	\$ 216,250.00	0%
Frazer, Ltd.	Type I - 12'XT	Ram 5500 Diesel 4x2 Reg Cab-84"CA w/ Steel wheels	\$ 224,250.00	0%
Frazer, Ltd.	Type I - 12'XT	Ram 5500 Diesel 4x2 Reg Cab-84"CA w/ Aluminum wheels	\$ 226,500.00	0%
Frazer, Ltd.	Type I - 12'XT	Ram 5500 Diesel 4x4 Reg Cab-84"CA w/ Steel wheels	\$ 228,750.00	0%
Frazer, Ltd.	Type I - 12'XT	Ram 5500 Diesel 4x4 Reg Cab-84"CA w/ Aluminum wheels	\$ 230,750.00	0%
Frazer, Ltd.	Type I - 12'XT	Ram 5500 Gas 4x2 Reg Cab-84"CA w/ Steel wheels	\$ 213,000.00	0%
Frazer, Ltd.	Type I - 12'XT	Ram 5500 Gas 4x2 Reg Cab-84"CA w/ Aluminum wheels	\$ 215,250.00	0%
Frazer, Ltd.	Type I - 12'XT	Ram 5500 Gas 4x4 Reg Cab-84"CA w/ Steel wheels	\$ 217,000.00	0%
Frazer, Ltd.	Type I - 12'XT	Ram 5500 Gas 4x4 Reg Cab-84"CA w/ Aluminum wheels	\$ 219,250.00	0%
Frazer, Ltd.	Type I - 12'XT	Chevy 3500 Gas 4x2 Reg Cab-84"CA w/ Steel wheels	\$ 201,250.00	0%
Frazer, Ltd.	Type I - 12'XT	Chevy 3500 Diesel 4x2 Reg Cab-84"CA w/ Steel wheels	\$ 212,000.00	0%
Frazer, Ltd.	Type I - 12'XT	Chevy 3500 Gas 4x4 Reg Cab-84"CA w/ Steel wheels	\$ 203,750.00	0%
Frazer, Ltd.	Type I - 12'XT	Chevy 3500 Diesel 4x4 Reg Cab-84"CA w/ Steel wheels	\$ 214,750.00	0%
Frazer, Ltd.	Type I - 12'XT	Chevy 4500 MD Diesel 4x2 Reg Cab-84"CA w/ Aluminum wheels	\$ 217,250.00	0%
Frazer, Ltd.	Type I - 12'XT	Chevy 4500 MD Diesel 4x2 Reg Cab-84"CA w/ Steel wheels	\$ 215,500.00	0%
Frazer, Ltd.	Type I - 12'XT	Chevy 4500 MD Diesel 4x4 Reg Cab-84"CA w/ Aluminum wheels	\$ 220,500.00	0%
Frazer, Ltd.	Type I - 12'XT	Chevy 4500 MD Diesel 4x4 Reg Cab-84"CA w/ Steel wheels	\$ 218,750.00	0%
Frazer, Ltd.	Type I - 12'XT	Ford F-350 Gas 4x4 Reg Cab-84"CA w/ Aluminum wheels	\$ 215,000.00	0%
Frazer, Ltd.	Type I - 12'XT	Ford F-350 Gas 4x4 Reg Cab-84"CA w/ Steel wheels	\$ 214,250.00	0%
Frazer, Ltd.	Type I - 12'XT	Ford F-450 Gas 4x2 Reg Cab-84"CA w/ AL wheels	\$ 210,750.00	0%
Frazer, Ltd.	Type I - 12'XT	Ford F-450 Diesel 4x2 Reg Cab-84"CA w/ AL wheels	\$ 221,750.00	0%
Frazer, Ltd.	Type I - 12'XT	Ford F-450 Diesel 4x2 Reg Cab-84"CA w/ Steel wheels	\$ 220,500.00	0%
Frazer, Ltd.	Type I - 12'XT	Ford F-450 Diesel 4x4 Super Cab-84"CA w/ Steel wheels	\$ 226,250.00	0%
Frazer, Ltd.	Type I - 12'XT	Ford F-450 Diesel 4x2 Super Cab-84"CA w/ Steel wheels	\$ 222,500.00	0%
Frazer, Ltd.	Type I - 12'XT	Ford F-450 Diesel 4x2 Super Cab-84"CA w/ Aluminum wheels	\$ 223,750.00	0%
Frazer, Ltd.	Type I - 12'XT	Ford F-450 Diesel 4x4 Reg Cab-84"CA w/ AL wheels	\$ 225,000.00	0%
Frazer, Ltd.	Type I - 12'XT	Ford F-450 Diesel 4x4 Super Cab-84"CA w/ AL wheels	\$ 227,500.00	0%
Frazer, Ltd.	Type I - 12'XT	Ford F-450 Diesel 4x4 Reg Cab-84"CA w/ Steel wheels	\$ 223,750.00	0%
Frazer, Ltd.	Type I - 12'XT	Ford F-450 Gas 4x2 Reg Cab-84"CA w/ Steel wheels	\$ 209,500.00	0%
Frazer, Ltd.	Type I - 12'XT	Ford F-450 Gas 4x4 Super Cab-84"CA w/ Steel wheels	\$ 215,500.00	0%
Frazer, Ltd.	Type I - 12'XT	Ford F-450 Gas 4x4 Super Cab-84"CA w/ Aluminum wheels	\$ 216,500.00	0%
Frazer, Ltd.	Type I - 12'XT	Ford F-450 Gas 4x4 Reg Cab-84"CA w/ AL wheels	\$ 214,000.00	0%
Frazer, Ltd.	Type I - 12'XT	Ford F-450 Gas 4x4 Reg Cab-84"CA w/ Steel wheels	\$ 212,750.00	0%
Frazer, Ltd.	Type I - 12'XT	Ford F-550 Diesel 4x2 Reg Cab-84"CA w/ AL wheels	\$ 223,000.00	0%
Frazer, Ltd.	Type I - 12'XT	Ford F-550 Diesel 4x2 Reg Cab-84"CA w/ Steel wheels	\$ 221,750.00	0%
Frazer, Ltd.	Type I - 12'XT	Ford F-550 Diesel 4x4 Reg Cab-84"CA w/ AL wheels	\$ 226,250.00	0%
Frazer, Ltd.	Type I - 12'XT	Ford F-550 Diesel 4x4 Reg Cab-84"CA w/ Steel wheels	\$ 225,000.00	0%

Frazer, Ltd.	Type I - 12'XT	Ford F-550 Gas 4x2 Reg Cab-84"CA w/ AL wheels	\$ 215,250.00	0%
Frazer, Ltd.	Type I - 12'XT	Ford F-550 Gas 4x2 Reg Cab-84"CA w/ Steel wheels	\$ 210,750.00	0%
Frazer, Ltd.	Type I - 12'XT	Ford F-550 Gas 4x4 Reg Cab-84"CA w/ AL wheels	\$ 212,000.00	0%
Frazer, Ltd.	Type I - 12'XT	Ford F-550 Gas 4x4 Reg Cab-84"CA w/ Steel wheels	\$ 214,000.00	0%
Frazer, Ltd.	Type I - 12'XT	Ford F-550 Diesel 4x2 Super Cab-84"CA w/ Aluminum wheels	\$ 223,750.00	0%
Frazer, Ltd.	Type I - 12'XT	Ford F-550 Diesel 4x2 Super Cab-84"CA w/ Steel wheels	\$ 225,000.00	0%
Frazer, Ltd.	Type I - 12'XT	Ford F-550 Gas 4x4 Super Cab-84"CA w/ Steel wheels	\$ 216,500.00	0%
Frazer, Ltd.	Type I - 12'XT	Ford F-550 Diesel 4x4 Super Cab-84"CA w/ Steel wheels	\$ 227,500.00	0%
Frazer, Ltd.	Type I - 12'XT	Ford F-550 Gas 4x4 Super Cab-84"CA w/ Aluminum wheels	\$ 217,750.00	0%
Frazer, Ltd.	Type I - 12'XT	Ford F-550 Diesel 4x4 Super Cab-84"CA w/ Aluminum wheels	\$ 228,750.00	0%
Frazer, Ltd.	Type I - 12'XT	International CV515 Diesel 4x2 Cab-84CA w/ Aluminum wheels	\$ 238,250.00	0%
Frazer, Ltd.	Type I - 12'XT	International CV515 Diesel 4x4 Cab-84CA w/ Aluminum wheels	\$ 240,000.00	0%
Frazer, Ltd.	Type I - 14'	Ram 4500 Diesel 4x4 Reg Cab-108"CA w/ Aluminum wheels	\$ 242,500.00	0%
Frazer, Ltd.	Type I - 14'	Ram 4500 Diesel 4x2 Reg Cab-108"CA w/ Aluminum wheels	\$ 238,250.00	0%
Frazer, Ltd.	Type I - 14'	Ram 4500 Diesel 4x2 Reg Cab-108"CA w/ Steel wheels	\$ 236,000.00	0%
Frazer, Ltd.	Type I - 14'	Ram 4500 Gas 4x4 Reg Cab-108"CA w/ Aluminum wheels	\$ 231,000.00	0%
Frazer, Ltd.	Type I - 14'	Ram 4500 Gas 4x2 Reg Cab-108"CA w/ Aluminum wheels	\$ 227,000.00	0%
Frazer, Ltd.	Type I - 14'	Ram 4500 Gas 4x2 Reg Cab-108"CA w/ Steel wheels	\$ 224,750.00	0%
Frazer, Ltd.	Type I - 14'	Ram 4500 Diesel 4x4 Reg Cab-108"CA w/ Steel wheels	\$ 240,500.00	0%
Frazer, Ltd.	Type I - 14'	Ram 4500 Gas 4x4 Reg Cab-108"CA w/ Steel wheels	\$ 228,750.00	0%
Frazer, Ltd.	Type I - 14'	Ram 5500 Diesel 4x2 Reg Cab-108"CA w/ Steel wheels	\$ 237,250.00	0%
Frazer, Ltd.	Type I - 14'	Ram 5500 Diesel 4x2 Reg Cab-108"CA w/ Aluminum wheels	\$ 239,500.00	0%
Frazer, Ltd.	Type I - 14'	Ram 5500 Diesel 4x4 Reg Cab-108"CA w/ Steel wheels	\$ 241,500.00	0%
Frazer, Ltd.	Type I - 14'	Ram 5500 Diesel 4x4 Reg Cab-108"CA w/ Aluminum wheels	\$ 243,750.00	0%
Frazer, Ltd.	Type I - 14'	Ram 5500 Gas 4x2 Reg Cab-108"CA w/ Steel wheels	\$ 226,000.00	0%
Frazer, Ltd.	Type I - 14'	Ram 5500 Gas 4x2 Reg Cab-108"CA w/ Aluminum wheels	\$ 228,250.00	0%
Frazer, Ltd.	Type I - 14'	Ram 5500 Gas 4x4 Reg Cab-108"CA w/ Steel wheels	\$ 230,000.00	0%
Frazer, Ltd.	Type I - 14'	Ram 5500 Gas 4x4 Reg Cab-108"CA w/ Aluminum wheels	\$ 232,250.00	0%
Frazer, Ltd.	Type I - 14'	Chevy 4500 MD Diesel 4x2 Reg Cab-108"CA w/ Aluminum wheels	\$ 230,500.00	0%
Frazer, Ltd.	Type I - 14'	Chevy 4500 MD Diesel 4x2 Reg Cab-108"CA w/ Steel wheels	\$ 228,750.00	0%
Frazer, Ltd.	Type I - 14'	Chevy 4500 MD Diesel 4x4 Reg Cab-108"CA w/ Aluminum wheels	\$ 233,750.00	0%
Frazer, Ltd.	Type I - 14'	Chevy 4500 MD Diesel 4x2 Reg Cab-108"CA w/ Steel wheels	\$ 232,000.00	0%
Frazer, Ltd.	Type I - 14'	Ford F-350 Gas 4x4 Reg Cab-84"CA w/ Aluminum wheels	\$ 227,750.00	0%
Frazer, Ltd.	Type I - 14'	Ford F-350 Gas 4x4 Reg Cab-84"CA w/ Steel wheels	\$ 227,000.00	0%
Frazer, Ltd.	Type I - 14'	Ford F-450 Diesel 4x2 Reg Cab-108"CA w/ Steel wheels	\$ 233,500.00	0%
Frazer, Ltd.	Type I - 14'	Ford F-450 Diesel 4x4 Reg Cab-108"CA w/ AL wheels	\$ 237,750.00	0%
Frazer, Ltd.	Type I - 14'	Ford F-450 Diesel 4x4 Reg Cab-108"CA w/ Steel wheels	\$ 236,750.00	0%
Frazer, Ltd.	Type I - 14'	Ford F-450 Gas 4x2 Reg Cab-108"CA w/ Steel wheels	\$ 222,500.00	0%

Frazer, Ltd.	Type I - 14'	Ford F-450 Gas 4x4 Reg Cab-108"CA w/ Steel wheels	\$ 225,750.00	0%
Frazer, Ltd.	Type I - 14'	Ford F-450 Gas 4x4 Reg Cab-108"CA w/ AL wheels	\$ 227,000.00	0%
Frazer, Ltd.	Type I - 14'	Ford F-450 Gas 4x2 Reg Cab-108"CA w/ AL wheels	\$ 223,750.00	0%
Frazer, Ltd.	Type I - 14'	Ford F-550 Diesel 4x2 Reg Cab-108"CA w/ AL wheels	\$ 236,000.00	0%
Frazer, Ltd.	Type I - 14'	Ford F-550 Diesel 4x2 Reg Cab-108"CA w/ Steel wheels	\$ 234,750.00	0%
Frazer, Ltd.	Type I - 14'	Ford F-550 Diesel 4x4 Reg Cab-108"CA w/ AL wheels	\$ 239,000.00	0%
Frazer, Ltd.	Type I - 14'	Ford F-550 Diesel 4x4 Reg Cab-108"CA w/ Steel wheels	\$ 238,000.00	0%
Frazer, Ltd.	Type I - 14'	Ford F-550 Gas 4x2 Reg Cab-108"CA w/ AL wheels	\$ 225,000.00	0%
Frazer, Ltd.	Type I - 14'	Ford F-550 Gas 4x2 Reg Cab-108"CA w/ Steel wheels	\$ 223,750.00	0%
Frazer, Ltd.	Type I - 14'	Ford F-550 Gas 4x4 Reg Cab-108"CA w/ AL wheels	\$ 228,000.00	0%
Frazer, Ltd.	Type I - 14'	Ford F-550 Gas 4x4 Reg Cab-108"CA w/ Steel wheels	\$ 227,000.00	0%
Frazer, Ltd.	Type I - 14'	International CV515 Diesel 4x2 Cab-108CA w/ Aluminum wheels	\$ 248,250.00	0%
Frazer, Ltd.	Type I - 14'	International CV515 Diesel 4x4 Cab-108CA w/ Aluminum wheels	\$ 252,500.00	0%
Frazer, Ltd.	Type I - 14'XT	Ram 4500 Diesel 4x4 Reg Cab-108"CA w/ Aluminum wheels	\$ 248,750.00	0%
Frazer, Ltd.	Type I - 14'XT	Ram 4500 Diesel 4x2 Reg Cab-108"CA w/ Aluminum wheels	\$ 244,500.00	0%
Frazer, Ltd.	Type I - 14'XT	Ram 4500 Diesel 4x2 Reg Cab-108"CA w/ Steel wheels	\$ 242,250.00	0%
Frazer, Ltd.	Type I - 14'XT	Ram 4500 Gas 4x4 Reg Cab-108"CA w/ Aluminum wheels	\$ 237,250.00	0%
Frazer, Ltd.	Type I - 14'XT	Ram 4500 Gas 4x2 Reg Cab-108"CA w/ Aluminum wheels	\$ 233,250.00	0%
Frazer, Ltd.	Type I - 14'XT	Ram 4500 Gas 4x2 Reg Cab-108"CA w/ Steel wheels	\$ 231,000.00	0%
Frazer, Ltd.	Type I - 14'XT	Ram 4500 Diesel 4x4 Reg Cab-108"CA w/ Steel wheels	\$ 246,750.00	0%
Frazer, Ltd.	Type I - 14'XT	Ram 4500 Gas 4x4 Reg Cab-108"CA w/ Steel wheels	\$ 235,000.00	0%
Frazer, Ltd.	Type I - 14'XT	Ram 5500 Diesel 4x2 Reg Cab-108"CA w/ Steel wheels	\$ 243,500.00	0%
Frazer, Ltd.	Type I - 14'XT	Ram 5500 Diesel 4x2 Reg Cab-108"CA w/ Aluminum wheels	\$ 245,750.00	0%
Frazer, Ltd.	Type I - 14'XT	Ram 5500 Diesel 4x4 Reg Cab-108"CA w/ Steel wheels	\$ 247,750.00	0%
Frazer, Ltd.	Type I - 14'XT	Ram 5500 Diesel 4x4 Reg Cab-108"CA w/ Aluminum wheels	\$ 250,000.00	0%
Frazer, Ltd.	Type I - 14'XT	Ram 5500 Gas 4x2 Reg Cab-108"CA w/ Steel wheels	\$ 234,500.00	0%
Frazer, Ltd.	Type I - 14'XT	Ram 5500 Gas 4x2 Reg Cab-108"CA w/ Aluminum wheels	\$ 236,250.00	0%
Frazer, Ltd.	Type I - 14'XT	Ram 5500 Gas 4x4 Reg Cab-108"CA w/ Steel wheels	\$ 238,500.00	0%
Frazer, Ltd.	Type I - 14'XT	Ram 5500 Gas 4x4 Reg Cab-108"CA w/ Aluminum wheels	\$ 232,000.00	0%
Frazer, Ltd.	Type I - 14'XT	Chevy 4500 MD Diesel 4x2 Reg Cab-108"CA w/ Aluminum wheels	\$ 236,750.00	0%
Frazer, Ltd.	Type I - 14'XT	Chevy 4500 MD Diesel 4x2 Reg Cab-108"CA w/ Steel wheels	\$ 235,000.00	0%
Frazer, Ltd.	Type I - 14'XT	Chevy 4500 MD Diesel 4x4 Reg Cab-108"CA w/ Aluminum wheels	\$ 240,000.00	0%
Frazer, Ltd.	Type I - 14'XT	Chevy 4500 MD Diesel 4x2 Reg Cab-108"CA w/ Steel wheels	\$ 238,250.00	0%
Frazer, Ltd.	Type I - 14'XT	Ford F-350 Gas 4x4 Reg Cab-84"CA w/ Aluminum wheels	\$ 234,000.00	0%
Frazer, Ltd.	Type I - 14'XT	Ford F-350 Gas 4x4 Reg Cab-84"CA w/ Steel wheels	\$ 233,250.00	0%
Frazer, Ltd.	Type I - 14'XT	Ford F-450 Diesel 4x2 Reg Cab-108"CA w/ Steel wheels	\$ 239,750.00	0%
Frazer, Ltd.	Type I - 14'XT	Ford F-450 Diesel 4x4 Reg Cab-108"CA w/ AL wheels	\$ 244,000.00	0%
Frazer, Ltd.	Type I - 14'XT	Ford F-450 Diesel 4x4 Reg Cab-108"CA w/ Steel wheels	\$ 243,000.00	0%



Frazer, Ltd.	Type I - 14'XT	Ford F-450 Gas 4x2 Reg Cab-108"CA w/ Steel wheels	\$ 228,750.00	0%
Frazer, Ltd.	Type I - 14'XT	Ford F-450 Gas 4x4 Reg Cab-108"CA w/ Steel wheels	\$ 232,000.00	0%
Frazer, Ltd.	Type I - 14'XT	Ford F-450 Gas 4x4 Reg Cab-108"CA w/ AL wheels	\$ 233,250.00	0%
Frazer, Ltd.	Type I - 14'XT	Ford F-450 Gas 4x2 Reg Cab-108"CA w/ AL wheels	\$ 230,000.00	0%
Frazer, Ltd.	Type I - 14'XT	Ford F-550 Diesel 4x2 Reg Cab-108"CA w/ AL wheels	\$ 242,250.00	0%
Frazer, Ltd.	Type I - 14'XT	Ford F-550 Diesel 4x2 Reg Cab-108"CA w/ Steel wheels	\$ 241,000.00	0%
Frazer, Ltd.	Type I - 14'XT	Ford F-550 Diesel 4x4 Reg Cab-108"CA w/ AL wheels	\$ 245,250.00	0%
Frazer, Ltd.	Type I - 14'XT	Ford F-550 Diesel 4x4 Reg Cab-108"CA w/ Steel wheels	\$ 244,250.00	0%
Frazer, Ltd.	Type I - 14'XT	Ford F-550 Gas 4x2 Reg Cab-108"CA w/ AL wheels	\$ 231,250.00	0%
Frazer, Ltd.	Type I - 14'XT	Ford F-550 Gas 4x2 Reg Cab-108"CA w/ Steel wheels	\$ 230,000.00	0%
Frazer, Ltd.	Type I - 14'XT	Ford F-550 Gas 4x4 Reg Cab-108"CA w/ AL wheels	\$ 234,250.00	0%
Frazer, Ltd.	Type I - 14'XT	Ford F-550 Gas 4x4 Reg Cab-108"CA w/ Steel wheels	\$ 233,250.00	0%
Frazer, Ltd.	Type I - 14'XT	International CV515 Diesel 4x2 Cab-108CA w/ Aluminum wheels	\$ 254,500.00	0%
Frazer, Ltd.	Type I - 14'XT	International CV515 Diesel 4x4 Cab-108CA w/ Aluminum wheels	\$ 258,750.00	0%
Frazer, Ltd.	Type III - 12'	Chevy G3500 Gas 4x2 Reg Cab-80"CA w/ Steel wheels	\$ 187,000.00	0%
Frazer, Ltd.	Type III - 12'	Ford E-350 Gas 4x2 Cutaway Cab-80"CA w/ Steel wheels	\$ 188,750.00	0%
Frazer, Ltd.	Type III - 12'	Ford E-450 Gas 4x2 Cutaway Cab-100"CA w/ Steel wheels	\$ 189,750.00	0%
Frazer, Ltd.	Type III - 12'XT	Chevy G3500 Gas 4x2 Reg Cab-80"CA w/ Steel wheels	\$ 193,250.00	0%
Frazer, Ltd.	Type III - 12'XT	Ford E-350 Gas 4x2 Cutaway Cab-80"CA w/ Steel wheels	\$ 195,000.00	0%
Frazer, Ltd.	Type III - 12'XT	Ford E-450 Gas 4x2 Cutaway Cab-100"CA w/ Steel wheels	\$ 196,000.00	0%
Frazer, Ltd.	Type III - 14'	Chevy G4500 Gas 4x2 Reg Cab-100"CA w/ Steel wheels	\$ 206,750.00	0%
Frazer, Ltd.	Type III - 14'	Ford E-350 Gas 4x2 Cutaway Cab-80"CA w/ Steel wheels	\$ 207,750.00	0%
Frazer, Ltd.	Type III - 14'	Ford E-450 Gas 4x2 Cutaway Cab-100"CA w/ Steel wheels	\$ 208,750.00	0%
Frazer, Ltd.	MSU - 14'	Mobile Stroke Unit 14' on Freightliner M2 Diesel 4x2 Crew Cab	\$ 534,500.00	0%
Frazer, Ltd.	MSU - 14'	Mobile Stroke Unit 14' on International MV Diesel 4x2 Reg Cab	\$ 534,500.00	0%
Frazer, Ltd.	MSU - 15'	Mobile Stroke Unit 15' on Freightliner M2 Diesel 4x2 Crew Cab	\$ 634,500.00	0%
Frazer, Ltd.	MSU - 15'	Mobile Stroke Unit 15' on International MV Diesel 4x2 Reg Cab	\$ 634,500.00	0%
		<b>Category B - Light/Medium EMS Rescue Vehicle</b>		
Frazer, Ltd.	First Responder (UCV) - 9'	Ram 3500 Diesel 4x4 Crew Cab-60"CA w/ Steel wheels	\$ 180,000.00	0%
Frazer, Ltd.	First Responder (UCV) - 9'	Ram 3500 Diesel 4x2 Crew Cab-60"CA w/ Steel wheels	\$ 176,250.00	0%
Frazer, Ltd.	First Responder (UCV) - 9'	Ram 3500 Gas 4x2 Crew Cab-60"CA w/ Steel wheels	\$ 168,750.00	0%
Frazer, Ltd.	First Responder (UCV) - 9'	Ram 4500 Diesel 4x4 Crew Cab-60"CA w/ Steel wheels	\$ 186,500.00	0%
Frazer, Ltd.	First Responder (UCV) - 9'	Ram 4500 Diesel 4x2 Crew Cab-60"CA w/ Steel wheels	\$ 181,250.00	0%
Frazer, Ltd.	First Responder (UCV) - 9'	Ram 4500 Diesel 4x2 Crew Cab-60"CA w/ Steel wheels	\$ 183,250.00	0%
Frazer, Ltd.	First Responder (UCV) - 9'	Ram 4500 Diesel 4x4 Crew Cab-60"CA w/ Aluminum wheels	\$ 188,750.00	0%
Frazer, Ltd.	First Responder (UCV) - 9'	Ram 4500 Gas 4x2 Crew Cab-60"CA w/ Aluminum wheels	\$ 172,000.00	0%
Frazer, Ltd.	First Responder (UCV) - 9'	Ram 4500 Gas 4x2 Crew Cab-60"CA w/ Steel wheels	\$ 170,000.00	0%
Frazer, Ltd.	First Responder (UCV) - 9'	Ram 4500 Gas 4x4 Crew Cab-60"CA w/ Steel wheels	\$ 175,250.00	0%

Frazer, Ltd.	First Responder (UCV) - 9'	Ram 4500 Gas 4x4 Crew Cab-60"CA w/ Aluminum wheels	\$ 177,500.00	0%
Frazer, Ltd.	First Responder (UCV) - 9'	Chevy C2500 Gas 4x2 Reg Cab-60"CA w/ Aluminum wheels	\$ 153,750.00	0%
Frazer, Ltd.	First Responder (UCV) - 9'	Chevy C2500 Diesel 4x2 Reg Cab-60"CA w/ Aluminum wheels	\$ 164,750.00	0%
Frazer, Ltd.	First Responder (UCV) - 9'	Ford F-350 Diesel 4x4 Crew Cab-60"CA w/ Steel wheels	\$ 177,500.00	0%
Frazer, Ltd.	First Responder (UCV) - 9'	Ford F-350 Diesel 4x2 Crew Cab-60"CA w/ Steel wheels	\$ 173,750.00	0%
Frazer, Ltd.	First Responder (UCV) - 9'	Ford F-350 Diesel 4x4 Super Cab-60"CA w/ Steel wheels	\$ 175,750.00	0%
Frazer, Ltd.	First Responder (UCV) - 9'	Ford F-450 Diesel 4x2 Crew Cab-60"CA w/ Steel wheels	\$ 178,750.00	0%
Frazer, Ltd.	First Responder (UCV) - 9'	Ford F-450 Diesel 4x4 Crew Cab-60"CA w/ Steel wheels	\$ 182,500.00	0%
Frazer, Ltd.	First Responder (UCV) - 9'	Ford F-450 Diesel 4x4 Super Cab-60"CA w/ Steel wheels	\$ 181,000.00	0%
Frazer, Ltd.	First Responder (UCV) - 9'	Ford F-450 Gas 4x4 Crew Cab-60"CA w/ Steel wheels	\$ 171,750.00	0%
Frazer, Ltd.	First Responder (UCV) - 9'	Ford F-450 Gas 4x2 Super Cab-60"CA w/ Steel wheels	\$ 166,000.00	0%
Frazer, Ltd.	First Responder (UCV) - 9'	Ford F-450 Gas 4x4 Super Cab-60"CA w/ Steel wheels	\$ 170,000.00	0%
Frazer, Ltd.	First Responder (UCV) - 9'	Ford F-450 Gas 4x2 Crew Cab-60"CA w/ Steel wheels	\$ 167,750.00	0%
Frazer, Ltd.	First Responder (UCV) - 10'	Ram 3500 Diesel 4x4 Crew Cab-60"CA w/ Steel wheels	\$ 203,250.00	0%
Frazer, Ltd.	First Responder (UCV) - 10'	Ram 3500 Diesel 4x2 Crew Cab-60"CA w/ Steel wheels	\$ 199,500.00	0%
Frazer, Ltd.	First Responder (UCV) - 10'	Ram 3500 Gas 4x2 Crew Cab-60"CA w/ Steel wheels	\$ 192,000.00	0%
Frazer, Ltd.	First Responder (UCV) - 10'	Ram 4500 Diesel 4x4 Crew Cab-60"CA w/ Steel wheels	\$ 209,750.00	0%
Frazer, Ltd.	First Responder (UCV) - 10'	Ram 4500 Diesel 4x2 Crew Cab-60"CA w/ Steel wheels	\$ 204,500.00	0%
Frazer, Ltd.	First Responder (UCV) - 10'	Ram 4500 Diesel 4x2 Crew Cab-60"CA w/ Steel wheels	\$ 206,500.00	0%
Frazer, Ltd.	First Responder (UCV) - 10'	Ram 4500 Diesel 4x4 Crew Cab-60"CA w/ Aluminum wheels	\$ 212,000.00	0%
Frazer, Ltd.	First Responder (UCV) - 10'	Ram 4500 Gas 4x2 Crew Cab-60"CA w/ Aluminum wheels	\$ 195,250.00	0%
Frazer, Ltd.	First Responder (UCV) - 10'	Ram 4500 Gas 4x2 Crew Cab-60"CA w/ Steel wheels	\$ 193,250.00	0%
Frazer, Ltd.	First Responder (UCV) - 10'	Ram 4500 Gas 4x4 Crew Cab-60"CA w/ Steel wheels	\$ 198,500.00	0%
Frazer, Ltd.	First Responder (UCV) - 10'	Ram 4500 Gas 4x4 Crew Cab-60"CA w/ Aluminum wheels	\$ 200,750.00	0%
Frazer, Ltd.	First Responder (UCV) - 10'	Chevy C2500 Gas 4x2 Reg Cab-60"CA w/ Aluminum wheels	\$ 177,000.00	0%
Frazer, Ltd.	First Responder (UCV) - 10'	Chevy C2500 Diesel 4x2 Reg Cab-60"CA w/ Aluminum wheels	\$ 188,000.00	0%
Frazer, Ltd.	First Responder (UCV) - 10'	Ford F-350 Diesel 4x4 Crew Cab-60"CA w/ Steel wheels	\$ 200,750.00	0%
Frazer, Ltd.	First Responder (UCV) - 10'	Ford F-350 Diesel 4x2 Crew Cab-60"CA w/ Steel wheels	\$ 197,000.00	0%
Frazer, Ltd.	First Responder (UCV) - 10'	Ford F-350 Diesel 4x4 Super Cab-60"CA w/ Steel wheels	\$ 199,000.00	0%
Frazer, Ltd.	First Responder (UCV) - 10'	Ford F-450 Diesel 4x2 Crew Cab-60"CA w/ Steel wheels	\$ 202,000.00	0%
Frazer, Ltd.	First Responder (UCV) - 10'	Ford F-450 Diesel 4x4 Crew Cab-60"CA w/ Steel wheels	\$ 205,750.00	0%
Frazer, Ltd.	First Responder (UCV) - 10'	Ford F-450 Diesel 4x4 Super Cab-60"CA w/ Steel wheels	\$ 204,250.00	0%
Frazer, Ltd.	First Responder (UCV) - 10'	Ford F-450 Gas 4x4 Crew Cab-60"CA w/ Steel wheels	\$ 195,000.00	0%
Frazer, Ltd.	First Responder (UCV) - 10'	Ford F-450 Gas 4x2 Super Cab-60"CA w/ Steel wheels	\$ 189,250.00	0%
Frazer, Ltd.	First Responder (UCV) - 10'	Ford F-450 Gas 4x4 Super Cab-60"CA w/ Steel wheels	\$ 193,250.00	0%
Frazer, Ltd.	First Responder (UCV) - 10'	Ford F-450 Gas 4x2 Crew Cab-60"CA w/ Steel wheels	\$ 191,000.00	0%
<b>Category C - Other Specialty Vehicle or Equipment</b>				
Frazer, Ltd.	Mobile Clinic. - 18'	18' Foot Mobile Clinic Module on International MV Diesel 4x2 Crew Cab	\$ 548,000.00	0%

Frazer, Ltd.	Type I - 14' Mobile Training Unit	Ram 4500 Diesel 4x4 Reg Cab-108"CA w/ Aluminum wheels	\$ 445,500.00	0%
Frazer, Ltd.	Type I - 14' Mobile Training Unit	Ram 4500 Diesel 4x2 Reg Cab-108"CA w/ Aluminum wheels	\$ 441,250.00	0%
Frazer, Ltd.	Type I - 14' Mobile Training Unit	Ram 4500 Diesel 4x2 Reg Cab-108"CA w/ Steel wheels	\$ 439,000.00	0%
Frazer, Ltd.	Type I - 14' Mobile Training Unit	Ram 4500 Gas 4x4 Reg Cab-108"CA w/ Aluminum wheels	\$ 434,000.00	0%
Frazer, Ltd.	Type I - 14' Mobile Training Unit	Ram 4500 Gas 4x2 Reg Cab-108"CA w/ Aluminum wheels	\$ 430,000.00	0%
Frazer, Ltd.	Type I - 14' Mobile Training Unit	Ram 4500 Gas 4x2 Reg Cab-108"CA w/ Steel wheels	\$ 427,750.00	0%
Frazer, Ltd.	Type I - 14' Mobile Training Unit	Ram 4500 Diesel 4x4 Reg Cab-108"CA w/ Steel wheels	\$ 443,500.00	0%
Frazer, Ltd.	Type I - 14' Mobile Training Unit	Ram 4500 Gas 4x4 Reg Cab-108"CA w/ Steel wheels	\$ 431,750.00	0%
Frazer, Ltd.	Type I - 14' Mobile Training Unit	Ram 5500 Diesel 4x2 Reg Cab-108"CA w/ Steel wheels	\$ 440,250.00	0%
Frazer, Ltd.	Type I - 14' Mobile Training Unit	Ram 5500 Diesel 4x2 Reg Cab-108"CA w/ Aluminum wheels	\$ 442,500.00	0%
Frazer, Ltd.	Type I - 14' Mobile Training Unit	Ram 5500 Diesel 4x4 Reg Cab-108"CA w/ Steel wheels	\$ 444,500.00	0%
Frazer, Ltd.	Type I - 14' Mobile Training Unit	Ram 5500 Diesel 4x4 Reg Cab-108"CA w/ Aluminum wheels	\$ 446,750.00	0%
Frazer, Ltd.	Type I - 14' Mobile Training Unit	Ram 5500 Gas 4x2 Reg Cab-108"CA w/ Steel wheels	\$ 429,000.00	0%
Frazer, Ltd.	Type I - 14' Mobile Training Unit	Ram 5500 Gas 4x2 Reg Cab-108"CA w/ Aluminum wheels	\$ 431,250.00	0%
Frazer, Ltd.	Type I - 14' Mobile Training Unit	Ram 5500 Gas 4x4 Reg Cab-108"CA w/ Steel wheels	\$ 433,000.00	0%
Frazer, Ltd.	Type I - 14' Mobile Training Unit	Ram 5500 Gas 4x4 Reg Cab-108"CA w/ Aluminum wheels	\$ 435,250.00	0%
Frazer, Ltd.	Type I - 14' Mobile Training Unit	Chevy 4500 MD Diesel 4x2 Reg Cab-108"CA w/ Aluminum wheels	\$ 433,500.00	0%
Frazer, Ltd.	Type I - 14' Mobile Training Unit	Chevy 4500 MD Diesel 4x2 Reg Cab-108"CA w/ Steel wheels	\$ 431,750.00	0%
Frazer, Ltd.	Type I - 14' Mobile Training Unit	Chevy 4500 MD Diesel 4x4 Reg Cab-108"CA w/ Aluminum wheels	\$ 436,750.00	0%
Frazer, Ltd.	Type I - 14' Mobile Training Unit	Chevy 4500 MD Diesel 4x2 Reg Cab-108"CA w/ Steel wheels	\$ 435,000.00	0%
Frazer, Ltd.	Type I - 14' Mobile Training Unit	Ford F-450 Diesel 4x2 Reg Cab-108"CA w/ Steel wheels	\$ 436,500.00	0%
Frazer, Ltd.	Type I - 14' Mobile Training Unit	Ford F-450 Diesel 4x4 Reg Cab-108"CA w/ AL wheels	\$ 440,750.00	0%
Frazer, Ltd.	Type I - 14' Mobile Training Unit	Ford F-450 Diesel 4x4 Reg Cab-108"CA w/ Steel wheels	\$ 439,750.00	0%
Frazer, Ltd.	Type I - 14' Mobile Training Unit	Ford F-450 Gas 4x2 Reg Cab-108"CA w/ Steel wheels	\$ 425,500.00	0%
Frazer, Ltd.	Type I - 14' Mobile Training Unit	Ford F-450 Gas 4x4 Reg Cab-108"CA w/ Steel wheels	\$ 428,750.00	0%
Frazer, Ltd.	Type I - 14' Mobile Training Unit	Ford F-450 Gas 4x4 Reg Cab-108"CA w/ AL wheels	\$ 430,000.00	0%
Frazer, Ltd.	Type I - 14' Mobile Training Unit	Ford F-450 Gas 4x2 Reg Cab-108"CA w/ AL wheels	\$ 426,750.00	0%
Frazer, Ltd.	Type I - 14' Mobile Training Unit	Ford F-550 Diesel 4x2 Reg Cab-108"CA w/ AL wheels	\$ 439,000.00	0%
Frazer, Ltd.	Type I - 14' Mobile Training Unit	Ford F-550 Diesel 4x2 Reg Cab-108"CA w/ Steel wheels	\$ 437,750.00	0%
Frazer, Ltd.	Type I - 14' Mobile Training Unit	Ford F-550 Diesel 4x4 Reg Cab-108"CA w/ AL wheels	\$ 442,000.00	0%
Frazer, Ltd.	Type I - 14' Mobile Training Unit	Ford F-550 Diesel 4x4 Reg Cab-108"CA w/ Steel wheels	\$ 441,000.00	0%
Frazer, Ltd.	Type I - 14' Mobile Training Unit	Ford F-550 Gas 4x2 Reg Cab-108"CA w/ AL wheels	\$ 428,000.00	0%
Frazer, Ltd.	Type I - 14' Mobile Training Unit	Ford F-550 Gas 4x2 Reg Cab-108"CA w/ Steel wheels	\$ 426,750.00	0%
Frazer, Ltd.	Type I - 14' Mobile Training Unit	Ford F-550 Gas 4x4 Reg Cab-108"CA w/ AL wheels	\$ 431,000.00	0%
Frazer, Ltd.	Type I - 14' Mobile Training Unit	Ford F-550 Gas 4x4 Reg Cab-108"CA w/ Steel wheels	\$ 430,000.00	0%

		Category E - Remountv Services Only		
Frazer, Ltd.	12' Remount	12' Remount on Customer Provided Chassis	\$ 45,000.00	0%
Frazer, Ltd.	14' Remount	14' Remount on Customer Provided Chassis	\$ 45,000.00	0%
Frazer, Ltd.	First Responder (UCV) Remount	First Responder (UCV) Remount on Customer Provided Chassis	\$ 40,000.00	0%
		Category F - Remount on Contractor Supplied Chassis		
Frazer, Ltd.	Type I - 12' Remount	Ram 3500 Diesel 4x2 Reg Cab-84"CA w/ Steel wheels	\$ 119,000.00	0%
Frazer, Ltd.	Type I - 12' Remount	Ram 3500 Gas 4x2 Reg Cab-84"CA w/ Steel wheels	\$ 99,500.00	0%
Frazer, Ltd.	Type I - 12' Remount	Ram 3500 Diesel 4x4 Reg Cab-84"CA w/ Steel wheels	\$ 126,250.00	0%
Frazer, Ltd.	Type I - 12' Remount	Ram 3500 Gas 4x4 Reg Cab-84"CA w/ Steel wheels	\$ 117,000.00	0%
Frazer, Ltd.	Type I - 12' Remount	Ram 4500 Diesel 4x4 Reg Cab-84"CA w/ Aluminum wheels	\$ 134,000.00	0%
Frazer, Ltd.	Type I - 12' Remount	Ram 4500 Diesel 4x2 Reg Cab-84"CA w/ Aluminum wheels	\$ 129,750.00	0%
Frazer, Ltd.	Type I - 12' Remount	Ram 4500 Diesel 4x2 Reg Cab-84"CA w/ Steel wheels	\$ 127,500.00	0%
Frazer, Ltd.	Type I - 12' Remount	Ram 4500 Gas 4x4 Reg Cab-84"CA w/ Aluminum wheels	\$ 122,750.00	0%
Frazer, Ltd.	Type I - 12' Remount	Ram 4500 Gas 4x2 Reg Cab-84"CA w/ Aluminum wheels	\$ 118,500.00	0%
Frazer, Ltd.	Type I - 12' Remount	Ram 4500 Gas 4x2 Reg Cab-84"CA w/ Steel wheels	\$ 116,250.00	0%
Frazer, Ltd.	Type I - 12' Remount	Ram 4500 Diesel 4x4 Reg Cab-84"CA w/ Steel wheels	\$ 132,000.00	0%
Frazer, Ltd.	Type I - 12' Remount	Ram 4500 Gas 4x4 Reg Cab-84"CA w/ Steel wheels	\$ 120,750.00	0%
Frazer, Ltd.	Type I - 12' Remount	Ram 5500 Diesel 4x2 Reg Cab-84"CA w/ Steel wheels	\$ 128,750.00	0%
Frazer, Ltd.	Type I - 12' Remount	Ram 5500 Diesel 4x2 Reg Cab-84"CA w/ Aluminum wheels	\$ 131,000.00	0%
Frazer, Ltd.	Type I - 12' Remount	Ram 5500 Diesel 4x4 Reg Cab-84"CA w/ Steel wheels	\$ 133,250.00	0%
Frazer, Ltd.	Type I - 12' Remount	Ram 5500 Diesel 4x4 Reg Cab-84"CA w/ Aluminum wheels	\$ 135,250.00	0%
Frazer, Ltd.	Type I - 12' Remount	Ram 5500 Gas 4x2 Reg Cab-84"CA w/ Steel wheels	\$ 117,500.00	0%
Frazer, Ltd.	Type I - 12' Remount	Ram 5500 Gas 4x2 Reg Cab-84"CA w/ Aluminum wheels	\$ 119,750.00	0%
Frazer, Ltd.	Type I - 12' Remount	Ram 5500 Gas 4x4 Reg Cab-84"CA w/ Steel wheels	\$ 121,500.00	0%
Frazer, Ltd.	Type I - 12' Remount	Ram 5500 Gas 4x4 Reg Cab-84"CA w/ Aluminum wheels	\$ 123,750.00	0%
Frazer, Ltd.	Type I - 12' Remount	Chevy 3500 Gas 4x2 Reg Cab-84"CA w/ Steel wheels	\$ 105,750.00	0%
Frazer, Ltd.	Type I - 12' Remount	Chevy 3500 Diesel 4x2 Reg Cab-84"CA w/ Steel wheels	\$ 116,500.00	0%
Frazer, Ltd.	Type I - 12' Remount	Chevy 3500 Gas 4x4 Reg Cab-84"CA w/ Steel wheels	\$ 108,250.00	0%
Frazer, Ltd.	Type I - 12' Remount	Chevy 3500 Diesel 4x4 Reg Cab-84"CA w/ Steel wheels	\$ 119,250.00	0%
Frazer, Ltd.	Type I - 12' Remount	Chevy 4500 MD Diesel 4x2 Reg Cab-84"CA w/ Aluminum wheels	\$ 121,750.00	0%
Frazer, Ltd.	Type I - 12' Remount	Chevy 4500 MD Diesel 4x2 Reg Cab-84"CA w/ Steel wheels	\$ 120,000.00	0%
Frazer, Ltd.	Type I - 12' Remount	Chevy 4500 MD Diesel 4x4 Reg Cab-84"CA w/ Aluminum wheels	\$ 125,000.00	0%
Frazer, Ltd.	Type I - 12' Remount	Chevy 4500 MD Diesel 4x4 Reg Cab-84"CA w/ Steel wheels	\$ 123,250.00	0%
Frazer, Ltd.	Type I - 12' Remount	Ford F-350 Gas 4x4 Reg Cab-84"CA w/ Aluminum wheels	\$ 119,500.00	0%
Frazer, Ltd.	Type I - 12' Remount	Ford F-350 Gas 4x4 Reg Cab-84"CA w/ Steel wheels	\$ 118,750.00	0%
Frazer, Ltd.	Type I - 12' Remount	Ford F-450 Gas 4x2 Reg Cab-84"CA w/ AL wheels	\$ 115,250.00	0%
Frazer, Ltd.	Type I - 12' Remount	Ford F-450 Diesel 4x2 Reg Cab-84"CA w/ AL wheels	\$ 126,250.00	0%
Frazer, Ltd.	Type I - 12' Remount	Ford F-450 Diesel 4x2 Reg Cab-84"CA w/ Steel wheels	\$ 125,000.00	0%



Frazer, Ltd.	Type I - 12' Remount	Ford F-450 Diesel 4x4 Super Cab-84"CA w/ Steel wheels	\$ 130,750.00	0%
Frazer, Ltd.	Type I - 12' Remount	Ford F-450 Diesel 4x2 Super Cab-84"CA w/ Steel wheels	\$ 127,000.00	0%
Frazer, Ltd.	Type I - 12' Remount	Ford F-450 Diesel 4x2 Super Cab-84"CA w/ Aluminum wheels	\$ 128,250.00	0%
Frazer, Ltd.	Type I - 12' Remount	Ford F-450 Diesel 4x4 Reg Cab-84"CA w/ AL wheels	\$ 129,500.00	0%
Frazer, Ltd.	Type I - 12' Remount	Ford F-450 Diesel 4x4 Super Cab-84"CA w/ AL wheels	\$ 132,000.00	0%
Frazer, Ltd.	Type I - 12' Remount	Ford F-450 Diesel 4x4 Reg Cab-84"CA w/ Steel wheels	\$ 128,250.00	0%
Frazer, Ltd.	Type I - 12' Remount	Ford F-450 Gas 4x2 Reg Cab-84"CA w/ Steel wheels	\$ 114,000.00	0%
Frazer, Ltd.	Type I - 12' Remount	Ford F-450 Gas 4x4 Super Cab-84"CA w/ Steel wheels	\$ 120,000.00	0%
Frazer, Ltd.	Type I - 12' Remount	Ford F-450 Gas 4x4 Super Cab-84"CA w/ Aluminum wheels	\$ 121,000.00	0%
Frazer, Ltd.	Type I - 12' Remount	Ford F-450 Gas 4x4 Reg Cab-84"CA w/ AL wheels	\$ 118,500.00	0%
Frazer, Ltd.	Type I - 12' Remount	Ford F-450 Gas 4x4 Reg Cab-84"CA w/ Steel wheels	\$ 117,250.00	0%
Frazer, Ltd.	Type I - 12' Remount	Ford F-550 Diesel 4x2 Reg Cab-84"CA w/ AL wheels	\$ 127,500.00	0%
Frazer, Ltd.	Type I - 12' Remount	Ford F-550 Diesel 4x2 Reg Cab-84"CA w/ Steel wheels	\$ 126,250.00	0%
Frazer, Ltd.	Type I - 12' Remount	Ford F-550 Diesel 4x4 Reg Cab-84"CA w/ AL wheels	\$ 130,750.00	0%
Frazer, Ltd.	Type I - 12' Remount	Ford F-550 Diesel 4x4 Reg Cab-84"CA w/ Steel wheels	\$ 129,500.00	0%
Frazer, Ltd.	Type I - 12' Remount	Ford F-550 Gas 4x2 Reg Cab-84"CA w/ AL wheels	\$ 119,750.00	0%
Frazer, Ltd.	Type I - 12' Remount	Ford F-550 Gas 4x2 Reg Cab-84"CA w/ Steel wheels	\$ 115,250.00	0%
Frazer, Ltd.	Type I - 12' Remount	Ford F-550 Gas 4x4 Reg Cab-84"CA w/ AL wheels	\$ 116,500.00	0%
Frazer, Ltd.	Type I - 12' Remount	Ford F-550 Gas 4x4 Reg Cab-84"CA w/ Steel wheels	\$ 118,500.00	0%
Frazer, Ltd.	Type I - 12' Remount	Ford F-550 Diesel 4x2 Super Cab-84"CA w/ Aluminum wheels	\$ 128,250.00	0%
Frazer, Ltd.	Type I - 12' Remount	Ford F-550 Diesel 4x2 Super Cab-84"CA w/ Steel wheels	\$ 129,500.00	0%
Frazer, Ltd.	Type I - 12' Remount	Ford F-550 Gas 4x4 Super Cab-84"CA w/ Steel wheels	\$ 121,000.00	0%
Frazer, Ltd.	Type I - 12' Remount	Ford F-550 Diesel 4x4 Super Cab-84"CA w/ Steel wheels	\$ 132,000.00	0%
Frazer, Ltd.	Type I - 12' Remount	Ford F-550 Gas 4x4 Super Cab-84"CA w/ Aluminum wheels	\$ 122,250.00	0%
Frazer, Ltd.	Type I - 12' Remount	Ford F-550 Diesel 4x4 Super Cab-84"CA w/ Aluminum wheels	\$ 133,250.00	0%
Frazer, Ltd.	Type I - 12' Remount	International CV515 Diesel 4x2 Cab-84CA w/ Aluminum wheels	\$ 142,750.00	0%
Frazer, Ltd.	Type I - 12' Remount	International CV515 Diesel 4x4 Cab-84CA w/ Aluminum wheels	\$ 144,500.00	0%
Frazer, Ltd.	Type I - 14' Remount	Ram 4500 Diesel 4x4 Reg Cab-108"CA w/ Aluminum wheels	\$ 134,250.00	0%
Frazer, Ltd.	Type I - 14' Remount	Ram 4500 Diesel 4x2 Reg Cab-108"CA w/ Aluminum wheels	\$ 130,000.00	0%
Frazer, Ltd.	Type I - 14' Remount	Ram 4500 Diesel 4x2 Reg Cab-108"CA w/ Steel wheels	\$ 127,750.00	0%
Frazer, Ltd.	Type I - 14' Remount	Ram 4500 Gas 4x4 Reg Cab-108"CA w/ Aluminum wheels	\$ 122,750.00	0%
Frazer, Ltd.	Type I - 14' Remount	Ram 4500 Gas 4x2 Reg Cab-108"CA w/ Aluminum wheels	\$ 118,750.00	0%
Frazer, Ltd.	Type I - 14' Remount	Ram 4500 Gas 4x2 Reg Cab-108"CA w/ Steel wheels	\$ 116,500.00	0%
Frazer, Ltd.	Type I - 14' Remount	Ram 4500 Diesel 4x4 Reg Cab-108"CA w/ Steel wheels	\$ 132,250.00	0%
Frazer, Ltd.	Type I - 14' Remount	Ram 4500 Gas 4x4 Reg Cab-108"CA w/ Steel wheels	\$ 120,500.00	0%
Frazer, Ltd.	Type I - 14' Remount	Ram 5500 Diesel 4x2 Reg Cab-108"CA w/ Steel wheels	\$ 129,000.00	0%
Frazer, Ltd.	Type I - 14' Remount	Ram 5500 Diesel 4x2 Reg Cab-108"CA w/ Aluminum wheels	\$ 131,250.00	0%
Frazer, Ltd.	Type I - 14' Remount	Ram 5500 Diesel 4x4 Reg Cab-108"CA w/ Steel wheels	\$ 133,250.00	0%

Frazer, Ltd.	Type I - 14' Remount	Ram 5500 Diesel 4x4 Reg Cab-108"CA w/ Aluminum wheels	\$ 135,500.00	0%
Frazer, Ltd.	Type I - 14' Remount	Ram 5500 Gas 4x2 Reg Cab-108"CA w/ Steel wheels	\$ 117,750.00	0%
Frazer, Ltd.	Type I - 14' Remount	Ram 5500 Gas 4x2 Reg Cab-108"CA w/ Aluminum wheels	\$ 120,000.00	0%
Frazer, Ltd.	Type I - 14' Remount	Ram 5500 Gas 4x4 Reg Cab-108"CA w/ Steel wheels	\$ 121,750.00	0%
Frazer, Ltd.	Type I - 14' Remount	Ram 5500 Gas 4x4 Reg Cab-108"CA w/ Aluminum wheels	\$ 124,000.00	0%
Frazer, Ltd.	Type I - 14' Remount	Chevy 4500 MD Diesel 4x2 Reg Cab-108"CA w/ Aluminum wheels	\$ 122,250.00	0%
Frazer, Ltd.	Type I - 14' Remount	Chevy 4500 MD Diesel 4x2 Reg Cab-108"CA w/ Steel wheels	\$ 120,500.00	0%
Frazer, Ltd.	Type I - 14' Remount	Chevy 4500 MD Diesel 4x4 Reg Cab-108"CA w/ Aluminum wheels	\$ 125,500.00	0%
Frazer, Ltd.	Type I - 14' Remount	Chevy 4500 MD Diesel 4x2 Reg Cab-108"CA w/ Steel wheels	\$ 123,750.00	0%
Frazer, Ltd.	Type I - 14' Remount	Ford F-350 Gas 4x4 Reg Cab-84"CA w/ Aluminum wheels	\$ 119,500.00	0%
Frazer, Ltd.	Type I - 14' Remount	Ford F-350 Gas 4x4 Reg Cab-84"CA w/ Steel wheels	\$ 118,750.00	0%
Frazer, Ltd.	Type I - 14' Remount	Ford F-450 Diesel 4x2 Reg Cab-108"CA w/ Steel wheels	\$ 125,250.00	0%
Frazer, Ltd.	Type I - 14' Remount	Ford F-450 Diesel 4x4 Reg Cab-108"CA w/ AL wheels	\$ 129,500.00	0%
Frazer, Ltd.	Type I - 14' Remount	Ford F-450 Diesel 4x4 Reg Cab-108"CA w/ Steel wheels	\$ 128,500.00	0%
Frazer, Ltd.	Type I - 14' Remount	Ford F-450 Gas 4x2 Reg Cab-108"CA w/ Steel wheels	\$ 114,250.00	0%
Frazer, Ltd.	Type I - 14' Remount	Ford F-450 Gas 4x4 Reg Cab-108"CA w/ Steel wheels	\$ 117,500.00	0%
Frazer, Ltd.	Type I - 14' Remount	Ford F-450 Gas 4x4 Reg Cab-108"CA w/ AL wheels	\$ 118,750.00	0%
Frazer, Ltd.	Type I - 14' Remount	Ford F-450 Gas 4x2 Reg Cab-108"CA w/ AL wheels	\$ 115,500.00	0%
Frazer, Ltd.	Type I - 14' Remount	Ford F-550 Diesel 4x2 Reg Cab-108"CA w/ AL wheels	\$ 127,750.00	0%
Frazer, Ltd.	Type I - 14' Remount	Ford F-550 Diesel 4x2 Reg Cab-108"CA w/ Steel wheels	\$ 126,500.00	0%
Frazer, Ltd.	Type I - 14' Remount	Ford F-550 Diesel 4x4 Reg Cab-108"CA w/ AL wheels	\$ 130,750.00	0%
Frazer, Ltd.	Type I - 14' Remount	Ford F-550 Diesel 4x4 Reg Cab-108"CA w/ Steel wheels	\$ 129,750.00	0%
Frazer, Ltd.	Type I - 14' Remount	Ford F-550 Gas 4x2 Reg Cab-108"CA w/ AL wheels	\$ 116,750.00	0%
Frazer, Ltd.	Type I - 14' Remount	Ford F-550 Gas 4x2 Reg Cab-108"CA w/ Steel wheels	\$ 115,500.00	0%
Frazer, Ltd.	Type I - 14' Remount	Ford F-550 Gas 4x4 Reg Cab-108"CA w/ AL wheels	\$ 119,750.00	0%
Frazer, Ltd.	Type I - 14' Remount	Ford F-550 Gas 4x4 Reg Cab-108"CA w/ Steel wheels	\$ 118,750.00	0%
Frazer, Ltd.	Type I - 14' Remount	International CV515 Diesel 4x2 Cab-108CA w/ Aluminum wheels	\$ 140,000.00	0%
Frazer, Ltd.	Type I - 14' Remount	International CV515 Diesel 4x4 Cab-108CA w/ Aluminum wheels	\$ 144,250.00	0%
Frazer, Ltd.	Type III - 12' Remount	Chevy G3500 Gas 4x2 Reg Cab-80"CA w/ Steel wheels	\$ 93,750.00	0%
Frazer, Ltd.	Type III - 12' Remount	Ford E-350 Gas 4x2 Cutaway Cab-80"CA w/ Steel wheels	\$ 95,500.00	0%
Frazer, Ltd.	Type III - 14' Remount	Chevy G4500 Gas 4x2 Reg Cab-100"CA w/ Steel wheels	\$ 94,500.00	0%
Frazer, Ltd.	Type III - 14' Remount	Ford E-450 Gas 4x2 Cutaway Cab-100"CA w/ Steel wheels	\$ 96,500.00	0%
Frazer, Ltd.	First Responder (UCV) Remount	Ram 3500 Diesel 4x4 Crew Cab-60"CA w/ Steel wheels	\$ 124,750.00	0%
Frazer, Ltd.	First Responder (UCV) Remount	Ram 3500 Diesel 4x2 Crew Cab-60"CA w/ Steel wheels	\$ 121,000.00	0%
Frazer, Ltd.	First Responder (UCV) Remount	Ram 3500 Gas 4x2 Crew Cab-60"CA w/ Steel wheels	\$ 113,500.00	0%
Frazer, Ltd.	First Responder (UCV) Remount	Ram 4500 Diesel 4x4 Crew Cab-60"CA w/ Steel wheels	\$ 131,250.00	0%
Frazer, Ltd.	First Responder (UCV) Remount	Ram 4500 Diesel 4x2 Crew Cab-60"CA w/ Steel wheels	\$ 126,000.00	0%
Frazer, Ltd.	First Responder (UCV) Remount	Ram 4500 Diesel 4x2 Crew Cab-60"CA w/ Steel wheels	\$ 128,000.00	0%

<b>Frazer, Ltd.</b>	<b>First Responder (UCV) Remount</b>	Ram 4500 Diesel 4x4 Crew Cab-60"CA w/ Aluminum wheels	\$ 133,500.00	0%
<b>Frazer, Ltd.</b>	<b>First Responder (UCV) Remount</b>	Ram 4500 Gas 4x2 Crew Cab-60"CA w/ Aluminum wheels	\$ 116,750.00	0%
<b>Frazer, Ltd.</b>	<b>First Responder (UCV) Remount</b>	Ram 4500 Gas 4x2 Crew Cab-60"CA w/ Steel wheels	\$ 114,750.00	0%
<b>Frazer, Ltd.</b>	<b>First Responder (UCV) Remount</b>	Ram 4500 Gas 4x4 Crew Cab-60"CA w/ Steel wheels	\$ 120,000.00	0%
<b>Frazer, Ltd.</b>	<b>First Responder (UCV) Remount</b>	Ram 4500 Gas 4x4 Crew Cab-60"CA w/ Aluminum wheels	\$ 122,250.00	0%
		<b>Category H - Ambulance/EMS/Rescue Vehicle Service/Maintenance Plans</b>		
<b>Frazer, Ltd</b>	<b>Labor</b>	Labor (Hourly Rate)	\$ 145.00	0%

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF DENTON, A TEXAS HOME-RULE MUNICIPAL CORPORATION, AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT WITH FRAZER, LTD, THROUGH THE BUY BOARD COOPERATIVE PURCHASING NETWORK CONTRACT NUMBER 650-21, AND THROUGH THE HOUSTON-GALVESTON AREA COUNCIL OF GOVERNMENTS (H-GAC) COOPERATIVE PURCHASING PROGRAM CONTRACT NUMBERS AM10-20 & AM10-23, FOR THE PURCHASE OF AMBULANCES FOR THE FLEET SERVICES DEPARTMENT; PROVIDING FOR THE EXPENDITURE OF FUNDS THEREFOR; AND PROVIDING AN EFFECTIVE DATE (FILE 8495 – AWARDED TO FRAZER, LTD, FOR ONE (1) YEAR, WITH THE OPTION FOR FOUR (4) ADDITIONAL ONE (1) YEAR EXTENSIONS, IN THE TOTAL FIVE (5) YEAR NOT-TO-EXCEED AMOUNT OF \$4,200,000.00).

WHEREAS, pursuant to Ordinance 2005-034, the Buy Board Cooperative Purchasing Network has solicited, received, and tabulated competitive bids for the purchase of necessary materials, equipment, supplies, or services in accordance with the procedures of state law and city ordinances; and

WHEREAS, pursuant to Ordinance 1995-107, the Houston-Galveston Area Council of Governments (H-GAC) Cooperative Purchasing Program has solicited, received, and tabulated competitive bids for the purchase of necessary materials, equipment, supplies, or services in accordance with the procedures of state law and city ordinances; and

WHEREAS, the City Manager, or a designated employee, has reviewed and recommended that the herein described materials, equipment, supplies, or services can be purchased by the City through the Buy Board and Houston-Galveston Area Council of Governments (H-GAC) programs at less cost than the City would expend if bidding these items individually; 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 shown in the "File Number" referenced herein and on file in the office of the Purchasing Agent, are hereby accepted and approved as being the lowest responsible bids for such items:

<u>FILE NUMBER</u>	<u>VENDOR</u>	<u>AMOUNT</u>
8495	Frazer, LTD	\$4,200,000.00

SECTION 2. By the acceptance and approval of the items set forth in the referenced file number, the City accepts the offer of the persons submitting the bids to Buy Board and Houston-Galveston Area Council of Governments (H-GAC) for such items and agrees to purchase the materials, equipment, supplies, or services in accordance with the terms, conditions, specifications, standards, quantities, and for the specified sums contained in the bid documents and related documents filed with Buy Board and Houston-Galveston Area Council of Governments (H-GAC) and the purchase orders issued by the City.

SECTION 3. Should the City and persons submitting approved and accepted items set forth in the referenced file number wish to enter into a formal written agreement as a result of the City's ratification of bids awarded by Buy Board and Houston-Galveston Area Council of Governments (H-GAC), 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, and standards contained in the Proposal submitted to Buy Board and Houston-Galveston Area Council of Governments (H-GAC), and the quantities and specified sums contained in the City's purchase orders and related documents referenced herein are 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 items set forth in the referenced file number, the City Council hereby authorizes the expenditure of funds therefor in the amount and in accordance with the approval purchase orders or pursuant to a written contract made pursuant thereto as authorized herein.

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 \_\_\_\_\_, 2024.

\_\_\_\_\_  
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: dc=com, dc=cityofdenton,  
dc=codad, ou=Department Users  
and Groups, ou=General  
Government, ou=Legal,  
cn=Marcella Lunn,  
email=Marcella.Lunn@cityofdenton.com  
Date: 2024.03.18 11:02:10 -05'00'

**CONTRACT BY AND BETWEEN  
CITY OF DENTON, TEXAS AND FRAZER, LTD.  
(File # 8495)**

**THIS CONTRACT** is made and entered into this date \_\_\_\_\_, by and between Frazer, LTD., a Texas Limited Partnership, whose address is 7219 Rampart St, Houston, TX 77081 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 Supplier's quote, a copy of which is attached hereto and incorporated herein for all purposes as **Exhibit "B"**. 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) BuyBoard Cooperative Purchasing Contract #650-21 and H-GAC Contract #AM10-20 and AM10-23 with Frazer, LTD. (**Exhibit "B" on file at the office of the Purchasing Agent**);
- (c) City of Denton Standard Terms and Conditions (**Exhibit "C"**);
- (d) Certificate of Interested Parties Electronic Filing (**Exhibit "D"**);
- (e) Insurance Requirements (**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."

**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.



SUPPLIER

DocuSigned by:  
BY: Lauren Lambert  
AUTHORIZED SIGNATURE

Printed Name Lauren Lambert

Title: Regional Sales Manager

214-733-9972  
PHONE NUMBER

llambert@frazerbilt.com  
EMAIL ADDRESS

2024-1134375  
TEXAS ETHICS COMMISSION  
1295 CERTIFICATE NUMBER

CITY OF DENTON, TEXAS

BY: \_\_\_\_\_  
SARA HENSLEY, CITY MANAGER

ATTEST:  
JESUS SALAZAR, CITY SECRETARY

BY: \_\_\_\_\_

APPROVED AS TO LEGAL FORM:  
MACK REINWAND, CITY ATTORNEY

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

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

DocuSigned by:  
Tom Gramer  
SIGNATURE PRINTED NAME

Director  
TITLE

Fleet  
DEPARTMENT

**Exhibit A**  
**Special Terms and Conditions**

**1. Contract Term**

The contract term will be one (1) year, effective from date of award. The City and the Supplier shall have the option to renew this contract for an additional four (4) one-year periods.

The contract shall commence upon the issuance of a Notice of Award by the City of Denton and shall automatically renew each year, from the date of award by City Council. 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.

**2. Total Contract Amount**

The contract total shall not exceed \$4,200,000.

**Exhibit C**  
**City of Denton**  
**Standard Purchase Terms and Conditions**

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

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

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

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

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

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

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

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

7. **RIGHT OF INSPECTION AND REJECTION:** The City expressly reserves all rights under law,

including, but not limited to the Uniform Commercial Code, to inspect the deliverables at delivery before accepting them, and to reject defective or non-conforming deliverables. If the City has the right to inspect the Contractor's, or the Contractor's Subcontractor's, facilities, or the deliverables at the Contractor's, or the Contractor's Subcontractor's, premises, the Contractor shall furnish, or cause to be furnished, without additional charge, all reasonable facilities and assistance to the City to facilitate such inspection.

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

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

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

#### **10. WORKFORCE**

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

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

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

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

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

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

**11. COMPLIANCE WITH HEALTH, SAFETY, AND ENVIRONMENTAL REGULATIONS:** The Contractor, it's Subcontractors, and their respective employees, shall comply fully with all applicable federal, state, and local health, safety, and environmental laws, ordinances, rules and regulations in the performance of the services, including but not limited to those promulgated by the City and by the

Occupational Safety and Health Administration (OSHA). In case of conflict, the most stringent safety requirement shall govern. The Contractor shall indemnify and hold the City harmless from and against all claims, demands, suits, actions, judgments, fines, penalties and liability of every kind arising from the breach of the Contractor's obligations under this paragraph.

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

## 12. INVOICES:

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

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

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

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

E. Federal excise taxes, State taxes, or City sales taxes must not be included in the invoiced amount. The City will furnish a tax exemption certificate upon request.

## 13. PAYMENT:

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

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

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

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

- i. delivery of defective or non-conforming deliverables by the Contractor;
- ii. third party claims, which are not covered by the insurance which the Contractor is required to provide, are filed or reasonable evidence indicating probable filing of such claims;
- iii. failure of the Contractor to pay Subcontractors, or for labor, materials or equipment;
- iv. damage to the property of the City or the City's agents, employees or contractors, which is not covered by insurance required to be provided by the Contractor;
- v. reasonable evidence that the Contractor's obligations will not be completed within the time specified in the Contract, and that the unpaid balance would not be adequate to cover actual

or damages for the anticipated delay;

vi. failure of the Contractor to submit proper invoices with purchase order number, with all required attachments and supporting documentation; or

vii. failure of the Contractor to comply with any material provision of the Contract Documents.

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

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

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

**14. TRAVEL EXPENSES:** All travel, lodging and per diem expenses in connection with the Contract shall be paid by the Contractor, unless otherwise stated in the contract terms. During the term of this contract, the contractor shall bill and the City shall reimburse contractor for all reasonable and approved out of pocket expenses which are incurred in the connection with the performance of duties hereunder. Notwithstanding the foregoing, expenses for the time spent by the contractor in traveling to and from City facilities shall not be reimbursed, unless otherwise negotiated.

#### **15. FINAL PAYMENT AND CLOSE-OUT:**

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

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

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

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

#### **17. RIGHT TO AUDIT:**

A. The City shall have the right to audit and make copies of the books, records and computations pertaining to the Contract. The Contractor shall retain such books, records, documents and other evidence pertaining to the Contract period and five years thereafter, except if an audit is in progress or audit findings are yet unresolved, in which case records shall be kept until all audit tasks are completed and resolved. These books, records, documents and other evidence shall be available, within ten (10) business days of written

request. Further, the Contractor shall also require all Subcontractors, material suppliers, and other payees to retain all books, records, documents and other evidence pertaining to the Contract, and to allow the City similar access to those documents. All books and records will be made available within a 50 mile radius of the City of Denton. The cost of the audit will be borne by the City unless the audit reveals an overpayment of 1% or greater. If an overpayment of 1% or greater occurs, the reasonable cost of the audit, including any travel costs, must be borne by the Contractor which must be payable within five (5) business days of receipt of an invoice.

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

#### **18. SUBCONTRACTORS:**

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

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

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

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

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

#### **19. WARRANTY-PRICE:**

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

B. The Contractor certifies that the prices in the Offer have been arrived at independently without

consultation, communication, or agreement for the purpose of restricting competition, as to any matter relating to such fees with any other firm or with any competitor.

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

**20. WARRANTY – TITLE:** The Contractor warrants that it has good and indefeasible title to all deliverables furnished under the Contract, and that the deliverables are free and clear of all liens, claims, security interests and encumbrances. The Contractor shall indemnify and hold the City harmless from and against all adverse title claims to the deliverables.

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

A. Recycled deliverables shall be clearly identified as such.

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

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

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

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

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

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

B. Unless otherwise specified in the Contract, the warranty period shall be at least one year from the Acceptance Date. If during the warranty period, one or more of the above warranties are breached, the Contractor shall promptly upon receipt of demand perform the services again in accordance with above standard at no additional cost to the City. All costs incidental to such additional performance shall be borne by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach warranty, but failure to give timely notice shall



not impair the City's rights under this section.

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

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

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

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

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

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

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

hereof.

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

30. **DELAYS:**

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

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

31. **INDEMNITY:**

A. Definitions:

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

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

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

A. General Requirements:

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

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

- vii. The "other" insurance clause shall not apply to the City where the City is an additional insured shown on any policy. It is intended that policies required in the Contract, covering both the City and the Contractor, shall be considered primary coverage as applicable.
- viii. If insurance policies are not written for amounts agreed to with the City, the Contractor shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.
- ix. The City shall be entitled, upon request, at an agreed upon location, and without expense, to review certified copies of policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the parties hereto or the underwriter on any such policies.
- x. The City reserves the right to review the insurance requirements set forth during the effective period of the Contract and to make reasonable adjustments to insurance coverage, limits, and exclusions when deemed necessary and prudent by the City based upon changes in statutory law, court decisions, the claims history of the industry or financial condition of the insurance company as well as the Contractor.
- xi. The Contractor shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of the Contract or as required in the Contract.
- xii. The Contractor shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in policies. All deductibles or self-insured retentions shall be disclosed on the Certificate of Insurance.

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

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

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

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

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

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

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

37. **CONFIDENTIALITY:** In order to provide the deliverables to the City, Contractor may require access to certain of the City's and/or its licensors' confidential information (including inventions, employee

information, trade secrets, confidential know-how, confidential business information, and other information which the City or its licensors consider confidential) (collectively, "Confidential Information"). Contractor acknowledges and agrees that the Confidential Information is the valuable property of the City and/or its licensors and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information will substantially injure the City and/or its licensors. The Contractor (including its employees, subcontractors, agents, or representatives) agrees that it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate, or otherwise use the Confidential Information without the prior written consent of the City or in a manner not expressly permitted under this Agreement, unless the Confidential Information is required to be disclosed by law or an order of any court or other governmental authority with proper jurisdiction, provided the Contractor promptly notifies the City before disclosing such information so as to permit the City reasonable time to seek an appropriate protective order. The Contractor agrees to use protective measures no less stringent than the Contractor uses within its own business to protect its own most valuable information, which protective measures shall under all circumstances be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.

**38. OWNERSHIP AND USE OF DELIVERABLES:** The City shall own all rights, titles, and interests throughout the world in and to the deliverables.

A. Patents. As to any patentable subject matter contained in the deliverables, the Contractor agrees to disclose such patentable subject matter to the City. Further, if requested by the City, the Contractor agrees to assign and, if necessary, cause each of its employees to assign the entire right, title, and interest to specific inventions under such patentable subject matter to the City and to execute, acknowledge, and deliver and, if necessary, cause each of its employees to execute, acknowledge, and deliver an assignment of letters patent, in a form to be reasonably approved by the City, to the City upon request by the City.

B. Copyrights. As to any deliverables containing copyrightable subject matter, the Contractor agrees that upon their creation, such deliverables shall be considered as work made-for-hire by the Contractor for the City and the City shall own all copyrights in and to such deliverables, provided however, that nothing in this Paragraph 38 shall negate the City's sole or joint ownership of any such deliverables arising by virtue of the City's sole or joint authorship of such deliverables. Should by operation of law, such deliverables not be considered works made-for-hire, the Contractor hereby assigns to the City (and agrees to cause each of its employees providing services to the City hereunder to execute, acknowledge, and deliver an assignment to the City of) all worldwide right, title, and interest in and to such deliverables. With respect to such work made-for-hire, the Contractor agrees to execute, acknowledge, and deliver and cause each of its employees providing services to the City hereunder to execute, acknowledge, and deliver a work-made-for-hire agreement, in a form to be reasonably approved by the City, to the City upon delivery of such deliverables to the City or at such other time as the City may request.

C. Additional Assignments. The Contractor further agrees to, and if applicable, cause each of its employees to, execute, acknowledge, and deliver all applications, specifications, oaths, assignments, and all other instruments which the City might reasonably deem necessary in order to apply for and obtain copyright protection, mask work registration, trademark registration and/or protection, letters patent, or any similar rights in any and all countries and in order to assign and convey to the City, its successors, assigns and nominees, the sole and exclusive right, title, and interest in and to the deliverables. The Contractor's obligations to execute, acknowledge, and deliver (or cause to be executed, acknowledged, and delivered) instruments or papers such as those described in this Paragraph 38 a., b., and c. shall continue after the termination of this Contract with respect to such deliverables. In the event the City should not seek to obtain copyright protection, mask work registration or patent protection for any of the deliverables, but should desire to keep the same secret, the Contractor agrees to treat the same as Confidential Information under the terms of Paragraph 37 above.

**39. PUBLICATIONS:** All published material and written reports submitted under the Contract must be originally developed material unless otherwise specifically provided in the Contract. When material not originally developed is included in a report in any form, the source shall be identified.

40. **ADVERTISING:** The Contractor shall not advertise or publish, without the City's prior consent, the fact that the City has entered into the Contract, except to the extent required by law.

41. **NO CONTINGENT FEES:** The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the Contract upon any agreement or understanding for commission, percentage, brokerage, or contingent fee, excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the City shall have the right, in addition to any other remedy available, to cancel the Contract without liability and to deduct from any amounts owed to the Contractor, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

42. **GRATUITIES:** The City may, by written notice to the Contractor, cancel the Contract without liability if it is determined by the City that gratuities were offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the City of Denton with a view toward securing the Contract or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performing of such contract. In the event the Contract is canceled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the Contractor in providing such gratuities.

43. **PROHIBITION AGAINST PERSONAL INTEREST IN CONTRACTS:** No officer, employee, independent consultant, or elected official of the City who is involved in the development, evaluation, or decision-making process of the performance of any solicitation shall have a financial interest, direct or indirect, in the Contract resulting from that solicitation. Any willful violation of this section shall constitute impropriety in office, and any officer or employee guilty thereof shall be subject to disciplinary action up to and including dismissal. Any violation of this provision, with the knowledge, expressed or implied, of the Contractor shall render the Contract voidable by the City. The Contractor shall complete and submit the City's Conflict of Interest Questionnaire.

44. **INDEPENDENT CONTRACTOR:** The Contract shall not be construed as creating an employer/employee relationship, a partnership, or a joint venture. The Contractor's services shall be those of an independent contractor. The Contractor agrees and understands that the Contract does not grant any rights or privileges established for employees of the City of Denton, Texas for the purposes of income tax, withholding, social security taxes, vacation or sick leave benefits, worker's compensation, or any other City employee benefit. The City shall not have supervision and control of the Contractor or any employee of the Contractor, and it is expressly understood that Contractor shall perform the services hereunder according to the attached specifications at the general direction of the City Manager of the City of Denton, Texas, or his designee under this agreement. The contractor is expressly free to advertise and perform services for other parties while performing services for the City.

45. **ASSIGNMENT-DELEGATION:** The Contract shall be binding upon and ensure to the benefit of the City and the Contractor and their respective successors and assigns, provided however, that no right or interest in the Contract shall be assigned and no obligation shall be delegated by the Contractor without the prior written consent of the City. Any attempted assignment or delegation by the Contractor shall be void unless made in conformity with this paragraph. The Contract is not intended to confer rights or benefits on any person, firm or entity not a party hereto; it being the intention of the parties that there are no third party beneficiaries to the Contract.

The Vendor shall notify the City's Purchasing Manager, in writing, of a company name, ownership, or address change for the purpose of maintaining updated City records. The president of the company or authorized official must sign the letter. A letter indicating changes in a company name or ownership must be accompanied with supporting legal documentation such as an updated W-9, documents filed with the

state indicating such change, copy of the board of director's resolution approving the action, or an executed merger or acquisition agreement. Failure to do so may adversely impact future invoice payments.

**46. WAIVER:** No claim or right arising out of a breach of the Contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. No waiver by either the Contractor or the City of any one or more events of default by the other party shall operate as, or be construed to be, a permanent waiver of any rights or obligations under the Contract, or an express or implied acceptance of any other existing or future default or defaults, whether of a similar or different character.

**47. MODIFICATIONS:** The Contract can be modified or amended only by a writing signed by both parties. No pre-printed or similar terms on any the Contractor invoice, order or other document shall have any force or effect to change the terms, covenants, and conditions of the Contract.

**48. INTERPRETATION:** The Contract is intended by the parties as a final, complete and exclusive statement of the terms of their agreement. No course of prior dealing between the parties or course of performance or usage of the trade shall be relevant to supplement or explain any term used in the Contract. Although the Contract may have been substantially drafted by one party, it is the intent of the parties that all provisions be construed in a manner to be fair to both parties, reading no provisions more strictly against one party or the other. Whenever a term defined by the Uniform Commercial Code, as enacted by the State of Texas, is used in the Contract, the UCC definition shall control, unless otherwise defined in the Contract.

**49. DISPUTE RESOLUTION:**

A. If a dispute arises out of or relates to the Contract, or the breach thereof, the parties agree to negotiate prior to prosecuting a suit for damages. However, this section does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. Either party may make a written request for a meeting between representatives of each party within fourteen (14) calendar days after receipt of the request or such later period as agreed by the parties. Each party shall include, at a minimum, one (1) senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within thirty (30) calendar days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will proceed directly to mediation as described below. Negotiation may be waived by a written agreement signed by both parties, in which event the parties may proceed directly to mediation as described below.

B. If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within thirty (30) calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option; the City and the Contractor agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in the Contract prevents the parties from relying on the skills of a person who is trained in the subject matter of the dispute or a contract interpretation expert. If the parties fail to agree on a mediator within thirty (30) calendar days of initiation of the mediation process, the mediator shall be selected by the Denton County Alternative Dispute Resolution Program (DCAP). The parties agree to participate in mediation in good faith for up to thirty (30) calendar days from the date of the first mediation session. The City and the Contractor will share the mediator's fees equally and the parties will bear their own costs of participation such as fees for any consultants or attorneys they may utilize to represent them or otherwise assist them in the mediation.

**50. JURISDICTION AND VENUE:** The Contract is made under and shall be governed by the laws of the State of Texas, including, when applicable, the Uniform Commercial Code as adopted in Texas, V.T.C.A., Bus. & Comm. Code, Chapter 1, excluding any rule or principle that would refer to and apply the substantive law of another state or jurisdiction. All issues arising from this Contract shall be resolved in the courts of Denton County, Texas and the parties agree to submit to the exclusive personal jurisdiction of

such courts. The foregoing, however, shall not be construed or interpreted to limit or restrict the right or ability of the City to seek and secure injunctive relief from any competent authority as contemplated herein.

51. **INVALIDITY:** The invalidity, illegality, or unenforceability of any provision of the Contract shall in no way affect the validity or enforceability of any other portion or provision of the Contract. Any void provision shall be deemed severed from the Contract and the balance of the Contract shall be construed and enforced as if the Contract did not contain the particular portion or provision held to be void. The parties further agree to reform the Contract to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this section shall not prevent this entire Contract from being void should a provision which is the essence of the Contract be determined to be void.

52. **HOLIDAYS:** The following holidays are observed by the City:

New Year's Day (observed)
Martin Luther King, Jr. Day
Memorial Day
Juneteenth
Independence Day
Labor Day
Veterans Day
Thanksgiving
Friday After Thanksgiving
Christmas Eve (observed)
Christmas Day (observed)

If a Legal Holiday falls on Saturday, it will be observed on the preceding Friday. If a Legal Holiday falls on Sunday, it will be observed on the following Monday. Normal hours of operation shall be between 8:00 am and 4:00 pm, Monday through Friday, excluding City of Denton Holidays. Any scheduled deliveries or work performance not within the normal hours of operation **must be approved** by the City Manager of Denton, Texas or his authorized designee.

53. **SURVIVABILITY OF OBLIGATIONS:** All provisions of the Contract that impose continuing obligations on the parties, including but not limited to the warranty, indemnity, and confidentiality obligations of the parties, shall survive the expiration or termination of the Contract.

54. **NON-SUSPENSION OR DEBARMENT CERTIFICATION:**

The City of Denton is prohibited from contracting with or making prime or sub-awards to parties that are suspended or debarred or whose principals are suspended or debarred from Federal, State, or City of Denton Contracts. By accepting a Contract with the City, the Vendor certifies that its firm and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Denton.

55. **EQUAL OPPORTUNITY**

A. **Equal Employment Opportunity:** No Offeror, or Offeror's agent, shall engage in any discriminatory employment practice. No person shall, on the grounds of race, sex, sexual orientation, age, disability, creed, color, genetic testing, or national origin, be refused the benefits of, or be otherwise subjected to discrimination under any activities resulting from this RFQ.

B. **Americans with Disabilities Act (ADA) Compliance:** No Offeror, or Offeror's agent, shall engage in any discriminatory employment practice against individuals with disabilities as defined



in the ADA.

**56. BUY AMERICAN ACT-SUPPLIES (Applicable to certain federally funded requirements)**

The following federally funded requirements are applicable. A. Definitions. As used in this paragraph –

i. "Component" means an article, material, or supply incorporated directly into an end product.

ii. "Cost of components" means -

(1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or

(2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the end product.

iii. "Domestic end product" means-

(1) An unmanufactured end product mined or produced in the United States; or

(2) An end product manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as those that the agency determines are not mined, produced, or manufactured in sufficient and reasonably available commercial quantities of a satisfactory quality are treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic.

iv. "End product" means those articles, materials, and supplies to be acquired under the contract for public use.

v. "Foreign end product" means an end product other than a domestic end product.

vi. "United States" means the 50 States, the District of Columbia, and outlying areas.

B. The Buy American Act (41 U.S.C. 10a - 10d) provides a preference for domestic end products for supplies acquired for use in the United States.

C. The City does not maintain a list of foreign articles that will be treated as domestic for this Contract; but will consider for approval foreign articles as domestic for this product if the articles are on a list approved by another Governmental Agency. The Offeror shall submit documentation with their Offer demonstrating that the article is on an approved Governmental list.

D. The Contractor shall deliver only domestic end products except to the extent that it specified delivery of foreign end products in the provision of the Solicitation entitled "Buy American Act Certificate".

**57. RIGHT TO INFORMATION:** The City of Denton reserves the right to use any and all information presented in any response to this contract, whether amended or not, except as prohibited by law. Selection of rejection of the submittal does not affect this right.

**58. LICENSE FEES OR TAXES:** Provided the solicitation requires an awarded contractor or supplier to be licensed by the State of Texas, any and all fees and taxes are the responsibility of the respondent.

**59. PREVAILING WAGE RATES:** The contractor shall comply with prevailing wage rates as defined by the United States Department of Labor Davis-Bacon Wage Determination at <http://www.dol.gov/whd/contracts/dbra.htm> and at the Wage Determinations website [www.wdol.gov](http://www.wdol.gov) for Denton County, Texas (WD-2509).

**60. COMPLIANCE WITH ALL STATE, FEDERAL, AND LOCAL LAWS:** The contractor or supplier shall comply with all State, Federal, and Local laws and requirements. The Respondent must comply with all applicable laws at all times, including, without limitation, the following: (i) §36.02 of the Texas Penal Code, which prohibits bribery; (ii) §36.09 of the Texas Penal Code, which prohibits the offering or conferring of benefits to public servants. The Respondent shall give all notices and comply with all laws and regulations applicable to furnishing and performance of the Contract.

**61. FEDERAL, STATE, AND LOCAL REQUIREMENTS:** Respondent shall demonstrate on-site compliance with the Federal Tax Reform Act of 1986, Section 1706, amending Section 530 of the Revenue Act of 1978, dealing with issuance of Form W-2's to common law employees. Respondent is responsible for both federal and State unemployment insurance coverage and standard Workers' Compensation insurance coverage. Respondent shall ensure compliance with all federal and State tax laws and withholding requirements. The City of Denton shall not be liable to Respondent or its employees for any Unemployment or Workers' Compensation coverage, or federal or State withholding requirements. Contractor shall indemnify the City of Denton and shall pay all costs, penalties, or losses resulting from Respondent's omission or breach of this Section.

**62. DRUG FREE WORKPLACE:** The contractor shall comply with the applicable provisions of the Drug-Free Work Place Act of 1988 (Public Law 100-690, Title V, Subtitle D; 41 U.S.C. 701 ET SEQ.) and maintain a drug-free work environment; and the final rule, government-wide requirements for drug-free work place (grants), issued by the Office of Management and Budget and the Department of Defense (32 CFR Part 280, Subpart F) to implement the provisions of the Drug-Free Work Place Act of 1988 is incorporated by reference and the contractor shall comply with the relevant provisions thereof, including any amendments to the final rule that may hereafter be issued.

**63. RESPONDENT LIABILITY FOR DAMAGE TO GOVERNMENT PROPERTY:** The Respondent shall be liable for all damages to government-owned, leased, or occupied property and equipment caused by the Respondent and its employees, agents, subcontractors, and suppliers, including any delivery or cartage company, in connection with any performance pursuant to the Contract. The Respondent shall notify the City of Denton Procurement Manager in writing of any such damage within one (1) calendar day.

**64. FORCE MAJEURE:** The City of Denton, any Customer, and the Respondent shall not be responsible for performance under the Contract should it be prevented from performance by an act of war, order of legal authority, act of God, or other unavoidable cause not attributable to the fault or negligence of the City of Denton. In the event of an occurrence under this Section, the Respondent will be excused from any further performance or observance of the requirements so affected for as long as such circumstances prevail and the Respondent continues to use commercially reasonable efforts to recommence performance or observance whenever and to whatever extent possible without delay. The Respondent shall immediately notify the City of Denton Procurement Manager by telephone (to be confirmed in writing within five (5) calendar days of the inception of such occurrence) and describe at a reasonable level of detail the circumstances causing the non-performance or delay in performance.

**65. NON-WAIVER OF RIGHTS:** Failure of a Party to require performance by another Party under the Contract will not affect the right of such Party to require performance in the future. No delay, failure, or waiver of either Party's exercise or partial exercise of any right or remedy under the Contract shall operate to limit, impair, preclude, cancel, waive or otherwise affect such right or remedy. A waiver by a Party of any breach of any term of the Contract will not be construed as a waiver of any continuing or succeeding breach.

**66. NO WAIVER OF SOVEREIGN IMMUNITY:** The Parties expressly agree that no provision of the Contract is in any way intended to constitute a waiver by the City of Denton of any immunities from suit or from liability that the City of Denton may have by operation of law.

**67. RECORDS RETENTION:** The Respondent shall retain all financial records, supporting documents, statistical records, and any other records or books relating to the performances called for in the Contract. The Respondent shall retain all such records for a period of four (4) years after the expiration of the Contract, or until the CPA or State Auditor's Office is satisfied that all audit and litigation matters are

resolved, whichever period is longer. The Respondent shall grant access to all books, records and documents pertinent to the Contract to the CPA, the State Auditor of Texas, and any federal governmental entity that has authority to review records due to federal funds being spent under the Contract.

**Should a conflict arise between any of the contract documents, it shall be resolved with the following order of precedence (if applicable). In any event, the final negotiated contract shall take precedence over any and all contract documents to the extent of such conflict.**

- 1. Final negotiated contract**
- 2. City's standard terms and conditions**
- 3. Purchase order**
- 4. Supplier terms and conditions**

**Exhibit D**  
**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](mailto: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.

## Exhibit E

### 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. GARAGE LIABILITY**

Garage Liability Insurance including, but not limited to, Premises/Operations, Automobile, 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 other than Auto-each accident, \$2,000,000 Other than Auto-aggregate, \$1,000,000 Auto-each accident.

The policy shall include:

- a) Garage Keepers on a direct primary basis to include coverage for Comprehensive and Collision for a limit equal to the Actual Cash Value of the CITY'S vehicle(s) in the CONTRACTOR'S care, custody or control.

**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: \$500,000.00 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.

**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.



# City of Denton

City Hall  
215 E. McKinney St.  
Denton, Texas 76201  
[www.cityofdenton.com](http://www.cityofdenton.com)

## Legislation Text

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**File #:** ID 24-415, **Version:** 1

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### **AGENDA CAPTION**

Consider adoption of an ordinance approving an economic development agreement under Chapter 380 of the Local Government Code to promote economic development, increase foot traffic, stimulate business activity and economic growth of the City of Denton between the City of Denton and Fine Arts Theater of Denton, LLC for an amount not to exceed \$1,620,869 of Tax Increment Reinvestment Zone One funds; authorizing the expenditure of funds therefor; and providing an effective date. The Downtown Tax Increment Reinvestment Zone Number One Board recommends approval (5-0).





## AGENDA INFORMATION SHEET

**DEPARTMENT:** Economic Development

**CM:** Sara Hensley, City Manager

**DATE:** April 2, 2024

### **SUBJECT**

Consider adoption of an ordinance approving an economic development agreement under Chapter 380 of the Local Government Code to promote economic development, increase foot traffic, stimulate business activity and economic growth of the City of Denton between the City of Denton and Fine Arts Theater of Denton, LLC for an amount not to exceed \$1,620,869 of Tax Increment Reinvestment Zone One funds; authorizing the expenditure of funds therefor; and providing an effective date. The Downtown Tax Increment Reinvestment Zone Number One Board recommends approval (5-0).

### **STRATEGIC ALIGNMENT**

- This action supports Key Focus Area: Foster Economic Opportunity and Affordability
  - Increase in tourism.
- This action supports the Economic Development Strategic Plan: Successful downtown development and an authentic town square are among Denton's top economic development achievements. The City should continue to prioritize the downtown area.
  - Downtown Development: continue to utilize various tools to stimulate new private investment downtown.
- This action supports the 2040 Comprehensive Plan: Identify opportunities to incorporate venues for arts and music events in future development, including Downtown. Pursue the next steps for the reuse of City Hall West and the potential development of a new fine arts theatre.

### **BACKGROUND**

The Fine Arts Theater was built in 1934 and has been the centerpiece of Denton Square for over 80 years. However, its entertainment roots date back further to the Graham Opera House, established in 1877. By 1935, after the opera house's era ended, the building was transformed into the Texas Theatre, joining the vibrant "Theatre Row" of Denton alongside names like the Majestic and the Dreamland. The theater landscape evolved, and by 1957, the Texas Theatre was renamed The Fine Arts Theater. Although it faced challenges, including a closure in 1981 and a fire in 1982, its legacy has persisted as an icon and landmark of the Denton Downtown Square.

The Theater was purchased by Fine Arts Theater of Denton, LLC in 2018. Since acquiring the property, the owners have made strides in the predevelopment and planning phases:

- Engaged Architexas, a Dallas-based historic preservation architectural firm, to assist in the development of renovation plans.

- Remediated asbestos and mold, ensuring the structure meets health and safety standards.
- Completed demolition of the interior in readiness for a renovation and expansion.
- Completed construction of a new roof.
- Partnership with local contractor Tim Beaty Builders to value-engineer and formulate a comprehensive renovation budget.
- Completed renovation plans and specifications and received a city permit.
- Securing approval for Federal Historic Tax Credit Program, while their application to the State of Texas Historic Tax Credit Program is still pending.

The City of Denton Economic Development Department was contacted by the owners/developer NorthBridge, in May 2022 regarding the Fine Arts Theater. The developer provided information regarding the status of the rehabilitation and renovation project and discussed a potential funding gap related to the project. At the time, the developer requested the City consider participation in the project as part of a Public/Private Partnership (P3). Staff used initial information provided by the owner to review potential participation strategies and researched other historic theater projects and city-involved theater projects throughout Texas. Staff found that several cities participated through P3s projects, typically through a Tax Increment Reinvestment Zone (TIRZ), bond funds, or an incentive (Lewisville, San Antonio and Temple). There were also a couple of instances of cities owning/operating theaters outright (Lewisville and Llano).

### **Project**

The Fine Arts Texas Theatre renovation is a significant undertaking, representing a capital investment of \$9,119,623. Once completed, the theater will offer a variety of spaces tailored to diverse audience sizes and needs:

- A 200-seat main theater
- A 30-seat VIP Mezzanine
- A 50-seat private theater

In addition to the viewing areas, the theater will house a concession and bar area. The theater's functionality extends beyond just film screenings. It is envisioned as a multi-use venue, capable of hosting film festivals, concerts, live performances, and private event rentals.

### **Underwriter Report**

An underwriter assessment was conducted to evaluate various facets of the Fine Arts Texas Theatre renovation project (Exhibit 4) The following are the key highlights and options:

#### *Developer's Credentials and Support Team*

The local developer boasts a rich expertise in real estate development, management, and business operations. They are complemented by a seasoned team, including Jason Reimer, a pivotal figure at Texas Theater. Jason Reimer, serving as a Class B Member of Fine Arts Theater of Denton LLC, plays an instrumental role in assessing building design and overall project viability.

#### *Financial Capacity*

The developer possesses the financial robustness to cover potential rehabilitation cost overruns. They have invested \$2,209,467 in the Project, demonstrating their commitment and readiness to pledge further assets beyond the initial requested incentive of \$2,000,000.

#### *City Incentives*

The project is eligible for City economic development incentives. Without the infusion of these incentives, the project would face challenges due to a discernible financial gap in the funding structure.

#### *Developer's Investment*

Beyond the initial investment of \$2,209,467, the developer has displayed a willingness to pledge additional resources. Notably, their total contribution surpasses the incentive request, and they have committed to forgo a \$250,000 fee for a decade.

#### *Developer Return on Investment*

With the proposed City incentive options, the developer is projected to receive a cash-on-cash return on \$1,837,041 equity starting in year 8 under Option 1 and year 5 under Option 2. This is followed by a modest return, less than 3%, spanning to the tenth year.

#### *Underwriter Report Options*

Grow America, formerly the National Development Council (NDC), the underwriter, was asked to prepare an underwriting report and incentive options to assist the City in the consideration of possible incentive mechanisms and options best suited for this project. The report presented two funding options for the project detailed below.

- Option 1:
  - \$1,076,366 in a City of Denton Chapter 380 incentive grant at Certificate of Occupancy (CO) for 5 to 7 years to pay down construction loan principal to the required \$3,195,000.
  - No tax rebates.
  - Downtown Reinvestment Grant in the amount of \$50,000.
  - An additional \$544,503 City of Denton Chapter 380 incentive funded at opening or annually from 5 to 7 years, as needed to cover the projected shortfall between Net Profit and Debt Service.
  - The second grant could be paid over 7 years with payments in the amount of \$152,402, \$124,396, \$69,512, \$54,077, \$38,243, \$21,723, \$5,348 to meet cash flow requirements, and \$78,802 for debt service reserve to be withdrawn if needed.
- Option 2:
  - \$1,076,366 in a City of Denton Chapter 380 incentive grant at CO to pay down construction loan principal to the required \$3,195,000.
  - Downtown Reinvestment Grant in the amount of \$50,000.
  - Performance-based annual rebates for property, sales, and mixed beverage taxes for a term of 10 years.
  - An additional \$301,947 City of Denton Chapter 380 incentive funded at opening or annually, as needed, to cover the projected shortfall between Net Profit and Debt Service.
  - Second Grant could be paid over 4 years, with payments in the amount of \$111,870, \$81,200, \$23,312, \$6,763 to meet cash flow requirements, and \$78,802 for debt service reserve to be withdrawn only if needed.

#### **Funding and Source**

<b>Funding Mechanisms</b>	<b>Funding Source</b>
Chapter 380 Grant or Loan	Property Taxes Generated (rebate)
	Sales Taxes Generated (rebate)
	Mixed Beverage Taxes Generated (rebate)
	Cash Grant/Loan (Catalyst Fund)
	TIRZ Cash Grant or Loan (Tax Increment Fund)
	TIRZ rebate of real property taxes
Property Tax Abatement	Abatement of property taxes from Improvements and Business Personal Property (BPP) (TIRZ participates, but BPP does not go in to the TIRZ)

#### **STRATEGIC ALIGNMENT**

- Foster Economic Opportunity and Affordability

- Grow Denton’s Economic Vitality
- 2040 Comp Plan – Redevelop Fine Arts Theater
- Economic Development Strategic Plan - Downtown Development: continue to utilize various tools to stimulate new private investment downtown.

### **Policy Considerations**

Strategic Growth Areas have been identified in the strategic plan for cultivation and recruitment and will be given priority consideration. This project is a targeted SGA and falls under the Creative category, with North American Classification System (NAICS) 711310 Promoters of and Similar Events with Facilities. An Incentive Evaluation Matrix incorporating these strategic initiatives, priority considerations, and public benefits has also been conducted (Exhibit 3). The project addressed four of the priority considerations and five of the Public Benefit Factors. Highlights of the considerations and public benefits include:

- Spur Infill Development or Redevelopment includes developing/redeveloping a property or facility in a manner that reduces urban sprawl and or increases density in a desirable area; the redevelopment of the property has been vacant for more than two years.
- Other Considerations: Adds to the culture of Denton and will help with foot traffic, and quality of life, and enhance the Downtown Square.
- Public-Private Partnership: includes the development of public infrastructure or amenities deemed beneficial, or the developer assumes responsibility for the development of infrastructure or public facilities beyond what is required. The project will involve a significant relationship with DISD and institutions of higher education.
- Community Investment: The company or developer demonstrates a commitment to community support or involvement through monetary or in-kind support of local nonprofits, public institutions, or community organizations.

### **Project Benefits**

Staff and the underwriter conducted a significant analysis of the information provided by the developer to ensure that stated policy criteria were met and determine both qualitative and quantitative public benefits. Staff also used an economic impact analysis model to quantify the economic impact and rate of return.

### **Quantitative Benefits and Economic Impact on the Community**

#### Option 1

- 10-year net benefits estimated at 897,700
- Rate of Return: 5.4%
- Payback period: 16.9 years

#### Option 2

- 10-year net benefits estimated at 897,700
- Rate of Return: 4.7%
- Payback period: 18.9 years

- In typical stand-alone theaters, approximately 20.4% of patrons complement their movie experience with dining or shopping in the vicinity.
- This percentage sees a significant surge in the context of a Main Street theater in Texas, where 50.6% of theatergoers choose to dine or shop around their cinema visit.

Given these trends, the economic projections for the Fine Arts Texas Theatre are promising. Surrounding businesses will see an increase in revenues. The theater's presence and its draw of patrons are projected to boost local business revenues by \$20,803,966.

### **Qualitative Benefits and Community Impact**

The revitalization of the Historic Fine Arts Texas Theatre promises more than just cinematic experiences. It is set to become a cornerstone for community development, education, and cultural enrichment. The theater is positioned to influence the community:

*Arts Job Training*

A strategic partnership with UNT Media Arts and Hospitality Management Department ensures that the theater becomes a ground for practical learning. This collaboration will pave the way for training, job opportunities, and internships, especially beneficial for film and theater majors.

#### *Community and Special Events*

The theater will open its doors to non-profits, civic and community groups, or local businesses, fostering community engagement and collaboration. It is poised to become a hub for regional festivals, celebrating film, music, and arts culture. Beyond public events, the venue will also cater to private rentals, making it an attractive choice for personal events like weddings or parties.

#### *Education*

The theater's potential as an educational tool is significant. Plans include DISD field trips for students to view educational and historical films. High school theater arts and film education programs are on the cards. These will include film labs designed in alignment with Texas Essential Knowledge and Skills.

#### *Partnerships*

The theater is not working in isolation. Collaborations are in place to host classic and historical movie series. Partnerships with esteemed institutions like the Greater Denton Arts Council, Thin Line and Black Film Festivals, and KUZU radio amplify the theater's role in promoting arts and culture in the community.

### **INCENTIVE OPTIONS AND DIRECTION**

Staff is recommending Option 1. to provide financial support or incentives to the Fine Arts Theater project.

- \$1,076,366 in a City Chapter 380 Grant at CO to pay down the construction loan principal to the required \$3,195,000. An additional \$544,503 Chapter 380 Grant funded at opening or annually as needed to cover the projected shortfall between Net Profit and Debt Service. No tax rebates. Total incentive: \$1,620,869.

### **PRIOR ACTION/REVIEW (Council, Boards, Commissions)**

January 10, 2024, Presented to the Economic Development Partnership Board

February 28, 2024, The Downtown Tax Increment Reinvestment Zone Number One Board recommended approval (5-0).

### **FISCAL INFORMATION**

This incentive will be funded from the Tax Increment Reinvestment Zone Number One (Downtown) Fund.

### **EXHIBITS**

Exhibit 1 – Agenda Information Sheet  
Exhibit 2 – Project Concept  
Exhibit 3 – Incentive Evaluation Matrix  
Exhibit 4 – Underwriter Report  
Exhibit 5- Impact Report  
Exhibit 6 – Ordinance and Contract  
Exhibit 7 – Presentation

Respectfully submitted:  
Christine Taylor  
Assistant City Manager

Prepared By:  
Christine Taylor  
Assistant City Manager  
&  
Erica Sullivan  
Economic Development Program Administrator

# TEXAS THEATRE FINE ARTS

EST. 1935



**NORTHBRIDGE**

212 S. Elm Street | Denton, TX 76201 | [nbrealtyholdings.com](http://nbrealtyholdings.com)



# HISTORY

For 79 years, generations of Dentonites driving down North Elm Street on the town Square have been greeted by the giant red, white and blue Fine Arts Theater marquee, a staple of downtown. Since 1935, the space has been a theater (before then, it was home to two different furniture and undertaker businesses). Originally named the Texas Theater (its name would change to the Fine Arts Theater in 1957), it was part of the Denton Square's theater row, which featured five theaters around the courthouse. But by 1981, the theater was forced to close. It reopened as a dollar theater in April 1982, but the balcony caught fire only five months later.



TEXAS THEATRE  
**FINE ARTS**



# CONDITION AT TIME OF PURCHASE

Fine Arts Theater of Denton, LLC, was formed in May 2018 by local forward-thinking, civic-minded, Denton enthusiasts with the plan of purchasing and rehabilitating Fine Arts Theater.

Since 1982, the building had been periodically used as a church and performance space, but it remained vacant since 2014.

During this time, the condition of the theater suffered due to previous fire damage and subsequent weather effects.



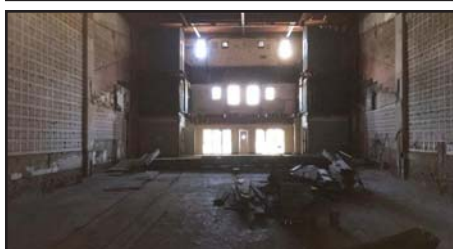
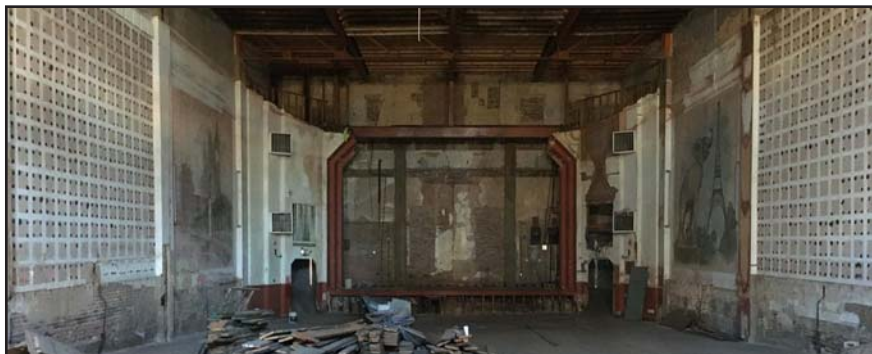


# PRESENT CONDITION

Since the purchase of the historic Fine Arts Building in 2018, a substantial amount of planning and predevelopment work has been completed to date including:

- Engaged Architexas, a Dallas-based historic preservation architectural firm;
- Remediated asbestos and mold throughout the structure;
- Completed demolition of the interior in preparation for the full renovation;
- Completed construction of a new roof;
- Worked with local contractor Tim Beaty Builders to value engineer and devise a full renovation budget;
- Completed renovation plans and specifications and obtained City of Denton permit approval; and
- Obtained approval for the Federal Historic Tax Credit Application (State of Texas Historic Tax Credit approval pending).

To date, a total of \$1.776 million has been expended, including \$764,000 for purchase of the building and \$1.012 million for predevelopment costs.



# FINE ARTS FUTURE

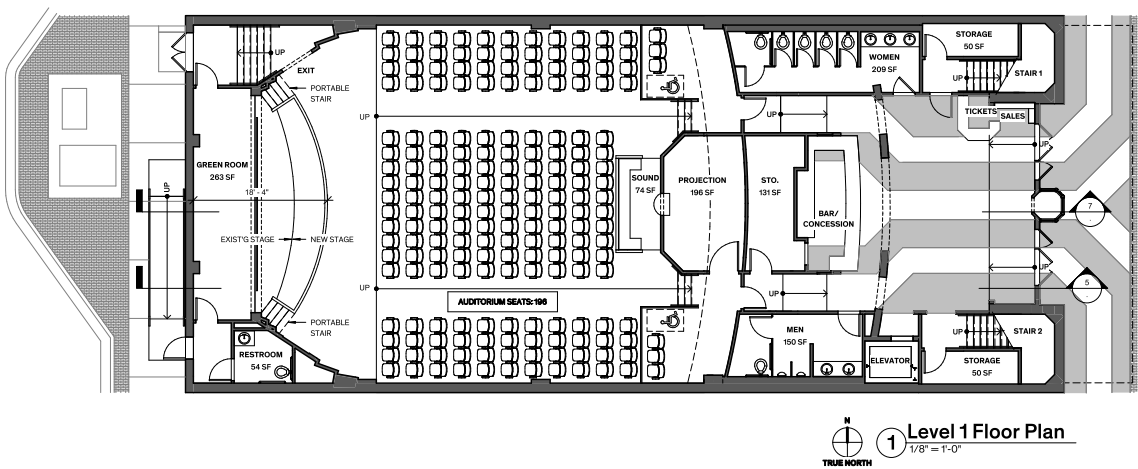
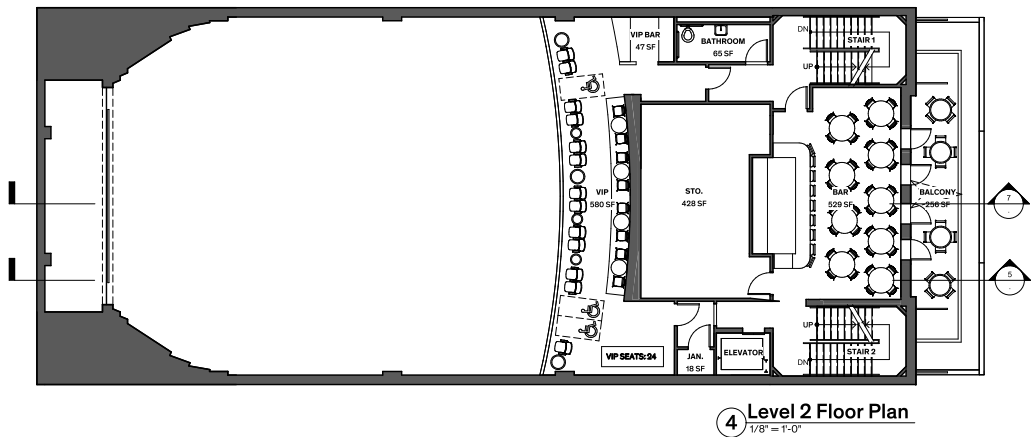
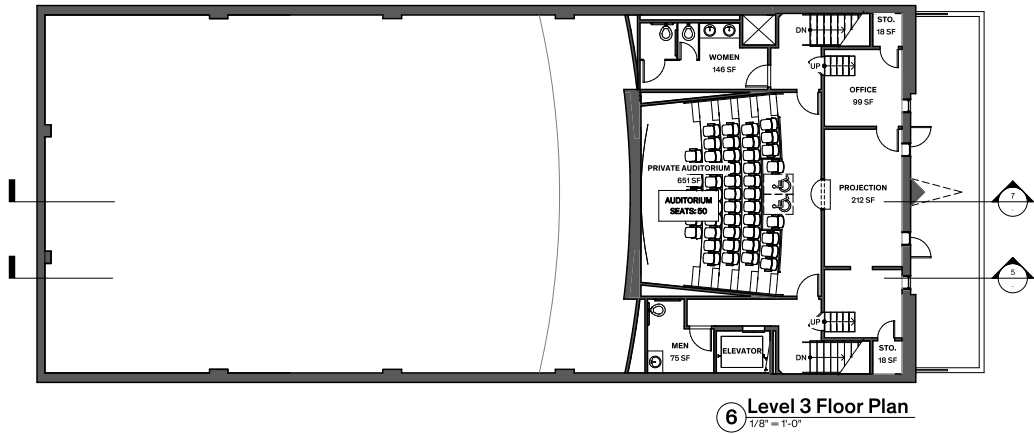
Alex Payne, Brad Andrus, Jason Reimer, Barak Epstein, and Martin Isles are all experienced investors and promoters representing the ownership group, which is intent on returning the Fine Arts Theater back to the community in its most viable function as a multi-use entertainment venue.

Examples of its activity will involve various presentation options including movies (first-run and independent), film festivals, concerts, live performance and rentals such as receptions, seminars and worship services, as well as various community-based rentals.

The rehabilitation plan includes a restored main theater with approximately 200 seats and V.I.P. mezzanine (25-30 seats), a smaller movie theater on the second level with approximately 50 seats, a new concession area at the entrance and a bar that overlooks the downtown courthouse open to theater patrons and casual visitors alike, making it an instant tourist attraction.

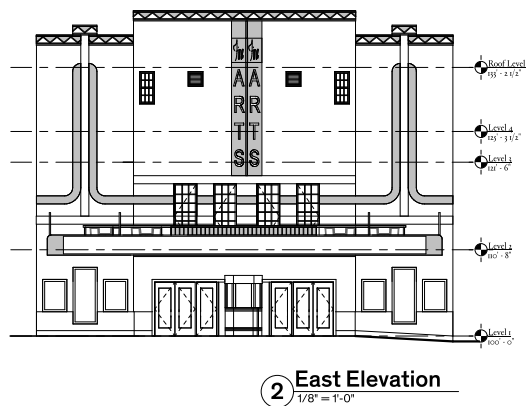
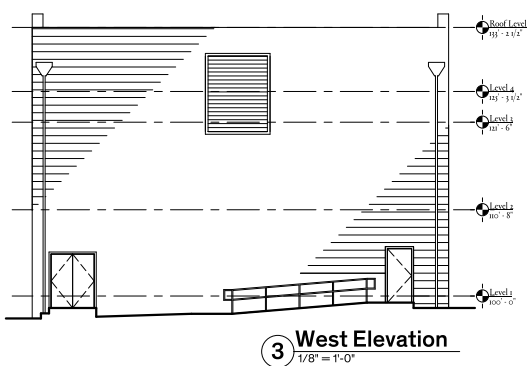
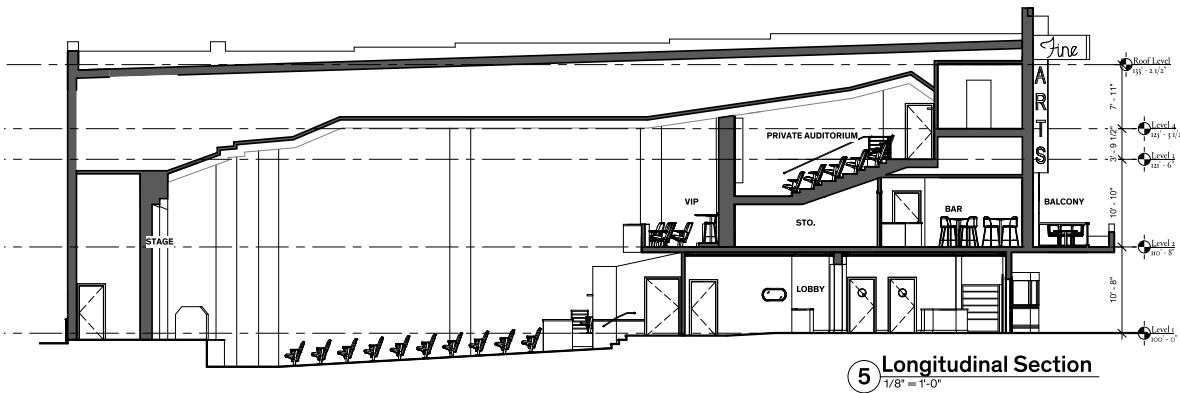
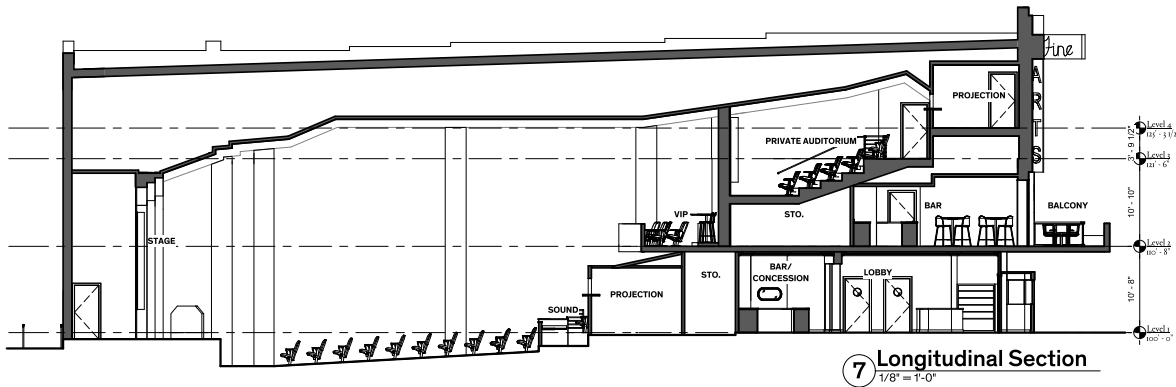


# REHABILITATION PLANS





# REHABILITATION PLANS



## REHABILITATION TEAM

NorthBridge Realty Holdings provides full service consulting for land use, real estate, and economic development projects. Services are available for all aspects of a development project, from early project feasibility and site selection, through full entitlement work, to issuance of Certificate of Occupancy.



Their associates are leaders in their respective fields of experience. The company offers a wide range of expertise in land use planning, real estate development, economic development, public/private partnerships, strategic planning, and project management.



Talented Friends is a creative direction company collaborating across multiple mediums. The common thread found throughout their varied output is thoughtful curation and attention to detail from concept to execution.

For four decades, Rudick Construction has served as a full-service commercial General Contractor delivering projects that are incorporated into the regions' landscape. What sets them apart is their ability to step in at any stage of a project's life cycle and complete the build, with expectation-exceeding results, at the best market price available.



## Architexas

Architexas provides a broad range of services encompassing architecture, planning and historic preservation. With every project, they follow a process that begins with researching and understanding the context – the physical, historical, and programmatic conditions – within which they will be working. Each project is seen as an opportunity to create a carefully crafted response to a unique set of circumstances and client aspirations.



# PROOF OF CONCEPT

## THE TEXAS THEATRE | [thetexastheatre.com](http://thetexastheatre.com)

After over a decade of disrepair, in February 2010 Jason Reimer began screening films at the Texas Theatre and launched a marketing campaign as part of the Oak Cliff Foundation, a community non-profit that previously owned the defunct theater. By August of that same year, Barak Epstein formed Aviation Cinemas and Reimer joined the team. Construction began that fall with a new bar and concession as well as renewed projection capabilities.

After re-opening in December there was immediate interest to use the building again in many different ways including workshops, award shows, live performance and most of all, movie screenings.

The Texas Theatre today is a strong community anchor for art and commerce and a highly decorated, unique entertainment experience open for movies and events of all kinds.



# COMMUNITY & ECONOMIC IMPACT

As a recognized arts leader invested in the continued development of the City of Denton as a strong, vibrant and healthy community, the Historic Fine Arts Theater is committed to expanding opportunities to improve the lives of the most vulnerable people residing in Denton's underserved neighborhoods and to ensure that theater arts experiences are accessible to all members of the community.

The Historic Fine Arts Theater of Denton is committed to the growth of diverse programming, community partnerships and collaborations, theater training and more importantly, to provide an arts community center for downtown Denton.

The restoration of this iconic feature that sits in the heart of the Downtown Denton Square will be a catalyst for economic growth and revitalization for the entire historic square. Theater events directly and in partnership with others will draw almost 10,000 patrons to downtown Denton each year where they can shop, dine, and visit the original historic Denton County Courthouse. This increase in visitors will boost the downtown economy and the local hotel and visitor industry.

## JOB TRAINING IN THE THEATER ARTS

The Historic Fine Arts Theater plans to partner with the University of North Texas's Media Arts and Hospitality Management Departments to provide training, jobs and internships for aspiring film and theater arts majors.

## COMMUNITY AND SPECIAL EVENTS

The Historic Fine Arts Theater intends to open its doors for local non-profits, businesses and major corporations, community groups, civic organizations, and public authorities to hold fundraisers, celebrations, and awareness events throughout the year. Non-profit organizations, including regional festivals, will be extended heavily discounted rates for building usage. The Theater will also be available as a private wedding or other party venue at rental rates which are expected to be as much as 50% less than other venues of similar size.

## ELEMENTARY SCHOOL EDUCATIONAL FIELD TRIPS

The Historic Fine Arts Theater intends to coordinate with Denton Independent School District and neighboring school districts to offer field trips for K-6 children to view educational or historical films during the school year. It is expected that at least 2,500 children per school year will participate in these educational field trips.

## HIGH SCHOOL THEATER ARTS AND FILM EDUCATION

Thousands of local high school students will be able to benefit each school year from exposure to theater arts educational activities that foster their social and emotional





development, self-expression, and creativity. The Historic Fine Arts Theater intends to regularly present and host educational program throughout the school year. One such program is High School Film Labs. High School Film Labs is a series of six informative and engaging film workshops to pique the interest of student filmmakers and teachers. The High School Film Labs content is aligned to Texas Essential Knowledge and Skills making the curriculum more meaningful to classroom lessons while helping teachers and administrators balance the impact of student film in their public or private high school schools.

## **THEATER ARTS EDUCATION**

Thousands of local high school students will be able to benefit each school year from exposure to theater arts educational activities that foster their social and emotional development, self-expression, and creativity. The Historic Fine Arts Theater intends to regularly present and host educational productions throughout the school year.

## **CLASSIC AND HISTORICAL MOVIE SERIES**

The Historic Fine Arts Theater intends to annually host various low cost and often free events related to cinema history and film culture, including classic films on 35MM prints, special screenings with guest speakers or cast members and more. Examples of these screenings would be holidays such as Veterans Day and Memorial Day or similar national days of remembrance and sponsored by community leaders who want to offer increased access and educational background to film culture at venues like the Historic Fine Arts Theater.

## **PARTNERSHIP WITH THE GREATER DENTON ARTS COUNCIL, THIN LINE FILM FESTIVAL AND RADIO KUZU**

The Historic Fine Arts Theater plans to partner with the Greater Denton Arts Council ("GDAC"), the Thin Line Film Festival and Radio KUZU.

GDAC has served the Denton community for almost 50 years by providing support for Denton's artists and community arts organizations. GDAC sponsors family programs on the third Saturday of each month, Summer Arts Camps and Arts Afterschool programs which provide access to the arts for the underserved Denton community. The Fine Arts Theater will provide a venue for GDAC sponsored programs and events.

The Thin Line Film is a documentary film festival conducted each spring at various sites throughout the City of Denton. The Historic Fine Arts Theater will serve as one of the film and event venues for Thin Line Film Festival.

KUZU Terrestrial radio station is based in Denton, just off the downtown square. KUZU regularly holds events open to the public and encourages people from all walks of life to become involved by creating their own shows. KUZU will host monthly and annual



events to be held at the Historic Fine Arts Theater as well as skills training workshops that pertain to radio communications. These events are projected to interact with as many as 2,500 people a year.

## ECONOMIC IMPACT

From major metropolitan areas to small rural towns, research shows that the arts and culture industry is an economically sound investment. It attracts audiences, spurs business development, supports jobs and generates government revenue. Locally as well as nationally, the arts mean business.

Dr. Michael Carroll from UNT's Economic Research Group has been engaged to prepare an analysis of the economic impact of the revitalization of the historic Fine Arts Theater. His findings will be presented at the council work session.



# FINE ARTS PRESS



Oak Cliff comes to Denton as Texas Theater's reel heroes rescue historic Fine Arts movie house  
[READ MORE](#)



New Owners Have Big Plans For Denton's Fine Arts Theater  
[READ MORE](#)



Texas Theatre Owners Buy Denton's Fine Arts Theater  
[READ MORE](#)



Denton's Fine Arts Theater To Be Restored  
[READ MORE](#)



Historic Denton Square theater under new ownership  
[READ MORE](#)



Denton Record-Chronicle

Fine Arts Theater sold, will be restored as entertainment venue  
[READ MORE](#)



The Team Behind Texas Theatre Just Bought An Abandoned Movie House on Denton's Town Square  
[READ MORE](#)



Bringing Back Denton's Fine Arts Theatre  
[READ MORE](#)



Denton's Fine Arts Theatre Slated For Remodel  
[READ MORE](#)



# TEXAS THEATRE FINE ARTS

EST. 1935

**BRAD ANDRUS**

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**ALEX PAYNE**

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[alex@nbrealtyholdings.com](mailto:alex@nbrealtyholdings.com)

**JASON REIMER**

940 391 5899

[jasonmreimer@gmail.com](mailto:jasonmreimer@gmail.com)

The logo for NorthBridge features a blue curved line above the word "NORTHBRIDGE" in a bold, blue, sans-serif font.

212 S. Elm Street | Denton, TX 76201 | [nbrealtyholdings.com](http://nbrealtyholdings.com)

## Evaluation Matrix

(145 points) + (30 "Other" bonus points) = 175 total points

SGA TARGETS	Targets (20 Points)	Points
	Connective	
	Creative	10
	Sustainable	
	Competitive	
	<b>Other Target Areas (Max 10 points):</b> square revitalization and attraction that can lead to more development and revenue to other businesses in the downtown core and the city.	<u>3</u>
	<b>SGA Targets Subtotal</b>	<u>13</u>
PRIORITY CONSIDERATIONS	Considerations (100 Points)	Points
	<b>Generates New Utility Customers (Max Points 10)</b> Project is a customer of City utilities, including water, wastewater, and electric. Higher points awarded for larger customers	4
	<b>Encourages New Business Markets/Suppliers And Entrepreneurship (Max Points 10)</b> Project is from an industry not significantly represented in local economy or company is a new business startup or entrepreneurial endeavor	7
	<b>Engages in Sustainable Practices (Max Points 10)</b> Project has adopted sustainable or green business practices (e.g. LEED certification, renewable energy commitment or use, energy efficient construction)	2
	<b>Increases High Wage Jobs (Max Points 10)</b> Project includes new jobs with an average or has a significant percentage of jobs that earn an annual base salary of \$65,000 or more	0
	<b>Encourage Knowledge Base Jobs (Max Points 10)</b> Project includes new jobs or has a significant percentage of jobs that require specialized and theoretical knowledge, usually acquired through experience or a college education, or other training which provides comparable knowledge; requires some research, analysis, or requires special licensing, certification	3
	<b>Pays a living wage for all new employees (Max 10 points)</b> From the most current MIT Living Wage Calculator for Denton County	2
	<b>Spur Infill Development Or Redevelopment (Max Points 10)</b> Project is to develop/redevelop a property or facility in a manner that reduces urban sprawl and or increases density in a desirable area; project includes use of existing facility that has been vacant for at least 2 years	10
	<b>Headquarters (Max Points 10)</b> The project is an international or national headquarters facility	0
	<b>Child Care Assistance (Max Points 10)</b> Provides on-site child care; vouchers or other financial assistance; backup services; flexible or remote work accommodations; and flexible spending accounts	0
	<b>Other Considerations (Max 10 points):</b> Adds to the culture of Denton and will help with foot traffic, quality of life and enhancing the Downtown Square.	<u>7</u>
	<b>Priority Considerations Subtotal</b>	<u>35</u>

PUBLIC BENEFIT FACTORS	Public Benefit Factors (55 Points)	Points
	<b>Expand The Tax Base (Max Points 10)</b> Project provides new property, sales, HOT, or other taxes to the City, County, DISD, and DCTA through the development of property or facility or by making improvements to an existing property or facility, a new business or expansion, a new multi-tenant complex, or increase in jobs	8
	<b>Fiscal and Economic Impacts (Max Points 15)</b> Project cost-benefit analysis to include net new, indirect and induced jobs; wages; contributions through property, sales, HOT and other taxes; and rate of return	9
	<b>Community Investment (Max Points 5)</b> Project, company, or developer demonstrates a commitment to community support or involvement through monetary or in-kind support of local nonprofits, public institutions, or community organizations	8
	<b>Public-Private Partnership (Max Points 10)</b> Project includes development of public infrastructure or amenities deemed beneficial, or developer assumes responsibility for development of infrastructure or public facilities beyond what is required. Project will involve a significant relationship with DISD or institution of higher education	7
	<b>Use of Local Contractors/Construction Vendors (Max Points 5)</b> Project agrees to use vendors that have their principal place of business within the Denton City Limits	5
	<b>Other Factors (Max 10 points):</b>	
	<b>Public Benefit Subtotal</b>	<u>37</u>
TOTAL BY CATEGORY	<b>Total by Category</b>	<b>Score</b>
	<b>Total</b>	<b>85</b>
	<b>Poor (0-44 points)</b>	
	<b>Acceptable (45-84 points)</b>	
	<b>Excellent (85-175 points)</b>	X



**Date:** December 6, 2023, 2023

**To:** Christine Taylor, Assistant City Manager, City of Denton  
Ralph Bishop, Fine Arts Theater of Denton, LLC.

**Re:** **Final** Revised Underwriting Report 3 incentive options – Fine Arts Theater of Denton, LLC.

**From:** Grow America, formerly National Development Council  
*Underwriter: Sheldon Bartel, CEcD, EDFP, HDFP*

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**STATUS:** The City of Denton (“City”) and Fine Arts Theater of Denton, LLC (“Developer”) retained Grow America to underwrite Fine Arts Theater of Denton, LLC request for a \$2,000,000 City economic development incentive. A final underwriting report was delivered (8/16/23) as a guide to assist the City in determining the type(s), timing, and amount(s) of incentives to commit, if any.

The requested incentives will support the development of 113-115 N. Elm Street, Denton TX (“Project”). The expected outcome is a rehabilitated historic theater with approximately 200 seats and V.I.P. mezzanine (25-30 seats), a smaller movie theater on the second level with approximately 50 seats, and a new concession area at the entrance with a bar that overlooks the downtown courthouse open to theater patrons and casual visitors alike. The developer believes the Project will contribute to the City as follows:

- Generate new revenue (sales and mixed beverage as well as property taxes) and drive tourism and visits to Denton Square and the City.
- Increase Denton Square’s value as a unique business and promote investment in other non-competing businesses due to increased visits.
- Enhance the creative arts culture of Denton.
- Provide new jobs and training in the theater arts with plans to partner with UNT’s media arts and hospitality management departments.
- Continue to revitalize Denton Square by bringing another newly rehabilitated building up to code.

The City provided a term sheet to the Developer post underwriting report. Following a meeting between the City and Developer where the Developer provided revised project financial information including:

- A revised operating model including proposed sales tax and property rebates,
- Updated Project development costs, sources and uses, based on the 8/31 balance sheet,
- corrections to the lender’s cash reserve requirement for debt service coverage after clarifying our projections of operating losses during the first few years, as well as the interest calculation.

Developer finds that because of the above changes and the assumption that the Project is approved for property and sales tax rebate incentives for 10 years:

- the initial cash needed at the opening, (year 1) is reduced to \$193,107.
- additional cash of \$121,371 to cover losses in years 2-4.
- The total cash requirement for working capital and debt service coverage is \$314,478.





With this information the Developer presented to the City three (3) incentive options as follows:

1. Option 1 - \$1,076,366 City of Denton incentive at CO, this can be a grant for 5 to 7 years . No tax rebates. An additional \$544,782 City of Denton incentive funded at opening or annually as needed, as a grant for 5 to 7 years s.
2. Option 2 - \$1,076,366 City of Denton incentive at CO, this can be a grant or forgivable loan over 10 years. Annual rebates for property, sales, and beverage taxes for 10 years. An additional \$314,478 City of Denton incentive funded at opening or annually as needed, as a grant or forgivable loan over 10 years.
3. Option 3 – Developer is not eligible for Option 3. Only non-profits are eligible for HOT funds. Developer pointed out that options 1 and 2 will require an additional capital contribution from its ownership group of approximately \$555,000, bringing their total investment to approximately \$1,837,000.

On 10/16/23 the City asked Grow America to review the new information and 3 incentive options for the Project provided by the Developer.

**REVIEW OF PROJECT COSTS:** Developer is proposing the rehabilitation of a Historic Theater into a multi-use entertainment facility. Existing 9,900 sqft structure is situated on 6,000 sqft footprint located at 113-115 N. Elm in the Denton Square. This is in a 2023 Qualified Census tract. Developer has site control via fee simple ownership of the property since 2018.

The building was originally constructed as a furniture store in the 1890's and converted to a movie theater in 1935. The building ceased operation as a movie theater in 1982. From 1982 to 2014 the space was utilized as a church and performance space. It has been vacant since 2014 and sustained considerable interior damage due to a small fire and weather-related issues due to a faulty roof. The Developer acquired the Project site in 2018 has restored the building to shell condition which included replacing the roof, asbestos removal and abatement, and demolition of the damaged areas along with architectural services at a cost of approximately \$2,146,714.

The ownership intends to completely renovate the building and convert it into a multi-use entertainment facility. Examples of its activity will involve assorted options including movies, film festivals, concerts, live performance, and rentals such as receptions, seminars, and worship services, as well as various community-based rentals. The renovated facility will have three interior levels and includes a restored main theater with approximately 200 seats and V.I.P. mezzanine (25-30 seats), a smaller movie theater on the second level with approximately 50 seats, a new concession area at the entrance and a bar that overlooks the downtown courthouse open to theater patrons and the public.

The table below shows the total rehabilitation budget, sources and uses of funds, and permanent financing for Fine Arts Theater at 3/21/23 (application) and 8/31/23. The table includes post construction proposed investments by Developer and City (Option 1).





Uses:		3/21/2023		8/31/2023	Difference
Building Purchase (at actual)		\$769,442		\$769,442	(0)
Pre-development Costs (at actual)		\$1,377,272		\$1,440,025	62,753
Total Pre-Development Costs		\$2,146,714		\$2,209,467	62,753
Rehabilitation Costs (projected)					
Rehabilitation costs & Contingency		\$5,185,490		\$5,186,074	584
Furniture & fixtures		\$629,985		\$629,985	0
Soft costs		\$410,000		\$410,000	0
Interest & related costs		\$672,409		\$684,096	11,687
Cash Reserve to meet OWC/DSCR Requirement		\$924,634		\$0	(924,634)
Total Projected Rehabilitation costs		\$7,822,518		\$6,910,155	(912,363)
Total Projected Project Costs		\$9,969,232		\$9,119,623	(849,609)
Funding Sources:					
Cash equity already invested		\$1,152,260		\$1,282,041	129,781
Deferred developer fee		\$250,000		\$250,000	0
Construction Loan Proceeds:					
Appraised Value - As Complete 75%LTV	\$3,195,000		\$3,195,000		0
Loan on Historic Tax Credits 75% LTV	\$2,000,000		\$2,033,217		33,217
Pledged collateral 75% LTV	\$744,918		\$2,359,365		1,614,447
Funding GAP	\$2,627,054		\$0		(2,627,054)
Construction Loan Amount	\$8,566,972	\$8,566,972	\$7,587,582	\$7,587,582	(979,390)
Total Funding Sources		\$9,969,232		\$9,119,623	(849,609)
Post Construction Loan Paydown					
Construction Loan	\$ 5,939,918		\$ 7,587,582		1,647,664
Historic Tax credits (Estimated)	\$ (2,694,918)		\$ (2,710,956)		(16,038)
Denton Downtown Econ Façade Grant (Estimated)	\$ (50,000)		\$ (50,000)		0
COD Rehab Cash Incentive	\$ -		\$ (1,076,366)		(1,076,366)
Funding Gap funded by partners	\$ -		\$ (555,260)		(555,260)
Loan Balance	\$ 3,195,000		\$ 3,195,000		(0)

Notes:

Rehabilitation/Construction.

- The 8/31/23 projected total rehabilitation/construction cost is reasonable. Total cost per square foot is \$921.
- Total pre-development costs increased \$62,753. These have been funded by a combination of \$1.2 million Developer cash and \$1.0 million loan.
- Total Rehabilitation costs (uses of funds) are \$9,119,623 – a decrease of \$849,609. This is primarily due to removal of cash reserve to meet Lender OWC/DSR requirement. This is a post rehabilitation cash need.
- Total Funding sources are \$9,119,623 – a decrease of \$849,609. Expected proceeds from sale of Project Historic Tax Credits increased \$33,217, proceeds from Developer pledged collateral



increased \$1,614,447, and the rehabilitation funding gap decreased \$2,627,054. The Developer is filling the gap.

#### *Post Construction*

The City will only be involved post construction. Lender requires the Developer pay down the construction loan to 75% of "as completed" appraised value of \$4,260,000 = \$3,195,000. Sources of funding to pay down the Lender are sale of Project Historic Tax Credits, proposed City Rehabilitation Cash Incentive (\$1,076,366), Denton Downtown Reinvestment Grant (\$50,000), and \$555,260 additional Developer cash. Discussion of City post construction incentives follows.

#### **Option 1**

*Post Construction Permanent Financing (Spreadsheet Option 1 Project Cost Worksheet and Sources of Funds tabs)*

- The City will only be involved post construction.
- Project Development Budget is a breakdown of the rehabilitation/construction costs.
- Source of Funds is the breakdown of post construction permanent financing including the Lender loan (\$3,195,000), the City's proposed Rehab Cash Incentive (\$1,076,366), Downtown Reinvestment grant (\$50,000), Historic Tax Credit equity (calculated by Project consultants Architexas @ \$2,710,685), and Developer equity investment (\$1,837,041) into the Project as well as Developer Deferred Loan (\$250,000).
  - Sources of funds exceed uses of funds by \$529 (insignificant).

#### *Operating and Debt Service Reserve Needs (Spreadsheet Option 1 Proforma tab)*

The Proforma shows the projected revenues and expenses for 10 years for the Project. Revenues and expenses were provided by Project Consultant ACI North LLC who has operated the Texas Theater in Dallas since 2010. Add backs to Net Profit include:

- Proposed/requested City Operating and Debt Reserve Grants totaling \$544,503 that includes:
  - \$465,701 over 7 years to cover projected shortfall between project Net Profit and Debt Service that results in required debt service coverage ratio of 1:1. These funds are included in the Add Backs to Cash Flow section of the Option 1 Proforma.
  - The Lender requires an additional \$0.25 of cash flow for debt service be maintained in a reserve account at the lending bank. This amounts to \$78,802 and is identified as Bank Required DSC Reserve (0.25%) on the Proforma. The source of the \$78,802 is the proposed City operating reserve incentive. The funds will only be drawn down should they be needed, that is, actual operations demonstrate cash flow for debt service is lower than projected. These funds are included in the Bank Required DSC Reserve line on the Option 1 Proforma.
- In summary, the projected total value of City operating and debt reserve incentives under Option 1 is \$544,503. When the City Rehab Cash (\$1,076,366) and City Downtown Reinvestment grant (\$50,000) incentives are added to the operating and debt reserves (\$544,503) incentives the total City incentive package totals \$1,670,869.

#### **Option 2**

*Post Construction Permanent Financing (Spreadsheet Option 2 Project Cost Worksheet and Sources of Funds tabs).*

The City will only be involved post construction.

- Project Development Budget is a breakdown of the rehabilitation/construction costs.



- Source of Funds is the breakdown of post construction permanent financing including the Lender loan (\$3,195,000), the City's proposed Rehab Cash Incentive (\$1,076,366), Downton Reinvestment grant (\$50,000), Historic Tax Credit equity (calculated by Project consultants Architexas @ \$2,710,685), and Developer equity investment (\$1,837,041) into the Project as well as Developer Deferred Loan (\$250,000).
  - Sources of funds exceed uses of funds by \$529 (insignificant).

#### *Operating and Debt Service Reserve Needs (Spreadsheet Option 2 Proforma tab)*

Add backs to Net Profit include:

- Proposed/requested City Operating and Debt Reserve Grants totaling \$301,947.
  - \$223,145 over 4 years to cover projected shortfall between project Net Profit and Debt Service that results in required debt service coverage ratio of 1:1. These funds are included in the Add Backs to Cash Flow section of the Option 2 Proforma.
  - The Lender requires an additional \$0.25 of cash flow for debt service be maintained in a reserve account at the lending bank. This amounts to \$78,802 and is identified as Bank Required DSC Reserve (0.25%) on the Proforma. The source of the \$78,802 is the proposed City operating reserve incentive. The funds will only be drawn down should they be needed, that is, actual operations demonstrate cash flow for debt service is lower than projected. These funds are included in the Bank Required DSC Reserve line on the Option 2 Proforma.
- Proposed City real estate tax rebate equal to 100% of the estimated property taxes of the Project
  - This is calculated on an estimated assessed value of \$3,195,000 (75% of the "As completed" appraised value of \$4,260,000) increasing 3% per year over 10 years. Total property tax rebate over 10 years = \$205,362 These funds are included in the Add Backs to Cash Flow section of Option 2 Proforma along with the following:
- Proposed City Sales Tax rebate 1.5% of total revenues over 10 years. Total sales tax rebate over 10 years = \$225,837.
- Proposed City Mixed Beverage Gross Receipts Tax over 10 years calculated using 50% of projected concession revenue. Total MBGRT tax rebate over 10 years = \$24,626
- Proposed City Mixed Beverage Sales Tax over 10 years calculated using 50% of projected concession revenue. Total MBST rebate over 10 years = \$30,322

In summary, the projected total value of City operating and debt reserve incentives under Option 2 is \$788,094. When the City Rehab Cash (\$1,076,366) and City Downtown Reinvestment grant (\$50,000) incentives are added to the operating and debt reserves (\$788,094) incentives the total City incentive package totals \$1,914,460.

#### **Option 3**

Developer is not eligible for HOT Funds.

#### **ANALYSIS OF DEVELOPER PROPOSED INCENTIVES**

The Table highlights the 2 Options of incentives proposed for the Project.

<b>COD \$</b>	<b>Option 1</b>	<b>Option 2</b>
<b>Rehab Cash</b>	\$1,076,366	\$1,076,366
<b>Downtown Reinvestment Grant</b>	\$50,000	\$50,000
<b>Operating Reserve</b>	\$465,701	\$223,145



<b>Debt Service Reserve</b>	\$78,802	\$78,802
<b>Cash Rebates*</b>	N/A	\$486,147
<b>Hot Funds</b>	N/A	N/A
<b>Total</b>	\$1,670,869	\$1,914,460
<b>Developer Equity</b>	\$1,837,041	\$1,837,041

- Property, Sales, MBGRT, & MBST Rebates

*Option 1:* \$1,076,366 City of Denton Rehab Cash incentive at CO, this can be a grant for 5-7 years. No tax rebates. An additional \$544,782 City of Denton incentive funded at opening or annually as needed, as a grant over 10 years. This includes \$465,701 City operating incentive over 7 years and \$78,802 debt service reserve. This is sufficient to produce cash flow sufficient to repay Lender loan at 1:1 ratio as well as fund the Lender required 0.25:1 debt service coverage reserve.

When the City Rehab Cash (\$1,076,366) and City Downtown Reinvestment (\$50,000) incentives are added to the operating and debt reserves (\$544,782) incentives the total City incentive package totals \$1,670,869. This option is the least expensive option.

*Under Option 1, the Developer begins to receive a cash-on-cash return on \$1,837,041 equity (Cash Flow Available for Distribution divided by equity investment) starting in year 8.* There is no return on the Deferred Developer loan until year 11.

*Option 2:* \$1,076,366 City of Denton incentive at CO, this can be a grant over 10 years. An additional \$709,292 City of Denton incentive funded at opening or spread annually as needed, as a grant over 10 years. This includes \$223,145 City operating incentive over 4 years and \$78,802 debt service reserve. This is sufficient to produce cash flow sufficient to repay Lender loan at 1:1 ratio as well as fund the Lender required 0.25:1 debt service coverage reserve. In addition, the City provides \$486,147 real estate, sales, and beverage taxes rebates over 10 years.

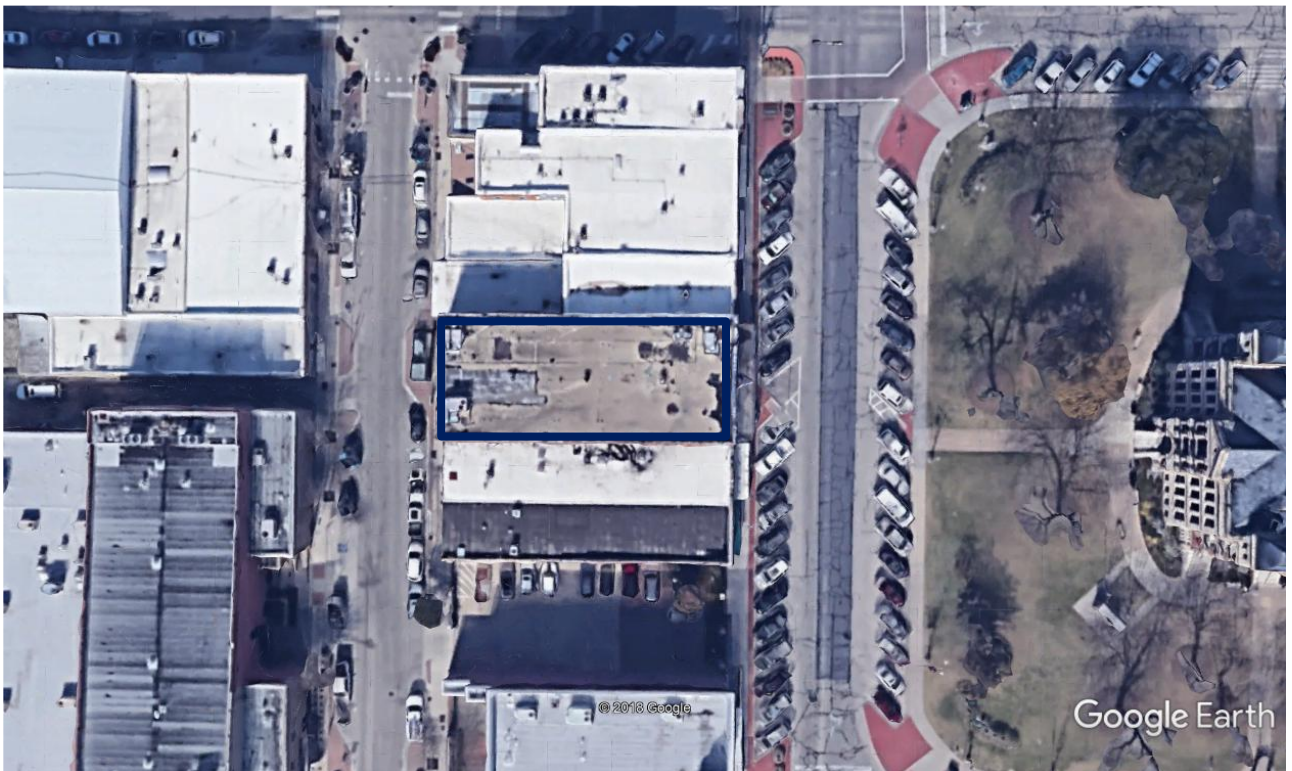
When the City Rehab Cash (\$1,076,366) and City Downtown Reinvestment (\$50,000) incentives are added to the operating (\$223,145) and debt reserves (\$78,802) as well as property, sales, MBGRT, and MBST rebates (\$486,147) incentives the total City incentive package totals \$1,914,460.

*Under this Option, the Developer only receives a cash-on-cash return on \$1,837,041 equity (Cash Flow Available for Distribution divided by equity investment) starting in year 5.* There is no return on the Deferred Developer loan until year 11.





Exterior View: Front



Location



Interior View





IMPACT REPORT

# FINE ARTS IMPACT

Option 1 After Agreement 2-21-24

JOBS



18.7 Total  
15.0 Direct  
3.7 Spin-off

SALARIES

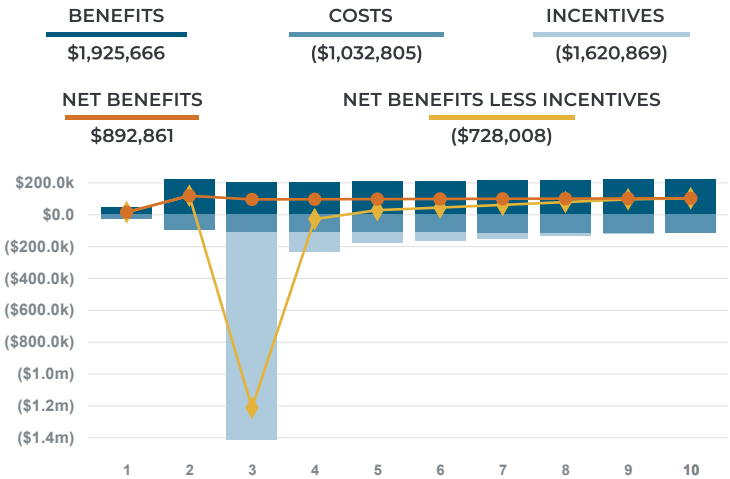


\$0 Avg  
\$0 Direct  
\$0 Spin-off

CAPITAL INVEST.



\$6.9M  
Buildings



	City of Denton	Denton County	Denton ISD	Denton CTA	Total
NET BENEFITS LESS INCENTIVES	(\$1,210,700)	\$148,470	\$327,717	\$6,504	(\$728,008)
Present Value	(\$1,060,495)	\$111,641	\$246,424	\$5,912	(\$696,518)
NET BENEFITS	\$410,169	\$148,470	\$327,717	\$6,504	\$892,861
Present Value	\$311,520	\$111,641	\$246,424	\$5,912	\$675,497
BENEFITS					
Sales Taxes	\$19,512	\$0	\$0	\$6,504	\$26,016
Real Property Taxes	\$361,372	\$140,211	\$866,626	\$0	\$1,368,210
FF&E Property Taxes	\$19,074	\$7,401	\$45,742	\$0	\$72,217
Other Benefits	\$441,260	\$9,049	\$8,915	\$0	\$459,224
Benefits Subtotal	\$841,218	\$156,661	\$921,283	\$6,504	\$1,925,666
COSTS					
Cost of Government Services	(\$46,669)	(\$8,191)	(\$5,126)	\$0	(\$59,986)
Other Costs	(\$384,379)	\$0	(\$588,440)	\$0	(\$972,820)
Costs Subtotal	(\$431,049)	(\$8,191)	(\$593,566)	\$0	(\$1,032,805)
INCENTIVES					
Non-Tax Incentive	(\$1,620,869)	\$0	\$0	\$0	(\$1,620,869)
Incentives Subtotal	(\$1,620,869)	\$0	\$0	\$0	(\$1,620,869)
Payback Period	29.6 Years				16.5 Years



ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE APPROVING AN ECONOMIC DEVELOPMENT AGREEMENT UNDER CHAPTER 380 OF THE LOCAL GOVERNMENT CODE TO PROMOTE ECONOMIC DEVELOPMENT, INCREASE FOOT TRAFFIC, STIMULATE BUSINESS ACTIVITY AND ECONOMIC GROWTH OF THE CITY OF DENTON BETWEEN THE CITY OF DENTON AND FINE ARTS THEATER OF DENTON, LLC FOR AN AMOUNT NOT TO EXCEED \$1,620,869 OF TAX INCREMENT REINVESTMENT ZONE ONE FUNDS; AUTHORIZING THE EXPENDITURE OF FUNDS THEREFOR; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Fine Arts Theater of Denton, LLC (the “Applicant”), on or about April 14, 2023, applied for an economic development incentive under Chapter 380 of the Texas Local Government for a construction and redevelopment grant to renovate the historic Fine Arts Theater located at 115-116 N. Elm Street, Denton, TX to increase foot traffic in the city to stimulate economic development activity and growth (“Grant Request”); and

WHEREAS, on February 28, 2024, the Tax Increment Reinvestment Zone No. One Board recommended entering into an agreement with the Applicant to provide an incentive in an amount not to exceed \$1,620,869 of Tax Increment Reinvestment Zone No. One Funds for the renovation and continued operation of the historic Fine Arts Theater; and

WHEREAS, City and Fine Arts Theater of Denton, LLC have negotiated a Chapter 380 Economic Development Agreement to reflect the terms of the incentive, a copy of which is attached hereto and made a part hereof by reference (the “Agreement”); and

WHEREAS, the City Council of the City of Denton hereby finds that the contemplated use of the premises and the performance of the Agreement will promote economic development, preserve a historic site, increase foot traffic, stimulate business and commercial activity, and help to reduce barriers that impair the sound growth of the City and Tax Increment Reinvestment Zone No. One; and

WHEREAS, the Agreement is necessary and convenient to implement the Tax Increment Reinvestment Zone Number One project and finance plans and is for the benefit of the public and therefore meets the requirements under Chapter 380 of the Texas Local Government Code and Chapter 311 of the Texas Tax Code; NOW, THEREFORE,

THE COUNCIL OF THE CITY OF DENTON, TEXAS HEREBY ORDAINS:

SECTION 1. The recitals and findings contained in the preamble of this Ordinance are found to be true and are incorporated into the body of this Ordinance.

SECTION 2. The City Manager, or their designee, is hereby authorized to execute the Agreement attached hereto on behalf of the City of Denton and to carry out the City’s responsibilities and rights under the Agreement, including without limitation the authorization to make the expenditures of Tax Increment Reinvestment Zone One funds as set forth in the Agreement.



SECTION 3. 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 [\_\_\_\_ - \_\_\_\_]:

	<b>Aye</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>
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 \_\_\_\_\_, 2024.

\_\_\_\_\_  
GERARD HUDSPETH, MAYOR

ATTEST:  
JESUS SALAZAR, CITY SECRETARY

BY: \_\_\_\_\_

APPROVED AS TO LEGAL FORM:  
MACK REINWAND, CITY ATTORNEY

BY: Scott Bray Scott Bray  
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THE STATE OF TEXAS

COUNTY OF DENTON

ECONOMIC DEVELOPMENT AGREEMENT BETWEEN  
THE CITY OF DENTON AND  
FINE ARTS THEATER OF DENTON, LLC

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This Economic Development Agreement (this “Agreement”) is made and entered into as of the Effective Date as defined herein by **Fine Arts Theater of Denton, LLC**, a Texas limited liability company with its principal place of business at 212 S. Elm Street, Denton, Texas (“Grantee”), and the **City of Denton**, a Texas home-rule municipal corporation located at 215 E. McKinney St., Denton, Texas (“City”), for the purposes and considerations stated below. Grantee and the City may each be individually referred to as a “Party” and collectively as the “Parties.”

The City and Grantee, for and in consideration of the promises contained herein, do hereby contract, covenant, and agree as follows:

RECITALS

The Parties agree and acknowledge that the following premises and recitals are true.

1. This Agreement is authorized pursuant to Article III, Section 52-a of the Texas Constitution, Chapter 380 of the Texas Local Government Code (the “Act”), and Chapter 311 of the Texas Tax Code to promote local economic development; preserve a historic structure; stimulate business and commercial activity; and help to reduce barriers that impair the sound growth of the City and eliminate blight in the Downtown Tax Increment Reinvestment Zone (TIRZ) No. One and the City of Denton.
2. Grantee intends to renovate and operate the vacant historic Fine Arts Theater entertainment facility in the City of Denton.
3. On or about April 14, 2023, Grantee submitted to the City a request for economic development incentives pursuant to the Act (the “Grant Request” as shown in **Exhibit B** attached hereto and incorporated herein for all purposes).
4. The Grant Request was reviewed by the Downtown Tax Increment Reinvestment Zone No. One Board of Directors (the “Downtown TIRZ Board”) in accordance with Chapter 311 of the Texas tax Code, and the Downtown TIRZ Board found the Grant Request meets the qualifications for financial incentives and recommended approval of the proposed incentives (5-0).
5. The City desires to provide an incentive in the form of a grant to the Grantee for the construction and renovation of the vacant historic Fine Arts Theater entertainment facility to increase foot traffic and stimulate economic and business activity in the City of Denton.

6. The contemplated use of funds to be provided will promote economic development, increase employment, and stimulate business and commercial activity within the City of Denton for the benefit of the public and therefore meets the requirements under the Act.

## ARTICLE I - DEFINITIONS

Capitalized terms in this Agreement shall have the following definitions:

1.1. “The Agreement” means this document and any incorporated attachments, as may be amended pursuant to its terms.

1.2. “Certificate of Occupancy” or “CO” means a Certificate issued by the Building Official for the use of a building, structure or land, when it is determined by the Building Official that the building, structure or proposed land use complies with the provisions of all applicable Codes of the City of Denton pursuant to the Denton Development Code Subchapter 23-5.

1.3. “City” means the City of Denton, a home-rule municipal corporation located at 215 E. McKinney, Denton, Texas 76201.

1.4. “Grant Request” means the request for economic development incentives submitted to the City by Grantee, a copy of which is attached hereto as **Exhibit B**.

1.5. “Grantee” has the meaning provided in the preamble of this Agreement.

1.6. “Historic Tax Credits” means income tax credits awarded to Grantee through the National Park Service program and Texas Historical Commission that supports private investment in the form of a historic tax credit for the rehabilitation of historic structures.

1.7. “Permanent Loan” is a loan from a financial institution with a long term financing structure, that is used to replace the construction loan that the developer/Grantee utilized to redevelop the facility.

1.8. “Program Effective Year” means the first calendar year during which Grantee requests that a TIRZ Grant One payment be made and the applicable conditions and requirements in this Agreement have been met by Grantee to receive the TIRZ Grant One.

1.9. The “Property” means the historic Denton Fine Arts Theater located at 115-116 N. Elm St., Denton, Texas 76201, more particularly described in Exhibit E.

1.10. “TIRZ Grant One” means a grant in the amount not to exceed \$1,076,366 for eligible reimbursable expenses, if the applicable conditions and requirements in this Agreement are met.

1.11. “TIRZ Grant One Eligible Reimbursable Expenses” means expenses made by the Grantee during the term of this Agreement as part of the renovation process including utilities costs (including internet and cloud storage), purchase of furniture, fixtures, and

equipment (including computers, office equipment, and other materials necessary to operate the business), construction and improvement costs, of which the Grantee can provide documentation of making such expense during the term of this Agreement.

1.12. "TIRZ Grant Two" means a grant in the amount not to exceed \$544,503 for eligible reimbursable expenses, if the applicable conditions and requirements in this Agreement are met.

1.13. "TIRZ Grant Two Eligible Reimbursable Expenses" means expenses made by the Grantee during the term of this Agreement as part of the costs associated with the operation of the theater including payroll, interest and carrying costs, film/performance and concession expenses, advertising, insurance, accounting, legal expenses, and sales taxes for furniture, fixtures, and equipment (including computers, office equipment, and other materials necessary to operate the business), of which the Grantee can provide documentation of making such expense during the term of this Agreement.

## ARTICLE II - GRANT CONDITIONS

Grantee shall satisfy the following conditions to receive the grant payments from the City provided in Articles IV and V, and except as otherwise expressly provided in Section 2.7, to avoid termination of this Agreement pursuant to the terms of Article VIII, subject to the notice and cure provisions contained herein:

2.1. Grantee covenants and agrees with the City that the City's obligations under this Agreement are subject to the fulfillment of the Grantee's obligations under this Agreement, and Grantee hereby agrees to perform and comply with the terms, conditions, and provisions of this Agreement and in all other instruments and agreements, if any, between Grantee and the City with respect to the financial or other incentives provided herein.

2.2. Grantee exists and is duly authorized and in good standing under the laws of the state of its formation and is registered to do business in the State of Texas.

2.3. In the event of any conflict between the City of Denton Code of Ordinances and federal, state, or other local regulations in effect on the Effective Date of this Agreement, and this Agreement, such ordinances and/or regulations shall control.

2.4. In accordance with Chapter 2264 of the Texas Government Code, Grantee covenants and certifies that Grantee shall not knowingly employ any person who is not lawfully admitted for permanent residence to the United States or who is not authorized under law to be employed in that manner in the United States ("Undocumented Worker"). During the term of this Agreement, Grantee shall notify the City of any complaint brought against Grantee alleging that Grantee has knowingly employed Undocumented Workers. In accordance with section 2264.052 of the Texas Government Code, if Grantee is convicted of a violation of 8 U.S.C. section 1324a(f) for employing an Undocumented Worker, all grant payments shall be terminated, and Grantee shall repay the amount of all grants with interest of ten percent (10%) per annum from the date the grant payment(s) was

made. Repayment shall be paid within 120 days after the date Grantee receives notice of such conviction from the City.

2.5. For the term of this Agreement, Grantee must maintain its principal place of business within the corporate limits of the City of Denton. For the avoidance of doubt, nothing herein precludes Grantee from maintaining satellite offices in any location, provided the principal place of business remains within the corporate limits of the City of Denton.

2.6. Improvements to the Property shall be made in substantial compliance with the description of the project as set forth in the updated incentive request referenced in the Underwriting Report (**Exhibit C**). Notwithstanding anything contained in this Agreement to the contrary, no grant or payment shall be made to the Grantee under this Agreement unless and until grantee has completed the improvements to the property no later than 36 months after the Agreement effective date, subject to force majeure delays as outlined herein, which improvements include but are not limited to: a restored main theater with approximately 200 seats and V.I.P. mezzanine (25-30 seats), a smaller movie theater on the second level with approximately 50 seats, a new concession area at the entrance and a bar that overlooks the downtown courthouse open to theater patrons and the public. As a grant condition, Grantee shall invest at least \$5,800,000 (excluding pre-development costs) of funds for TIRZ Grant One Eligible Expenses from non-city sources for the development of the project. Grantee is responsible for cooperating in the provision of any receipts or books to determine compliance with this section.

2.7. Annual appraisals of the Property by the Denton Central Appraisal District Grantee must meet or exceed \$1,500,000 above the 2023 base valuation in Year 1, a total of \$3,000,000 in Year 3 and the appreciation amounts shown in **Table I** for Years 4 through 10. For the purposes of this section, Year 1 refers to the calendar year following the receipt of a Certificate of Occupancy and after grant initiation, and Years 2-10 refer to the subsequent calendar years. Failure to meet the minimum appraised value for any year during the term of this Agreement shall constitute a default by Grantee for only the year in which such failure occurs and shall not constitute an event of default for which this Agreement may be terminated by City as provided in Article VIII. In the event of such an occurrence, Grantee shall be ineligible for the TIRZ Grant Two payment for only the year in which the minimum appraised value requirement of **Table I** has not been met.

TABLE I

Year	Threshold Appreciation	Threshold Numerical Increase	Valuation after Numerical Increase & Appreciation
Base Year	N/A	N/A	\$700,000
1	0%	\$1,500,000	\$2,200,000
2	0%	\$0	\$2,200,000
3	0%	\$800,000	\$3,000,000
4	3%	\$90,000	\$3,090,000
5	3%	\$92,700	\$3,182,700

Economic Development Agreement Between  
City of Denton and  
Fine Arts Theater of Denton, LLC

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6	3%	\$95,481	\$3,278,181
7	3%	\$98,345	\$3,376,526
8	3%	\$101,296	\$3,477,822
9	3%	\$104,335	\$3,582,157
10	3%	\$107,465	\$3,689,622

*A 3% appreciation is applied following \$3 million in valuation, years 4-10*

2.8 The Property shall be operated and maintained for the purposes set forth herein so that the uses of the premises shall be consistent with the public purpose and welfare of the community to preserve a historic structure; provide educational opportunities; stimulate business and commercial activity; increase foot traffic, sales taxes, mixed beverage taxes, and revenues from the historic theater and surrounding businesses; help to reduce barriers that impair the sound growth of the City and eliminate blight in the Downtown TIRZ No. One and, except as otherwise authorized or modified by this Agreement. The City shall have the right to terminate the Agreement if the Grantee does not occupy and operate the premises continuously for the purposes set forth in this Agreement for the entire term of the Agreement.

2.9 Grantee shall not fail to render for taxation any property located within the City of Denton, nor shall it allow the ad valorem taxes owed to the City on any property owned by the Grantee and located within the City of Denton to become delinquent beyond the last day they can be paid without assessment of penalty, as such date is generally extended to allow for any appeal.

2.10 Grantee shall not allow any other municipal fees, levies, assessments, bills, or fines to become delinquent.

2.11 Grantee shall not discriminate in employment and contracting based on race, sex, sexual orientation, gender identity, age, disability, creed, color, genetics, or national origin, and shall not violate any applicable anti-discrimination laws in connection with Grantee's business.

2.12 Grantee agrees to use good faith efforts to purchase and select goods, services, and contractors from businesses located in the City of Denton whenever such goods, services, and contractors are comparable in availability, quality, and price. In the selection of contractors, suppliers, or other persons proposed for work on this Agreement, Grantee agrees to use its good faith efforts to select and employ historically underutilized businesses for work on this Agreement, whenever such vendors are comparable in availability, quality and price; however, Grantee is not required to use such vendors. Grantee is not required to but may submit information related to any good faith efforts as it relates to the local procurement of goods and services or the use of historically underutilized businesses with its annual Certificate of Compliance.

### ARTICLE III - TERMS OF GRANTS

3.1. The City agrees to provide TIRZ Grant One to the Grantee following the construction and rehabilitation of the facility, subject to all other terms of this Agreement. TIRZ Grant One shall not exceed One Million Seventy-Six Thousand Three Hundred and Sixty-Six Dollars (\$1,076,366) over the term of this Agreement. Grantee shall be eligible for payment of TIRZ Grant One following confirmation to City of the following:

1. receipt by Grantee of a Certificate of Occupancy,
2. issuance of Historic Tax Credits by Grantee, as demonstrated by an approved National Park Service Part 3 and Texas Historical Commission Part C,
3. that Grantee has met the investment threshold of non-City funds for the project, and
4. demonstration of the Permanent Loan in a document deemed acceptable by the City.

3.2. TIRZ Grant Two will be provided in an amount not to exceed Five Hundred and Forty-Four Thousand Five Hundred and Three Dollars (\$544,503) over the term of this Agreement. TIRZ Grant Two payments shall be made annually in installments over a seven (7) year term or until \$544,503 has been paid, whichever comes first. Payment of TIRZ Grant Two shall commence on the calendar year immediately following the date Grantee becomes eligible for payment of TIRZ Grant One.

3.3. The calculation of the TIRZ Grant Two payment amount for any year as shown in **Table II** and the schedule of payments shall be made in accordance with Articles IV and V.

3.4. To receive a TIRZ Grant Two payment for a year the Grantee must submit the annual Certificate of Compliance (as shown in **Exhibit A** attached hereto and incorporated herein for all purposes) for the prior year in accordance with the dates provided in **Table II**, along with all documentation required to certify compliance with the terms and conditions of this Agreement, including but not limited to total revenue.

3.5. If for any year during the term of this Agreement Grantee fails to maintain at least 40% of the projected revenue in **Table II**, the Grantee is ineligible for the TIRZ Grant Two payment for that year.

3.6. The total amount of the TIRZ Grant One and TIRZ Grant Two shall not exceed One Million Six Hundred and Twenty Thousand Eight Hundred and Sixty-Nine Dollars (\$1,620,869).

3.7. Payment of TIRZ Grant One and TIRZ Grant Two as provided for in this Agreement shall be paid exclusively from funds from the Tax Increment Reinvestment Zone No. One, City of Denton Tax Increment Fund and shall not constitute a general obligation of the City or indebtedness under the constitution or laws of the State of Texas.

3.8. Grantee shall not sell, convey, or assign its property interests in the Property during the term of this Agreement without prior written authorization from City. Grantee shall execute, deliver to City, and cause to be recorded in the real property records of Denton County, Texas restrictive covenants in the form provided in **Exhibit D**, attached hereto, prohibiting the sale, conveyance, or assignment of Grantee's ownership interests in the Property during the term of this Agreement without authorization from the City. Notwithstanding the foregoing, if during the term of this Agreement, there is a default by Grantee resulting in termination and/or a Recapture Event (defined in Section 8.2.3), and Grantee has repaid City all sums due and owing as a result of the Recapture Event, Grantee shall be entitled to sell, convey or assign any and all interest in the Property in its sole discretion.

#### ARTICLE IV - PAYMENTS OF GRANTS

4.1. The TIRZ Grant One payment will be paid as a lump sum to Grantee within sixty (60) days of City's receipt of a written request from Grantee with appropriate documentation evidencing eligibility for payment as provided in Article VI. At Grantee's option, a portion of TIRZ Grant One may be paid instead of a lump sum upon request. Grantee may only submit a written request for payment from TIRZ Grant One once per year until the entire TIRZ Grant One amount is paid or until the end of the term of this Agreement, whichever is sooner.

4.2. Grantee must provide the City with a written request to commence the Program Effective Year at least thirty (30) days prior to the last day of the requested Program Effective Year. The Grantee shall be entitled to payments of TIRZ Grant Two payments in accordance with the requirements and schedule set forth on **Table II** below and the terms of this Agreement.

TABLE II

	Program Effective Year	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10	Total
Total Revenue	1,230,880	1,333,830	1,455,306	1,484,412	1,514,100	1,544,662	1,265,407	1,606,755	1,638,910	1,671,688	14,745,950
TIRZ Grant Two (minimum)	231,204	124,396	69,512	54,077	38,243	21,723	5,348				544,503

#### ARTICLE V - CALCULATION OF INSTALLMENT PAYMENTS

5.1. TIRZ Grant Two payments shall be made each year for seven (7) years beginning with the Program Effective Year in the minimum amounts per year as shown in **Table II**, provided, however, that no payment shall be made once the TIRZ Grant Two cap provided in Section 5.3 has been met. Payment may also be withheld in accordance with Section 2.7 above. Grantee may receive, upon request, an increase in each annual payment of TIRZ



Grant Two funds by showing, to the City's satisfaction, that Grantee has met certain percentages of the revenue projections in **Table II**, as follows:

1. If 90% of the projected revenue is met, then the disbursement for that year may be increased by up to 15% of the minimum.
2. If 80% of the projected revenue is met, then the disbursement for that year may be increased by up to 10% of the minimum.
3. If 75% of the projected revenue is met, then the disbursement for that year may be increased by up to 10% of the minimum.

5.2. Payment of TIRZ Grant Two for the Program Effective Year will be prorated by the number of months that the theater is open during that year (e.g. six months of operation is 50%). Any balance remaining from the minimum from the Program Effective Year following the proration will be allocated to Year Two in Table II.

5.3. TIRZ Grant One shall have a cap not to exceed One Million Seventy-Six Thousand Three Hundred and Sixty-Six Dollars (\$1,076,366) over the term of this agreement.

5.4. TIRZ Grant Two shall have a cap not to exceed Five Hundred and Forty-Four Thousand Five Hundred and Three Dollars (\$544,503). The minimum annual TIRZ Grant Two payment shall be reduced for any year where payment of the minimum would cause the total amount of TIRZ Grant Two payments to exceed the TIRZ Grant Two cap.

5.5. Payments shall be made payable to Fine Arts Theater of Denton, LLC.

## ARTICLE VI - OTHER GRANTEE OBLIGATIONS

6.1. In order to receive payment of any portion of TIRZ Grant One or TIRZ Grant Two for the applicable year, Grantee must submit the Annual Certificate of Compliance form attached hereto as **Exhibit A** certifying compliance with the obligations set forth in this Agreement not later than March 31 of the year following the year for which the request for payment is made.

6.2. Grantee shall submit to the City documentation supporting Grantee's request and demonstrating proof of investment of non-City funds in accordance with the terms of this Agreement adequate to justify Grantee's receipt of any payment of TIRZ Grant One or TIRZ Grant Two. A failure to provide the Certificate of Compliance and supporting documentation by the date set forth in Section 6.1 may, in the sole discretion of the City, result in Grantee being ineligible to receive a TIRZ Grant One or TIRZ Grant Two payment for the applicable year.

## ARTICLE VII - AUDITS AND MONITORING

During the term of this Agreement, the City reserves the right to conduct audits of the business records of the Grantee related to this Agreement if, in the sole opinion of the City, such action is determined to be necessary. Grantee agrees upon reasonable advance request to furnish the City with additional records and information reasonably requested to support that the terms and conditions of this Agreement have been satisfied. Failure to provide such assistance shall be grounds for default, and City may withhold any TIRZ Grant One or TIRZ Grant Two payment until such assistance is provided. During the term of this Agreement, the City will keep, or cause to be kept, copies of the Certificates of Compliance and all documentation or employment records provided by the Grantee, payments made to Grantee, and any other calculations, allocations, and payments required by this Agreement.

## ARTICLE VIII - DEFAULT AND TERMINATION

8.1. If a party fails to perform any of its obligations under this Agreement and such failure is not cured within sixty (60) days after written notice by the City, the failure of the non-performing party to cure within such sixty (60) day period (or to commence and continue diligently to cure such default if the nature of the failure cannot reasonably be cured within 60 days in the exercise of all due diligence) shall constitute a default under this Agreement. A default by Grantee shall entitle the City to all remedies available at law or in equity, including but not limited to, termination of this Agreement, injunctive relief, specific performance, and suspending or withholding TIRZ Grant One and TIRZ Grant Two payments. A default by the City shall entitle Grantee as its sole remedy to seek specific performance of the terms of this Agreement.

8.2. If Grantee is in default of this Agreement or fails to meet the conditions hereof, the following terms apply:

1. If this Agreement is terminated, TIRZ Grant One and TIRZ Grant Two payments shall be terminated with respect to the year in which notice of termination is given and all future years thereafter.
2. If this Agreement is terminated by the City within the first year following the first payment of any portion of TIRZ Grant One or TIRZ Grant Two, Grantee shall refund to the City all TIRZ Grant payments received prior to termination. If this Agreement is terminated by City in any subsequent year, the amount of TIRZ Grant One or TIRZ Grant Two that Grantee shall be required to refund to City will be reduced each year following initial payment, as shown in **Table III** below. Refunds required by this section shall be made within thirty (30) days of termination.

TABLE III

	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10
Refund to City	100%	100%	75%	25%	15%	15%	10%	10%	5%	5%

3. In the event of a default by Grantee for which the recapture provisions of this Agreement are triggered ("Recapture Event"), City shall have a lien against the Property and improvements on the premises for the amount of payment and interest due and owed by Grantee; such lien shall be placed upon the Property only as an enforcement mechanism to secure repayment of grant payments due under this section during the time period beginning on the date such payment obligation accrues and continuing until the date it is paid. Upon payment by Grantee of all sums due and owing as a result of a Recapture Event, City shall take all necessary action to release the lien on the Property. Notwithstanding any other term of this Agreement, any lien placed upon the Property and improvements thereon by City pursuant to this Section shall be subordinate to a lien for a Permanent Loan, prior construction loan, or any lien placed upon the Property that is related to or arises from Historic Tax Credits.

#### ARTICLE IX - INDEMNITY

**IT IS UNDERSTOOD AND AGREED THAT GRANTEE IN PERFORMING ITS OBLIGATIONS HEREUNDER IS ACTING INDEPENDENTLY AND THE CITY ASSUMES NO RESPONSIBILITIES OR LIABILITIES IN CONNECTION THEREWITH TO THIRD PARTIES AND GRANTEE AGREES TO DEFEND, INDEMNIFY, AND HOLD HARMLESS THE CITY FROM AND AGAINST ANY AND ALL DIRECT DAMAGES INCURRED BY THE CITY RESULTING FROM CLAIMS, SUITS, AND CAUSES OF ACTION OF ANY NATURE WHATSOEVER BROUGHT BY ANY THIRD PARTY ARISING OUT OF GRANTEE'S OBLIGATIONS HEREUNDER.**

#### ARTICLE X - REPRESENTATIONS AND WARRANTIES BY THE CITY

The City represents and warrants that:

10.1. The City is a home rule Texas municipal corporation that has the power to enter into and has taken all actions to date required to authorize this Agreement and to carry out its obligations hereunder, and the person executing this Agreement on behalf of City has been authorized to act on behalf of and to bind the City to the terms of this Agreement; and

10.2. The City knows of no litigation, proceedings, initiative, referendum, investigation, or threat of any of the same contesting the powers of the City or its officials with respect to this Agreement that has not been disclosed in writing to Grantee; and

10.3. The City knows of no law, order, rule, or regulation applicable to the City or to the City's governing documents that would be contravened by, or conflict with, the execution and delivery of this Agreement; and

10.4. This Agreement constitutes a valid and binding obligation of the City, enforceable according to its terms, except to the extent limited by governmental immunity and bankruptcy, insolvency, and other laws of general application affecting creditors' rights and by equitable principles, whether considered at law or in equity; and

10.5. The funds granted by the City are derived from sources lawfully available to the City and are not proceeds of bonds or other obligations of the City payable from ad valorem taxes.

#### ARTICLE XI - REPRESENTATIONS AND WARRANTIES BY GRANTEE

Grantee represents and warrants that:

11.1. Grantee is a Texas limited liability company duly registered and validly existing under the laws of the State of Texas and is, or will prior to the Effective Date of this Agreement, be qualified to do business in the State of Texas; has the legal capacity and the authority to enter into and perform its obligations under this Agreement; and

11.2. The execution and delivery of this Agreement and the performance and observance of its terms, conditions and obligations have been duly and validly authorized by all necessary action on its part to enter into this Agreement; and

11.3. Grantee knows of no litigation, proceeding, initiative, referendum, or investigation or threat of any of the same contesting the powers of the City of Grantee or any of its principals or officials with respect to this Agreement that has not been disclosed in writing to the City. Grantee has the necessary legal ability to perform its obligations under this Agreement and has the necessary financial ability, through borrowing or otherwise, to construct improvements on the portions of the property that Grantee may acquire or improve in accordance with this Agreement. This Agreement constitutes a valid and binding obligation of Grantee, enforceable according to its terms, except to the extent limited by bankruptcy, insolvency and other laws of general application affecting creditors' rights and by equitable principles, whether considered at law or in equity.

#### ARTICLE XII - RIGHTS OF LENDERS AND INTERESTED PARTIES

The City is aware that financing for Grantee may be provided, in whole or in part, from time to time, by one or more third parties, including, without limitation, lenders, major tenants, equity partners and purchasers or developers (individually, an "Interested Party" and collectively, "Interested Parties"). In the event Grantee fails to perform any of its obligations under this Agreement, all notices to which Grantee is entitled under Article XVIII of this Agreement shall be provided to the Interested Parties at the same time they are provided to Grantee (provided the Interested Parties have previously been identified to

the City and provided their notice addresses to the City). If any Interested Party is permitted under the terms of its agreement with Grantee to cure the event of default and/or to assume Grantee's position with respect to this Agreement, the City agrees to recognize such rights of the Interested Party and to otherwise permit the Interested Party to cure the event of default and to assume all of the rights and obligations of Grantee under this Agreement. The City shall, at any time upon reasonable request by Grantee, provide to any Interested Party an estoppel certificate or other document evidencing that this Agreement is in full force and effect and that no event of default by Grantee exists hereunder (or, if appropriate, specifying the nature and duration of any existing event of default). Upon request by any Interested Party and with written consent of Grantee, the City will enter into a separate assumption or similar agreement with such Interested Party, consistent with the provisions of this Article. Grantee's consent to such an assumption or similar agreement may not be withheld if Grantee's denial of consent would violate the terms of any agreement between Grantee and the Interested Party. Upon execution of an assumption or similar agreement by City and an Interested Party pursuant to this Section, City agrees to fully release Grantee from Grantee's obligations under this Agreement to the extent such obligations have been assumed by the Interested Party.

### ARTICLE XIII - COMPLIANCE

This Agreement shall be conditioned upon and subject to compliance with applicable federal, state, and City laws, ordinances, rules, and regulations.

### ARTICLE XIV - NO VESTED RIGHTS

The Grantee shall be subject to all applicable ordinances of the City, whether now existing or in the future arising; provided however that future ordinances shall only be binding as allowed by law. This Agreement shall confer no vested rights, as defined and referenced in Chapter 245 of the Texas Local Government Code, as amended, on the Grantee or property where Grantee conducts business. The foregoing shall not be construed as a waiver by Grantee of any claims to vested rights under Chapter 245, or other law, conferred by a permit issued by the City subsequent to the execution of this Agreement or any claim of vested rights that arose prior to the execution of this Agreement. Article XV - Entire Agreement; Changes and Amendments

This Agreement constitutes the entire agreement of the Parties with regard to the subject matter hereof. Except as specifically provided otherwise in this Agreement, any alterations or deletions to the terms of this Agreement shall be by written amendment executed by both Parties to this Agreement.

### ARTICLE XV - SUCCESSORS AND ASSIGNS

This Agreement shall be binding on and inure to the benefit of the Parties, their respective successors, and assigns. Grantee may not assign any part of its rights and/or obligations in

or under this Agreement except with written authorization from City or as otherwise expressly provided in this Agreement.

## ARTICLE XVI - NOTICE

Any notice and/or statement required or permitted to be delivered shall be deemed delivered five business days after being deposited in the United States mail, certified with return receipt requested, postage prepaid, addressed to the appropriate party at the following addresses, or at such other addresses provided by the Parties in writing. Any such notice and/or statement shall also be deemed delivered when delivered by a nationally recognized delivery company (e.g., FedEx or UPS) with evidence of delivery signed by anyone at the delivery address.

If to Grantee:

Fine Arts Theater Of Denton, LLC  
Attn: Brad Andrus and Michael Payne  
212 S. Elm St.  
Denton, Texas, 76201

If to the City:

City of Denton  
Attn: City Manager  
215 E. McKinney  
Denton, Texas 76201  
Phone: (940) 349-8307  
Fax: (940) 349-8596

With a copy to:

City of Denton  
Attn: City Attorney  
215 E. McKinney  
Denton, Texas 76201  
Phone: (940) 349-8333  
Fax: (940) 382-7923

## ARTICLE XVII - APPLICABLE LAW

This Agreement shall be governed by and construed in accordance with the laws and court decisions of the State of Texas. Venue for any action under this Agreement shall be the State's District Court of Denton County, Texas. This Agreement is performable in Denton County, Texas.

## ARTICLE XVIII - BENEFIT OF AGREEMENT

This Agreement is executed solely for the benefit of the Parties and their successors and assigns, and nothing in this Agreement is intended to create any rights in favor of or for the benefit of any third party.

## ARTICLE XIX - LEGAL CONSTRUCTION; PARTIAL INVALIDITY OF AGREEMENT

In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and it is the intention of the Parties to this Agreement that in lieu of each provision that is found to be illegal, invalid or unenforceable, upon written, mutual agreement of both parties and approval of the City Council, a provision be added to this Agreement which is legal, valid and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

## ARTICLE XX - TERM

This Agreement shall be effective as of the Effective Date. This Agreement will terminate on the earlier to occur of (a) December 31st of the final year of the 10-year term beginning thirty-six (36) months following Program Effective Year; (b) December 31, 2037 or (c) the date of termination for default in accordance with Article VIII. After termination of this Agreement, the City shall not be liable to make any further payments to Grantee except, if applicable, the payment for "Agreement Year 7" as provided in **Table II** for which Grantee is eligible.

*[Signature page follows]*

EXECUTED and effective as of the \_\_\_\_\_ day of \_\_\_\_\_, 2024 ("Effective Date"), by the City signing by and through its City Manager, duly authorized to execute same by action of the City Council, and by Grantee, acting through its duly authorized officials.

CITY OF DENTON, TEXAS

\_\_\_\_\_  
Sara Hensley, City Manager

Attest:

\_\_\_\_\_  
Jesus Salazar, City Secretary

Approved as to legal form:

By: Scott Bray  
Mack Reinwand, City Attorney

FINE ARTS THEATER OF DENTON, LLC  
a Texas limited liability company

By: [Signature]  
Name: BRAD ANDRUS  
Title: MANAGER



**EXHIBIT A**  
**CITY OF DENTON**  
**JOBS-BASED INCENTIVE**  
**ANNUAL CERTIFICATE OF COMPLIANCE**

**Fine Arts Theater of Denton, LLC**

**A. Investment Information**

Section 2.6 of the Economic Development Agreement requires the capital investment of \$5,800,000.

Start of Coverage Period (date)	1. January 1, 20__
End of Coverage Period (date)	2. December 31, 20__
Total Investment at Start of Coverage Period	3.
Total Investment above Pre-development Costs at End of Year	4.
Total (line 4 minus line 3)	5.

*<sup>1</sup>Investment for the development of the project of at least \$5,800,000 (excluding pre-development costs). including but not limited to: a restored main theater with approximately 200 seats and V.I.P. mezzanine (25-30 seats), a smaller movie theater on the second level with approximately 50 seats, a new concession area at the entrance and a bar that overlooks the downtown courthouse open to theater patrons and the public.*

**B. Valuation Information**

Section 2.7 of the Economic Development Agreement requires the real property valuation in accordance with Table I.

Start of Coverage Period (date)	3. January 1, 20__
End of Coverage Period (date)	4. December 31, 20__
Total Prior Valuation	3.
Total Valuation of the tax year at the start of the coverage period	4.
Total (line 4 minus line 3)	5.

C. TIRZ One Grant Terms

- Section 3.1 of the Agreement requires that a Certificate of Occupancy (CO) is received before contract initiation. CO was approved on: \_\_\_\_\_.
- Section 3.1 of the Agreement requires the issuance of Historic Tax Credits. Historic Tax Credits were issued on: \_\_\_\_\_.
- Section 3.1 of the Agreement requires demonstration of the Permanent Loan, in a document deemed acceptable by the City. The Permanent Loan was received on \_\_\_\_\_.

D. Calculation of TIRZ Grant Two

20.1. Sections 3.2 and 5.3 of the Agreement state that TIRZ Two Grant shall not exceed Five Hundred and Forty-Four Thousand Five Hundred and Three Dollars (\$544,503) over the term of the Agreement. TIRZ Grant Two shall be calculated for the appropriate year of the TIRZ Grant Two minimum in **Table II**. Grantee may receive, upon request, an increase in each annual payment of TIRZ Grant Two funds by showing, to the City's satisfaction, that Grantee has met certain percentages of the revenue projections in **Table II**, as follows:

- If 90% of the projected revenue is met, then the disbursement for that year may be increased by up to 15% of the minimum.
- If 80% of the projected revenue is met, then the disbursement for that year may be increased by up to 10% of the minimum.
- If 75% of the projected revenue is met, then the disbursement for that year may be increased by up to 10% of the minimum.

Total Revenue for the prior year	1.
Total Expenses for the prior year.	2.
Percent of the projected revenue	3.
TIRZ Two Grant (annual) Minimum	4.
Additional ___% of projected revenue	5.
<b>Total Amount of Residency Bonus (Add Line C4 to Line C5)</b>	6.

E. Total Payment Request

Total Amount of Annual TIRZ One Grant (Line B9)	1.
Total Amount of TIRZ Two Grant (Line C5)	2.
<b>Total Amount of Payment Requested (Add D1 and D2)</b>	3.

F. Required Attachments

Grantee to submit Certificate of Compliance to include CO, Historic Tax Credit issuance documentation and Permanent Loan document. Grantee should indicate in which year the grant is covering.

I hereby certify that, to the best of my knowledge and belief, the information provided herein is accurate and in compliance with the terms of the Economic Development Agreement with the City of Denton, Texas. I have provided a copy of all documentation needed to substantiate the number of Eligible Jobs added and to establish the residency requirement for those positions for which I am requesting a Residency Bonus payment.

\_\_\_\_\_  
Printed Name and Title of Certifying Officer

\_\_\_\_\_  
Signature of Certifying Officer

\_\_\_\_\_  
Date

*Note: This form is due by March 31 of each year after the commencement date, and as long as this Agreement is in effect.*

Attach CO, Historic Tax Credit issuance, as demonstrated by an approved National Park Service Part 3 and Texas Historical Commission Part C and Permanent Loan document as required by Economic Development Agreement.

This Certificate of Compliance should be mailed to:

City of Denton  
Attn: Economic Development  
401 N. Elm St.  
Denton, TX 76201

**EXHIBIT B**  
**Grant Request**

Brad Andrus  
Fine Arts Theater of Denton, LLC  
212 S. Elm St  
Denton, TX 76201

Wayne Emerson  
Director of Economic Development  
City of Denton  
401 N. Elm Street  
Denton, TX 76201

RE: City of Denton request letter for Fine Arts Theater of Denton, LLC

**Project Description**

We are pleased to present the following rehabilitation plan for the revival and improvement of the Fine Arts Theater on Denton's Square. In May of 2018, Fine Arts Theater of Denton, LLC was formed by local forward-thinking, civic minded Denton enthusiasts with a plan of purchasing and rehabilitating the Fine Arts Theater.

The theater has remained vacant since 2014 and deteriorated due to previous fire damage and subsequent weather effects. Since the purchase in 2018, a substantial amount of planning and predevelopment work has been completed including:

- Engaged Architexas, a Dallas-based historic preservation architectural firm.
- Remediated asbestos and mold throughout the structure.
- Completed demolition of the interior in preparation for the full renovation.
- Completed construction of a new roof.
- Worked with Rudick Construction Group to value engineer and devise a full renovation budget.
- Completed renovation plans and specifications and obtained City of Denton permit approval; and
- Obtained approval for the Federal Historic Tax Credit Application and Texas Historic Tax Credit Application.

Alex Payne, Brad Andrus, Jason Reimer, Barak Epstein, and Martin Isles are all experience investors and promotors represent the ownership group, which is intent on returning the Fine Arts Theater back to the community in its most viable function as a multi-use entertainment venue.

The rehabilitation plan includes a restored main theater with approximately 200 seats and V.I.P. mezzanine (25-30 seats), a smaller movie theater on the second level with approximately 50 seats, and a new concession area at the entrance with a bar that overlooks the downtown courthouse open to theater patrons and casual visitors alike.

### Alignment with the City's Strategic Plan

As a recognized arts leader invested in the continued development of the City of Denton as a strong, vibrant, and healthy community, the Historic Fine Arts Theater is committed to expanding opportunities to improve the lives in Denton's underserved neighborhoods and to ensure that theater arts experiences are accessible to all members of the community and aligns with the City of Denton's strategic plan. The Fine Arts Theater will contribute to this vision as follows:

- Generate additional new revenue (sales and mixed beverage) and drive tourism and visits to Denton Square and the city.
- Increase Denton Square's value as a unique business and promote investment in other non-competing businesses due to increased visits.
- Enhance the creative arts culture of Denton.
- Provide new jobs and training in the theater arts with plans to partner with UNT's media arts and hospitality management departments.
- Locally owned by people with a vested interest in Denton and the Fine Arts Theater history.
- Continue to revitalize Denton Square by bringing another newly rehabilitated building up to code.

### City Subsidy Requirement

The total Rehabilitation budget for the Fine Arts Theater is \$9.969M. The ownership group has secured financing for both the rehabilitation and permanent financing through American National Bank & Trust. Based on our current projection of free cashflow, the project once stabilized can support debt service on a loan no greater than \$3.195M. The financing plan requires the construction loan to be paid down from \$8.566M to \$3.195M with funding from the sale of Historic Tax credits and the Denton Downtown Econ Façade Grant. These paydowns leave a funding gap of approximately \$2.6m.

<b>Funding Sources:</b>		
Cash equity already invested		\$1,152,260
Deferred developer fee		\$250,000
<b>Construction Loan Proceeds:</b>		
Appraised Value - As Complete 75%LTV	\$3,195,000	
Loan on Historic Tax Credits 75% LTV	\$2,000,000	
Pledged collateral 75% LTV	\$744,918	
Funding GAP	\$2,627,054	
Construction Loan Amount	\$8,566,972	\$8,566,972
<b>Total Funding Sources</b>		<b>\$9,969,232</b>
<b>Post Construction Loan Paydown</b>		
Construction Loan		\$ 5,939,918
Historic Tax credits (Estimated)		\$ (2,694,918)
Denton Downtown Econ Façade Grant (Estimated)		\$ (50,000)
<b>Loan Balance</b>		<b>\$ 3,195,000</b>

**Request for Funding**

Fine Arts Theater of Denton, LLC requests an economic development grant of \$2.0M from the City of Denton, which will be used to pay down the existing construction loan at completion of work.

Thank you for your consideration of this request and feel free to reach out to me with any questions or concerns.

Sincerely,



Brad Andrus

Date: 4-14-23

**EXHIBIT C**  
**Underwriting Report**





**Date:** December 6, 2023, 2023

**To:** Christine Taylor, Assistant City Manager, City of Denton  
Ralph Bishop, Fine Arts Theater of Denton, LLC.

**Re:** **Final** Revised Underwriting Report 3 incentive options – Fine Arts Theater of Denton, LLC.

**From:** Grow America, formerly National Development Council  
*Underwriter: Sheldon Bartel, CEcD, EDFP, HDFP*

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**STATUS:** The City of Denton ("City") and Fine Arts Theater of Denton, LLC ("Developer") retained Grow America to underwrite Fine Arts Theater of Denton, LLC request for a \$2,000,000 City economic development incentive. A final underwriting report was delivered (8/16/23) as a guide to assist the City in determining the type(s), timing, and amount(s) of incentives to commit, if any.

The requested incentives will support the development of 113-115 N. Elm Street, Denton TX ("Project"). The expected outcome is a rehabilitated historic theater with approximately 200 seats and V.I.P. mezzanine (25-30 seats), a smaller movie theater on the second level with approximately 50 seats, and a new concession area at the entrance with a bar that overlooks the downtown courthouse open to theater patrons and casual visitors alike. The developer believes the Project will contribute to the City as follows:

- Generate new revenue (sales and mixed beverage as well as property taxes) and drive tourism and visits to Denton Square and the City.
- Increase Denton Square's value as a unique business and promote investment in other non-competing businesses due to increased visits.
- Enhance the creative arts culture of Denton.
- Provide new jobs and training in the theater arts with plans to partner with UNT's media arts and hospitality management departments.
- Continue to revitalize Denton Square by bringing another newly rehabilitated building up to code.

The City provided a term sheet to the Developer post underwriting report. Following a meeting between the City and Developer where the Developer provided revised project financial information including:

- A revised operating model including proposed sales tax and property rebates,
- Updated Project development costs, sources and uses, based on the 8/31 balance sheet,
- corrections to the lender's cash reserve requirement for debt service coverage after clarifying our projections of operating losses during the first few years, as well as the interest calculation.

Developer finds that because of the above changes and the assumption that the Project is approved for property and sales tax rebate incentives for 10 years:

- the initial cash needed at the opening, (year 1) is reduced to \$193,107.
- additional cash of \$121,371 to cover losses in years 2-4.
- The total cash requirement for working capital and debt service coverage is \$314,478.



With this information the Developer presented to the City three (3) incentive options as follows:

1. Option 1 - \$1,076,366 City of Denton incentive at CO, this can be a grant for 5 to 7 years . No tax rebates. An additional \$544,782 City of Denton incentive funded at opening or annually as needed, as a grant for 5 to 7 years s.
2. Option 2 - \$1,076,366 City of Denton incentive at CO, this can be a grant or forgivable loan over 10 years. Annual rebates for property, sales, and beverage taxes for 10 years. An additional \$314,478 City of Denton incentive funded at opening or annually as needed, as a grant or forgivable loan over 10 years.
3. Option 3 – Developer is not eligible for Option 3. Only non-profits are eligible for HOT funds. Developer pointed out that options 1 and 2 will require an additional capital contribution from its ownership group of approximately \$555,000, bringing their total investment to approximately \$1,837,000.

On 10/16/23 the City asked Grow America to review the new information and 3 incentive options for the Project provided by the Developer.

**REVIEW OF PROJECT COSTS:** Developer is proposing the rehabilitation of a Historic Theater into a multi-use entertainment facility. Existing 9,900 sqft structure is situated on 6,000 sqft footprint located at 113-115 N. Elm in the Denton Square. This is in a 2023 Qualified Census tract. Developer has site control via fee simple ownership of the property since 2018.

The building was originally constructed as a furniture store in the 1890's and converted to a movie theater in 1935. The building ceased operation as a movie theater in 1982. From 1982 to 2014 the space was utilized as a church and performance space. It has been vacant since 2014 and sustained considerable interior damage due to a small fire and weather-related issues due to a faulty roof. The Developer acquired the Project site in 2018 has restored the building to shell condition which included replacing the roof, asbestos removal and abatement, and demolition of the damaged areas along with architectural services at a cost of approximately \$2,146,714.

The ownership intends to completely renovate the building and convert it into a multi-use entertainment facility. Examples of its activity will involve assorted options including movies, film festivals, concerts, live performance, and rentals such as receptions, seminars, and worship services, as well as various community-based rentals. The renovated facility will have three interior levels and includes a restored main theater with approximately 200 seats and V.I.P. mezzanine (25-30 seats), a smaller movie theater on the second level with approximately 50 seats, a new concession area at the entrance and a bar that overlooks the downtown courthouse open to theater patrons and the public.

The table below shows the total rehabilitation budget, sources and uses of funds, and permanent financing for Fine Arts Theater at 3/21/23 (application) and 8/31/23. The table includes post construction proposed investments by Developer and City (Option 1).



Uses:	3/21/2023	8/31/2023	Difference
<b>Building Purchase (at actual)</b>	\$769,442	\$769,442	(0)
<b>Pre-development Costs (at actual)</b>	\$1,377,272	\$1,440,025	62,753
<b>Total Pre-Development Costs</b>	\$2,146,714	\$2,209,467	62,753
<b>Rehabilitation Costs (projected)</b>			
Rehabilitation costs & Contingency	\$5,185,490	\$5,186,074	584
Furniture & fixtures	\$629,985	\$629,985	0
Soft costs	\$410,000	\$410,000	0
Interest & related costs	\$672,409	\$684,096	11,687
Cash Reserve to meet OWC/DSCR Requirement	\$924,634	\$0	(924,634)
<b>Total Projected Rehabilitation costs</b>	\$7,822,518	\$6,910,155	(912,363)
<b>Total Projected Project Costs</b>	\$9,969,232	\$9,119,623	(849,609)
<b>Funding Sources:</b>			
Cash equity already invested	\$1,152,260	\$1,282,041	129,781
Deferred developer fee	\$250,000	\$250,000	0
<b>Construction Loan Proceeds:</b>			
Appraised Value - As Complete 75%LTV	\$3,195,000	\$3,195,000	0
Loan on Historic Tax Credits 75% LTV	\$2,000,000	\$2,033,217	33,217
Pledged collateral 75% LTV	\$744,918	\$2,359,365	1,614,447
Funding GAP	\$2,627,054	\$0	(2,627,054)
Construction Loan Amount	\$8,566,972	\$7,587,582	(979,390)
<b>Total Funding Sources</b>	\$9,969,232	\$9,119,623	(849,609)
<b>Post Construction Loan Paydown</b>			
Construction Loan	\$ 5,939,918	\$ 7,587,582	1,647,664
Historic Tax credits (Estimated)	\$ (2,694,918)	\$ (2,710,956)	(16,038)
Denton Downtown Econ Façade Grant (Estimated)	\$ (50,000)	\$ (50,000)	0
COD Rehab Cash Incentive	\$ -	\$ (1,076,366)	(1,076,366)
Funding Gap funded by partners	\$ -	\$ (555,260)	(555,260)
<b>Loan Balance</b>	\$ 3,195,000	\$ 3,195,000	(0)

**Notes:**

**Rehabilitation/Construction.**

- The 8/31/23 projected total rehabilitation/construction cost is reasonable. Total cost per square foot is \$921.
- Total pre-development costs increased \$62,753. These have been funded by a combination of \$1.2 million Developer cash and \$1.0 million loan.
- Total Rehabilitation costs (uses of funds) are \$9,119,623 – a decrease of \$849,609. This is primarily due to removal of cash reserve to meet Lender OWC/DSR requirement. This is a post rehabilitation cash need.
- Total Funding sources are \$9,119,623 – a decrease of \$849,609. Expected proceeds from sale of Project Historic Tax Credits increased \$33,217, proceeds from Developer pledged collateral





increased \$1,614,447, and the rehabilitation funding gap decreased \$2,627,054. The Developer is filling the gap.

#### *Post Construction*

The City will only be involved post construction. Lender requires the Developer pay down the construction loan to 75% of "as completed" appraised value of \$4,260,000 = \$3,195,000. Sources of funding to pay down the Lender are sale of Project Historic Tax Credits, proposed City Rehabilitation Cash Incentive (\$1,076,366), Denton Downtown Reinvestment Grant (\$50,000), and \$555,260 additional Developer cash. Discussion of City post construction incentives follows.

#### **Option 1**

*Post Construction Permanent Financing (Spreadsheet Option 1 Project Cost Worksheet and Sources of Funds tabs)*

- The City will only be involved post construction.
- Project Development Budget is a breakdown of the rehabilitation/construction costs.
- Source of Funds is the breakdown of post construction permanent financing including the Lender loan (\$3,195,000), the City's proposed Rehab Cash Incentive (\$1,076,366), Downtown Reinvestment grant (\$50,000), Historic Tax Credit equity (calculated by Project consultants Architexas @ \$2,710,685), and Developer equity investment (\$1,837,041) into the Project as well as Developer Deferred Loan (\$250,000).
  - Sources of funds exceed uses of funds by \$529 (insignificant).

#### *Operating and Debt Service Reserve Needs (Spreadsheet Option 1 Proforma tab)*

The Proforma shows the projected revenues and expenses for 10 years for the Project. Revenues and expenses were provided by Project Consultant ACI North LLC who has operated the Texas Theater in Dallas since 2010. Add backs to Net Profit include:

- Proposed/requested City Operating and Debt Reserve Grants totaling \$544,503 that includes:
  - \$465,701 over 7 years to cover projected shortfall between project Net Profit and Debt Service that results in required debt service coverage ratio of 1:1. These funds are included in the Add Backs to Cash Flow section of the Option 1 Proforma.
  - The Lender requires an additional \$0.25 of cash flow for debt service be maintained in a reserve account at the lending bank. This amounts to \$78,802 and is identified as Bank Required DSC Reserve (0.25%) on the Proforma. The source of the \$78,802 is the proposed City operating reserve incentive. The funds will only be drawn down should they be needed, that is, actual operations demonstrate cash flow for debt service is lower than projected. These funds are included in the Bank Required DSC Reserve line on the Option 1 Proforma.
- In summary, the projected total value of City operating and debt reserve incentives under Option 1 is \$544,503. When the City Rehab Cash (\$1,076,366) and City Downtown Reinvestment grant (\$50,000) incentives are added to the operating and debt reserves (\$544,503) incentives the total City incentive package totals \$1,670,869.

#### **Option 2**

*Post Construction Permanent Financing (Spreadsheet Option 2 Project Cost Worksheet and Sources of Funds tabs).*

The City will only be involved post construction.

- Project Development Budget is a breakdown of the rehabilitation/construction costs.



- Source of Funds is the breakdown of post construction permanent financing including the Lender loan (\$3,195,000), the City's proposed Rehab Cash Incentive (\$1,076,366), Downtown Reinvestment grant (\$50,000), Historic Tax Credit equity (calculated by Project consultants Architexas @ \$2,710,685), and Developer equity investment (\$1,837,041) into the Project as well as Developer Deferred Loan (\$250,000).
  - Sources of funds exceed uses of funds by \$529 (insignificant).

*Operating and Debt Service Reserve Needs (Spreadsheet Option 2 Proforma tab)*

Add backs to Net Profit include:

- Proposed/requested City Operating and Debt Reserve Grants totaling \$301,947.
  - \$223,145 over 4 years to cover projected shortfall between project Net Profit and Debt Service that results in required debt service coverage ratio of 1:1. These funds are included in the Add Backs to Cash Flow section of the Option 2 Proforma.
  - The Lender requires an additional \$0.25 of cash flow for debt service be maintained in a reserve account at the lending bank. This amounts to \$78,802 and is identified as Bank Required DSC Reserve (0.25%) on the Proforma. The source of the \$78,802 is the proposed City operating reserve incentive. The funds will only be drawn down should they be needed, that is, actual operations demonstrate cash flow for debt service is lower than projected. These funds are included in the Bank Required DSC Reserve line on the Option 2 Proforma.
- Proposed City real estate tax rebate equal to 100% of the estimated property taxes of the Project
  - This is calculated on an estimated assessed value of \$3,195,000 (75% of the "As completed" appraised value of \$4,260,000) increasing 3% per year over 10 years. Total property tax rebate over 10 years = \$205,362 These funds are included in the Add Backs to Cash Flow section of Option 2 Proforma along with the following:
- Proposed City Sales Tax rebate 1.5% of total revenues over 10 years. Total sales tax rebate over 10 years = \$225,837.
- Proposed City Mixed Beverage Gross Receipts Tax over 10 years calculated using 50% of projected concession revenue. Total MBGRT tax rebate over 10 years = \$24,626
- Proposed City Mixed Beverage Sales Tax over 10 years calculated using 50% of projected concession revenue. Total MBST rebate over 10 years = \$30,322

In summary, the projected total value of City operating and debt reserve incentives under Option 2 is \$788,094. When the City Rehab Cash (\$1,076,366) and City Downtown Reinvestment grant (\$50,000) incentives are added to the operating and debt reserves (\$788,094) incentives the total City incentive package totals \$1,914,460.

**Option 3**

Developer is not eligible for HOT Funds.

**ANALYSIS OF DEVELOPER PROPOSED INCENTIVES**

The Table highlights the 2 Options of incentives proposed for the Project.

COD \$	Option 1	Option 2
Rehab Cash	\$1,076,366	\$1,076,366
Downtown Reinvestment Grant	\$50,000	\$50,000
Operating Reserve	\$465,701	\$223,145



<b>Debt Service Reserve</b>	\$78,802	\$78,802
<b>Cash Rebates*</b>	N/A	\$486,147
<b>Hot Funds</b>	N/A	N/A
<b>Total</b>	\$1,670,869	\$1,914,460
<b>Developer Equity</b>	\$1,837,041	\$1,837,041

- Property, Sales, MBGRT, & MBST Rebates

*Option 1:* \$1,076,366 City of Denton Rehab Cash incentive at CO, this can be a grant for 5-7 years. No tax rebates. An additional \$544,782 City of Denton incentive funded at opening or annually as needed, as a grant over 10 years. This includes \$465,701 City operating incentive over 7 years and \$78,802 debt service reserve. This is sufficient to produce cash flow sufficient to repay Lender loan at 1:1 ratio as well as fund the Lender required 0.25:1 debt service coverage reserve.

When the City Rehab Cash (\$1,076,366) and City Downtown Reinvestment (\$50,000) incentives are added to the operating and debt reserves (\$544,782) incentives the total City incentive package totals \$1,670,869. This option is the least expensive option.

*Under Option 1, the Developer begins to receive a cash-on-cash return on \$1,837,041 equity (Cash Flow Available for Distribution divided by equity investment) starting in year 8. There is no return on the Deferred Developer loan until year 11.*

*Option 2:* \$1,076,366 City of Denton incentive at CO, this can be a grant over 10 years. An additional \$709,292 City of Denton incentive funded at opening or spread annually as needed, as a grant over 10 years. This includes \$223,145 City operating incentive over 4 years and \$78,802 debt service reserve. This is sufficient to produce cash flow sufficient to repay Lender loan at 1:1 ratio as well as fund the Lender required 0.25:1 debt service coverage reserve. In addition, the City provides \$486,147 real estate, sales, and beverage taxes rebates over 10 years.

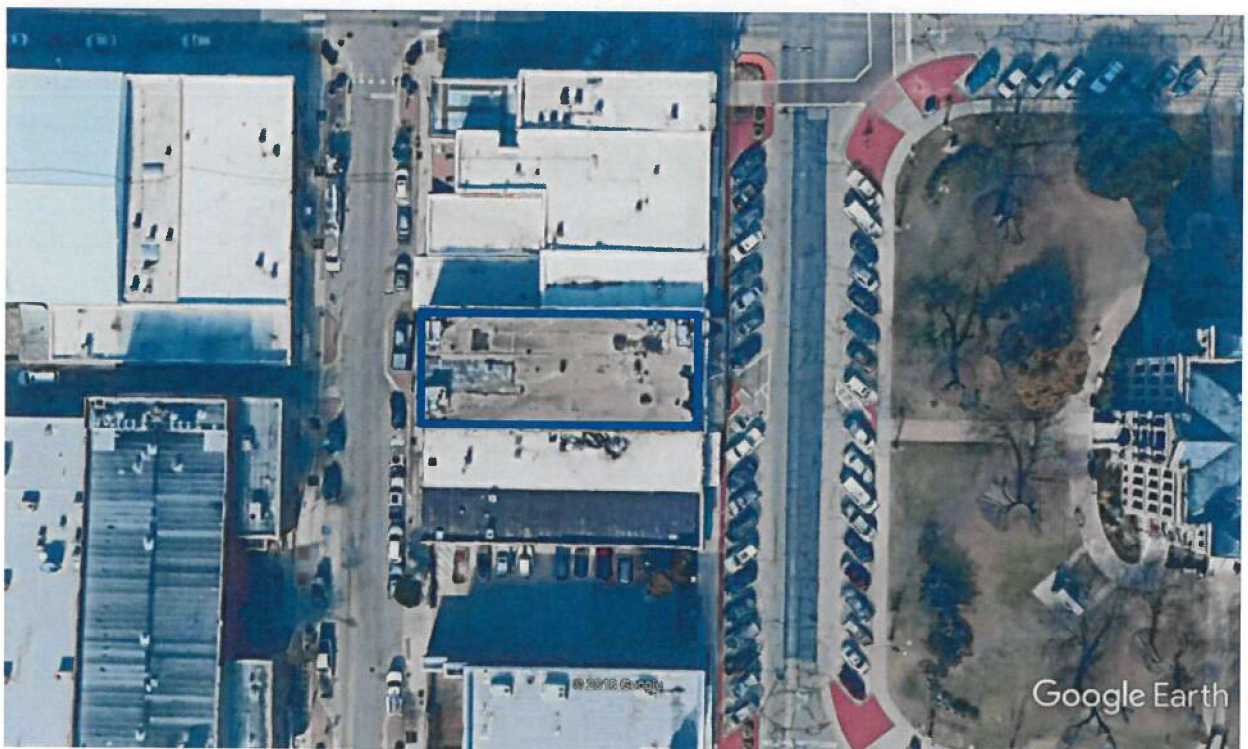
When the City Rehab Cash (\$1,076,366) and City Downtown Reinvestment (\$50,000) incentives are added to the operating (\$223,145) and debt reserves (\$78,802) as well as property, sales, MBGRT, and MBST rebates (\$486,147) incentives the total City incentive package totals \$1,914,460.

*Under this Option, the Developer only receives a cash-on-cash return on \$1,837,041 equity (Cash Flow Available for Distribution divided by equity investment) starting in year 5. There is no return on the Deferred Developer loan until year 11.*





Exterior View: Front



Location



Interior View





## EXHIBIT D

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER

### RESTRICTIVE COVENANTS

STATE OF TEXAS

COUNTY OF DENTON

THESE RESTRICTIVE COVENANTS (as amended from time to time, the "Restrictive Covenants") are impressed upon the property described below by **Fine Arts Theater of Denton, LLC** (the "Owner") a Texas limited liability company, the owner of said real property situated in Denton County, Texas, and any improvements located thereon, more particularly described as all that certain lot, tract or parcel of land lying and being situated in the City and County of Denton, State of Texas and being known as Lot Three (3), in Block Three (3), of the Original Town of Denton), and more specifically described in Exhibit E (the "Property").

### RECITALS

**WHEREAS**, on April 3, 2024, the City of Denton (the "City"), a Texas municipal corporation, and the Owner entered into an Economic Development Agreement which is incorporated herein by reference (the "Agreement"), pursuant to which the Owner is prohibited from conveying its interest in the Property during the term of the Agreement; and

**WHEREAS**, it is a condition of the Agreement that Owner execute and impress these Restrictive Covenants upon the Property and Owner's execution of the Restrictive Covenants with all of the covenants, restrictions, conditions, and other provisions set forth herein is a material inducement to the City to grant Owner funds pursuant to the Agreement; and

**WHEREAS**, the Restrictive Covenants are entitled to run with the land because (i) the Restrictive Covenants touch and concern the land by, among other things, benefitting and controlling the use of the Property, (ii) privity of estate exists by reason of Owner holding legal and equitable title to the land subject to the Restrictive Covenants, (iii) notice is given of the Restrictive Covenants contained herein when this instrument is filed in the Official Property Records of the county in which the Property is located, and (iv) the Restrictive Covenants are reasonable in light of their public purpose of securing performance of the Agreement; and

**WHEREAS**, Owner intends that the Restrictive Covenants shall run with the land and shall be binding upon Owner and its representatives, successors, and assigns, including, without limitation, all successive owners of each Unit of the Property and that any person, by acceptance of title, legal or equitable, to any Unit or other portion of the Property shall abide by and perform

all of the covenants, restrictions, conditions, and other provisions set forth herein regardless of whether or not the Restrictive Covenants are included in or otherwise referenced in the sales contract, deed, or other instruments of conveyance; and

**WHEREAS**, capitalized terms contained herein shall have the meaning set forth in the Agreement unless otherwise specifically provided herein;

**NOW, THEREFORE**, the foregoing Recitals are incorporated herein and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Owner hereby establishes the following Restrictive Covenants.

#### **USE RESTRICTIONS AND RESALE REQUIREMENTS**

1. The Property shall be used and occupied solely by Owner for the purposes established in the Agreement for its entire term.
2. If the Property or any part of it is sold or otherwise made available for purchase during the term of the Restrictive Covenants, then the Owner shall affirmatively disclose to potential purchasers the existence and nature of the Restrictive Covenants and of the Agreement. The proceeds of any such sale shall be paid first to the City to satisfy the reimbursement requirements of the Agreement before the remaining balance, if any, may be distributed to the Owner or any third party to the Agreement.
3. Before the Property may be sold, transferred, or conveyed to another owner, the City must give written consent of the sale, transfer, or conveyance of the Property and any attempted sale without said prior written consent is void.
4. The Property and any part thereof shall be maintained to and fully comply with all City codes.

#### **COVENANT TERM**

The covenants contained in these Restrictive Covenants shall remain in full force and effect for **ten (10) years** from the first distribution of grant funds pursuant to the Agreement (the "Covenant Term"). All of the covenants, restrictions, conditions, and other provisions set forth in these Restrictive Covenants shall be covenants running with the land and binding upon the Property, Owner, and their respective heirs, legal representatives, successors, and assigns for the duration of the Covenant Term. Notwithstanding the foregoing, if the Agreement is terminated pursuant to any of its terms prior to the end of the Covenant Term, the covenants, restrictions, conditions, and other provisions set forth in these Restrictive Covenants shall automatically terminate upon the later of (1) the date that the Agreement terminates, or (2) in the event that termination results in a Recapture Event as defined in the Agreement, the date that Grantee has repaid City all sums due and owing as a result of the Recapture Event ("Final Termination"). Upon Final Termination, Grantee shall be entitled to sell, convey or assign any and all interest in the Property in its sole discretion in its sole discretion, and this Restrictive Covenant shall terminate automatically without need or requirement for further action by either party. City agrees to execute a written release of

the Property from these Restrictive Covenants within ten (10) business days of City's receipt of written request of Owner.

### ENFORCEMENT

1. All of the covenants, restrictions, conditions and other provisions set forth in these Restrictive Covenants shall be binding upon Owner, Owner's successors, heirs, legal representatives and assigns, and all parties claiming by, through, or under Owner, including but not limited to all subsequent owners of the Property, each of whom shall be obligated and bound to observe the covenants, restrictions, conditions, and other provisions set forth in these Restrictive Covenants as to their respective Property until the expiration of the Covenant Term or Final Termination, whichever occurs first. By accepting any deed or other instrument of conveyance after the execution and recording hereof, a party is conclusively deemed to have accepted and agreed to be bound by and assumed the covenants, restrictions, conditions, and other provisions set forth in these Restrictive Covenants as to the portion of the Property conveyed and acquired.
2. In the event any provision of these Restrictive Covenants is violated by Owner or its successors and assigns, the City may first give to Owner or its heirs, legal representatives, successors and assigns written notice of violation and sixty (60) days opportunity to cure same (or to commence and continue diligently to cure such default if the nature of the failure cannot reasonably be cured within 60 days in the exercise of all due diligence), City shall have the right to every remedy either public or private, available to it at law or equity against the Owner and its successor and assigns. The terms and provisions of these Restrictive Covenants shall be specifically enforceable against Owner and Owner's heirs, legal representatives, successors and assigns as the owner of the Property from time to time. All remedies provided under these Restrictive Covenants including those at law or in equity shall be cumulative and not exclusive. No failure on the part of the City to enforce the terms and provisions of these Restrictive Covenants shall be deemed a waiver of the operation or enforcement of such provisions or any other provision of these Restrictive Covenants. The right of the City to enforce the Restrictive Covenants may not be waived, expressly or otherwise, and the City's forbearance or failure to pursue any violation or breach of these Restrictive Covenants shall in no event waive or preclude the City from enforcing said violation or breach in the future or any new violation or breach. The City shall not be liable for failure to enforce these Restrictive Covenants. The City may enforce this instrument and the covenants, restrictions, conditions, and other provisions set forth herein by proceedings at law or in equity against Owner or any person violating or attempting to violate any term or provision hereof. Said proceedings may include but shall not be limited to temporary restraining orders, temporary and permanent injunctive relief and/or suits for damages as may be appropriate.
3. If the City substantially prevails in a legal or equitable proceeding to enforce the Restrictive Covenants, the City shall be entitled to recover damages, reasonable attorney's fees, and court costs from the offending party.

## MISCELLANEOUS

1. The Restrictive Covenants shall not restrict the right of the Denton City Council to exercise its legislative or governmental duties and powers, including but not limited to zoning of any part of the Property or the exercise of the City's right of eminent domain regarding any part of the Property.
2. This instrument shall be subject to and governed by the laws of the State of Texas. The venue of any litigation concerning this instrument shall be in a court of competent jurisdiction sitting in Denton County, Texas.
3. If any one or more of the provisions contained in this instrument shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof and this instrument shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.
4. Whenever required by the context, as used in this instrument, the singular shall include the plural and the neuter shall include the masculine or feminine, and vice versa.
5. The Section headings appearing in this instrument are for convenience of reference only and are not intended to limit or define the text of any section.
6. The provisions of these Restrictive Covenants inure to the benefit of the City.
5. These Restrictive Covenants may be amended only by written instrument signed by Owner and the City and recorded in the Official Real Property Records of the county in which the Property is located. Owner covenants and agrees to execute such other instruments and take such further actions as the City may deem reasonably necessary or convenient to implement and effectuate the covenants, restrictions, conditions, and other provisions herein contemplated.

EXECUTED on MARCH 28, 2024.

FINE ARTS THEATER OF DENTON, LLC  
a Texas limited liability company

By: \_\_\_\_\_

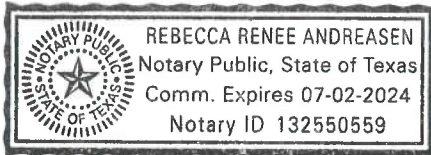
Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF TEXAS §

COUNTY OF DENTON §

This instrument was acknowledged before me on this the 28 day of March, 2024 by Brad Andrus, Manager of Denton Fine Arts Theater, LLC, a Texas limited liability company, on behalf of said company.



Rebecca Andreasen  
Notary Public, State of Texas

AFTER RECORDING, RETURN TO:

City of Denton Economic Development Department, 401 N. Elm Street, Denton, Texas 76201.

## **EXHIBIT E**

### **Legal Description**

The following real property, together with all improvements, with a street address of 113-115 North Elm Street, Denton, Texas, 76201, and more particularly described as follows:

All that certain lot, tract or parcel of land lying and being situated in the City and County of Denton, State of Texas, and being known as Lot Three (3), in Block Three (3), of the ORIGINAL TOWN OF DENTON, and being more particularly described as follows:

BEGINNING in the West line of Elm Street, 100 feet South of its intersection with the South line of West Oak Street;

THENCE South 50 feet;

THENCE West 120 feet;

THENCE North 50 feet;

THENCE East 120 feet to the Place of Beginning.



# Economic Development Incentive Agreement

*Fine*  
A  
R  
T  
S

Christine Taylor  
Assistant City Manager  
April 2, 2024



# Proposed Project

9,900 sq. ft. structure situated in a 6,000 sq. ft. footprint

Multi-Use Theater: live performances, movies, special events, film festivals, concerts, and private rentals

- **First Floor**

Lobby

Bar/Concessions

Main Theater

200 seats

- **Second Floor**

Secondary Theater

30 seats – mezzanine

Bar (approx. 30 seats) overlooking the square

- **Third Floor**

Private Theater

50 seats





# Developer

Alex Payne & Brad Andrus

Local projects include:

- **Station 222**  
222 S Elm – Texas Downtown  
Presidents Award Finalist
- **Axis Realty Group Building**  
212 S Elm
- **Free Play**  
101 W Hickory
- **Guaranty Bank and Trust**  
University Drive

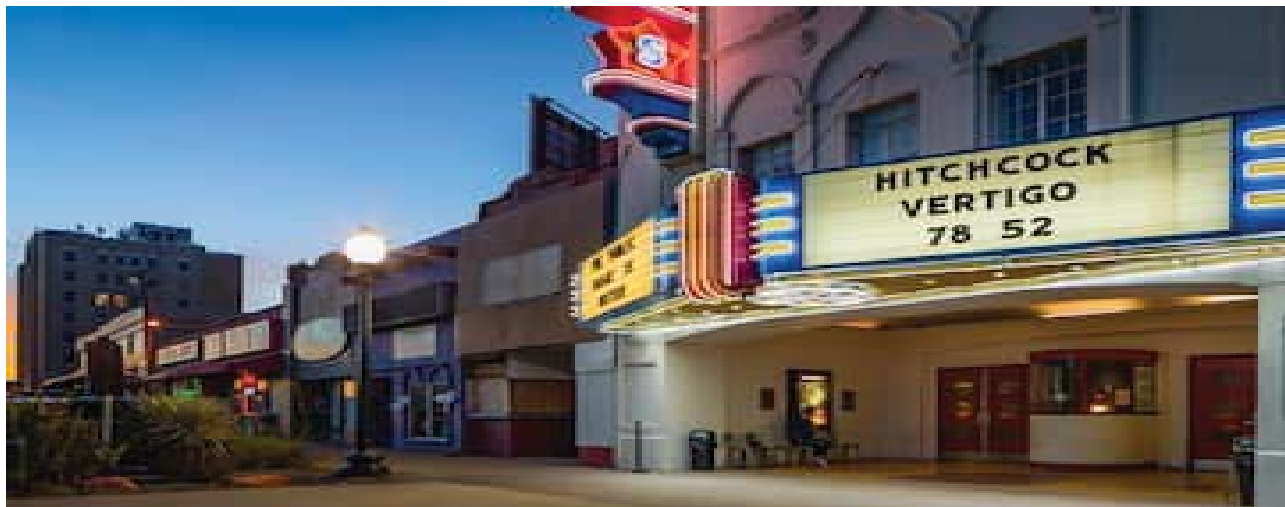


# Operator

Texas Theater Group

Jason Reimer & Barak Epstein

- Texas Theater- Operating since 2010



ID 24-415; April 2, 2024

# Predevelopment Activities

The property was purchased in 2018 for \$769,442 and \$2.2 Million has been invested in predevelopment activities

Purchase of the property

Engagement of the Architect & Engineer

Interior demolition & remediation

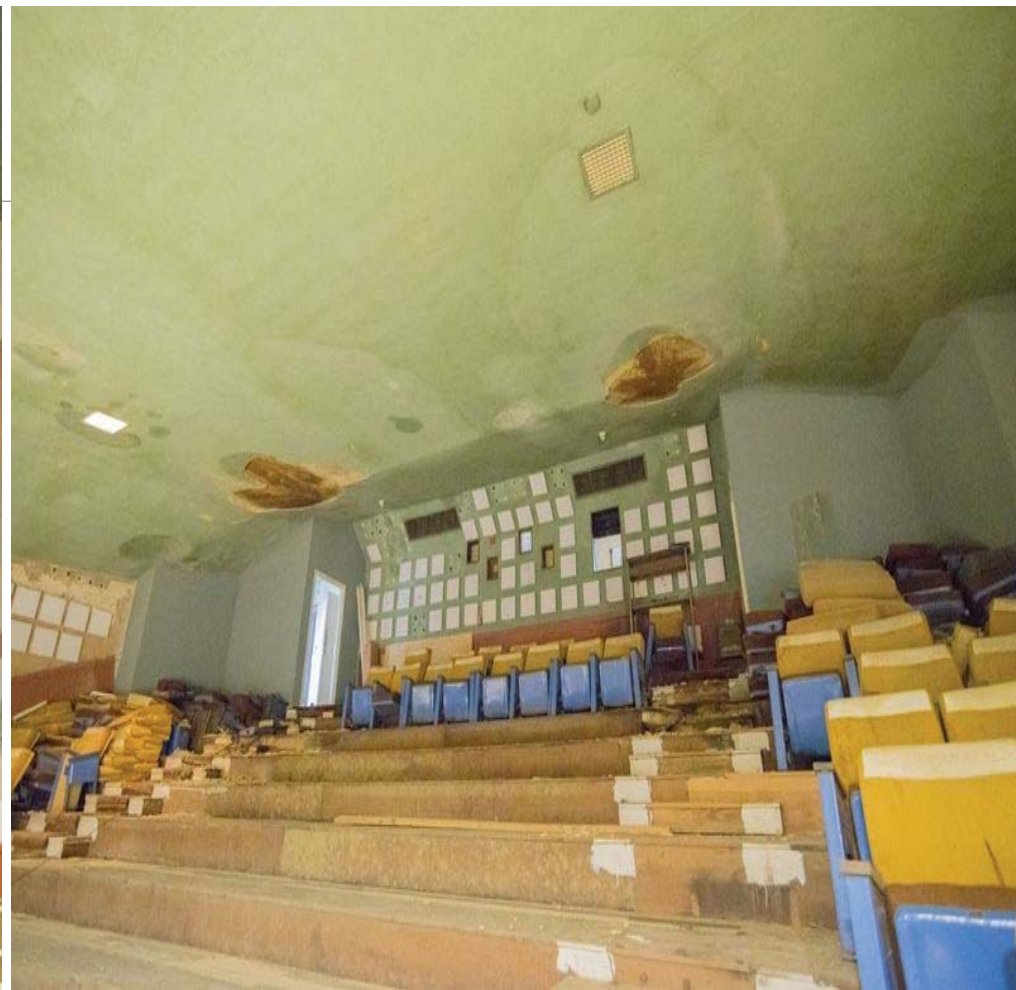
Renovation plans and permits issued

Obtained approval for Historic Tax Credits





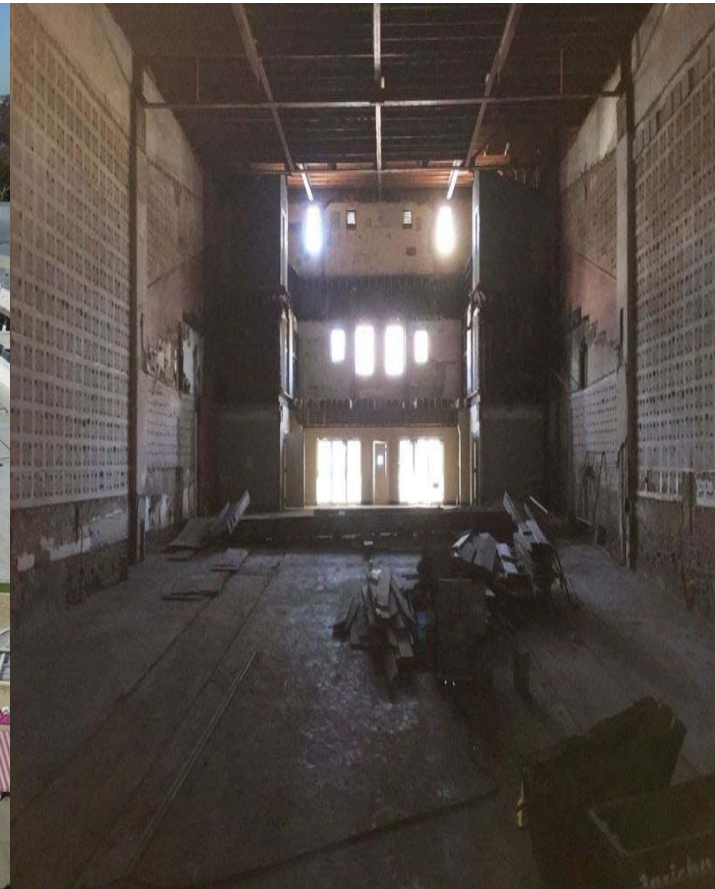
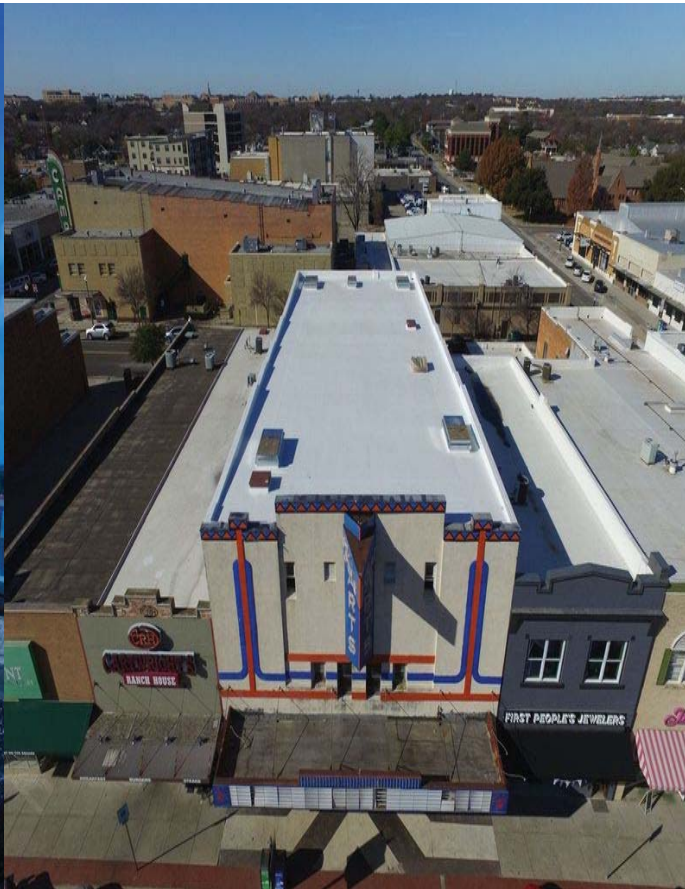
# Condition at Purchase



ID 24-415; April 2, 2024



# New Roof and Interior Demo



ID 24-415; April 2, 2024

# Underwriter Review

3<sup>rd</sup> Party Underwriter hired by the City for evaluation of the proposal in February 2023

- Goals of Underwriter Report:
  - Evaluate developer experience and capacity
  - Financial review of sources and uses, operating proformas, and financial statements
  - Review of appraisals, cost assumptions, capital budgets, operating statements, marketing data, and other funding commitments
  - Identifying potential sources and need for public funding
  - Incentive options

# Underwriter Review – Capital

## Development Costs

<b>Pre-Development</b>	
Building Purchase	\$ 769,442
Architect, Engineer, Consultant & Legal Fees	\$ 736,386
Asbestos Abatement, Demolition, Roof Replacement	\$ 574,621
Property Taxes & Other	\$ 129,018
<b>Total Pre-Development Costs*</b>	<b>\$ 2,209,467</b>
<b>Rehabilitation</b>	
Rehabilitation Costs & Contingency	\$ 5,186,074
Furnitures & Fixtures	\$ 629,985
Soft Costs	\$ 410,000
Interest & Related Costs	\$ 684,096
<b>Total Projected Rehabilitation Costs</b>	<b>\$ 6,910,155</b>
<b>Total Projected Project Costs</b>	<b>\$ 9,119,622</b>

## Loan, Estimated Funding Sources, and Need

Remaining Pre-Development Loan	\$677,427
Construction Loan	6,910,155
<b>Loan Sub Total</b>	<b>\$7,587,582</b>
Estimated Historic Tax Credits	(2,710,956)
Estimated additional cash paydown from developers	(555,260)
<b>Loan Paydown Sub Total</b>	<b>\$4,321,366</b>
<b>Maximum Loan -Appraised Value as Complete- 75% LTV</b>	<b>\$ 3,195,000</b>
<b>Variance (Estimated Incentive Need)</b>	<b>\$1,126,366</b>

**Estimated Capital Incentive Need**  
**\$1,126,366**

\*Predevelopment costs are funded by a combination of 1.5M Cash and 0.7M Remaining Loan Balance

# Underwriter Review – Operating

	Year 1	2	3	4	5	6	7	8	9	10
Total Revenue	1,230,880	1,333,830	1,455,306	1,484,412	1,514,100	1,544,662	1,575,269	1,606,775	1,638,910	1,671,688
Total Expenses (Operating and Goods Sold)	1,068,072	1,143,016	1,209,608	1,223,279	1,237,133	1,251,175	1,265,407	1,279,832	1,294,456	1,309,281
Net Profit/Loss	162,808	190,814	245,698	261,133	276,967	293,487	309,862	326,943	344,454	362,407
Debt Service (p+i) bank	315,210	315,210	315,210	315,210	315,210	315,210	315,210	315,210	315,210	315,210
Bank required DSC Reserve (0.25%)	78,802									
Sub Total	394,012	315,210	315,210	315,210	315,210	315,210	315,210	315,210	315,210	315,210
Variance	-231,204	-124,396	-69,512	-54,077	-38,243	-21,723	-5,348			

Estimated Operating Incentive  
Need \$544,503



# Incentive Recommendation

- Original Developer Request \$2.0 Million
  - Proposed Incentive \$1.6 Million (Total) funded from the Downtown TIRZ Fund with performance metrics
- 

- **TIRZ Grant 1** - \$1,076,366 - City of Denton Chapter 380 incentive grant – Term 10 Years

## **Grant Conditions to receive funding**

- Improvements made in substantial compliance with the description of the project
- Invest at least \$5.8 Million (excluding predevelopment costs) from non-city sources for the development of the project
- Certificate of Occupancy
- Issuance of Tax Credits, approved by the National Park Service and Texas Historical Commission
- Permanent Loan in place
- Meet Annual appraised value
  - Must meet or exceed \$1.5M above the 2023 base value in Year 1, a total of \$3.0 M in Year 3, Forecasted amounts for years 4-10.
- Payback provisions outlined for Years 1- 10
- Recapture Event - The City will place a lien against the property to secure repayment

# Incentive Recommendation

- Original Developer Request \$2.0 Million
  - Proposed Incentive \$1.6 Million (Total) funded from the Downtown TIRZ Fund with performance metrics
- 

- **TIRZ Grant 2** - \$544,503 - City of Denton Chapter 380 incentive grant – Term 10 Years

## Grant Conditions to receive funding

- Meet all conditions of Grant 1
- Must submit Annual Certificate of Compliance
- Must meet annual revenue minimums
  - Incentives to draw down faster if revenue exceeds projections
- Payback provisions outlined for Years 1- 10
- Recapture Event - The City will place a lien against the property to secure repayment

\*The project is eligible for a Façade Grant in an amount up to \$50,000 which will be presented to the TIRZ Board and City Council on a future date

# Strategic Plan Alignment

## City of Denton Key Focus Areas

- Key Focus Area 3: Foster Economic Opportunity and Affordability
  - Increase in tourism

## 2040 Comprehensive Plan

- Key Action #69: Identify opportunities to incorporate venues for arts and music events in future development, including Downtown. Pursue the next steps for the reuse of City Hall West and the potential development of a new fine arts theatre.

## Economic Development Strategic Plan

- 2D.2 Downtown Development: Successful downtown development and an authentic town square are among Denton's top economic development achievements. The City should continue to prioritize the downtown area.

# Policy Alignment

## Denton Tax Abatement and Chapter 380 Policies

- Strategic Growth Area (SGA): Creative
- NAICS Code: 711310 Promoters of and Similar Events with Facilities

## Incentive Evaluation Matrix Summary

SGA Target: 13 points  
Priority Considerations: 35 points  
Public Benefit Factors: 37 points  
Total Points: 85 Excellent (85-175 points)

## Downtown TIRZ No. 1 Project Plan

- Eligible Project Category: Downtown Projects- may include grants, loans and services for public and private development.
- Eligible TIRZ project may also include:
  - Historic preservation
  - Demolition
  - Environmental remediation
  - Economic development grants

# Community Impact

## Job Training

- Partner with the University of North Texas to provide training, and internships for aspiring film, hospitality, and theater arts majors.

## Community and Special Events

- Offer discounted rates to local non-profits to hold fundraisers, celebrations, and event awareness events
- Offering events (low or no cost) related to cultural history screenings including guest speakers
- Partner with local festivals to provide a venue

## Educational

- Coordinate with Denton ISD and neighboring districts to offer field trips to view educational and or historical films
- Present and host educational productions

# Prior Action/ Review

- On January 10, 2024, Presented to the Economic Development Partnership Board
- On February 28, 2024, The Downtown Tax Increment Reinvestment Zone Number One Board recommended approval (5-0).

# Staff Recommendation

- Provide an incentive, \$1,620,869 in a City Chapter 380 Grant



# Questions

ID 24-415; April 2, 2024



# City of Denton

City Hall  
215 E. McKinney St.  
Denton, Texas 76201  
[www.cityofdenton.com](http://www.cityofdenton.com)

## Legislation Text

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**File #:** ID 24-266, **Version:** 1

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### **AGENDA CAPTION**

Consider adoption of an ordinance establishing the City of Denton Utility System Nodal Market Revenue Financing Program and authorizing Utility System Nodal Market Revenues Notes, Taxable Series A, in a maximum aggregate principal amount not to exceed sixty million five thousand dollars (\$60,005,000) to satisfy ERCOT financial security requirements; and providing an effective date. The Public Utilities Board recommends approval (5-0).





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## AGENDA INFORMATION SHEET

**DEPARTMENT:** Finance

**ACM:** Cassandra Ogden

**DATE:** April 02, 2024

### **SUBJECT**

Consider adoption of an ordinance establishing the City of Denton Utility System Nodal Market Revenue Financing Program and authorizing Utility System Nodal Market Revenue Notes, Taxable Series A, in a maximum aggregate principal amount not to exceed sixty million five thousand dollars (\$60,005,000) to satisfy ERCOT financial security requirements; and providing an effective date. The Public Utilities Board recommends approval (5-0).

### **BACKGROUND**

As a direct result of the short pay and defaults of ERCOT market participants during winter storm Uri, ERCOT staff recommended to the ERCOT Board of Directors that the practice of granting unsecured credit to market participants with excellent credit (like DME) be terminated. The default of Brazos Electric Cooperative for \$1.2 billion and Rayburn Electric Cooperative for \$800 million, both of whom had been extended a level of unsecured credit, was cited as the reason for this policy change. It is important to note that the elimination of unsecured credit to investment grade entities is counter to best practices in the commodity and energy trading business.

Under the approved credit protocol changes adopted by the ERCOT Board, market participants can use cash or letters of credit to securitize their credit and collateral obligations. The City's Finance Department has explored the cost of obtaining and using a bank letter of credit as the mechanism to meet this requirement as opposed to posting the daily cash margin requirements, which would require the City to keep funds liquid and not invested. Given current interest rates for instruments authorized for investment by the City, staff has determined that it will be more cost effective to utilize a bank letter of credit. The letter of credit will not exceed DME's ability to provide payment to the bank or ERCOT if so required. The use of the letter of credit is only to meet the day-to-day collateral requirements that became effective on October 1, 2023.

Previously DME had a \$40 million unsecured line of credit with ERCOT based upon the A+ (S&P) and A (Fitch) ratings of DME's revenue bonds and the City's credit rating of AA+. On average DME's use of this credit line is approximately \$15 million but during high priced periods in the summer and winter, the use of the credit line approaches \$30 million. While not anticipated to happen because of market changes and conservative operations by ERCOT since winter storm Uri, maximum credit requirements could rise as high as \$60 million. These conditions would only persist for a limited number of days since DME is both a payer to ERCOT for the energy purchased to serve load (creating the need to post credit to meet payment obligations) and a receiver of funds from ERCOT associated with the sale of energy by DME from our renewable PPA positions and the Denton Energy Center. However, under ERCOT protocols, accounts payable to ERCOT are due at least one day prior to amounts receivable from ERCOT. Consequently, these



positions do not offset one another to reduce ERCOT's credit exposure to DME or DME's collateral posting requirements to ERCOT.

The City issued a letter of credit request for proposal on July 9, 2023, for ERCOT qualified banking institutions for up to \$60 million and Wells Fargo Bank was selected.

Finance sought and obtained an opinion from Bond Counsel indicating that such a letter of credit can be legally obtained for the purpose of providing collateral to meet DME's obligations and other electric utilities have already put the letter of credit in place. DME currently has approximately \$10 million in cash with ERCOT to meet the daily cash margin requirements.

### **RECOMMENDATION**

Finance recommends approval the Letter of Credit

### **PRIOR ACTION/REVIEW (Council, Boards, Commissions)**

On March 25, 2024, the Public Utilities Board recommended this item to City Council for consideration.

### **FISCAL INFORMATION**

Funds to meet these obligations are budgeted in the Electric Fund.

### **EXHIBITS**

1. Agenda Information Sheet
2. Ordinance
3. Presentation

Respectfully submitted:  
Jessica Williams  
Chief Financial Officer  
940-349-7899

Prepared by:  
Vis Bouaphanthavong  
Assistant Director of Finance  
940-349-7743

**AN ORDINANCE ESTABLISHING THE CITY OF DENTON UTILITY SYSTEM NODAL MARKET REVENUE FINANCING PROGRAM AND AUTHORIZING UTILITY SYSTEM NODAL MARKET REVENUE NOTES, TAXABLE SERIES A, IN A MAXIMUM AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED SIXTY MILLION FIVE THOUSAND DOLLARS (\$60,005,000) TO SATISFY ERCOT FINANCIAL SECURITY REQUIREMENTS; AND PROVIDING AN EFFECTIVE DATE**

Adopted: April 2, 2024

## ORDINANCE

**AN ORDINANCE ESTABLISHING THE CITY OF DENTON UTILITY SYSTEM NODAL MARKET REVENUE FINANCING PROGRAM AND AUTHORIZING UTILITY SYSTEM NODAL MARKET REVENUE NOTES, TAXABLE SERIES A, IN A MAXIMUM AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED SIXTY MILLION FIVE THOUSAND DOLLARS (\$60,005,000) TO SATISFY ERCOT FINANCIAL SECURITY REQUIREMENTS; AND PROVIDING AN EFFECTIVE DATE**

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**AN ORDINANCE ESTABLISHING THE CITY OF DENTON UTILITY SYSTEM NODAL MARKET REVENUE FINANCING PROGRAM AND AUTHORIZING UTILITY SYSTEM NODAL MARKET REVENUE NOTES, TAXABLE SERIES A, IN A MAXIMUM AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED SIXTY MILLION FIVE THOUSAND DOLLARS (\$60,005,000) TO SATISFY ERCOT FINANCIAL SECURITY REQUIREMENTS; AND PROVIDING AN EFFECTIVE DATE.**

WHEREAS, the City of Denton, Texas (the “City” or the “Issuer”) is a home-rule municipality, acting as such under the Constitution and laws of the State of Texas, has a population in excess of 50,000, and has outstanding long-term indebtedness that is rated by a nationally recognized rating agency for municipal securities in one of the four highest rating categories for long-term obligations; and

WHEREAS, capitalized terms used herein shall have the meanings given to them in Section 1.01 hereof; and

WHEREAS, the Outstanding Senior Lien Obligations and the Outstanding Subordinate Lien Obligations are payable from Pledged Revenues; and

WHEREAS, the Senior Lien Obligation Ordinances for the Outstanding Senior Lien Obligations and the Subordinate Lien Obligation Ordinance for the Outstanding Subordinate Lien Obligations permit the Issuer to encumber the Pledged Revenues with additional Senior Lien Obligations or additional Subordinate Lien Obligations or other bonds or obligations payable from a subordinate lien on the Pledged Revenues; and

WHEREAS, on December 1, 2010, a nodal wholesale electric market design was implemented within ERCOT's service area, and various electric market participants, including the Issuer, are required to comply with the ERCOT Nodal Protocols adopted by ERCOT; and

WHEREAS, pursuant to Section 16.11.1 of such ERCOT Nodal Protocols, the Issuer has previously provided and currently has in place with ERCOT additional financial security sufficient to satisfy the requirements of such ERCOT Nodal Protocols; and

WHEREAS, the City Council finds that it is necessary for the Issuer to establish a note program in an amount not to exceed \$60,005,000 to provide financial security to ERCOT and, in furtherance thereof, the City Council hereby authorizes the Notes and their installment deliveries to the Note Purchaser, to induce the Note Purchaser to enter into the Note Purchase Agreement and deliver the Financial Security to ERCOT as is necessary for the Issuer to participate in the ERCOT electric nodal market at the levels it deems prudent; and

WHEREAS, the City Council finds and determines that it should issue the Notes, in a principal amount not to exceed \$60,005,000, as a series of Subordinate Lien Obligations pursuant to this Ordinance to finance Project Costs of Eligible Projects, all in accordance with and subject to Chapter 1371, Texas Government Code, as amended, and the terms, conditions, and limitations

contained herein; and

WHEREAS, the City Council finds, determines and represents that (i) the proceeds of any draw upon the Financial Security by ERCOT are for the payment, on behalf or for the benefit of the Issuer, of Project Costs of Eligible Projects, (ii) such proceeds and the drawing upon such Financial Security shall constitute and shall be the payment of the purchase price of the corresponding Authorized Installment pursuant to the provisions of this Ordinance and (iii) the Note Purchaser's delivery of the Financial Security to ERCOT is additional and sufficient consideration for the transactions and agreements contemplated in this Ordinance; and

WHEREAS, this Ordinance constitutes an "obligation authorization," as defined in Chapter 1371; and

WHEREAS, the Notes are issued pursuant to Texas law, including the Acts; and

WHEREAS, the City Council further finds and determines that all terms and conditions for the issuance of the Notes herein authorized as Subordinate Lien Obligations have been or can be met and satisfied; and

WHEREAS, the City Council intends to refinance the Notes with refunding bonds issued under Chapter 1207, Texas Government Code, as amended, on parity with or subordinate to Issuer's Outstanding Senior Lien Obligations and, therefore (in accordance with Section 1371.057(c) of Chapter 1371), the Issuer will treat the Notes as having the intended term and payment schedule of such refunding bonds, as determined by the City Authorized Representative.

WHEREAS, the meeting was open to the public and public notice of the time, place and purpose of said meeting was given pursuant to Chapter 551, Texas Government Code; NOW, THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

## **ARTICLE I DEFINITIONS AND CONSTRUCTION OF TERMS**

### **Section 1.01. Definitions.**

“Accountant” means an independent certified public accountant or accountants or a firm of independent certified public accountants, in either case, with demonstrated expertise and competence in public accountancy.

“Acts” means Chapter 1371 and Chapter 1502, Texas Government Code, as amended.

“Amended Ordinance” means any ordinance amending or amending and restating this Ordinance entered into as provided in Article VI of this Ordinance.

“Authorized Installment” means on the Original Issue Date, an amount determined in the Pricing Certificate and on each Issue Date thereafter, an amount equal to the amount of any draw upon the Financial Security by ERCOT, reflecting payment by the Note Purchaser of the purchase price of such Authorized Installment of the Notes to ERCOT on behalf of the Issuer.

“Authorized Installment Draw Period” means the period commencing on the Original Issue Date and ending immediately following the effective date of the end of the term of the Financial Security, whether by termination, non-renewal or otherwise.

“Bond Counsel” means McCall, Parkhurst & Horton L.L.P. or an attorney or law firm of attorneys of national recognition selected or engaged by the Issuer with knowledge and experience in the field of municipal finance.

“Chapter 1371” means Chapter 1371, Texas Government Code, as amended.

“City Authorized Representative” means one or more of the following officers or employees of the Issuer: the City Manager, the Chief Financial Officer, the Director of Finance (or successors to any such positions), or such other officer or employee of the Issuer authorized by the City Council to act as a City Authorized Representative.

“City Council” means the City Council of the Issuer.

“Defeasance Securities” means (i) direct, noncallable obligations of the United States of America, including obligations that are unconditionally guaranteed by the United States of America, (ii) noncallable obligations of an agency or instrumentality of the United States of America, including obligations that are unconditionally guaranteed or insured by the agency or instrumentality and that, on the date of the purchase thereof are rated as to investment quality by a nationally recognized investment rating firm not less than AAA or its equivalent, (iii) noncallable obligations of a state or an agency or a county, municipality, or other political subdivision of a state that have been refunded and that, on the date the governing body of the Issuer adopts or approves the proceedings authorizing the financial arrangements are rated as to investment quality by a nationally recognized investment rating firm not less than AAA or its equivalent, and (iv) any other then authorized securities or obligations under applicable state law in existence at the time of such defeasance that may be used to defease obligations such as the Notes.

“Depository” means such banks or trust companies, or any one of them at any time, selected by the Issuer for the custody of the special funds to be maintained by the Issuer.

“Eligible Projects” means, as permitted by the Acts, including Chapter 1371, the acquisition, purchase, sale of any property, including any contractual obligations related thereto, for which, except with respect to the initial Authorized Installment, ERCOT may draw upon the Financial Security for the payment thereof, on behalf or for the benefit of the Issuer.

“ERCOT” means The Electric Reliability Council of Texas and any successor thereto.

“Financial Security” means the letter of credit of the Note Purchaser provided for in the Note Purchase Agreement (and any extension or amendment of such letter of credit or any substitute or replacement letter of credit of the Note Purchaser) provided to ERCOT for the benefit of the Issuer pursuant to Section 16 of the ERCOT Nodal Protocols.

“Fiscal Year” means the 12-month operational period of the Issuer commencing on October 1 of each year, or such other twelve month period as may in the future be designated as the Fiscal Year of the Issuer.

“Fitch” means Fitch Ratings, Inc or, if such corporation is dissolved or liquidated or otherwise ceases to perform securities ratings services, such other nationally recognized securities rating agency as may be designated in writing by the City Council.

“Gross Revenues” mean all revenues, income and receipts of every nature derived or received by the Issuer from the operation and ownership of the System, including the interest income from investment or deposit of money in any fund or account created by any Senior Lien Obligation Ordinance or Subordinate Lien Obligation Ordinance or maintained by the Issuer in connection with the System.

“Initial Note” means the non-interest bearing Note, numbered T-1, delivered to and held by the Paying Agent/Registrar in accordance with Section 2.02 hereof.

“Issue Date” means the date of delivery of an Authorized Installment of the Notes..

“Issuer” means the City of Denton, Texas.

“Latest Draw Date” shall mean the last date a draw may be made under the Financial Security pursuant to the Note Purchase Agreement.

“Maximum Available Amount” means the maximum amount that is available to be drawn on the Financial Security on any particular day.

“Maximum Maturity Date” means the ninetieth day after the Latest Draw Date, as may be extended in accordance with the Note Purchase Agreement.

“Maximum Rate” means the lesser of the (i) maximum net effective interest rate (as defined in and calculated in accordance with the provisions of Chapter 1204, Texas Government Code, as amended) and (ii) maximum non-usurious lawful rate of interest permitted by applicable law.

“Moody’s” means Moody’s Investors Service, Inc., or, if such corporation is dissolved or liquidated or otherwise ceases to perform securities rating services, such other nationally recognized securities rating agency as may be designated in writing by the Issuer.

“Net Revenues” mean all Gross Revenues remaining after deducting Operating Expenses.



“Note Purchase Agreement” means the Note Purchase Agreement between the Issuer and the Note Purchaser, including any amendment, supplement, restatement or extension of such Note Purchase Agreement pursuant to the terms thereof.

“Note Purchaser” means Wells Fargo Bank, National Association, and its successors and assigns under the Note Purchase Agreement.

“Notes” means the “City of Denton Utility System Nodal Market Revenue Notes, Taxable Series A”, including any Authorized Installments, issued pursuant to the provisions of this Ordinance, having the terms and characteristics specified in Section 2.02 and in the form described in Exhibit A hereto.

“Operating Expenses” means the reasonable and necessary expenses of operation and maintenance of the System, including all salaries, labor, materials, repairs and extensions necessary to render efficient service (but only such repairs and extensions as, in the judgment of the Issuer, are necessary to keep the System in operation and render adequate service or such as might be necessary to meet some physical accident or conditions which would otherwise impair the Senior Lien Obligations or Subordinate Lien Obligations), and all payments under contracts for materials and services (including water supply contracts) provided to the Issuer that are required to enable the Issuer to render efficient service. The following shall never be considered as an Operating Expense: (1) depreciation, (2) franchise fees paid to the Issuer or transferred to the general fund or other fund of the Issuer, and (3) return on investment payments made to the Issuer or transferred to the general fund or other fund of the Issuer.

“Ordinance” means this Ordinance establishing the City of Denton Utility System Nodal Protocols Financing Program and Authorizing Utility System Nodal Market Revenue Notes, Taxable Series A, adopted by the City Council on April 2, 2024 and as it may be amended or supplemented from time to time by an Amended Ordinance.

“Original Issue Date” means the date of delivery of the initial Authorized Installment, the Note Purchase Agreement and the Financial Security.

“Outstanding”, when used with respect to Notes, shall mean all Notes which have been authenticated and delivered under this Ordinance, except: (a) Notes cancelled or purchased by the Paying Agent/Registrar for cancellation or delivered to or acquired by the Paying Agent/Registrar for cancellation and, in all cases, with the intent to extinguish the debt represented thereby (including Notes surrendered pursuant to Section 2.10 hereof); (b) Notes in lieu of which other Notes have been authenticated; (c) Notes that have become due (at maturity or on redemption or otherwise) and for the payment of which sufficient moneys, including interest accrued to the due date, are held by the Paying Agent/Registrar; (d) Notes which, under the terms of this Ordinance, are deemed to be no longer Outstanding; and (e) for purposes of any consent or other action to be taken by the Registered Owners of a specified percentage of Notes under this Ordinance, Notes held by or for the account of the Issuer or by any person controlling, controlled by or under common control with the Issuer.

“Outstanding”, when used with reference to Senior Lien Obligations or Subordinate Lien Obligations other than the Notes, shall mean all such bonds or other obligations theretofore delivered except: (i) any such obligations canceled by or on behalf of the Issuer at or before said date; (ii) any such obligations defeased pursuant to the defeasance provisions of the Senior Lien Obligation Ordinance or Subordinate Lien Obligation Ordinance authorizing their issuance, or otherwise defeased as permitted by applicable law; and (iii) any such obligations in lieu of or in substitution for which another obligation shall have been delivered pursuant to the ordinance authorizing the issuance of such obligations.

“Paying Agent/Registrar” means such entity or entities acting as such which are appointed by the City Authorized Representative pursuant to Section 2.03 hereof and have executed and delivered a Paying Agent/Registrar Agreement as approved and executed by a City Authorized Representative. When there is a co-Paying Agent/Registrar, either may perform the functions and duties of the Paying Agent/Registrar hereunder and under the Paying Agent/Registrar Agreement.

“Paying Agent/Registrar Agreement” means any paying agent and registrar agreement authorized to be entered into by Section 2.03 hereof, and any and all modifications, alterations, amendments and supplements thereto, or any other Paying Agent/Registrar Agreement entered into by the Issuer and the Paying Agent/Registrar with respect to the Notes.

“Payment Fund” means that fund created pursuant to Section 4.01 hereof.

“Permitted Investments” means any investment permitted by the Public Funds Investment Act, Chapter 2256, Texas Government Code, and the investment policy of the Issuer.

“Pledged Revenues” means

(a) the Net Revenues, plus

(b) any additional revenues, income, receipts, or other resources, including, without limitation, any grants, donations or income received or to be received from the United States Government, or any other public or private source, whether pursuant to an agreement or otherwise, which hereafter are pledged by the Issuer to the payment of the Senior Lien Obligations and Subordinate Lien Obligations,

and excluding those revenues excluded from Gross Revenues or excluded from Net Revenues.

“Project Costs” means all costs and expenses defined as "project costs" under Chapter 1371 incurred in relation to Eligible Projects and permitted by law to be paid with the proceeds of the Notes.

“Rating Agency” means, any of the following: (i) Moody’s, (ii) Standard & Poor’s, (iii) Fitch or (iv) any other nationally recognized credit rating agency specified in an Amended Ordinance that maintains a rating on the Notes at the request of the Issuer.

“Registered Owner” means the person or entity in whose name any Note is registered in the Security Register.

“Security Register” means the books and records kept and maintained by the Paying Agent/Registrar relating to the registration and payment of the Notes and the interest thereon.

“Senior Lien Obligations” means any Outstanding “City of Denton Utility System Revenue Bonds, Series 2017” and “City of Denton Utility System Revenue Refunding Bonds, Taxable Series 2021” of the Issuer, and any other obligations issued or incurred by the Issuer from time to time that are specified to be on parity with such Senior Lien Obligations pursuant to any ordinance authorizing Senior Lien Obligations. The Senior Lien Obligations, and the interest thereon, are payable from and secured by a first lien on and pledge of Pledged Revenues.

“Senior Lien Obligation Ordinance” or “Senior Lien Obligation Ordinances” shall mean, individually or collectively, as appropriate, the Issuer’s Ordinance adopted June 21, 2016 authorizing the issuance of the “City of Denton Utility System Revenue Bonds, Series 2017”, as may be amended, the Issuer’s Ordinance adopted January 12, 2021 authorizing the issuance of the “City of Denton Utility System Revenue Refunding Bonds, Taxable Series 2021”, as amended to date and as may be further amended, and all other ordinances, as amended, authorizing the issuance of the Senior Lien Obligations.

“Special Project” means any water, wastewater, electric, drainage or other facilities of any kind or other public improvement declared by the Issuer not to be part of the System, for which the costs of acquisition, construction and installation are paid from proceeds of Special Project Bonds, but only to the extent that and for so long as all or any part of the revenues or proceeds of which are or will be pledged to secure the payment or repayment of such costs of acquisition, construction and installation under such financing transaction.

“Special Project Bonds” means special revenue obligations of the Issuer which are not secured by the Pledged Revenues, but which are secured by and payable solely from liens on and pledges of any other revenues, sources, or payments, including, but not limited to, special contract revenues or payments received from the System, any other legal entity, or any combination thereof, in connection with a Special Project; and such revenues, sources or payments shall not be considered as or constitute Gross Revenues of the System, unless and to the extent otherwise provided in the ordinance or ordinances authorizing the issuance of such Special Project Bonds.

“Standard & Poor’s” means S&P Global Ratings, a division of Standard & Poor’s Financial Services LLC, or, if such corporation is dissolved or liquidated or otherwise ceases to perform securities rating services, such other nationally recognized securities rating agency as may be designated in writing by the Issuer.

“State” means the State of Texas.

“Subordinate Lien Obligations” means any Outstanding “City of Denton Utility System

Revenue Extendable Commercial Paper Notes, Series A” and “City of Denton Utility System Nodal Market Revenue Notes, Taxable Series A” of the Issuer, and any other bonds, notes, contractual obligations or other debt issued or incurred by the Issuer that are payable from or reasonably expected to be payable in whole from, and equally and ratably secured by a lien on and pledge of the Pledged Revenues, such pledge being subordinate and inferior to the lien on and pledge of the Pledged Revenues that are or will be pledged to the payment of any Senior Lien Obligations issued by the Issuer.

“Subordinate Lien Obligation Ordinance” or “Subordinate Lien Obligation Ordinances” shall mean, individually or collectively, as appropriate, the Issuer’s Ordinance adopted January 12, 2021 authorizing the issuance of the “City of Denton Utility System Revenue Extendable Commercial Paper Notes, Series A”, as may be amended, this Ordinance authorizing the issuance of the “City of Denton Utility System Nodal Market Revenue Notes, Taxable Series A”, as may be amended, and all other ordinances, as amended, authorizing the issuance of the Subordinate Lien Obligations.

“System” means the Issuer's entire existing waterworks system, the Issuer's entire existing wastewater system, the Issuer's entire existing electric light and power system, and the Issuer's entire existing drainage system, together with all future extensions, improvements, enlargements, and additions thereto, and all replacements thereof; provided that, notwithstanding the foregoing, and to the extent now or hereafter authorized or permitted by law, the term System shall not include any Special Projects which are hereafter acquired or constructed by the Issuer with the proceeds of Special Project Bonds.

**Section 1.02. Construction of Terms.** If appropriate in the context of this Ordinance, words of the singular number shall be considered to include the plural, words of the plural number shall be considered to include the singular, and words of the masculine, feminine, or neuter gender shall be considered to include the other genders.

**Section 1.03. Interpretation.** All references herein to “Articles,” “Sections” and other subdivisions are to the corresponding Articles, Sections or subdivisions of this Ordinance, and the words “herein,” “hereof,” “hereunder” and other words of similar import refer to this Ordinance as a whole and not to any particular Article, Section or subdivision hereof.

## **ARTICLE II**

### **NOTE AUTHORIZATION AND SPECIFICATIONS**

**Section 2.01. Amount, Purposes and Designation of the Notes.** Under and pursuant to the authority granted hereby and subject to the limitations contained herein, the City Council hereby authorizes the issuance of a series of notes designated "CITY OF DENTON UTILITY SYSTEM NODAL MARKET REVENUE NOTES, TAXABLE SERIES A" (the "Notes") in a maximum aggregate principal amount not to exceed SIXTY MILLION FIVE THOUSAND DOLLARS (\$60,005,000) for the purpose to finance Project Costs of Eligible Projects, all in accordance with the Acts and the terms, conditions, and limitations contained in this Ordinance. The authority to issue Notes from time to time under the provisions of this Ordinance and the Note

Purchase Agreement shall exist until the end of the Authorized Installment Draw Period regardless of whether at any time prior to the end of the Authorized Installment Draw Period there are any Notes outstanding.

**Section 2.02. Date, Denominations, Numbers, Maturities, and Terms of the Notes.**

(a) *Terms of Notes.* There initially shall be issued, sold and delivered fully registered notes reflecting Authorized Installments (except for the Initial Note), without interest coupons, numbered consecutively from R-1 upward (except the Initial Note provided to the Attorney General of the State of Texas which shall be numbered T-1), payable to the Note Purchaser, maturing not later than the Maximum Maturity Date, in the manner, on the dates, in the years and in the principal amounts, respectively, and dated, all as set forth in this Ordinance, the Pricing Certificate to be executed and delivered by the City Authorized Representative pursuant to subsection (b) of this Section and the Note Purchase Agreement. The Pricing Certificate is hereby incorporated in and made a part of this Ordinance.

An Initial Note bearing interest at zero percent (0%) in the aggregate principal amount determined in the Pricing Certificate will be issued on the Original Issue Date and will be dated as set forth in the Pricing Certificate. The Initial Note shall, after approval by the Attorney General of the State of Texas and registration by the Comptroller of Public Account of the State of Texas, be provided to the Paying Agent/Registrar, and concurrently with the delivery of the Initial Note, the initial Authorized Installment of the Notes, in the aggregate principal amount determined in the Pricing Certificate, will be issued, in accordance with the terms of the Note Purchase Agreement executed by the Issuer and Wells Fargo Bank, National Association, as the Note Purchaser.

The initial Authorized Installment of the Notes delivered on the Original Issue Date shall be dated as determined in the Pricing Certificate. An Authorized Installment of the Notes delivered after the Original Issue Date shall be dated as of its Issue Date. The Authorized Installments of the Notes shall bear interest as determined in the Pricing Certificate and the Note Purchase Agreement from the Issue Date of an Authorized Installment of the Notes until payment of the principal amount thereof at maturity or prior redemption or prepayment.

Subject to applicable terms, limitations, and procedures contained herein, after the delivery of the initial Authorized Installment, Authorized Installments of the Notes may be sold and delivered pursuant to the terms of the Note Purchase Agreement in consideration of and in the amount of, any draw upon the Financial Security by ERCOT, reflecting payment by the Note Purchaser of the purchase price of such Notes concurrently upon payment to ERCOT, on behalf of the Issuer, pursuant to such draw upon the Financial Security. No Authorized Installments may be issued and delivered after the end of the Authorized Installment Draw Period, and no Authorized Installment may be issued and delivered in an amount that exceeds the Maximum Available Amount in effect as of the date of the applicable draw on the Financial Security; provided that the aggregate principal amount of all Authorized Installments issued and delivered under this Ordinance may at times exceed the then applicable Maximum Available Amount due to a reduction in such amount subsequent to the issuance of Authorized Installments pursuant to the

terms of the Financial Security, if provided for by the Financial Security, but in no case may the aggregate principal amount of all Authorized Installments issued and delivered under this Ordinance exceed the amount of Notes authorized by the Pricing Certificate. The Issuer shall promptly notify the Paying Agent/Registrar of any changes to the Maximum Available Amount made pursuant to the Note Purchase Agreement and of the end of the Authorized Installment Draw Period, provided that the Paying Agent/Registrar may alternatively receive actual notice of such events from the Note Purchaser.

The Note Purchaser shall give written notice to the Issuer and the Paying Agent/Registrar of any draw upon the Financial Security by ERCOT, provided such notice is not required for the delivery of an Authorized Installment. The Paying Agent/Registrar shall issue and deliver an Authorized Installment in the principal amount of any draw on the Financial Security to the Note Purchaser pursuant to the terms of this Ordinance and the Note Purchase Agreement; provided, however, in consideration of the delivery of the Financial Security and the unconditional obligation of the Note Purchaser thereunder, any particular Authorized Installment corresponding to the related draw on the Financial Security is deemed issued and delivered to the Note Purchaser on the date of any such drawing.

In the event the Pricing Certificate and the Note Purchase Agreement as provided in Section 2.05 shall not be executed on or before 5:00 p.m. on October 2, 2024, the delegation to the City Authorized Representatives pursuant to this Ordinance shall cease to be effective unless the City Council shall act to extend such delegation.

(b) *Selling and Delivering Notes.* As authorized by Chapter 1371, Texas Government Code, as amended and this Ordinance, a City Authorized Representative is hereby authorized to act on behalf of the Issuer in selling and delivering the Notes, including the Authorized Installments, and carrying out the other procedures specified in this Ordinance, including determining and fixing (i) the Original Issue Date of the Notes, (ii) the principal amount of the initial Authorized Installment, (iii) the price at which the Notes will be sold, (iv) the date or dates in which the Notes will mature, (v) the aggregate principal amount to mature on any such date or dates, (vi) the aggregate principal amount of Notes, (vii) the fixed or variable rate of interest to be borne by the Notes, (viii) the interest payment periods, (ix) the dates, price, and terms, if any, upon and at which the Notes shall be subject to redemption or prepayment prior to maturity at the option of the Issuer, (x) the dated dates of the Initial Note and the initial Authorized Installment of the Notes delivered on the Original Issue Date and (xi) all other matters relating to the issuance, sale, and delivery of the Notes and the delivery of the Note Purchase Agreement (as provided in Section 2.05 hereof), all of which shall be specified in the Pricing Certificate; provided that (A) the price to be paid for the Notes shall not be less than 100% of the aggregate original principal amount thereof plus accrued interest thereon from their date to their delivery and (B) none of the Notes shall bear interest at a rate greater than the Maximum Rate. It is further provided, however, that, notwithstanding the foregoing provisions, the Initial Note shall not be delivered unless prior to delivery, the Notes have been rated by a nationally recognized rating agency for municipal securities (I) in one of the four highest rating categories for long-term obligations or (II) in one of the three highest rating categories for short-term obligations, as required by Chapter 1371.

(c) *General.* The Notes (i) may be redeemed or prepaid prior to the respective scheduled maturity dates, (ii) shall have the characteristics, and (iii) shall be signed and sealed and the principal of and interest on the Notes shall be payable, all as provided, and in the manner required or indicated, in this Ordinance, including the FORM OF NOTES set forth in Exhibit A to this Ordinance, as may be modified in the Pricing Certificate, and in the Note Purchase Agreement.

(d) *Payments on Holidays.* In the event that any date for payment of the principal of or interest on the Notes is a Saturday, Sunday, legal holiday, or day on which banking institutions in the city where the Paying Agent/Registrar is located are authorized by law or executive order to close, then the date for such payment will be the next succeeding day that is not a Saturday, Sunday, legal holiday, or day on which such banking institutions are authorized to close, and such extended period of time shall be included in the computation of interest; provided, however, that the payment of interest on the Notes on such extended date shall have the same force and effect as if made on the original payment date.

**Section 2.03. Payment of Notes; Paying Agent/Registrar.** The principal of, premium, if any, and the interest on the Notes shall be payable in immediately available funds, without exchange or collection charges to the Note Purchaser, in any coin or currency of the United States of America that at the time of payment is legal tender for the payment of public and private debts. Payments of principal of and interest on the Notes may be made by wire transfer of immediately available funds at no cost to the Note Purchaser.

The City Authorized Representative shall designate in the Pricing Certificate a bank to act as the Paying Agent/Registrar for the Notes. In the Note Purchase Agreement, the Note Purchaser, by accepting the appointment as Paying Agent/Registrar, will acknowledge receipt of copies of this Ordinance, and is deemed to have agreed to the provisions hereof. The Issuer agrees and covenants to cause to be kept and maintained at the office of the Paying Agent/Registrar a Security Register, all as provided herein, in accordance with the terms and provisions of the Paying Agent/Registrar Agreement and such reasonable rules and regulations as the Paying Agent/Registrar and the Issuer may prescribe. In addition, to the extent required by law, the Issuer covenants to cause to be kept and maintained the Security Register or a copy thereof in the State of Texas. The Issuer covenants to maintain and provide a Paying Agent/Registrar at all times until the Notes are paid and discharged, and any successor Paying Agent/Registrar shall be a bank, trust company, financial institution, or other entity duly qualified and legally authorized to serve as and perform the duties and services of Paying Agent/Registrar for the Notes. The Issuer will not, without the prior written consent of the Note Purchaser (such consent not to be unreasonably withheld), appoint or permit the appointment of a successor Paying Agent/Registrar.

The principal of, premium, if any, and interest on the Notes due and payable by reason of maturity, redemption, or otherwise, shall be payable only to the owner thereof appearing on the Security Register, and, to the extent permitted by law, neither the Issuer nor the Paying Agent/Registrar, nor any agent of either, shall be affected by notice to the contrary.

**Section 2.04. Redemption.** The Notes shall be subject to redemption or prepayment prior to scheduled maturity at such times and with such provisions as provided in the Pricing Certificate

and the Note Purchase Agreement.

**Section 2.05. Note Purchase Agreement.** The draft of the Note Purchase Agreement relating to the Notes, in substantially the form presented to the City Council, is hereby approved pursuant to the terms of this Ordinance, including the prepayment, redemption, term and interest rates applicable to any Notes purchased thereunder. Subject to the provisions of this Ordinance, the City Authorized Representative may determine the final terms of the Note Purchase Agreement consistent with Section 1371.056(c) of Chapter 1371. The Note Purchase Agreement shall constitute a "credit agreement" under Chapter 1371. Any City Authorized Representative and the Issuer's Bond Counsel are each hereby authorized to complete, amend and modify the Note Purchase Agreement and the Mayor and Mayor Pro Tem, and any City Authorized Representative are each hereby authorized to execute and deliver such Note Purchase Agreement, in the form so amended, completed and modified, and to take such other actions as shall be required under the Note Purchase Agreement in connection with the issuance of the Financial Security. The Note Purchase Agreement and the obligation of the Issuer to make certain payments thereunder, including certain fees, will constitute a Subordinate Lien Obligation. Any City Authorized Representative may enter into transactions under the Note Purchase Agreement and execute any instruments in connection therewith, including requesting any increases or decreases to the stated amount of the Financial Security in accordance with the provisions of the Note Purchase Agreement but in no case may the stated amount of the Financial Security exceed (i) the amount of Notes authorized by the Pricing Certificate minus (ii) the amount of the initial Authorized Installment of the Notes delivered on the Original Issue Date.

**Section 2.06. Registration and Ownership.**

(a) *Registration of Notes.* The Paying Agent/Registrar shall obtain, record, and maintain in the Security Register the name and address of each owner of any Note issued under and pursuant to the provisions of this Ordinance.

(b) *Ownership of Notes.* The entity in whose name any Note shall be registered in the Security Register at any time shall be deemed and treated as the absolute owner thereof for all purposes of this Ordinance, whether or not such Note shall be overdue, and, to the extent permitted by law, the City Council and the Paying Agent/Registrar shall not be affected by any notice to the contrary; and payment of, or on account of, the principal of, premium, if any, and interest on any such Note shall be made only to such Registered Owner. All such payments shall be valid and effectual to satisfy and discharge the liability upon such Note to the extent of the sum or sums so paid.

**Section 2.07. Form of Notes.** The Notes and the Authentication Certificate of the Paying Agent/Registrar to appear on each of the Notes, shall be substantially in the form set forth in Exhibit A to this Ordinance with such appropriate insertions, omissions, substitutions, and other variations as are permitted or required by this Ordinance and may have such letters, numbers or other marks of identification and such legends and endorsements (including any reproduction of an opinion of counsel) thereon as may be established by the Issuer or determined by the officers executing such Notes as evidenced by their execution thereof. Any portion of the text of any Notes



may be set forth on the reverse thereof, with an appropriate reference thereto on the face of the Note.

The Notes shall be typewritten, photocopied, printed, lithographed, engraved, or produced in any other similar manner, all as determined by the officers executing such Notes as evidenced by their execution thereof.

**Section 2.08. Execution and Registration.** Notes shall be executed on behalf of the Issuer by the Mayor and City Secretary under its seal reproduced or impressed thereon. The signature of said officers on the Notes may be manual or facsimile. Notes bearing the manual or facsimile signatures of individuals who are or were the proper officers of the Issuer as of their authorization shall be deemed to be duly executed on behalf of the Issuer, notwithstanding that such individuals or either of them shall cease to hold such offices at the time of delivery of the Notes to the Note Purchaser, all as authorized and provided in Chapter 1201, Texas Government Code.

Subject to Section 2.02(a) hereof, no Note shall be entitled to any right or benefit under this Ordinance, or be valid or obligatory for any purpose, unless there appears on such Note the Authentication Certificate of the Paying Agent/Registrar substantially in the form provided in Exhibit A to this Ordinance, executed by the manual signature of an authorized officer or employee of the Paying Agent/Registrar, and either such certificate duly signed upon any Note shall be conclusive evidence that such Note has been duly certified, registered, and delivered.

**Section 2.09. Control and Custody of Notes.** The City Authorized Representative shall be and is hereby authorized to take and have charge of all necessary orders and records pending investigation by the Attorney General of the State of Texas, including the printing and supply of printed Notes.

Furthermore, any one or more of the Mayor and Mayor Pro Tem, and the City Authorized Representative are each hereby authorized and directed to furnish and execute such documents relating to the Issuer and its financial affairs as may be necessary for the issuance of Notes, the approval of the Attorney General of the State of Texas of Notes and, together with the Issuer's bond counsel and the Paying Agent/Registrar, make the necessary arrangements for the delivery of Notes to the Note Purchaser thereof.

**Section 2.10. Mutilated, Destroyed, Lost, and Stolen Notes.** If (1) any mutilated Note is surrendered to the Paying Agent/Registrar, or the Issuer and the Paying Agent/Registrar receive evidence to their satisfaction of the destruction, loss or theft of any Note, and (2) there is delivered to the Issuer and the Paying Agent/Registrar such security or indemnity as may be required to save each of them harmless, then, in the absence of notice to the Issuer or the Paying Agent/Registrar that such Note has been acquired by a bona fide purchaser, the Issuer shall execute and, upon its request, the Paying Agent/Registrar shall register and deliver, in exchange for or in lieu of any such mutilated, destroyed, lost or stolen Note, a new Note of the same maturity date and of like tenor and principal amount, bearing a number not contemporaneously outstanding.

In case any such mutilated, destroyed, lost, or stolen Note has become or is about to become due and payable, the Issuer in its discretion may, instead of issuing a new Note, pay such Note and the interest due thereon to the date of payment.

Upon the issuance of any new Note under this Section, the Issuer may require payment by the Note Purchaser of a sum sufficient to cover any tax or other governmental charge imposed in relation thereto and any other expenses (including the fees and expenses of the Paying Agent/Registrar) connected therewith.

Every new Note issued pursuant to this Section in lieu of any mutilated, destroyed, lost, or stolen Note shall constitute a replacement of the prior obligation of the Issuer, whether or not the mutilated, destroyed, lost, or stolen Note shall be at any time enforceable by anyone, and shall be entitled to all the benefits of this Ordinance equally and ratably with all other outstanding Notes.

### **ARTICLE III**

#### **ESTABLISHMENT OF NODAL MARKET REVENUE NOTE PROGRAM AND SECURITY THEREFOR**

**Section 3.01. Establishment of Program.** This Ordinance is intended to establish a master plan for the authorization, issuance, sale, delivery, form, characteristics, provisions of payment and redemption, and security of the Notes.

**Section 3.02. Security; Subordinate Lien; and Pledge.**

(a) The Notes and the other obligations under the Note Purchase Agreement are special obligations of the Issuer, and the payment of the principal of and interest on the Notes and the other obligations under the Note Purchase Agreement are and shall be secured by and payable only from a lien on and pledge of (i) the Pledged Revenues, and the Pledged Revenues are further pledged to the establishment and maintenance of the Payment Fund; provided that the pledge of Pledged Revenues securing the Notes and the other obligations under the Note Purchase Agreement is expressly made subordinate and inferior to the lien on and pledge of Pledged Revenues securing Senior Lien Obligations, and the Notes and the other obligations under the Note Purchase Agreement shall constitute Subordinate Lien Obligations, as provided in the Senior Lien Obligation Ordinances, payable on a parity with all Subordinate Lien Obligations, and (ii) all amounts in the Payment Fund created and maintained pursuant to this Ordinance, and such amounts constitute funds held for that purpose, subject only to the provisions of this Ordinance permitting the application thereof for the purposes and on the terms and conditions set forth herein. The pledge herein made shall be irrevocable until the Notes and the other obligations under the Note Purchase Agreement have been paid and retired. The granting of this pledge by the Issuer does not limit in any manner the rights of the Issuer to issue any additional debt or incur any other obligations, except as otherwise set forth in the Note Purchase Agreement. The Notes are not secured by or payable from any funds raised or to be raised by the levy of taxes by the Issuer nor a mortgage or deed of trust on any properties, whether real, personal, or mixed, constituting the System or otherwise, nor from any source other than as specified in this Ordinance.

(b) The Issuer shall not issue Notes on a parity with the Senior Lien Obligations.

(c) The Issuer covenants to pay the principal of, premium, if any, and the interest on the Notes when due, whether by reason of maturity or redemption.

(d) Chapter 1208, Texas Government Code, applies to the issuance of the Notes and the pledge of the proceeds of the sale of Notes and the Pledged Revenues granted by the Issuer under this section, and such pledge is therefore valid, effective, and perfected. If State law is amended at any time while the Notes are outstanding such that the pledge granted by the Issuer under this section is to be subject to the filing requirements of Chapter 9, Texas Business & Commerce Code, then in order to preserve to the Note Purchaser the perfection of the security interest in said pledge, the Issuer agrees to take such measures as it determines are reasonable and necessary under State law to comply with the applicable provisions of Chapter 9, Texas Business & Commerce Code and enable a filing to perfect the security interest in said pledge to occur.

#### **ARTICLE IV CREATION OF FUNDS; PAYMENT**

**Section 4.01. Payment Fund.** (a) A City Authorized Representative may create and establish a separate and special fund to be designated as the "City of Denton Utility System Nodal Market Revenue Notes, Taxable Series A Payment Fund" (the "Payment Fund"). Moneys on deposit in the Payment Fund shall be used to pay principal of and interest on Notes hereafter issued at the respective interest payment, maturity or redemption dates (if any) of each issue of such Notes as provided herein and the repayment of any amounts owing under a Note Purchase Agreement.

(b) Pending the expenditure of moneys in the Payment Fund, if created and established, for authorized purposes, moneys deposited in said fund may be invested and reinvested by a City Authorized Representative in Permitted Investments, as directed in writing by a City Authorized Representative. Funds in the Payment Fund shall be held by a Depository.

**Section 4.02. Disposition of Note Proceeds.** Proceeds from the initial Authorized Installment of the Notes shall, as determined in the Pricing Certificate, promptly upon receipt thereof, be applied by the City Authorized Representative to pay a portion of the costs of issuance of the Notes.

Proceeds relating to any other Authorized Installments of the Notes corresponding to a drawing upon the Financial Security by ERCOT will be for the payment, on behalf or for the benefit of the Issuer, of Project Costs of Eligible Projects.

**Section 4.03. Defeasance of Notes.** Notes shall not be deemed to have been paid in full unless payment of the principal of and interest on the Notes either (a) shall have been made or caused to be made in accordance with the terms of the Notes, the Note Purchase Agreement and this Ordinance, or (b) shall have been provided for on or before such due date by irrevocably

depositing with or making available to the Paying Agent/Registrar in accordance with an escrow agreement or other instrument for such payment (i) lawful money of the United States of America sufficient to make such payment or (ii) Defeasance Securities that mature as to principal and interest in such amounts and at such times as will insure the availability of sufficient money to provide for such payment.

## **ARTICLE V COVENANTS OF THE ISSUER**

**Section 5.01. Limitation on Issuance.** Unless this Ordinance is amended and modified by the Issuer in accordance with the provisions of Article VI, the Issuer covenants that there will not be issued and Outstanding at any time more than the maximum aggregate principal amount of Notes as provided in Section 2.01 of this Ordinance. The Issuer, however, does reserve the right to increase said amount by an amendment to this Ordinance duly adopted by the City Council.

**Section 5.02. Tax Exemption.** The Issuer does not intend to issue the Notes in a manner such that the Notes would constitute obligations described in section 103(a) of the Internal Revenue Code of 1986, as amended (the "Code"), and all applicable temporary, proposed, and final regulations and procedures promulgated thereunder (the "Regulations"). The Issuer covenants that it will not file an Internal Revenue Form 8038 or an Internal Revenue Form 8038-G with respect to the Notes.

**Section 5.03. Federal Tax Information Reporting.** To the extent required by the Code and the Regulations it shall be the duty of the Paying Agent/Registrar to report to the Registered Owners and the Internal Revenue Service (i) the amount of "reportable payments," if any, subject to back up withholding during each year and the amount of tax withheld, if any, with respect to the payments on the Notes and (ii) the amount of interest or amount treated as interest, such as original issue discount, on the Notes required to be included in the gross income of the owners thereof for federal income tax purposes.

**Section 5.04. Performance.** The Issuer will faithfully perform at all times any and all covenants, undertakings, stipulations, and provisions authorizing the issuance of the Notes, and in each and every Note; promptly pay or cause to be paid the principal of and interest on every Note, on the dates and in the places and manner prescribed, and will, at the times and in the manner prescribed, deposit or cause to be deposited the amounts required to be deposited into the Payment Fund, and any Registered Owner of Notes may require the Issuer, its City Council, and its officials and employees, to carry out, respect, or enforce the covenants and obligations of this Ordinance, by all legal and equitable means, including specifically, but without limitation, the use and filing of mandamus proceedings, in any court of competent jurisdiction, against the Issuer, its City Council, and its officials and employees.

**Section 5.05. Legal Authority.** The Issuer represents that it is a municipal corporation, a political subdivision of the State and a body politic and corporate, duly created, organized, and existing, under the Constitution and general laws of the State, and is duly authorized under the

laws of the State to create and issue the Notes; that all action on its part for the creation and issuance of the Notes has been duly and effectively taken, and that the Notes in the hands of the Registered Owners thereof are and will be valid and enforceable special obligations of the Issuer in accordance with their terms.

**Section 5.06. Operation of System.** The Issuer will, while any Notes are Outstanding, continuously and efficiently operate the System, and shall maintain the System in good condition, repair and working order, all at reasonable cost. No free service of the System shall be allowed, and should the Issuer or any of its agencies, instrumentalities, lessors, or concessionaires make use of the services and facilities of the System, payment monthly of the standard retail price of the services provided shall be made by the Issuer or any of its agencies, instrumentalities, lessors, or concessionaires out of funds from sources other than the revenues of the System, unless made from surplus Pledged Revenues.

**Section 5.07. Further Encumbrance.** While the Notes are Outstanding, the Issuer shall not, except with respect to the issuance of Senior Lien Obligations, additionally encumber the Pledged Revenues, unless said encumbrance is made on a parity with, or junior and subordinate in all respects to the liens, pledges, covenants and agreements hereof; but the right of the Issuer to issue obligations subordinate to the Notes for any lawful purpose payable from a lien on the Pledged Revenues that is subordinate to the Notes is specifically recognized and retained. This Ordinance does not and is not intended to affect, limit, or prohibit the issuance of bonds payable wholly or in part from ad valorem taxes.

**Section 5.08. Sale or Disposal of Property.** While any Notes are Outstanding, it will not sell, convey, mortgage, encumber, lease or in any manner transfer title to, or otherwise dispose of, the System, or any significant or substantial part thereof, except as follows:

(a) To the extent permitted by law, the Issuer may sell, exchange or otherwise dispose of at any time and from time to time any property or facilities constituting part of the System only if (i) it shall determine such property or facilities are not useful in the operation of the System, (ii) the proceeds of such sale are \$500,000 or less, or it shall have received a certificate of a City Authorized Representative stating in the opinion of the signer, that the fair market value of the property or facilities exchanged is \$500,000 or less, or (iii) if such proceeds or fair market value exceeds \$500,000 it shall have received a certificate of a City Authorized Representative stating, in the opinion of the signer, that the sale or exchange of such property or facilities will not impair the ability of the Issuer to comply during the current or any future year with the provisions of Section 5.10 of this Ordinance. The proceeds of any such sale or exchange not used to acquire other property necessary or desirable for the safe or efficient operation of the System shall forthwith, at the option of the Issuer (i) be used to redeem or purchase Senior Lien Obligations, (ii) otherwise be used to provide for the payment of Senior Lien Obligations, or (iii) be used for any other lawful purpose; and

(b) To the extent permitted by law, the Issuer may lease or make contracts or grant licenses for the operation of or make arrangements for the use of or grant easements or

other rights with respect to, any part of the System, provided that any such lease, contract, license, arrangement, easement or right (i) does not impede the operation by the Issuer of the System and (ii) does not in any manner impair or adversely affect the rights or security of the Registered Owners under this Ordinance; and provided, further, that if the depreciated cost of the property to be covered by any such lease, contract, license, arrangement, easement or other right is in excess of \$1,000,000, the Issuer shall have received a certificate of a City Authorized Representative that the action of the Issuer with respect thereto does not result in a breach of the conditions under this clause (b). Any payments received by the Issuer under or in connection with any such lease, contract, license, arrangement, easement or right in respect of the System or any part thereof shall constitute Gross Revenues.

**Section 5.09. Insurance.** (a) The Issuer shall insure such parts of the System as would usually be insured by corporations operating like properties, with responsible insurance companies, or through self-insurance with adequate stop-loss reinsurance, against loss to the extent insurance is usually carried by corporations operating like properties, including, to the extent reasonably obtainable, insurance against the perils of fire, extended coverage and flooding and use and occupancy insurance. Public liability and property damage insurance shall also be carried unless the Issuer's attorney gives a written opinion to the effect that the Issuer is not liable for claims which would be protected by such insurance. At any time while any contractor engaged in construction work shall be fully responsible therefor, the Issuer shall not be required to carry insurance on the work being constructed if the contractor is required to carry appropriate insurance. All such policies shall be open to the inspection of the Registered Owners and their agents and representatives at all reasonable times. Upon the happening of any loss or damage covered by insurance from one or more of said causes, the Issuer shall make due proof of loss and shall do all things necessary or desirable to cause the insuring companies to make payment in full directly to the Issuer. The proceeds of insurance covering such property, together with any other funds necessary and available for such purpose, shall be used forthwith by the Issuer for repairing the property damaged or replacing the property destroyed; provided, however, that if said insurance proceeds and other funds are insufficient for such purpose, then said insurance proceeds pertaining to the System shall be deposited in a special and separate trust fund, at a Depository, to be designated the Insurance Account. The Insurance Account shall be held until such time as other funds become available which, together with the Insurance Account, will be sufficient to make the repairs or replacements originally required, whichever of said events occurs first; provided that the Issuer may, in its discretion, use funds in the Insurance Account for the redemption or purchase of Senior Lien Obligations.

(b) The foregoing provisions of clause (a) above notwithstanding, the Issuer shall have authority to enter into coinsurance or similar plans where risk of loss is shared in whole or in part by the Issuer.

(c) The annual audit hereinafter required may contain a section commenting on whether or not the Issuer has complied with the requirements of this Section with respect to the maintenance of insurance, and listing all policies carried, and whether or not all insurance premiums upon the insurance policies to which reference is hereinbefore made have been paid.

**Section 5.10. Rate Covenant.** The Issuer will fix, establish, maintain and collect such rates, charges and fees for the use and availability of the System at all times as are necessary to produce Gross Revenues, together with any other Pledged Revenues, sufficient (1) to pay all current Operating Expenses, and (2) to produce Pledged Revenues for each Fiscal Year at least equal to 1.00 times the Annual Debt Service Requirements (as defined and determined in accordance with the Senior Lien Obligation Ordinances) of all then Outstanding Senior Lien Obligations for that Fiscal Year, and (3) to make all payments and deposits required to be made into the Payment Fund for the Notes (including any obligations due and owing under a Note Purchase Agreement) and produce amounts required to pay all other obligations of the System reasonably anticipated to be paid from Pledged Revenues during the current Fiscal Year. For purposes of calculating Annual Debt Service Requirements on the Notes, the City shall assume the Maximum Available Amount is fully drawn and amortized over a period of up to thirty (30) years at the Assumed Rate (as defined in the Note Purchase Agreement).

**Section 5.11. Governmental Agencies.** The Issuer will comply with all of the terms and conditions of any and all franchises, permits and authorizations applicable to or necessary with respect to the System, and which have been obtained from any governmental agency; and the Issuer has or will obtain and keep in full force and effect all franchises, permits, authorization and other requirements applicable to or necessary with respect to the acquisition, construction, equipment, operation and maintenance of the System.

**Section 5.12. Title.** The Issuer has or will obtain lawful title to the lands, buildings, structures and facilities constituting the System, that it warrants that it will defend the title to all the aforesaid lands, buildings, structures and facilities, and every part thereof, for the benefit of the holders and owners of the Senior Lien Obligations and Notes, against the claims and demands of all persons whomsoever, that it is lawfully qualified to pledge the Pledged Revenues to the payment of the Senior Lien Obligations and the Notes in the manner prescribed herein, and has lawfully exercised such rights.

**Section 5.13. Liens.** The Issuer will from time to time and before the same become delinquent pay and discharge all taxes, assessments and governmental charges, if any, which shall be lawfully imposed upon it, or the System; it will pay all lawful claims for rents, royalties, labor, materials and supplies which if unpaid might by law become a lien or charge thereon, the lien of which would be prior to or interfere with the liens hereof, so that the priority of the liens granted hereunder shall be fully preserved in the manner provided herein, and it will not create or suffer to be created any mechanic's, laborer's, materialman's or other lien or charge which might or could be prior to the liens hereof, or do or suffer any matter or thing whereby the liens hereof might or could be impaired; provided, however, that no such tax, assessment or charge, and that no such claims which might be used as the basis of a mechanic's, laborer's, materialman's or other lien or charge, shall be required to be paid so long as the validity of the same shall be contested in good faith by the Issuer.

**Section 5.14. No Competition.** So far as it legally may, the Issuer will not grant any franchise or permit for the acquisition, construction or operation of any competing facilities which

might be used as a substitute for the System's facilities and, to the extent that it legally may, the Issuer will prohibit any such competing facilities.

**Section 5.15. Records.** The Issuer will keep proper books of record and account in which full, true and correct entries will be made of all dealings, activities and transactions relating to the System, the Pledged Revenues, and the funds created pursuant to this Ordinance and Senior Lien Ordinances, and all books, documents and vouchers relating thereto shall at all reasonable times be made available for inspection upon request of a Registered Owner; provided, that all books, documents, and vouchers relating to the Issuer's electric system shall be made available for inspection only to the extent required by law, including, without limitation, the provisions of Section 552.133 of the Texas Government Code.

**Section 5.16. Audits.** After the close of each Fiscal Year while any Note is Outstanding, it will cause an audit to be made of the books and accounts relating to the Issuer, including the System and the Pledged Revenues by an Accountant. Such annual audit reports shall be open to the inspection of the Registered Owners and their agents and representatives at all reasonable times.

## **ARTICLE VI AMENDMENTS**

**Section 6.01. Amendments or Modifications with Consent of Note Purchaser.** Any amendment to this Ordinance shall be subject to the prior written approval of the Note Purchaser as provided in the Note Purchase Agreement.

**Section 6.02. Effect of Amendments.** Upon the adoption by the City Council of any ordinance to amend this Ordinance pursuant to the provisions of this Article VI, this Ordinance shall be deemed to be amended in accordance with the Amended Ordinance, and the respective rights, duties, and obligations of the Issuer and all the owners of then Outstanding Notes and all future Notes shall thereafter be determined, exercised, and enforced under this Ordinance.

**Section 6.03. Additional Amendments.** Subject to the provisions of Section 6.01 hereof, the Issuer may, from time to time and at any time, adopt an Amended Ordinance which amends the provisions of an earlier Amended Ordinance.

## **ARTICLE VII MISCELLANEOUS**

**Section 7.01. Ordinance to Constitute a Contract; Equal Security.** In consideration of the acceptance of the Notes by those who shall hold the same from time to time, this Ordinance shall be deemed to be and shall constitute a contract between the Issuer and the Registered Owners and the Note Purchaser and the pledge made in this Ordinance by the Issuer and the covenants and agreements set forth in this Ordinance to be performed by the Issuer shall be for the equal and



proportionate benefit, security, and protection of all owners of the Notes and the Note Purchaser, without preference, priority, or distinction as to security or otherwise of any of the Notes over any of the others by reason of time of issuance, sale, or maturity thereof or otherwise for any cause whatsoever, except as expressly provided in or permitted by this Ordinance or with respect to the Notes, the Note Purchase Agreement.

**Section 7.02. Individuals Not Liable.** All covenants, stipulations, obligations, and agreements of the Issuer contained in this Ordinance shall be deemed to be covenants, stipulations, obligations, and agreements of the Issuer and the City Council to the full extent authorized or permitted by the Constitution and laws of the State of Texas. No covenant, stipulation, obligation, or agreement herein contained shall be deemed to be a covenant, stipulation, obligation, or agreement of any member of the City Council or agent or employee of the Issuer in his or her individual capacity and neither the members of the City Council nor any officer of the Issuer shall be liable personally on the Notes or be subject to any personal liability or accountability by reason of the issuance thereof.

**Section 7.03. Additional Actions; Recitals.**

(a) The Mayor and Mayor Pro Tem, the City Authorized Representatives and the City Secretary, and all other officers, employees and agents of the Issuer are hereby authorized and directed, jointly and severally, to do any and all things and to execute and deliver any and all documents which they may deem necessary or advisable in order to consummate the issuance, sale, and delivery of the Notes and otherwise to effectuate the purposes of this Ordinance, the Note Purchase Agreement, and the Paying Agent/Registrar Agreement. In addition, the Mayor and Mayor Pro Tem, the City Secretary, the City Authorized Representatives, and Bond Counsel are hereby authorized to approve, subsequent to the date of adoption of this Ordinance, any amendments or supplements to the above named documents, and any technical amendments to this Ordinance as may be required by a Rating Agency as a condition to the granting or maintaining of a rating on the Notes acceptable to a City Authorized Representative, or as may be required by the Office of the Attorney General of the State in connection with the approval of this Ordinance or to correct any ambiguity or mistake or properly or more completely document the transactions contemplated and approved by this Ordinance. In addition, the statements, findings, representations, and determinations set forth in the recitals to this Ordinance are hereby incorporated into and made a part of this Ordinance for all purposes.

(b) The obligation of the Note Purchaser to accept delivery of the Initial Note is subject to the Note Purchaser being furnished with the final, approving opinion of Bond Counsel, which opinion shall be dated as of and delivered on the date of initial delivery of the Initial Note.

(c) A City Authorized Representative shall promptly give written notice to each Rating Agency then rating the Notes, as appropriate, of any changes or amendments to this Ordinance, or any other operative document used in connection with the issuance from time to time of the Notes.

**Section 7.04. Severability of Invalid Provisions.** If any one or more of the covenants, agreements, or provisions herein contained shall be held contrary to any express provisions of law

or contrary to the policy of express law, though not expressly prohibited, or against public policy, or shall for any reason whatsoever be held invalid, then such covenants, agreements, or provisions shall be null and void and shall be deemed separable from the remaining covenants, agreements or provisions and shall in no way affect the validity of any of the other provisions hereof or of the Notes issued hereunder.

**Section 7.05. Performance on Business Days.** Except as set forth in Section 2.02(d) hereof, whenever under the terms of this Ordinance or the Notes, the performance date of any provision hereof or thereof shall occur on a day other than a business day, then the performance thereof need not be made on such day but may be performed on the next succeeding business day with the same force and effect as if made on the date of performance is scheduled.

**Section 7.06. Limitation of Benefits With Respect to the Ordinance.** With the exception of the rights or benefits herein expressly conferred, nothing expressed or contained herein or implied from the provisions of this Ordinance or the Notes is intended or should be construed to confer upon or give to any person other than the Issuer, the Note Purchaser, and the Paying Agent/Registrar, any legal or equitable right, remedy, or claim under or by reason of or in respect to this Ordinance or any covenant, condition, stipulation, promise, agreement, or provision herein contained. This Ordinance and all of the covenants, conditions, stipulations, promises, agreements, and provisions hereof are intended to be and shall be for and inure to the sole and exclusive benefit of the Issuer, the Note Purchaser, and the Paying Agent/Registrar as herein and in the Paying Agent/Registrar Agreement and the Note Purchase Agreement provided.

**Section 7.07. Approval of Attorney General.** No Notes herein authorized to be issued shall be sold or delivered by a City Authorized Representative until the Attorney General of the State shall have approved the Notes authorized by this Ordinance and the proceedings related thereto and the Note Purchase Agreement, and other agreements and proceedings as may be required in connection therewith, and the Comptroller of Public Accounts of the State of Texas has registered the record of proceedings relating to this Ordinance and the Notes, all as is required by the Acts.

**Section 7.08. Notices.** (a) The City Authorized Representative shall provide the Rating Agencies with written notice of the occurrence of the following events: (i) the appointment of a successor Paying Agent/Registrar, (ii) amendments or supplements to the Ordinance or the Paying Agent/Registrar Agreement, (iii) the defeasance of all Outstanding Notes and (iv) the termination of the Note program. Any notice under this paragraph (a) shall be sent to the Rating Agencies at the following addresses, as applicable:

Standard & Poor's:    Attention: Muni Structured Finance  
                                 55 Water Street, 38th Floor  
                                 New York, New York 10041  
                                 phone: 212-438-2000  
                                 fax: 212-438-2157  
                                 email: pubfin\_structured@sandp.com

Moody's:                    Attention: Public Finance Department – Rating Desk/CP  
Moody's Investors Service, Inc.  
99 Church Street  
New York, New York 10007  
phone: 212-553-0300  
fax: 212-964-5082

Fitch Ratings:            Fitch Ratings - U.S. Public Finance  
33 Whitehall Street  
New York, New York 10004  
phone: 212-908-0889

(b) Except as otherwise required herein, all notices required or authorized to be given to the Issuer or the Paying Agent/Registrar pursuant to this Ordinance shall be in writing and shall be sent by registered or certified mail, postage prepaid, to the following addresses or otherwise given in a manner deemed, in writing, acceptable to the party to receive the notice:

1.        to the Issuer, to:  
          215 E. McKinney Street.  
          Denton, Texas 76201  
          Attn: Jessica Williams, Chief Financial Officer  
          Telephone: (940) 349-8244
2.        to the Paying Agent/Registrar, to:  
          (as provided in the Paying Agent/Registrar Agreement)
3.        to the Note Purchaser, to:  
          (as provided in the Note Purchase Agreement)

or to such other addresses as may from time to time be furnished to the parties, effective upon the receipt of notice thereof given as set forth above.

## **ARTICLE VIII EVENTS OF DEFAULT AND REMEDIES**

**Section 8.01. Events of Default.** Each of the following events shall constitute and is referred to in this Ordinance as an "Event of Default":

(a) a failure by the Issuer to pay principal of or interest on any Note when the same shall have become due and payable;

(b) a failure by the Issuer to observe and perform any covenant, condition, agreement or provision contained in the Notes or in this Ordinance on the part of the Issuer to be observed or performed, which materially, adversely affects the rights of the owners of the Notes, including,

but not limited to, their prospect or ability to be repaid in accordance with this Ordinance and which failure shall continue for a period of 30 days after written notice, specifying such failure and requesting that it be remedied, shall have been given to the Issuer by the Paying Agent/Registrar or any owner of the Notes;

(c) bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings, including, without limitation, proceedings under the United States Bankruptcy Code (as the same may from time to time be hereafter amended), or other proceedings for relief under any federal or State bankruptcy law or similar law for the relief of debtors are instituted by the Issuer;

(d) an “Event of Default” shall have occurred and be continuing under the Note Purchase Agreement; or

(e) the occurrence of any other Event of Default as is provided in an Amended Ordinance.

If any Event of Default has occurred, but is subsequently cured or waived, then such Event of Default shall no longer constitute an Event of Default hereunder.

#### **Section 8.02. Remedies for Default.**

(a) Upon the happening of any Event of Default, any Registered Owner or an authorized representative thereof, including, but not limited to, a trustee or trustees therefore, may proceed against the Issuer or the City Council, as appropriate, for the purpose of protecting and enforcing the rights of the owners of Notes under this Ordinance, by mandamus or other suit, action or special proceeding in equity or at law, in any court of competent jurisdiction, for any relief permitted by law, including the specific performance of any covenant or agreement contained herein, or thereby to enjoin any act or thing that may be unlawful or in violation of any right of the owners of Notes hereunder or any combination of such remedies. It is provided that all such proceedings shall be instituted and maintained for the equal benefit of all owners of Notes then Outstanding.

(b) No remedy herein conferred or reserved is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or under the Notes or now or hereafter existing at law or in equity; provided, however, that notwithstanding any other provision of this Ordinance, the right to accelerate the debt evidenced by the Notes shall not be available as a remedy under this Ordinance.

(c) By accepting the delivery of an Note authorized under this Ordinance, a Registered Owner agrees that the certifications required to effectuate any covenants or representations contained in this Ordinance do not and shall never constitute or give rise to a personal or pecuniary liability or charge against the officers or employees of the Issuer or the City Council.

The motion to approve this Ordinance was made by [\_\_\_\_\_] and seconded by [\_\_\_\_\_]. This Ordinance was passed and approved by the following vote [\_\_ – \_\_]:

	<b>Aye</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>
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:	_____	_____	_____	_____

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PASSED, APPROVED AND EFFECTIVE this 2nd day of April, 2024.

\_\_\_\_\_  
GERARD HUDSPETH, MAYOR

ATTEST:  
JESUS SALAZAR, CITY SECRETARY

BY: \_\_\_\_\_

APPROVED AS TO LEGAL FORM:  
MACK REINWAND, CITY ATTORNEY

BY: \_\_\_\_\_

## EXHIBIT A

### FORM OF NOTES

UNITED STATES OF AMERICA  
STATE OF TEXAS  
CITY OF DENTON  
UTILITY SYSTEM NODAL MARKET REVENUE NOTE  
SERIES A

NO.: \_\_\_\_ Issue Date: \_\_\_\_

Principal Amount: \$\_\_\_\_ Maturity Date: \_\_\_\_

Dated Date: \_\_\_\_

Interest Rate or Interest Rate Formula (%): \_\_\_\_<sup>1</sup>

THE CITY OF DENTON, IN DENTON COUNTY, TEXAS (the "*Issuer*") being a political subdivision of the State of Texas, hereby promises to pay, solely from the sources hereinafter identified and as hereinafter stated, to the order of

WELLS FARGO BANK, NATIONAL ASSOCIATION (the "*Bank*")

on the Maturity Date specified above [or date of prior redemption]<sup>2</sup>, the Principal Amount set forth above, and to pay interest on said Principal Amount, if any, on the dates provided in the Note Purchase Agreement at said Maturity Date [or date of prior redemption]<sup>2</sup>, from the above specified Issue Date to said Maturity Date [or date of prior redemption]<sup>2</sup> at the rate of interest calculated as shown above (computed on the basis of actual days elapsed and a 360 day year) and as provided for in the Note Purchase Agreement (as defined herein); both principal and interest on this Note being payable in lawful money of the United States of America in freely transferable and immediately available funds at the principal corporate office of the Paying Agent/Registrar executing the "Certificate of Authentication" endorsed hereon and appearing below.

This Note is one of a duly authorized issue of notes of the Issuer (the "*Notes*") issued in the aggregate principal amount of \$\_\_\_\_,000, pursuant to the laws of the State of Texas, including specifically Chapter 1371 and Chapter 1502, Texas Government Code, as amended (the "*Acts*"), and under and pursuant to an ordinance of the City Council of the Issuer adopted April 2,

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<sup>1</sup> As provided for in the Pricing Certificate.

<sup>2</sup> If the Notes are subject to redemption as provided in the Pricing Certificate.

2024 (the "Ordinance") for the purpose of financing Project Costs of Eligible Projects. The Notes are secured by the Ordinance, on a parity with all other Subordinate Lien Obligations and subject only to the payment of Senior Lien Obligations, if any. Terms used herein and not otherwise defined shall have the meanings given in the Ordinance and in the Note Purchase Agreement dated \_\_\_\_\_, 2024 between the Issuer and the Bank relating to the Notes (the "Note Purchase Agreement").

The initial Authorized Installment of the Notes issued on the Original Issue Date is in the principal amount of \$\_\_\_\_\_,000. Thereafter, additional Authorized Installments of the Notes in a principal amount not to exceed \$\_\_\_\_\_,000 may be issued on any date so long as the total aggregate principal amount of Notes issued does not exceed \$\_\_\_\_\_,000, as reflected in the Schedule of Authorized Installment Deliveries attached to the Initial Note. The foregoing notwithstanding, in no event shall an Authorized Installment of the Notes be issued after the end of the Authorized Installment Draw Period, and in no event shall an Authorized Installment be issued and delivered in an amount that exceeds the Maximum Available Amount in effect as of the date of the applicable draw on the Financial Security; provided that the aggregate principal amount of all Authorized Installments issued and delivered under the Ordinance may at times exceed the then applicable Maximum Available Amount due to a reduction in such amount subsequent to the issuance of Authorized Installments pursuant to the terms of the Financial Security but in no case shall the aggregate principal amount of all Authorized Installments issued and delivered under the Ordinance exceed \$\_\_\_\_\_,000.

Anything contained herein to the contrary notwithstanding, if the rate of interest payable under any Authorized Installment shall exceed the Maximum Interest Rate (as defined in the Note Purchase Agreement) for any period for which interest is payable, then (i) interest at the Maximum Interest Rate shall be due and payable with respect to such interest period and (ii) interest at the rate equal to the difference between (A) the rate of interest calculated in accordance with the terms hereof without regard to the Maximum Interest Rate and (B) the Maximum Interest Rate (the "Excess Interest"), shall be deferred until such date as the rate of interest calculated in accordance with the terms hereof ceases to exceed the Maximum Interest Rate, at which time the Issuer shall pay to the Bank, with respect to amounts then payable to the Bank that are required to accrue interest hereunder, such portion of the deferred Excess Interest as will cause the rate of interest then paid to the Bank to equal the Maximum Interest Rate, which payments of deferred Excess Interest shall continue to apply to such unpaid amounts hereunder until all deferred Excess Interest is fully paid to the Bank, not to exceed the Maturity Date.

The Notes are special obligations of the Issuer, and the payment of the principal of and interest on the Notes is and shall be secured by and payable only from a lien on and pledge of the Pledged Revenues; provided that the pledge of Pledged Revenues securing the Notes is expressly made subordinate and inferior to the lien on and pledge of Pledged Revenues securing Senior Lien Obligations, and the Notes shall constitute Subordinate Lien Obligations, payable, together with all Outstanding Subordinate Lien Obligations and any additional Subordinate Lien Obligations hereafter, solely from and equally secured by a lien on and pledge of the Pledged Revenues. The Notes are not secured by or payable from any funds raised or to be raised by the levy of taxes by



the Issuer nor a mortgage or deed of trust on any properties, whether real, personal, or mixed, constituting the System or otherwise, nor from any source other than as specified in the Ordinance.

[INSERT ADDITIONAL PROVISIONS, IF ANY, PROVIDED FOR IN THE PRICING CERTIFICATE AND THE NOTE PURCHASE AGREEMENT DEEMED NECESSARY BY THE AUTHORIZED REPRESENTATIVE, INCLUDING ANY PREPAYMENT AND/OR REDEMPTION PROVISIONS, ALL PURSUANT TO SECTIONS 2.02 AND 2.04 OF THE ORDINANCE.]

The pledge of Pledged Revenues under the Ordinance may be discharged at or prior to the maturity of the Notes upon the making of provision for their payment on the terms and conditions set forth in the Ordinance.

Subject to satisfying the terms and conditions stated in the Ordinance, the Issuer has reserved the right to issue additional Subordinate Lien Obligations payable solely from and equally and ratably secured by a parity lien on and pledge of the Pledged Revenues and other moneys and securities pledged under the Ordinance to the payment of the Notes.

Reference is hereby made to the Ordinance, copies of which may be obtained upon request to the Issuer, and to all of the provisions of which any owner of this Note by its acceptance hereof hereby assents, for definitions of terms; the description of and the nature and extent of the security for the Notes; the Pledged Revenues; the nature and extent and manner of enforcement of the pledge; the terms and conditions for the issuance of additional Subordinate Lien Obligations; the conditions upon which the Ordinance may be amended or supplemented with or without the consent of the Registered Owners; the rights and remedies of the owner hereof with respect hereto and thereto; the rights, duties and obligations of the Issuer; the terms and provisions upon which the liens, pledges, charges, and covenants made therein may be discharged at or prior to the maturity or redemption of this Note and this Note thereafter no longer to be secured by the Ordinance or be deemed to be outstanding thereunder; and for the other terms and provisions thereof.

It is hereby certified, recited, represented, and declared that the Issuer is a duly organized and legally existing political subdivision of the State of Texas, organized under and by virtue of the Constitution and laws of the State of Texas; that the issuance of this Note and the series of which it is a part are duly authorized by law; that all acts, conditions, and things required to exist and be done precedent to and in the issuance of this Note to render the same lawful and valid have been properly done, have happened and have been performed in regular and due time, form, and manner as required by the Constitution and laws of the State of Texas and the Ordinance; that this series of Notes does not exceed any Constitutional or statutory limitation; and that due provision has been made for the payment of the principal of and interest on this Note and the series of which it is a part as aforestated. In case any provision in this Note shall be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. The terms and provisions of this Note and the Ordinance shall be construed in accordance with and shall be governed by the laws of the State of Texas.

This Note has been issued pursuant to proceedings approved by the Attorney General of the State of Texas and registered by the Comptroller of Public Accounts of the State of Texas.

Except as provided in Section 2.02(a) of the Ordinance, this Note shall not be entitled to any benefit under the Ordinance or be valid or become obligatory for any purpose until this Note shall have been authenticated by the execution by the Paying Agent/Registrar or the Comptroller of Public Accounts, as applicable, of the Certificate of Authentication hereon.

**IN WITNESS WHEREOF**, the Issuer has authorized and caused this Note to be executed and attested on its behalf by the manual or facsimile signatures of the Mayor of the Issuer (or in the Mayor's absence, of the Mayor Pro-Tem) and countersigned with the manual or facsimile signature of the City Secretary of said Issuer and its official seal impressed or a facsimile thereof to be printed hereon.

\_\_\_\_\_  
City Secretary

\_\_\_\_\_  
Mayor

(SEAL)

Form of Registration Certificate of Comptroller of Public Accounts to Appear on Initial Note only.

**REGISTRATION CERTIFICATE OF  
COMPTROLLER OF PUBLIC ACCOUNTS**

**OFFICE OF THE COMPTROLLER  
OF PUBLIC ACCOUNTS  
THE STATE OF TEXAS**

'  
'  
'

**REGISTER NO. \_\_\_\_\_**

**I HEREBY CERTIFY** that this Note has been examined, certified as to validity and approved by the Attorney General of the State of Texas, and duly registered by the Comptroller of Public Accounts of the State of Texas.

**WITNESS** my signature and seal of office this \_\_\_\_\_.

\_\_\_\_\_  
Comptroller of Public Accounts  
of the State of Texas

(SEAL)

Form of Authentication Certificate of Paying Agent/Registrar.

**AUTHENTICATION CERTIFICATE OF  
PAYING AGENT/REGISTRAR**

This Note has been duly issued and registered under the provisions of the within-mentioned Resolution; the note or notes of the above titled and designated series originally delivered having been approved by the Attorney General of the State of Texas and registered by the Comptroller of Public Accounts, as shown by the records of the Paying Agent/Registrar.

[ \_\_\_\_\_ ]  
as Paying Agent/Registrar

Registered this date:

\_\_\_\_\_

By: \_\_\_\_\_  
Authorized Signature

Form of Schedule of Authorized Installments Deliveries to appear on Initial Note only.

**SCHEDULE OF AUTHORIZED INSTALLMENT DELIVERIES**

<u>Issue Date</u>	<u>No.</u>	<u>Principal Amount</u>	<u>Remaining Available Principal Balance</u>	<u>Extended Maturity Date</u>	<u>Date Paid</u>	<u>Principal and Interest Paid</u>
_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____



# Wells Fargo Letter of Credit

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**Vis Bouaphanthavong**  
**Assistant Director of Finance**  
**April 02, 2024**

# ERCOT Credit and Collateral Protocol

Prior to October 1, 2023

- ERCOT maintained \$40 million of unsecured credit for DME based on revenue rating of A/Stable
- DME occasionally posted cash to supplement the unsecured credit when additional collateral was necessary

October 1, 2023, ERCOT Credit Protocol Changes

- Eliminated unsecured credit for any market participant
- Market participants required to issue cash or letter of credit to secure credit and collateral obligations
- DME provided cash collateral for all ERCOT financial activity
- DME issued RFP to obtain letter of credit to satisfy new ERCOT protocol



# Letter of Credit Program and Benefits

## Program

- \$500,000 estimated cost per year for a three-year term
- Drawdown is not anticipated - DME will continue to prepay for power and cash settle all ERCOT accounts
- In the unlikely event of a drawdown, City will explore more effective financing options

Staff recommends the use of a letter of credit for the following benefits

- Protects City's liquidity
- Interest earnings on City's cash will offset cost
- Meets ERCOT collateral requirements



# Authority Requested

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City to enter into agreement with Wells Fargo to provide a Letter of Credit of up to \$60 million to satisfy new ERCOT protocols.



# Questions







# City of Denton

City Hall  
215 E. McKinney St.  
Denton, Texas 76201  
[www.cityofdenton.com](http://www.cityofdenton.com)

## Legislation Text

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**File #:** ID 24-568, **Version:** 1

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### **AGENDA CAPTION**

Consider adoption of an ordinance directing the publication of Notice of Intention to issue \$84,770,000 in principal amount of Certificates of Obligation of the City of Denton for General Government and Solid Waste projects; and providing an effective date. The Public Utilities Board recommends approval (5-0).



# City of Denton

City Hall  
215 E. McKinney Street  
Denton, Texas  
[www.cityofdenton.com](http://www.cityofdenton.com)

## AGENDA INFORMATION SHEET

**DEPARTMENT:** Finance

**ACM:** Cassey Ogden

**DATE:** April 2, 2024

### **SUBJECT**

Consider adoption of an ordinance directing the publication of Notice of Intention to issue \$84,770,000 in principal amount of Certificates of Obligation of the City of Denton for General Government and Solid Waste projects; and providing an effective date. The Public Utilities Board recommends approval (5-0).

### **BACKGROUND**

This ordinance provides the Notice of Intention to issue \$84,770,000 of Certificates of Obligation (CO) of the City of Denton for Solid Waste projects, as required by state law. The notice will be published once a week for two consecutive weeks in the Denton Record Chronicle, with the date of the first publication to be at least forty-six (46) days before the date tentatively set for the passage of the ordinance authorizing the issuance of the bonds. The notice will also be posted on the City's website. The additional \$764,495 is for issuance costs and to allow flexibility in marketing and pricing the bond sale.

Staff recommends the sale of \$84,770,000 in COs for General Government and Solid Waste. Below is a listing of recommended Solid Waste CO funded projects for FY 2023-24 CIP.

	<b>Budget</b>	<b>NOI</b>
Fleet Building Addition Equipment and Furnishings	\$ 2,000,000	\$ 2,000,000
Fuel Control Hardware / Software Upgrade	650,000	650,000
End User Computing	664,500	664,500
<b>Internal Services Total</b>	<b>3,314,500</b>	<b>\$ 3,314,500</b>
Security Hardware Upgrade (Facilities)	\$ 180,000	\$ 180,000
Facilities ADA Upgrades (Facilities)	1,068,600	1,068,600
Facilities Capital Replacements (Facilities)	4,000,000	4,000,000
Facility Condition Maintenance (Facilities)	10,000,000	10,000,000
Standard Building Specifications (Facilities)	500,000	500,000
Adjacency Remodels (Facilities)	50,000	50,000
Service Center Renovation (Facilities)	9,000,000	9,000,000
Parking Lot Replacements (Facilities)	931,172	931,172
ADA Transition Plan Improvements (Parks)	309,000	309,000
Parkside Property Playground (Parks)	280,000	280,000
Traffic Signal Cabinets (Traffic)	208,000	208,000
Gridsmart Vehicle Detection (Traffic)	240,000	240,000
Traffic Signal Design and Rebuilds (Traffic)	1,950,000	1,950,000

	<b>Budget</b>	<b>NOI</b>
Vehicle Replacement - General Fund (Motorpool)	\$ 5,500,000	\$ 5,498,000
Vehicle Additions - General Fund (Motorpool)	1,535,000	1,059,350
Infrastructure Replacement (Tech Services)	1,641,500	1,641,500
Radios & Modems (Tech Services)	725,653	725,653
Asset Management Software (Tech Services)	5,000,000	5,000,000
Citywide Fiber Replacement (Tech Services)	500,000	500,000
CAD/RMS Software Replacement (Tech Services)	4,000,000	4,000,000
Land Management Software (Tech Services)	5,000,000	5,000,000
Drainage Improvements (Drainage)	1,350,000	1,350,000
I35 TxDOT Merge Medallion Artwork (Streets)	1,500,000	1,500,000
Bonnie Brae 4B (Streets)	8,000,000	8,000,000
Bonnie Brae 5 (Streets)	2,000,000	2,000,000
Riney Road East (Streets)	6,000,000	6,000,000
McKinney Sidewalks (Streets)	5,500,000	5,500,000
<b>General Government Total</b>	<b>\$ 76,968,925</b>	<b>\$ 76,491,275</b>
Home Chemical Collection Storage Capacity	\$ 2,000,000	\$ -
Fleet Shop at Solid Waste	-	2,000,000
Cell 5 & 6 Construction	1,950,000	-
Vehicles - New Additions	130,000	130,000
Vehicles - Replacements	3,000,000	2,069,730
<b>Solid Waste Total</b>	<b>\$ 7,080,000</b>	<b>\$ 4,199,730</b>
Subtotal All Funds		\$84,005,505
<u>Issuance Cost and Pricing Flexibility</u>		764,495
<b>Total General Government</b>		<b>\$84,770,000</b>

The City sells bonds in accordance with the useful life of the asset that is being acquired. For example, vehicles are typically sold with bonds that will be paid within five years. For the FY 2023-24 proposed debt issuance for General Government and Solid Waste COs: \$9,421,580 will be 5-year debt, \$17,555,653 will be 10-year debt and \$57,028,272 will be 20-year debt.

Concurrently with the sale of the COs for General Government and Solid Waste, the City anticipates the sale of approximately \$88,717,000 in General Obligation Bonds (GO) to fund the 2019 and 2023 Bond Programs and approximately \$177,560,000 in COs for Water, Wastewater and Electric.

If approved by the City Council, staff will proceed with the publication of the Notice of Intention and will schedule the Bond Ordinance consideration and adoption for June 4, 2024. The bond ordinance will dictate the parameters of the bond sale. Under such an arrangement, staff will be permitted to execute the bond sale within six (6) months of June 4, 2023, provided certain interest rate parameters are met.

### **RECOMMENDATION**

Staff recommends adoption of the ordinance.

### **PRIOR ACTION/REVIEW (Council, Boards, Commissions)**

On October 24, 2023, the City Council adopted a reimbursement ordinance (Ord. No. 23-1426) authorizing the reimbursement of capital program expenditures of \$35,600,000 in GO and \$308,624,582 in CO funded projects for General Government, Solid Waste, Electric, Water and Wastewater.

On January 23, 2024, the City Council adopted a reimbursement ordinance (Ord. No. 23-2433) authorizing the reimbursement of capital program expenditures of \$53,117,000 in GO General Government funded projects for year one of the 2023 Bond Program.

On March 25, 2024, the Public Utilities Board recommended this item to City Council for consideration.

**FISCAL INFORMATION**

The ordinance is for the authorization to publish the Notice of Intention to sell \$84,770,000 of Certificates of Obligation for General Government and Solid Waste projects. A notice is only required for Certificates of Obligation.

**EXHIBITS**

1. Agenda Information Sheet
2. Ordinance
3. Presentation

Respectfully submitted:  
Vis Bouaphanthavong  
Assistant Director of Finance

Prepared by:  
Randee Klingele  
Treasury Manager

ORDINANCE NO. 24-\_\_

AN ORDINANCE DIRECTING THE PUBLICATION OF NOTICE OF INTENTION TO ISSUE \$84,770,000 IN PRINCIPAL AMOUNT OF CERTIFICATES OF OBLIGATION OF THE CITY OF DENTON FOR GENERAL GOVERNMENT AND SOLID WASTE PROJECTS; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, it is deemed necessary and advisable that the Notice of Intention to Issue Certificates of Obligation be given as hereinafter provided; NOW, THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. That attached hereto is a form of "NOTICE OF INTENTION TO ISSUE CERTIFICATES OF OBLIGATION OF THE CITY OF DENTON", the form and substance of which are hereby adopted and approved, and made a part of this Ordinance for all purposes.

SECTION 2. That the City Secretary shall cause said NOTICE, in substantially the form attached hereto, to be published once a week for two consecutive weeks in a newspaper of general circulation in the City, with the date of the first publication to be at least forty-six (46) days before the date tentatively set for the passage of the Ordinance authorizing the issuance of such Certificates of Obligation. And further that the City Secretary shall cause said NOTICE, in substantially the form attached hereto, to be posted continuously on the City's Internet website for at least 45 days before the date tentatively set for the passage of the Ordinance authorizing the issuance of the Certificates of Obligation.

SECTION 3. That for purposes of Texas Local Government Code, Subchapter C of Chapter 271, as amended, the City has currently designated \$663,075,000 in principal amount of the following \$1,014,935,000 of outstanding debt obligations as self-supporting debt, provided that such designated amount may be changed from time to time:

- Certificates of Obligation, Series 2014
- General Obligation Refunding and Improvement Bonds, Series 2014
- General Obligation Refunding Bonds, Series 2014
- Certificates of Obligation, Series 2015
- General Obligation Refunding and Improvement Bonds, Series 2015
- General Obligation Refunding Bonds, Series 2015
- Certificates of Obligation, Series 2016
- General Obligation Refunding and Improvement Bonds, Series 2016
- General Obligation Refunding Bonds, Series 2016
- Certificates of Obligation, Series 2017
- General Obligation Refunding and Improvement Bonds, Series 2017
- Certificates of Obligation, Series 2018

- General Obligation Bonds, Series 2018
- Certificates of Obligation, Series 2018A
- Certificates of Obligation, Series 2019
- General Obligation Refunding and Improvement Bonds, Series 2019
- Certificates of Obligation, Series 2020
- General Obligation Refunding and Improvement Bonds, Series 2020
- General Obligation Refunding Bonds, Series 2020A
- Certificates of Obligation, Series 2021
- General Obligation Bonds, Series 2021
- Certificates of Obligation, Series 2022
- General Obligation Refunding and Improvement Bonds, Series 2022
- Certificates of Obligation, Series 2023
- General Obligation Refunding and Improvement Bonds, Series 2023
- Extendable Commercial Paper Notes, Series A

SECTION 4. That this Ordinance is intended to satisfy the official intent requirements set forth in section 1.150-2 of the rules and regulations of the United States Department of the Treasury.

SECTION 5. That this Ordinance shall become effective immediately upon its passage and approval.

The motion to approve this ordinance was made by \_\_\_\_\_ and seconded by \_\_\_\_\_. The ordinance was passed and approved by the following vote [\_\_ – \_\_]:

	<b>Aye</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>
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 2nd day of April, 2024.

\_\_\_\_\_  
GERARD HUDSPETH, MAYOR

ATTEST:  
JESUS SALAZAR, CITY SECRETARY

BY: \_\_\_\_\_

APPROVED AS TO LEGAL FORM:  
MACK REINWAND, CITY ATTORNEY

BY: \_\_\_\_\_  
**Susan Keller**  
Digitally signed by Susan Keller  
DN: dc=com, dc=cityofdenton, dc=codad,  
ou=Department Users and Groups,  
ou=General Government, ou=Legal, cn=Susan  
Keller, email=Susan.Keller@cityofdenton.com  
Date: 2024.03.19 10:08:09 -05'00'

THE STATE OF TEXAS :

COUNTY OF DENTON :

CITY OF DENTON :

NOTICE OF INTENTION  
TO ISSUE CERTIFICATES OF OBLIGATION  
OF THE CITY OF DENTON  
(GENERAL GOVERNMENT AND SOLID WASTE PROJECTS)

THE CITY OF DENTON, in Denton County, Texas, hereby gives notice of its intention to issue CITY OF DENTON CERTIFICATES OF OBLIGATION, in accordance with the Certificate of Obligation Act of 1971, as amended and codified, and other applicable laws, in the maximum principal amount of \$84,770,000 for the purpose of paying all or a portion of the City's contractual obligations incurred pursuant to contracts for the purchase, construction and acquisition of certain real and personal property, to wit: (a) renovating, constructing, expanding, improving and equipping existing municipal service center building; (b) acquisition of vehicles and equipment for the fire, police, building inspections, community improvement services, animal services, streets and traffic control, facilities management, airport, technology services, fleet management, warehouse management, and parks and recreation departments; (c) renovations to, and equipping of, existing municipal buildings, including the acquisition and installation of replacement heating, venting and air conditioning equipment, roofing and flooring; (d) acquiring, expanding, constructing, renovating, improving and equipping parking facilities; (e) acquiring, constructing and installing building security systems, including security system technology equipment and software, for municipal buildings; (f) constructing, reconstructing, renovating, installing and equipping municipal parks; (g) renovations to and equipping existing municipal vehicle maintenance facility; (h) acquisition and installation of technology equipment, including radio equipment, computer equipment and software, for various municipal departments; (i) constructing and improving streets, including traffic signalization, landscaping, drainage, sidewalks, utility line relocations and the acquisition of land and rights-of-way therefor; (j) acquisition of equipment for, and acquiring, constructing, installing and equipping additions, extensions, renovations and improvements to, the City's drainage and storm sewer systems; and (k) acquisition of vehicles and equipment for, and acquiring, constructing, installing and equipping additions, extensions, renovations and improvements to, the City's solid waste disposal system; and also for the purpose of paying all or a portion of the City's contractual obligations for professional services, including engineers, architects, attorneys, map makers, auditors, and financial advisors, in connection with said projects and said Certificates of Obligation. The City proposes to provide for the payment of such Certificates of Obligation from the levy and collection of ad valorem taxes in the City as provided by law, and from certain surplus revenues (not to exceed \$1,000 in aggregate amount) derived by the City from the ownership and operation of the City's Utility System (consisting of the City's combined waterworks system, wastewater system and electric light and power system). The City Council of the City tentatively proposes to authorize the issuance of such Certificates of Obligation, in one or more series, at a meeting commencing at 6:30 p.m. on June 4, 2024, in the City Council room at the Municipal Building (City Hall), 215 E. McKinney, Denton, Texas. In the event the City Council will be unable to meet at the Municipal Building (City Hall) on June 4, 2024, the City will post on its website, [www.cityofdenton.com](http://www.cityofdenton.com), information for persons to attend the meeting by telephone, teleconference or other electronic means.

The maximum interest rate for such Certificates of Obligation will not exceed the maximum legal interest rate, the maximum maturity date for such Certificates of Obligation is February 15, 2054, and the



estimated combined principal and interest required to pay such Certificates of Obligation to be authorized on time and in full is \$113,920,043.

The City has separately provided notice of its intention to also issue additional Certificates of Obligation in the maximum principal amount of \$177,560,000 for water system, wastewater system and electric system projects (the "Utility System Certificates of Obligation"). The maximum interest rate for the Utility System Certificates of Obligation will not exceed the maximum legal interest rate, the maximum maturity date for the Utility System Certificates of Obligation is February 15, 2054, and the estimated combined principal and interest required to pay the Utility System Certificates of Obligation to be authorized on time and in full is \$277,753,063.

The City currently has outstanding debt obligations secured by and payable from ad valorem taxes (not including \$663,075,000 principal amount of outstanding debt obligations the City has designated as self-supporting debt) equal to \$351,860,000 in principal amount and \$464,843,469 in combined principal and interest required to pay such outstanding debt obligations on time and in full. The City reasonably expects to pay self-supporting debt obligations from revenue sources other than ad valorem taxes, provided, however, that in the event such self-supporting revenue sources are insufficient to pay debt service, the City is obligated to levy ad valorem taxes to pay such debt obligations. Ordinance No. 24-\_\_\_ designating certain outstanding debt obligations of the City as self-supporting for purposes of Texas Local Government Code, Subchapter C of Chapter 271 is available upon request to the City at the address noted above.

CITY OF DENTON, TEXAS

By: Jesus Salazar, City Secretary



# Certificates of Obligation Notice of Intentions

Randee Klingele  
Treasury Manager



# Purpose of Notice of Intention

- State Law requires the publication of a Notice of Intent to issue Certificates of Obligation (COs). *(Texas Local Government Code, Chapter 271, Subchapter C – Certificate of Obligation Act)*
- The notice must be published in a newspaper of general circulation in the City (Denton Record Chronicle) and on the City's website.
- Publication must be once a week for two consecutive weeks.
- Passage of Bond Ordinance authorizing the sale of COs must be at least 46 days after the date of the first publication.

# General Government Projects

	Budget	NOI
Fleet Building Addition Equipment and Furnishings	\$2,000,000	\$2,000,000
Fuel Control Hardware / Software Upgrade	650,000	650,000
End User Computing	664,500	664,500
<b>Internal Service Total</b>	<b>\$3,314,500</b>	<b>\$3,314,500</b>

	Budget	NOI
Security Hardware Upgrade (Facilities)	\$ 180,000	\$ 180,000
Facilities ADA Upgrades (Facilities)	1,068,600	1,068,600
Facilities Capital Replacements (Facilities)	4,000,000	4,000,000
Facility Condition Maintenance (Facilities)	10,000,000	10,000,000
Standard Building Specifications (Facilities)	500,000	500,000
Adjacency Remodels (Facilities)	50,000	50,000
Service Center Renovation (Facilities)	9,000,000	9,000,000
Parking Lot Replacements (Facilities)	931,172	931,172
ADA Transition Plan Improvements (Parks)	309,000	309,000
Parkside Property Playground (Parks)	280,000	280,000
Traffic Signal Cabinets (Traffic)	208,000	208,000
Gridsmart Vehicle Detection (Traffic)	240,000	240,000
Traffic Signal Design and Rebuilds (Traffic)	1,950,000	1,950,000

*General Government Continued on Next Slide*

# General Government Projects Cnt'd

	Budget	NOI
Vehicle Replacement - General Fund (Motorpool)	5,500,000	5,498,000
Vehicle Additions - General Fund (Motorpool)	1,535,000	1,059,350
Infrastructure Replacement (Tech Services)	1,641,500	1,641,500
Radios & Modems (Tech Services)	725,653	725,653
Asset Management Software (Tech Services)	5,000,000	5,000,000
Citywide Fiber Replacement (Tech Services)	500,000	500,000
CAD/RMS Software Replacement (Tech Services)	4,000,000	4,000,000
Land Management Software (Tech Services)	5,000,000	5,000,000
Drainage Improvements (Drainage)	1,350,000	1,350,000
I35 TxDOT Merge Medallion Artwork (Streets)	1,500,000	1,500,000
Bonnie Brae 4B (Streets)	8,000,000	8,000,000
Bonnie Brae 5 (Streets)	2,000,000	2,000,000
Riney Road East (Streets)	6,000,000	6,000,000
McKinney Sidewalks (Streets)	5,500,000	5,500,000
<b>General Government Total</b>	<b>\$76,968,925</b>	<b>\$76,491,275</b>

# Solid Waste Projects

	Budget	NOI
Home Chemical Collection Storage Capacity	\$2,000,000	\$ -
Fleet Shop at Solid Waste	-	2,000,000
Cell 5 & 6 Construction	1,950,000	-
Vehicles - New Additions	130,000	130,000
Vehicles - Replacements	3,000,000	2,069,730
<b>Solid Waste Total</b>	<b>\$7,080,000</b>	<b>\$4,199,730</b>

# General Government and Solid Waste Total NOI Projects

Internal Services	\$3,314,500
General Government	76,491,275
Solid Waste	4,199,730
Issuance Cost & Pricing Flexibility	764,495
<hr/>	
<b>Total General Government &amp; Solid Waste</b>	<b>\$84,770,000</b>



# Utility Projects - Water

	Budget	NOI
AMI/AMR Replacements	\$ 7,000,000	\$ 2,000,000
Sampling Station Upgrades	500,000	500,000
Distributor Replacement Program	4,320,572	4,320,572
LLRWPS Redundant Power Supply	250,000	250,000
LLWTP Clarifiers Rehab (Sludge Rake Coating & Sludge Valves)	3,500,000	3,500,000
LLWTP Raw Water Transmission Line	7,500,000	1,500,000
Robson Ranch Water Line (WMP:15)	400,000	400,000
RRWTP Capacity Rerate and Performance Upgrades	8,000,000	8,000,000
RRWTP Disinfection Conversion and Chemical Improvements	4,000,000	4,000,000
RRWTP Expansion #1 (HC:O-1); RRWTP Expansion #2 (HC:O-6)	31,580,500	20,000,000
Supplement to Bond Election 2019 Projects	12,200,000	12,200,000
Transmission Line Condition Repairs	1,000,000	1,000,000
LLWTP Sludge Dewatering Improvement Project	500,000	500,000
Service Center Renovation	2,000,000	2,000,000
<b>Water Total</b>	<b>\$82,751,072</b>	<b>\$60,170,572</b>



# Utility Projects - Wastewater

	Budget	NOI
12/15-inch Robson Ranch Interceptor (HC: O-4)	\$ 2,361,900	\$ 2,361,900
Clear Creek Water Reclamation Plant (CCWRP)	460,000	460,000
Collector Replacement Program	4,915,318	4,915,318
Hickory Creek Water Reclamation Plant Ph 1 (HC: O-1, O-2, O-3)	171,178	171,178
Milam Creek Basin Wastewater Line and Lift Station	5,752,000	5,752,000
PCWRP New 75 MGD Headworks	24,000,000	24,000,000
PCWRP Expansion to 26 MGD	6,300,000	6,300,000
Supplement to Bond Election 2019 Projects	8,000,000	8,000,000
Oversize Participation - Waterline Increases	4,000,000	4,000,000
<b>Wastewater Total</b>	<b>\$55,960,396</b>	<b>\$55,960,396</b>

# Utility Projects - Electric

	Budget	NOI
Automated Meter Reading	\$ 1,194,689	\$ 1,250,000
Building Construction	5,000,000	5,000,000
Distribution Substations	8,170,000	6,980,000
Distribution Transformers	7,000,000	5,000,000
Feeder Extensions and Improvements	14,975,000	6,902,100
New Residential & Commercial	7,100,000	5,269,000
Power Factor Improvement	500,000	150,000
Street Lighting	1,800,000	500,000
Transmission Lines	14,850,000	11,800,000
Transmission Substation	15,860,000	9,220,000
Technology - Software/Hardware	100,000	4,528,900
Electric Relocations	6,000,000	3,400,000
<b>Electric Total</b>	<b>\$82,549,689</b>	<b>\$60,000,000</b>

# Utilities Total NOI Projects

Water	\$ 60,170,572
Wastewater	55,960,396
Electric	60,000,000
Issuance Cost & Pricing Flexibility	1,429,032
<hr/>	
<b>Total Utilities</b>	<b>\$ 177,560,000</b>

# Next Steps

- **June 4, 2024**
  - Council considers approval of bond ordinances authorizing the sale of both General Obligation bonds and Certificates of Obligation.
- **June 12, 2024**
  - Preliminary date of sale if market conditions are favorable.
- **July 16, 2024**
  - Preliminary date of close and delivery of funds.

# Questions





# City of Denton

City Hall  
215 E. McKinney St.  
Denton, Texas 76201  
[www.cityofdenton.com](http://www.cityofdenton.com)

## Legislation Text

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**File #:** ID 24-569, **Version:** 1

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### **AGENDA CAPTION**

Consider adoption of an ordinance directing the publication of Notice of Intention to issue \$177,560,000 in principal amount of Certificates of Obligation of the City of Denton for Waterworks and Wastewater System and Electric System projects; and providing an effective date. The Public Utilities Board recommends approval (5-0).



## AGENDA INFORMATION SHEET

**DEPARTMENT:** Finance

**ACM:** Cassey Ogden

**DATE:** April 2, 2024

### **SUBJECT**

Consider adoption of an ordinance directing the publication of Notice of Intention to issue \$177,560,000 in principal amount of Certificates of Obligation of the City of Denton for Waterworks and Wastewater System and Electric System projects; and providing an effective date. The Public Utilities Board recommends approval (5-0).

### **BACKGROUND**

This ordinance provides the Notice of Intention (NOI) to issue \$177,560,000 of Certificates of Obligation (CO) of the City of Denton for Water, Wastewater and Electric System projects, as required by state law. The notice will be published once a week for two consecutive weeks in the Denton Record Chronicle, with the date of the first publication to be at least forty-six (46) days before the date tentatively set for the passage of the ordinance authorizing the issuance of the bonds. The notice will also be posted on the City's website. The additional \$1,429,032 is for issuance costs and to allow flexibility in marketing and pricing the bond sale.

Staff recommends the sale of \$177,560,000 in COs for Water, Wastewater and Electric System. Changes to material pricing and project requirements for large projects were compared to the initial 2023 scopes and pricing in developing the NOI project list. The reduction in Water is associated with some projects still in design deferring expenses to next fiscal year. An overall review of Electric's capital projects resulted in a reduction of NOI project dollars.

Below is a listing of recommended Water, Wastewater and Electric System CO funded projects for FY 2023-24.

	<b>Budget</b>	<b>NOI</b>
AMI/AMR Replacements	\$ 7,000,000	\$ 2,000,000
Sampling Station Upgrades	500,000	500,000
Distributor Replacement Program	4,320,572	4,320,572
LLRWPS Redundant Power Supply	250,000	250,000
LLWTP Clarifiers Rehab (Sludge Rake Coating & Sludge Valves)	3,500,000	3,500,000
LLWTP Raw Water Transmission Line	7,500,000	1,500,000
Robson Ranch Water Line (WMP:15)	400,000	400,000
RRWTP Capacity Rerate and Performance Upgrades	8,000,000	8,000,000
RRWTP Disinfection Conversion and Chemical Improvements	4,000,000	4,000,000
RRWTP Expansion #1 (HC:O-1); RRWTP Expansion #2 (HC:O-6)	31,580,500	20,000,000
Supplement to Bond Election 2019 Projects	12,200,000	12,200,000
Transmission Line Condition Repairs	1,000,000	1,000,000
LLWTP Sludge Dewatering Improvement Project	500,000	500,000
Service Center Renovation	2,000,000	2,000,000
<b>Water Total</b>	<b>\$ 82,751,072</b>	<b>\$ 60,170,572</b>

	<b>Budget</b>	<b>NOI</b>
12/15-inch Robson Ranch Interceptor (HC: O-4)	\$2,361,900	\$2,361,900
Clear Creek Water Reclamation Plant (CCWRP)	460,000	460,000
Collector Replacement Program	4,915,318	4,915,318
Hickory Creek Water Reclamation Plant Ph 1 (HC: O-1, O-2, O-3)	171,178	171,178
Milam Creek Basin Wastewater Line and Lift Station	5,752,000	5,752,000
PCWRP New 75 MGD Headworks	24,000,000	24,000,000
PCWRP Expansion to 26 MGD	6,300,000	6,300,000
Supplement to Bond Election 2019 Projects	8,000,000	8,000,000
Oversize Participation - Waterline Increases	\$4,000,000	4,000,000
<b>Wastewater Total</b>	<b>\$55,960,396</b>	<b>\$55,960,396</b>
Automated Meter Reading	\$1,194,689	\$1,250,000
Building Construction	5,000,000	5,000,000
Distribution Substations	8,170,000	6,980,000
Distribution Transformers	7,000,000	5,000,000
Feeder Extensions and Improvements	14,975,000	6,902,100
New Residential & Commercial	7,100,000	5,269,000
Power Factor Improvement	500,000	150,000
Street Lighting	1,800,000	500,000
Transmission Lines	14,850,000	11,800,000
Transmission Substation	15,860,000	9,220,000
Technology - Software/Hardware	100,000	4,528,900
Electric Relocations	\$6,000,000	\$3,400,000
<b>Electric Total</b>	<b>\$82,549,689</b>	<b>\$60,000,000</b>
Subtotal All Funds		\$176,130,968
Issuance Cost and Pricing Flexibility		1,429,032
<b>Total Water, Wastewater and Electric</b>		<b>\$177,560,000</b>

The City sells bonds in accordance with the useful life of the asset that is being acquired. For example, vehicles are typically sold with bonds that will be paid within five years. For the FY 2023-24 proposed debt issuance for Water, Wastewater and Electric System COs: \$4,528,900 will be 10-year debt, \$116,130,968 will be 20-year debt, and \$55,471,100 will be 30-year debt.

If approved by the City Council, staff will proceed with the publication of the Notice of Intention and will schedule the Bond Ordinance consideration and adoption for June 4, 2024. The bond ordinance will dictate the parameters of the bond sale. Under such an arrangement, staff will be permitted to execute the bond sale within six (6) months of June 4, 2024, provided certain interest rate parameters are met.

### **RECOMMENDATION**

Staff recommends adoption of the ordinance.

### **PRIOR ACTION/REVIEW (Council, Boards, Commissions)**

On October 24, 202, the City Council adopted reimbursement ordinance (Ord. 23-1426) authorizing the reimbursement of capital program expenditures of \$35,600,000 in GO and \$308,624,528 in CO funded projects for General Government, Solid Waste, Electric, Water and Wastewater.

On March 25, 2024, the Public Utilities Board recommended this item to City Council for consideration.



**FISCAL INFORMATION**

The ordinance is for the authorization to publish the Notice of Intention to sell \$177,560,000 of Certificates of Obligation for Water, Wastewater and Electric System projects. A notice is only required for Certificates of Obligation.

**EXHIBITS**

1. Agenda Information Sheet
2. Ordinance
3. Presentation

Respectfully submitted:  
Vis Bouaphanthavong  
Assistant Director of Finance

Prepared by:  
Randee Klingele  
Treasury Manager

ORDINANCE NO. 24-\_\_\_\_

AN ORDINANCE DIRECTING THE PUBLICATION OF NOTICE OF INTENTION TO ISSUE \$177,560,000 IN PRINCIPAL AMOUNT OF CERTIFICATES OF OBLIGATION OF THE CITY OF DENTON FOR WATERWORKS AND WASTEWATER SYSTEM AND ELECTRIC SYSTEM PROJECTS; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, it is deemed necessary and advisable that the Notice of Intention to Issue Certificates of Obligation be given as hereinafter provided; NOW, THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. That attached hereto is a form of "NOTICE OF INTENTION TO ISSUE CERTIFICATES OF OBLIGATION OF THE CITY OF DENTON", the form and substance of which are hereby adopted and approved, and made a part of this Ordinance for all purposes.

SECTION 2. That the City Secretary shall cause said NOTICE, in substantially the form attached hereto, to be published once a week for two consecutive weeks in a newspaper of general circulation in the City, with the date of the first publication to be at least forty-six (46) days before the date tentatively set for the passage of the Ordinance authorizing the issuance of such Certificates of Obligation. And further that the City Secretary shall cause said NOTICE, in substantially the form attached hereto, to be posted continuously on the City's Internet website for at least 45 days before the date tentatively set for the passage of the Ordinance authorizing the issuance of the Certificates of Obligation.

SECTION 3. That this Ordinance is intended to satisfy the official intent requirements set forth in section 1.150-2 of the rules and regulations of the United States Department of the Treasury.

SECTION 4. That this Ordinance shall become effective immediately upon its passage and approval.

The motion to approve this ordinance was made by \_\_\_\_\_ and seconded by \_\_\_\_\_. The ordinance was passed and approved by the following vote [\_\_ – \_\_]:

	<b>Aye</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>
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 2nd day of April, 2024.

\_\_\_\_\_  
GERARD HUDSPETH, MAYOR

ATTEST:  
JESUS SALAZAR, CITY SECRETARY

BY: \_\_\_\_\_

APPROVED AS TO LEGAL FORM:  
MACK REINWAND, CITY ATTORNEY

BY:  **Susan Keller**  
\_\_\_\_\_  
Digitally signed by Susan Keller  
DN: dc=com, dc=cityofdenton, dc=codad,  
ou=Department Users and Groups,  
ou=General Government, ou=Legal,  
cn=Susan Keller,  
email=Susan.Keller@cityofdenton.com  
Date: 2024.03.25 14:46:54 -05'00'

THE STATE OF TEXAS :

COUNTY OF DENTON :

CITY OF DENTON :

NOTICE OF INTENTION  
TO ISSUE CERTIFICATES OF OBLIGATION  
OF THE CITY OF DENTON  
(WATERWORKS AND WASTEWATER SYSTEM AND ELECTRIC SYSTEM PROJECTS)

THE CITY OF DENTON, in Denton County, Texas, hereby gives notice of its intention to issue CITY OF DENTON CERTIFICATES OF OBLIGATION, in accordance with the Certificate of Obligation Act of 1971, as amended and codified, and other applicable laws, in the maximum principal amount of \$177,560,000 for the purpose of paying all or a portion of the City's contractual obligations incurred pursuant to contracts for the purchase, construction and acquisition of certain real and personal property, to wit: (a) acquisition of equipment for, and acquiring, constructing, installing and equipping additions, extensions, renovations and improvements to, the City's waterworks and wastewater system; and (b) acquisition of equipment for, and acquiring, constructing, installing and equipping additions, extensions, renovations and improvements to, the City's electric light and power system; and also for the purpose of paying all or a portion of the City's contractual obligations for professional services, including engineers, architects, attorneys, map makers, auditors, and financial advisors, in connection with said projects and said Certificates of Obligation. The City proposes to provide for the payment of such Certificates of Obligation from the levy and collection of ad valorem taxes in the City as provided by law, and from certain surplus revenues (not to exceed \$1,000 in aggregate amount) derived by the City from the ownership and operation of the City's Utility System (consisting of the City's combined waterworks system, wastewater system and electric light and power system). The City Council of the City tentatively proposes to authorize the issuance of such Certificates of Obligation, in one or more series, at a meeting commencing at 6:30 p.m. on June 4, 2024, in the City Council room at the Municipal Building (City Hall), 215 E. McKinney, Denton, Texas. In the event the City Council will be unable to meet at the Municipal Building (City Hall) on June 4, 2024, the City will post on its website, [www.cityofdenton.com](http://www.cityofdenton.com), information for persons to attend the meeting by telephone, teleconference or other electronic means.

The maximum interest rate for such Certificates of Obligation will not exceed the maximum legal interest rate, the maximum maturity date for such Certificates of Obligation is February 15, 2054, and the estimated combined principal and interest required to pay such Certificates of Obligation to be authorized on time and in full is \$277,753,063.

The City has separately provided notice of its intention to also issue additional Certificates of Obligation in the maximum principal amount of \$84,770,000 for general government and solid waste disposal system projects (the "General Government & Solid Waste Certificates of Obligation"). The maximum interest rate for the General Government & Solid Waste Certificates of Obligation will not exceed the maximum legal interest rate, the maximum maturity date for the General Government & Solid Waste Certificates of Obligation is February 15, 2054, and the estimated combined principal and interest required to pay the General Government & Solid Waste Certificates of Obligation to be authorized on time and in full is \$113,920,043.

The City currently has outstanding debt obligations secured by and payable from ad valorem taxes (not including \$663,075,000 principal amount of outstanding debt obligations the City has designated as self-supporting debt) equal to \$351,860,000 in principal amount and \$464,843,469 in combined principal and interest required to pay such outstanding debt obligations on time and in full. The City reasonably expects to pay self-supporting debt obligations from revenue sources other than ad valorem taxes, provided, however, that in the event such self-supporting revenue sources are insufficient to pay debt service, the City is obligated to levy ad valorem taxes to pay such debt obligations. Ordinance No. 24-\_\_\_ designating certain outstanding debt obligations of the City as self-supporting for purposes of Texas Local Government Code, Subchapter C of Chapter 271 is available upon request to the City at the address noted above.

CITY OF DENTON, TEXAS

By: Jesus Salazar, City Secretary



# Certificates of Obligation Notice of Intentions

Randee Klingele  
Treasury Manager



# Purpose of Notice of Intention

- State Law requires the publication of a Notice of Intent to issue Certificates of Obligation (COs). *(Texas Local Government Code, Chapter 271, Subchapter C – Certificate of Obligation Act)*
- The notice must be published in a newspaper of general circulation in the City (Denton Record Chronicle) and on the City's website.
- Publication must be once a week for two consecutive weeks.
- Passage of Bond Ordinance authorizing the sale of COs must be at least 46 days after the date of the first publication.

# General Government Projects

	Budget	NOI
Fleet Building Addition Equipment and Furnishings	\$2,000,000	\$2,000,000
Fuel Control Hardware / Software Upgrade	650,000	650,000
End User Computing	664,500	664,500
<b>Internal Service Total</b>	<b>\$3,314,500</b>	<b>\$3,314,500</b>

	Budget	NOI
Security Hardware Upgrade (Facilities)	\$ 180,000	\$ 180,000
Facilities ADA Upgrades (Facilities)	1,068,600	1,068,600
Facilities Capital Replacements (Facilities)	4,000,000	4,000,000
Facility Condition Maintenance (Facilities)	10,000,000	10,000,000
Standard Building Specifications (Facilities)	500,000	500,000
Adjacency Remodels (Facilities)	50,000	50,000
Service Center Renovation (Facilities)	9,000,000	9,000,000
Parking Lot Replacements (Facilities)	931,172	931,172
ADA Transition Plan Improvements (Parks)	309,000	309,000
Parkside Property Playground (Parks)	280,000	280,000
Traffic Signal Cabinets (Traffic)	208,000	208,000
Gridsmart Vehicle Detection (Traffic)	240,000	240,000
Traffic Signal Design and Rebuilds (Traffic)	1,950,000	1,950,000

*General Government Continued on Next Slide*



# General Government Projects Cnt'd

	Budget	NOI
Vehicle Replacement - General Fund (Motorpool)	5,500,000	5,498,000
Vehicle Additions - General Fund (Motorpool)	1,535,000	1,059,350
Infrastructure Replacement (Tech Services)	1,641,500	1,641,500
Radios & Modems (Tech Services)	725,653	725,653
Asset Management Software (Tech Services)	5,000,000	5,000,000
Citywide Fiber Replacement (Tech Services)	500,000	500,000
CAD/RMS Software Replacement (Tech Services)	4,000,000	4,000,000
Land Management Software (Tech Services)	5,000,000	5,000,000
Drainage Improvements (Drainage)	1,350,000	1,350,000
I35 TxDOT Merge Medallion Artwork (Streets)	1,500,000	1,500,000
Bonnie Brae 4B (Streets)	8,000,000	8,000,000
Bonnie Brae 5 (Streets)	2,000,000	2,000,000
Riney Road East (Streets)	6,000,000	6,000,000
McKinney Sidewalks (Streets)	5,500,000	5,500,000
<b>General Government Total</b>	<b>\$76,968,925</b>	<b>\$76,491,275</b>

# Solid Waste Projects

	Budget	NOI
Home Chemical Collection Storage Capacity	\$2,000,000	\$ -
Fleet Shop at Solid Waste	-	2,000,000
Cell 5 & 6 Construction	1,950,000	-
Vehicles - New Additions	130,000	130,000
Vehicles - Replacements	3,000,000	2,069,730
<b>Solid Waste Total</b>	<b>\$7,080,000</b>	<b>\$4,199,730</b>

# General Government and Solid Waste Total NOI Projects

Internal Services	\$3,314,500
General Government	76,491,275
Solid Waste	4,199,730
Issuance Cost & Pricing Flexibility	764,495
<hr/>	
<b>Total General Government &amp; Solid Waste</b>	<b>\$84,770,000</b>

# Utility Projects - Water

	Budget	NOI
AMI/AMR Replacements	\$ 7,000,000	\$ 2,000,000
Sampling Station Upgrades	500,000	500,000
Distributor Replacement Program	4,320,572	4,320,572
LLRWPS Redundant Power Supply	250,000	250,000
LLWTP Clarifiers Rehab (Sludge Rake Coating & Sludge Valves)	3,500,000	3,500,000
LLWTP Raw Water Transmission Line	7,500,000	1,500,000
Robson Ranch Water Line (WMP:15)	400,000	400,000
RRWTP Capacity Rerate and Performance Upgrades	8,000,000	8,000,000
RRWTP Disinfection Conversion and Chemical Improvements	4,000,000	4,000,000
RRWTP Expansion #1 (HC:O-1); RRWTP Expansion #2 (HC:O-6)	31,580,500	20,000,000
Supplement to Bond Election 2019 Projects	12,200,000	12,200,000
Transmission Line Condition Repairs	1,000,000	1,000,000
LLWTP Sludge Dewatering Improvement Project	500,000	500,000
Service Center Renovation	2,000,000	2,000,000
<b>Water Total</b>	<b>\$82,751,072</b>	<b>\$60,170,572</b>

# Utility Projects - Wastewater

	Budget	NOI
12/15-inch Robson Ranch Interceptor (HC: O-4)	\$ 2,361,900	\$ 2,361,900
Clear Creek Water Reclamation Plant (CCWRP)	460,000	460,000
Collector Replacement Program	4,915,318	4,915,318
Hickory Creek Water Reclamation Plant Ph 1 (HC: O-1, O-2, O-3)	171,178	171,178
Milam Creek Basin Wastewater Line and Lift Station	5,752,000	5,752,000
PCWRP New 75 MGD Headworks	24,000,000	24,000,000
PCWRP Expansion to 26 MGD	6,300,000	6,300,000
Supplement to Bond Election 2019 Projects	8,000,000	8,000,000
Oversize Participation - Waterline Increases	4,000,000	4,000,000
<b>Wastewater Total</b>	<b>\$55,960,396</b>	<b>\$55,960,396</b>

# Utility Projects - Electric

	Budget	NOI
Automated Meter Reading	\$ 1,194,689	\$ 1,250,000
Building Construction	5,000,000	5,000,000
Distribution Substations	8,170,000	6,980,000
Distribution Transformers	7,000,000	5,000,000
Feeder Extensions and Improvements	14,975,000	6,902,100
New Residential & Commercial	7,100,000	5,269,000
Power Factor Improvement	500,000	150,000
Street Lighting	1,800,000	500,000
Transmission Lines	14,850,000	11,800,000
Transmission Substation	15,860,000	9,220,000
Technology - Software/Hardware	100,000	4,528,900
Electric Relocations	6,000,000	3,400,000
<b>Electric Total</b>	<b>\$82,549,689</b>	<b>\$60,000,000</b>

# Utilities Total NOI Projects

Water	\$ 60,170,572
Wastewater	55,960,396
Electric	60,000,000
Issuance Cost & Pricing Flexibility	1,429,032
<hr/>	
<b>Total Utilities</b>	<b>\$ 177,560,000</b>

# Next Steps

- **June 4, 2024**
  - Council considers approval of bond ordinances authorizing the sale of both General Obligation bonds and Certificates of Obligation.
- **June 12, 2024**
  - Preliminary date of sale if market conditions are favorable.
- **July 16, 2024**
  - Preliminary date of close and delivery of funds.



# Questions





# City of Denton

City Hall  
215 E. McKinney St.  
Denton, Texas 76201  
[www.cityofdenton.com](http://www.cityofdenton.com)

## Legislation Text

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**File #:** ID 24-562, **Version:** 1

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### **AGENDA CAPTION**

Consider approval of a resolution of the City of Denton authorizing the submission of an application through the Water Utilities Department to the Texas Water Development Board for financial assistance via a fixed rate loan in the amount of \$195,845,000 from the State Water Implementation Fund for Texas to fund the Ray Roberts Water Treatment Plant Expansion Project; and providing an effective date. The Public Utilities Board recommends approval (5-0-1).



## AGENDA INFORMATION SHEET

**DEPARTMENT:** Water Utilities

**ACM:** Cassey Ogden

**DATE:** April 2, 2024

### **SUBJECT**

Consider approval of a resolution of the City of Denton authorizing the submission of an application through the Water Utilities Department to the Texas Water Development Board for financial assistance via a fixed rate loan in the amount of \$195,845,000 from the State Water Implementation Fund for Texas to fund the Ray Roberts Water Treatment Plant Expansion Project; and providing an effective date. The Public Utilities Board recommends approval (5-0-1).

### **STRATEGIC ALIGNMENT**

This action supports Key Focus Area: Support Healthy and Safe Communities.

### **INFORMATION/BACKGROUND**

The Water Utilities Planning and Engineering Department is seeking \$195,845,000 in funding from the Texas Water Development Board SWIFT program. The SWIFT program provides financial assistance for projects in the state water plan to help communities develop and optimize water supplies. SWIFT offers fixed rate loans offered at below-market interest rates. The exact rates will be provided after the complete application is accepted and TWDB makes a funding commitment.

The Water Utilities Department is planning to use the loan to fully subsidize the Ray Roberts Water Treatment Plan (RRWTP) Expansion project. This project will expand RRWTP's treatment capacity by an additional 20 million gallons per day (MGD) through the design and construction of a parallel membrane process train, with space reserved for an additional 30 MGD in the future for a total of 50 MGD at full build-out. To achieve the goal of completing the RRWTP Expansion, City Staff evaluated the use of a Construction Manager at Risk, an alternative delivery method that will make project delivery more efficient. By utilizing this methodology, the staff's goal of construction sequencing to mitigate increasing costs, prepurchase equipment to plan for long lead times and gain overall cost value will be prioritized. The current total opinion of probable construction cost for this project is approximately \$195,845,000.

The Water Utilities Department submitted an abridged application to TWDB on February 1, stating our interest in obtaining in SWIFT low-interest loan. Currently TWDB is evaluating submissions and it is anticipated that the City will receive an invitation to submit complete application in mid-April. Once staff receive this invitation, applications are due in 30 calendar days. TWDB will then prioritize their review of the applications and are expected to make funding commitments in mid-July. The City is not committed to accept the SWIFT funding until the City signs the financing agreement which is due in early

September. Once the TWDB has the signed financing agreement, the TWDB will sell bonds and use the proceeds to fund the SWIFT loans. The City will be expected to close the loan in mid-November to early December and will then be fully obligated to repay the loan.

### **RECOMMENDATION**

Staff recommends approval of the resolution to continue the application process

### **FISCAL INFORMATION**

If awarded, the required loan payment will be programmed into the Water Utilities Department's CIP budget for the loan term and will not be funded by any future bond sales.

### **EXHIBITS**

Exhibit 1: Agenda Information Sheet

Exhibit 2: Resolution

Exhibit 3: Presentation

Respectfully submitted:  
Stephen D. Gay  
Director Water Utilities  
940-349-8086

For information concerning this acquisition, contact: Katherine Koch, 940-349-8419.

Legal point of contact: Christopher Mullins at 940-349-8114.

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION OF THE CITY OF DENTON AUTHORIZING THE SUBMISSION OF AN APPLICATION THROUGH THE WATER UTILITIES DEPARTMENT TO THE TEXAS WATER DEVELOPMENT BOARD FOR FINANCIAL ASSISTANCE VIA A FIXED RATE LOAN IN THE AMOUNT OF \$195,845,000 FROM THE STATE WATER IMPLEMENTATION FUND FOR TEXAS TO FUND THE RAY ROBERTS WATER TREATMENT PLANT EXPANSION PROJECT; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Texas Water Development Board's mission is to provide leadership, technical services, and financial assistance to support planning, conservation and responsible development of water for Texas; and

WHEREAS, the State Water Implementation Fund for Texas provides fixed rate loans offered at below-market interest rates to help communities develop and optimize water supplies at cost effective rates; and

WHEREAS, the City of Denton, Texas (the "City") may apply to the Texas Water Development Board (TWDB) for financial assistance in an amount not to exceed \$195,845,000 to fully fund the Ray Roberts Water Treatment Plant Expansion project; and

WHEREAS, the City submitted an abridged application to the Texas Water Development Board on February 1, 2024, stating the City's interest in submitting a complete application; and

WHEREAS, in accordance with the rules and regulations for making such application to the Texas Water Development Board, a resolution adopted by City Council must accompany such application; and

WHEREAS, the City has developed the necessary application materials and desires to make a complete application to the Texas Water Development Board State Water Implementation Fund for Texas; and

WHEREAS, once TWDB evaluates the initial applications, the City anticipates an invitation from TWDB to submit the complete application by the Texas Water Development Board, which will be due 30 days after such invitation; NOW THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY RESOLVES:

SECTION 1. The recitals are hereby incorporated and made part of this resolution for all purposes.

SECTION 2. Submittal of the application for the Texas Water Development Board's State Water Implementation Fund for Texas by the City is hereby approved and authorized.

SECTION 3. The City Manager, or designee, is designated, delegated, and authorized to execute and submit to the Texas Water Development Board an application for financial assistance

via a fixed rate loan in an amount not to exceed of \$195,845,000 from the State Water Implementation Fund for Texas, and act on behalf of the City of Denton in all matters related to the loan application, receipt of funds, and any subsequent loan contracts and projects that may result; and the City Manager, together with the City Attorney's Office, City's Bond Counsel, City's Financial Advisor, and Engineers named in such application are hereby authorized to appear before the Texas Water Development Board in support of such application and project.

SECTION 4. The City Manager is further specifically authorized to make the required assurances to the Texas Water Development Board in accordance with the rules, regulations and policies of the Texas Water Development Board.

SECTION 5. A certified copy of this Resolution shall be attached to the application for financial assistance herein authorized to be prepared and submitted to the Texas Water Development Board.

SECTION 6. The funds will be used solely for the purposes for which they are intended under the SWIFT loan.

SECTION 7. This resolution is effective immediately upon its passage.

The motion to approve this ordinance was made by [\_\_\_\_\_] and seconded by [\_\_\_\_\_].

The ordinance was passed and approved by the following vote [\_\_ – \_\_ – \_\_]:

	<b>Aye</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>
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 \_\_\_\_\_, 2024.

\_\_\_\_\_  
GERARD HUDSPETH, MAYOR

ATTEST:  
JESUS SALAZAR, CITY SECRETARY

BY: \_\_\_\_\_

APPROVED AS TO LEGAL FORM:  
MACK REINWAND, CITY ATTORNEY

BY: \_\_\_\_\_

**Susan Keller**

Digitally signed by Susan Keller  
DN: dc=com, dc=cityofdenton, dc=codad,  
ou=Department Users and Groups, ou=General  
Government, ou=Legal, cn=Susan Keller,  
email=Susan.Keller@cityofdenton.com  
Date: 2024.03.04 21:46:58 -06'00'





# Texas Water Development Board (TWDB) State Water Implementation Fund for Texas (SWIFT) Loan Application

Jessica Williams, CFO  
Stephen D. Gay, Director of Water Utilities  
ID24-562





# Project Overview

- The Ray Roberts Water Treatment Plant (RRWTP) was placed into service in 2002 and has a current treatment capacity of 20 million gallons a day (MGD).
- Based on Hunter-Cole Development Analysis, MUD growth analysis, and average annual city growth, it is currently anticipated that the RRWTP will need to support a build-out capacity of approximately 110 MGD by the year 2053.
- The planned expansion project will increase treatment capacity by an additional 20 MGD, with space reserved for an additional 30 MGD in treatment capacity.
- Total new capacity 50 MGD
- Total combined capacity 70 MGD
- The current cost of the project is \$195,845,000. Staff is seeking to **apply** to fully fund the project through the issuance of state subsidized debt issued by the Texas Water Development Board.

# TWDB SWIFT Loan Overview

- Passed by the Legislature and approved by Texas voters through a constitutional amendment, the State Water Implementation Fund for Texas (SWIFT) program helps communities develop and optimize water supplies at cost-effective rates.
- The program provides:
  - Low-interest rate loans
  - Extended repayment terms
    - Deferral of principal and interest payments up to eight years after completion
  - No set maximum funding
- The Texas Water Development Board (TWDB) manages SWIFT applications and provides funding after issuance of debt to the marketplace.

# Why Apply For The TWDB SWIFT Loan?

- Diversification of our financial portfolio
- Current rates below market
- Ability to defer repayment up to five years after project completion
- No obligation to accept the loan if approved
- Alignment with long term financial strategy to allow for complete buildout of needed water and wastewater infrastructure
  - Will be evaluated in conjuncture with other financing instruments available for water/wastewater needs

# TWDB's SWIFT Loan Process



*Provided by the Texas Water Development Board*



# Anticipated Application Timeline

- January 31, 2024 – Abridged Applications Submitted to TWDB
- March 11, 2024– Recommendation from Public Utility Board for resolution from City Council to apply
- April 2, 2024 – Seek resolution from City Council authorizing application
- April – Anticipate invitation from TWDB to submit completed application
- May – Anticipate Applications Due to TWDB
- June – Anticipate TWDB to make funding commitments
- August – Seek resolution from City Council authorizing acceptance of SWIFT Loan and directing staff to secure funding
- October – TWDB bond sale
- November/December – Funding closes

# QUESTIONS?