



CITY COUNCIL WORKSHOP AND REGULAR SESSION
Thursday, December 16, 2021 at 5:45 PM
City Hall | 3300 Corinth Parkway

A. **NOTICE IS HEREBY GIVEN** of a Workshop and Regular Session of the Corinth City Council.

B. **CALL TO ORDER**

C. **WORKSHOP AGENDA**

- [1.](#) Interview candidate for Place 9 on the Keep Corinth Beautiful Board.
- [2.](#) Receive a presentation and have a discussion on the Meadowview Park upgrades.
- [3.](#) Continue the discussion from the November 18, 2021, Workshop Session and provide staff direction on Home Rule Charter amendments.
4. Discuss Regular Meeting Items on Regular Session Agenda, including the consideration of closed session items as set forth in the Closed Session agenda items below.

D. **ADJOURN WORKSHOP**

E. **CLOSED SESSION**

The City Council will convene in such executive or closed session to consider any matters regarding any of the items posted on the Agenda as well as the following matters pursuant to Chapter 551 of the Texas Government Code. After discussion of any matters in closed session, any final action or vote taken will be public by the City Council. City Council shall have the right at any time to seek legal advice in Closed Session from its Attorney on any agenda item, whether posted for Closed Session or not.

Section 551.071 - Legal Advice. (1) Private consultation with its attorney to seek advice about pending or contemplated litigation; and/or settlement offer; and/or (2) a matter in which the duty of the attorney to the government body under the Texas Disciplinary Rules of Professional Conduct of the State of Texas clearly conflict with Chapter 551.

a. C&JJ Investments, LLC v. City of Corinth, Cause No. 21-5053-431, (431st Judicial District, Denton County, Texas).

b. Proposed purchase offer from Texas Department of Transportation for a portion of the property located at the southeast corner of Lake Sharon and I35E (6801 S IH 35E). (F/Y)

Section 551.072 - Real Estate. To deliberate the purchase, exchange, lease, or value of real property if deliberations in an open meeting would have a detrimental effect on the position of the governmental body in negotiations with a third person.

a. 1.747 acres, more or less, of land consisting of Lots 1,2, and 3, Block B of the F&H Addition north of Walton Drive and east of North Corinth Street. (H3)

b. Lot 1, Block A of the F&H Addition. (H3)

Section 551.087 - Economic Development. To deliberate or discuss regarding commercial or financial information that the governmental body has received from a business prospect that the governmental body

seeks to have locate, stay, or expand in or near the territory of the governmental body and with which the governmental body is conducting economic development negotiations; or to deliberate the offer of a financial or other incentive to a business project.

a. Project Agora.

F. RECONVENE IN OPEN SESSION TO TAKE ACTION, IF NECESSARY, ON CLOSED SESSION ITEMS

G. CALL TO ORDER, INVOCATION, PLEDGE OF ALLEGIANCE & TEXAS PLEDGE

H. PROCLAMATIONS AND PRESENTATIONS

1. Recognition of Eagle Scout Court of Honor recipient - Luke Davison.

I. CITIZENS COMMENTS

Please limit your comments to three minutes. Comments about any of the Council agenda items are appreciated by the Council and may be taken into consideration at this time or during that agenda item. Council is prohibited from acting on or discussing items brought before them at this time.

J. CONSENT AGENDA

All matters listed under the consent agenda are considered to be routine and will be enacted in one motion. Should the Mayor or a Councilmember desire discussion of any item, that item will be removed from the Consent Agenda and will be considered separately.

2. Consider and act on minutes from the November 18, 2021, City Council Meeting.

3. Consider and act on minutes from the December 2, 2021, Joint Workshop Meeting with the City Council and Corinth Economic Development Corporation (CEDC).

4. Consider and act on an amended Interlocal Agreement between the Lake Cities Fire Department (LCFD) and the Little Elm Fire Department to include North Central Texas College (NCTC) in the Fire Training Field collaboration regarding the ownership, management, use and rental, maintenance, and operation of the facility located at 2708 Shady Shores Road, behind the Lake Cities Fire Department.

5. Consider and act on the purchase of Meadowview Playscape and maintenance materials with Child's Play in an amount not to exceed \$133,860 using BuyBoard, Contract 592-19, and authorizing the City Manager to execute the necessary documents.

6. Consider and act on a two-year piggyback contract with the City of Denton to use Floyd Smith for concrete street and sidewalk repairs in the amount not to exceed \$90,000 for the fiscal year 2021-22, and not to exceed \$100,000 in the fiscal year 2022-23 and authorizing the City Manager to execute the necessary documents.

7. Consider and act on an Interlocal Cooperative Agreement for Library Services between the City of Corinth, Texas and City of Denton, Texas.

K. BUSINESS AGENDA

8. Consider and act on an Ordinance amending Section 52.07, Garbage Collection Fees, of the Corinth Code of Ordinances relating to charges for certain refuse and recycling services; providing that this ordinance shall be cumulative of all ordinances of the City of Corinth; providing a savings clause; and providing an effective date.

9. Consider and act on an Ordinance of the City of Corinth approving an amendment to the fiscal year 2021-2022 budget and annual program of services to provide expenditures of funds to pay for garbage services; and providing an effective date.
10. Consider and act on authorizing the execution of the Chapter 380 Economic Development Agreement with Wolverine Interests, L.L.C. for the development of a mixed-use development in the Agora at Corinth.
11. Consider and act on the Unimproved Property Contract with Wolverine Interests, L.L.C. for the sale of 4.692 acres to Wolverine for a mixed-use development and authorize the execution of necessary documents by the Mayor or his designee.
12. Consider and act on the execution of the Unimproved Property Contract with M.R. Development Corporation and Carleton Development Limited for the sale of 5.918 acres formerly known as the Honsel Property to M.R. Development and Carleton Development for a multifamily development and authorize the execution of necessary documents by the Mayor or his designee.
13. Consider and act upon the recommendation of the Planning & Zoning Commission to appoint Wade May as Chair and Cody Gober as Vice Chair for 2021-2022 term.
14. Consider and act on nominations, appointments, and removal of board members for the Keep Corinth Beautiful Board.
15. Consider and act on Contract Amendment No. 2 with Jones|Carter to add the engineering of N. Corinth Street from Walton Drive to N. Corinth Street in the amount of \$49,650.00 for a total contract price of \$971,340 for design of the streets and park civil infrastructure and authorize the City Manager to ratify any necessary documents
16. Consider and act on an Ordinance of the City of Corinth approving an amendment to the fiscal year 2021-2022 budget and annual program of services to appropriate and transfer monies from the General Fund to the Economic Development Foundation (“CEDF”) in order to provide for the funding of the purchase of land by the CEDF and related closing costs; and providing an effective date.

L. COUNCIL COMMENTS & FUTURE AGENDA ITEMS

The purpose of this section is to allow each Council Member the opportunity to provide general updates and/or comments to fellow Council Members, the public, and/or staff on any issues or future events. Also, in accordance with Section 30.085 of the Code of Ordinances, at this time, any Council Member may direct that an item be added as a business item to any future agenda.

M. ADJOURN

Posted on this 10th day of December 2021, at 11:30 A.M., on the bulletin board at Corinth City Hall.

The City Council reserves the right to adjourn into executive session at any time during the course of this meeting to discuss any of the matters listed above, as authorized by the Texas Government Code. Section 551.071 (Consultation Attorney).



Lana Wylie, City Secretary
City of Corinth, Texas



CITY OF CORINTH Staff Report

Meeting Date:	12/16/2021	Title:	Interview Keep Corinth Beautiful Interview - Hill
Ends:	<input checked="" type="checkbox"/> Resident Engagement <input checked="" type="checkbox"/> Proactive Government <input type="checkbox"/> Organizational Development <input type="checkbox"/> Health & Safety <input type="checkbox"/> Regional Cooperation <input type="checkbox"/> Attracting Quality Development		
Governance Focus:	<i>Focus:</i> <input checked="" type="checkbox"/> Owner <input type="checkbox"/> Customer <input type="checkbox"/> Stakeholder		
	<i>Decision:</i> <input checked="" type="checkbox"/> Governance Policy <input type="checkbox"/> Ministerial Function		
Owner Support:	<input type="checkbox"/> Planning & Zoning Commission <input type="checkbox"/> Economic Development Corporation <input type="checkbox"/> Parks & Recreation Board <input type="checkbox"/> TIRZ Board #2 <input type="checkbox"/> Finance Audit Committee <input type="checkbox"/> TIRZ Board #3 <input checked="" type="checkbox"/> Keep Corinth Beautiful <input type="checkbox"/> Ethics Commission Click to enter recommendation/decision of supporting group.		

Item/Caption

Interview candidate for Place 9 on the Keep Corinth Beautiful Board.

Item Summary/Background/Prior Action

On November 16, 2021, Julie Hill submitted an application to serve on the Keep Corinth Beautiful Board. The Board currently has a vacancy due to a previous placement resigning.

Financial Impact

Applicable Owner/Stakeholder Policy

Staff Recommendation/Motion

N/A

Select the Board, Commission, or Committee for which you are applying. To apply for more than one board/commission, select all desired options by holding down the control key.

Keep Corinth Beautiful

Name: Julie Hill

Occupation: Teller

Length of Residency in Corinth: Since 2012

Are you a registered voter: Yes

High School: RL Turner Carrollton TX

College: n/a

Trade or Business School: Life Federal Credit Union

Hobbies: Golf

Are you currently serving on other Boards, Commissions, or Committees?: No

Have you served on a Board, Commission, or Committee before?: No

Please list organization memberships and positions held:

Please List Areas of Special Interest: Keeping our Community Connected

Please Enter Basic Resume Information Below: Licensed Real Estate Agent Since 2001 in Denton County



CITY OF CORINTH
Staff Report

Meeting Date:	12/16/2021	Title:	Presentation Meadowview Park Playground Upgrades
Ends:	<input type="checkbox"/> Resident Engagement <input checked="" type="checkbox"/> Proactive Government <input type="checkbox"/> Organizational Development <input checked="" type="checkbox"/> Health & Safety <input type="checkbox"/> Regional Cooperation <input type="checkbox"/> Attracting Quality Development		
Governance Focus:	<i>Focus:</i> <input type="checkbox"/> Owner <input checked="" type="checkbox"/> Customer <input type="checkbox"/> Stakeholder		
	<i>Decision:</i> <input type="checkbox"/> Governance Policy <input checked="" type="checkbox"/> Ministerial Function		
Owner Support:	<input type="checkbox"/> Planning & Zoning Commission <input type="checkbox"/> Economic Development Corporation <input checked="" type="checkbox"/> Parks & Recreation Board <input type="checkbox"/> TIRZ Board #2 <input type="checkbox"/> Finance Audit Committee <input type="checkbox"/> TIRZ Board #3 <input type="checkbox"/> Keep Corinth Beautiful <input type="checkbox"/> Ethics Commission Click to enter recommendation/decision of supporting group.		

Item/Caption

Receive a presentation and have a discussion on the Meadowview Park upgrades.

Item Summary/Background/Prior Action

Provide a presentation on the Parks and Recreation Board’s recommended playscape design for Meadowview Park.

Financial Impact

This is funded via the NP 22-01 CIP approved by the City Council.

Applicable Owner/Stakeholder Policy

N/A

Staff Recommendation/Motion

N/A

Meadowview Park CIP Update

Section C, Item 2.



Child's Play, Inc.
Parks & Playgrounds



3-IN-A-R-O-W PANEL



TREE BRANCH CLIMBER



ROCK N ROLL SLIDE



5 OVERHEAD NUCLEUS



ASCEND CLIMBER



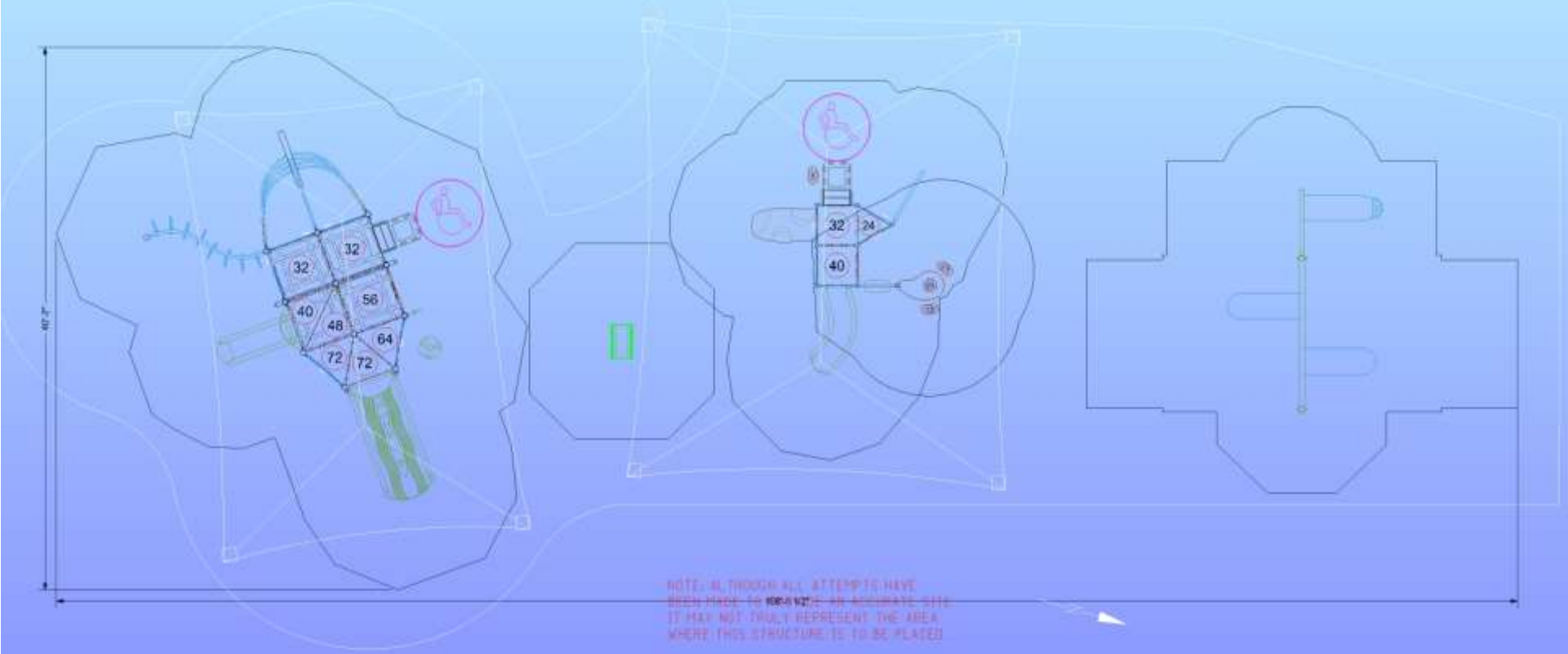
TREASURE CHEST



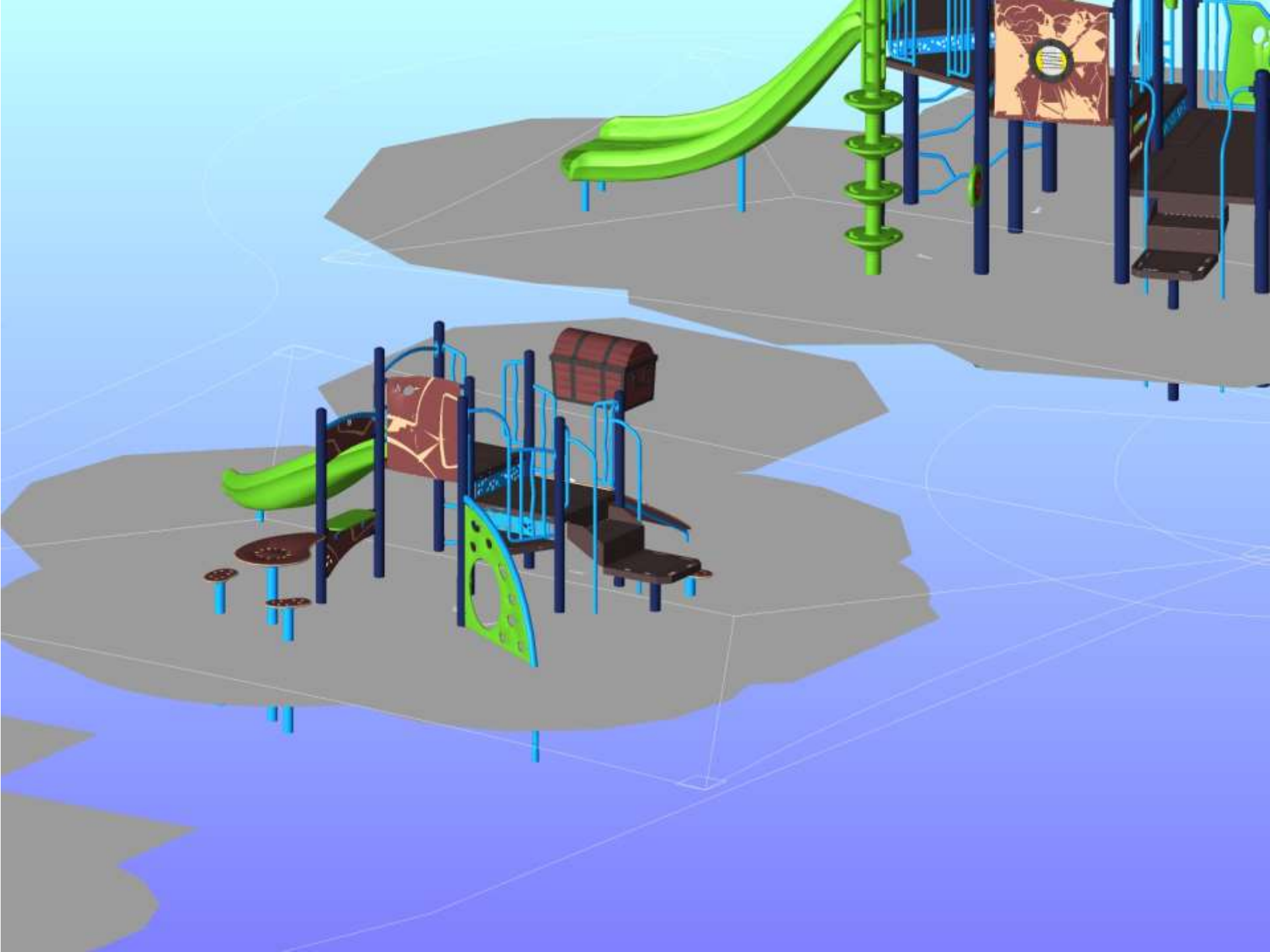
HYPNO PANEL

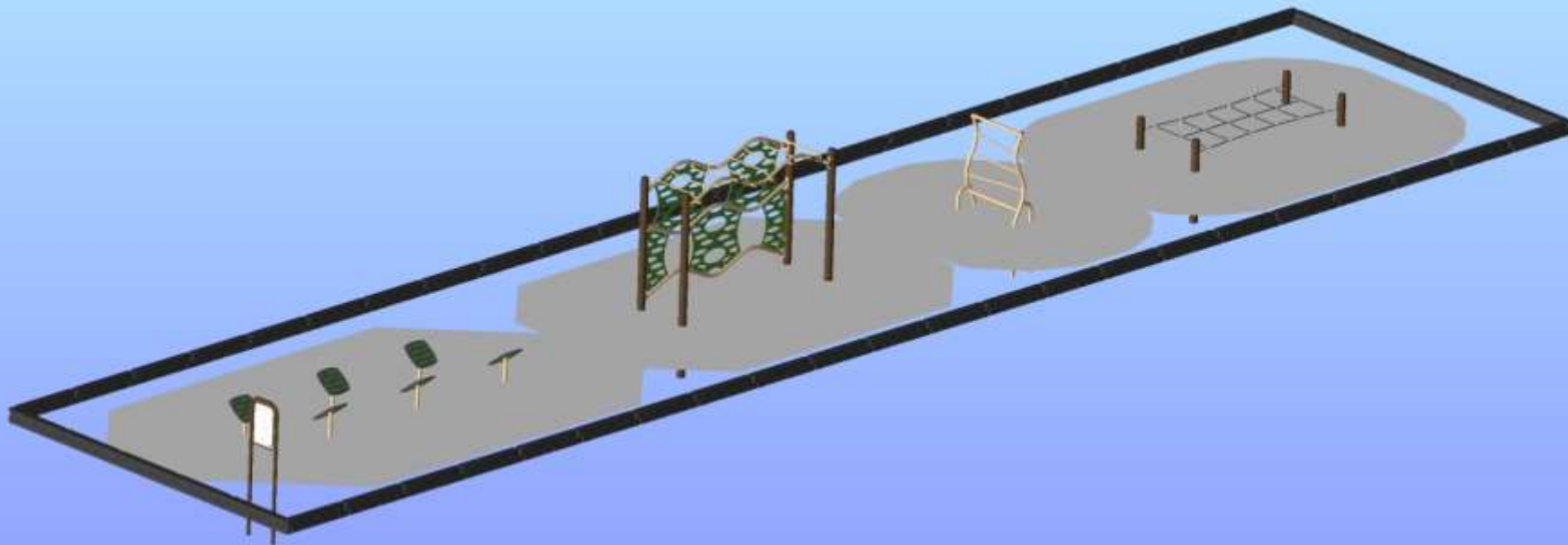
Section C, Item 2.







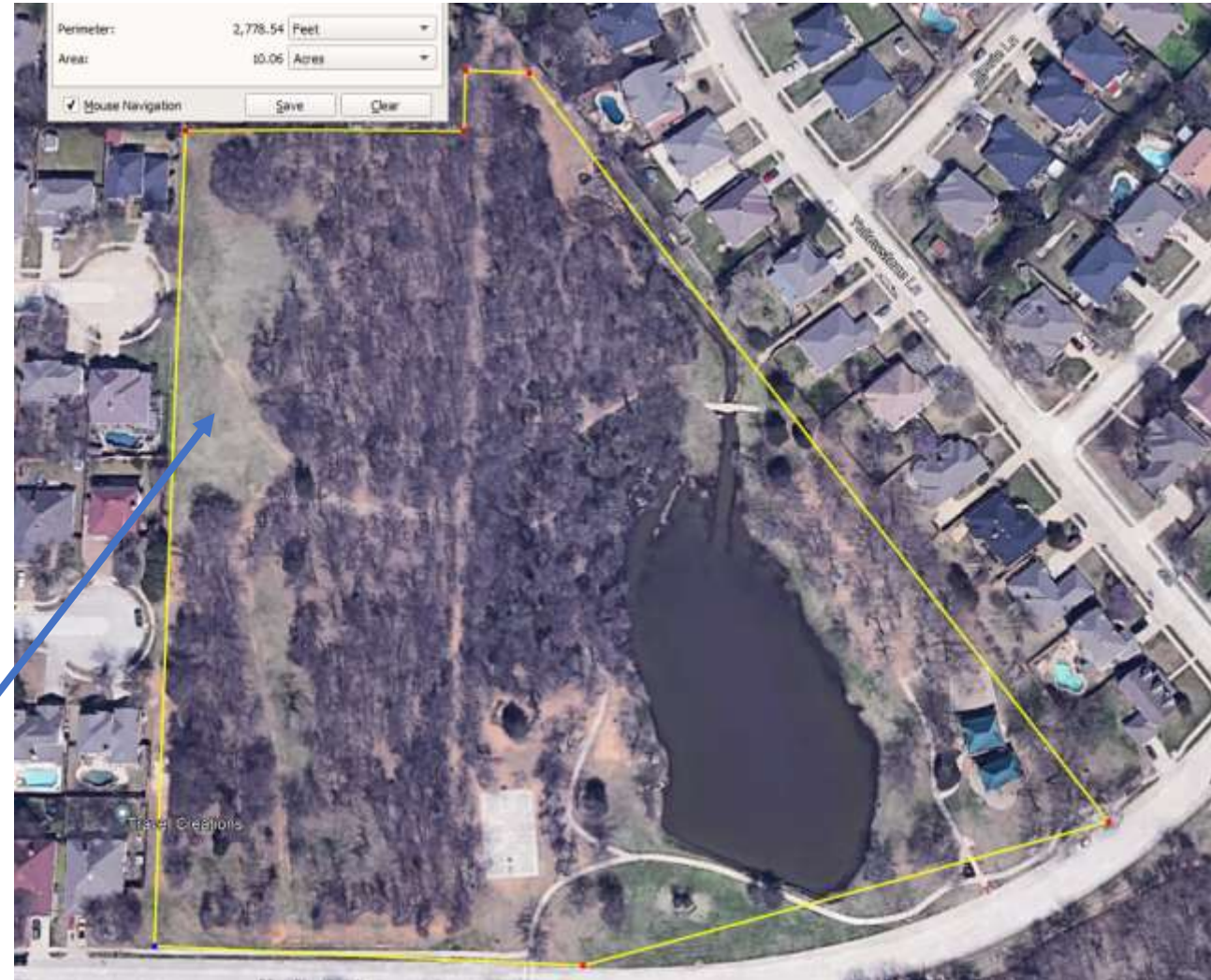




Meadowview Park

Other items

- Lighting for basketball court
- Trail clean up
- 1 mile run route through park
 - Ninja course will be parallel with route
 - Connect Knotts Park with route
- Fountain in Pond
- Fishing dock in pond
 - Add a hook and fishline disposal tube
- Dredge Pond
- Upgrade basketball rims
- Add a Park Library



Area for Ninja Warrior



CITY OF CORINTH
Staff Report

Meeting Date:	12/16/2021	Title:	Amendment Home Rule Charter
Ends:	<input type="checkbox"/> Resident Engagement <input checked="" type="checkbox"/> Proactive Government <input checked="" type="checkbox"/> Organizational Development <input type="checkbox"/> Health & Safety <input type="checkbox"/> Regional Cooperation <input type="checkbox"/> Attracting Quality Development		
Governance Focus:	<i>Focus:</i> <input checked="" type="checkbox"/> Owner <input type="checkbox"/> Customer <input type="checkbox"/> Stakeholder		
	<i>Decision:</i> <input checked="" type="checkbox"/> Governance Policy <input type="checkbox"/> Ministerial Function		
Owner Support:	<input type="checkbox"/> Planning & Zoning Commission <input type="checkbox"/> Economic Development Corporation <input type="checkbox"/> Parks & Recreation Board <input type="checkbox"/> TIRZ Board #2 <input type="checkbox"/> Finance Audit Committee <input type="checkbox"/> TIRZ Board #3 <input type="checkbox"/> Keep Corinth Beautiful <input type="checkbox"/> Ethics Commission N/A		

Item/Caption

Continue the discussion from the November 18, 2021, Workshop Session and provide staff direction on Home Rule Charter amendments.

Item Summary/Background/Prior Action

A home-rule city can amend its charter through a vote of its residents but not more often than every two years. Corinth voters last amended the charter in 2016. Staff recommends the council consider amending the charter in two potential areas:

1. Proposed Modification: Change the term of a council member from two years to three years with two council being elected every year rather than three.
2. Proposed Modification: That the position of mayor pro-tem be formally established in the charter. The council may also wish to consider the method of selecting the mayor pro-tem, e.g., by vote of the council members, appointment by the mayor, the council member being the longest tenured member, or by rotation.

The City Attorney will lead the discussion for each proposed modification.

Financial Impact

This item would be considered at the May 2022 election cycle.

Staff Recommendation/Motion

N/A



CITY OF CORINTH
Staff Report

Meeting Date:	12/16/2021	Title: Proclamation Eagle Scout – Luke Davison
Ends:	<input checked="" type="checkbox"/> Resident Engagement <input checked="" type="checkbox"/> Proactive Government <input type="checkbox"/> Organizational Development <input type="checkbox"/> Health & Safety <input type="checkbox"/> Regional Cooperation <input type="checkbox"/> Attracting Quality Development	
Governance Focus:	<i>Focus:</i> <input checked="" type="checkbox"/> Owner <input type="checkbox"/> Customer <input type="checkbox"/> Stakeholder	
	<i>Decision:</i> <input type="checkbox"/> Governance Policy <input checked="" type="checkbox"/> Ministerial Function	
Owner Support:	<input type="checkbox"/> Planning & Zoning Commission <input type="checkbox"/> Economic Development Corporation <input type="checkbox"/> Parks & Recreation Board <input type="checkbox"/> TIRZ Board #2 <input type="checkbox"/> Finance Audit Committee <input type="checkbox"/> TIRZ Board #3 <input type="checkbox"/> Keep Corinth Beautiful <input type="checkbox"/> Ethics Commission N/A	

Item/Caption

Recognition of Eagle Scout Court of Honor recipient - Luke Davison.



PROCLAMATION

FROM THE OFFICE OF THE MAYOR OF CORINTH, TEXAS

WHEREAS, the Boy Scouts of America was founded on February 8, 1910, and has grown to be a vital force in the development of our youth through its many programs which encourage the ability of its members to do things for themselves and others.

WHEREAS, the Boy Scouts of America serves many through a wide variety of activities designed to complement and implement the youth programs offered by churches, civic organizations and public schools.

WHEREAS, Luke Douglas Davison, of Boy Scout Troop 424, recently earned the rank of Eagle Scout on July 29, 2021.

WHEREAS, as a Scout, Luke served both his troop and the Lake Cities community in a variety of leadership roles, including volunteering with Keep Corinth Beautiful’s spring litter clean-up, litter removal on Dobb’s Road, and trimming and pruning over 100 trees along Lake Sharon Drive.

WHEREAS, the Eagle Scout Award has been awarded for over 100 years to a small number of young men who accomplish its requirements and demonstrate community leadership; and

WHEREAS, Luke’s Eagle Scout community service project entailed renovating an unused building at Sycamore Bend Park in Hickory Creek; creating a Nature Center to educate schools and campers on local plants and habitat.

NOW, THEREFORE, I, Bill Heidemann, by virtue of the authority vested in me as Mayor of Corinth, Texas do hereby honor Luke Douglas Davison for his leadership and service to his community and applaud his rank as Eagle Scout.

Signed this 14th day of December 2021.

*Bill Heidemann, Mayor
City of Corinth, Texas*



CITY OF CORINTH
Staff Report

Meeting Date:	12/16/2021	Title: Minutes Approval of Meeting Minutes
Ends:	<input type="checkbox"/> Resident Engagement <input checked="" type="checkbox"/> Proactive Government <input type="checkbox"/> Organizational Development <input type="checkbox"/> Health & Safety <input type="checkbox"/> Regional Cooperation <input type="checkbox"/> Attracting Quality Development	
Governance Focus:	<i>Focus:</i> <input checked="" type="checkbox"/> Owner <input type="checkbox"/> Customer <input type="checkbox"/> Stakeholder	
	<i>Decision:</i> <input type="checkbox"/> Governance Policy <input checked="" type="checkbox"/> Ministerial Function	
Owner Support:	<input type="checkbox"/> Planning & Zoning Commission <input type="checkbox"/> Economic Development Corporation <input type="checkbox"/> Parks & Recreation Board <input type="checkbox"/> TIRZ Board #2 <input type="checkbox"/> Finance Audit Committee <input type="checkbox"/> TIRZ Board #3 <input type="checkbox"/> Keep Corinth Beautiful <input type="checkbox"/> Ethics Commission N/A	

Item/Caption

Consider and act on minutes from the November 18, 2021, City Council Meeting.

Item Summary/Background/Prior Action

Attached are the minutes, in draft form, and are not considered official until formally approved by the City Council.

Staff Recommendation/Motion

Staff recommends approval of the minutes.



CITY COUNCIL WORKSHOP AND REGULAR SESSION - MINUTES

Thursday, November 18, 2021 at 5:45 PM

City Hall | 3300 Corinth Parkway

**STATE OF TEXAS
COUNTY OF DENTON
CITY OF CORINTH**

On this, the 18th day of November 2021, the City Council of the City of Corinth, Texas, met in Workshop & Regular Session at the Corinth City Hall at 5:45 P.M., located at 3300 Corinth Parkway, Corinth, Texas. The meeting date, time, place, and purpose as required by Title 5, Subtitle A, Chapter 551, Subchapter C, Section 551.041, Government Code, with the following members to wit:

Council Members Present:

- Bill Heidemann, Mayor
- Sam Burke, Mayor Pro Tem
- Steve Holzwarth, Council Member
- Tina Henderson, Council Member
- Kelly Pickens, Council Member

Council Members Absent:

- Scott Garber, Council Member

Staff Members Present:

- Bob Hart, City Manager
- Lana Wylie, City Secretary
- Patricia Adams, City Attorney
- Jerry Garner, Police Chief
- Michael Ross, Fire Chief
- Lee Ann Bunselmeyer, Finance, Communications & Strategic Services Director
- Elise Back, Economic Development Director
- John Webb, Planning & Development Director
- George Marshall, City Engineer
- Michelle Mixell, Planning and Development Manager
- Andrea Parker, Engineering Services Coordinator
- Brenton Copeland, Technology Services Manager
- James Trussell, Multi-Media Video Production Intern
- Lance Stacy, City Marshal

CALL TO ORDER

Mayor Heidemann called the meeting to order at 5:45 P.M.

WORKSHOP AGENDA

1. Receive a report, hold a discussion, and provide staff direction on Home Rule Charter amendments.

The item was presented and discussed.

2. Presentation of the Planning & Zoning Commission Annual Report by Cody Gober, Commissioner, Place 2.

The item was presented and discussed.

- 3. Provide an update on the Commons at Agora Project.

The item was presented and discussed.

- 4. Discuss potential modifications to the City's ETJ boundaries.

The item was presented and discussed.

- 5. Discuss the redistricting map for the Denton County Commissioner's Court.

The item was presented and discussed.

- 6. Receive a report and hold a discussion on the request submittal for the Denton County Transportation Bond Program.

The item was presented and discussed.

- 7. Discuss Regular Meeting Items on Regular Session Agenda, including the consideration of closed session items as set forth in the Closed Session agenda items below.

Council Member Henderson inquired about items on the Consent Agenda being on the Business Agenda.

Mayor Heidemann shared comments about the broadband initiative.

ADJOURN WORKSHOP

Mayor Heidemann adjourned the Workshop Session at 6:51 P.M., and immediately convened into the Closed Session.

CLOSED SESSION

The City Council will convene in such executive or closed session to consider any matters regarding any of the above agenda items as well as the following matters pursuant to Chapter 551 of the Texas Government Code. After discussion of any matters in closed session, any final action or vote taken will be public by the City Council. City Council shall have the right at any time to seek legal advice in Closed Session from its Attorney on any agenda item, whether posted for Closed Session or not.

Section 551.071 - Legal Advice. (1) Private consultation with its attorney to seek advice about pending or contemplated litigation; and/or settlement offer; and/or (2) a matter in which the duty of the attorney to the government body under the Texas Disciplinary Rules of Professional Conduct of the State of Texas clearly conflict with Chapter 551.

- a. C&JJ Investments, LLC v. City of Corinth, Cause No. 21-5053-431, (431st Judicial District, Denton County, Texas).

Section 551.072 - Real Estate. To deliberate the purchase, exchange, lease, or value of real property if deliberations in an open meeting would have a detrimental effect on the position of the governmental body in negotiations with a third person.

- a. 1.747 acres, more or less, of land consisting of Lots 1,2, and 3, Block B of the F&H Addition north of Walton Drive and east of North Corinth Street. (H3)

- b. Lot 1, Block A of the F&H Addition. (H3)

Section 551.087 - Economic Development. To deliberate or discuss regarding commercial or financial information that the governmental body has received from a business prospect that the governmental body seeks to have locate,

stay, or expand in or near the territory of the governmental body and with which the governmental body is conducting economic development negotiations; or to deliberate the offer of a financial or other incentive to a business project.

a. Project Agora.

RECONVENE IN OPEN SESSION TO TAKE ACTION, IF NECESSARY, ON CLOSED SESSION ITEMS

Mayor Heidemann recessed Closed Session at 7:06 P.M.

CALL TO ORDER, INVOCATION, PLEDGE OF ALLEGIANCE & TEXAS PLEDGE

Mayor Heidemann called the Regular Session Meeting to order at 7:12 P.M. Logan Fehrenbacher lead the pledges.

CITIZENS COMMENTS

Please limit your comments to three minutes. Comments about any of the Council agenda items are appreciated by the Council and may be taken into consideration at this time or during that agenda item. Council is prohibited from acting on or discussing items brought before them at this time.

There were no citizen comments made.

CONSENT AGENDA

All matters listed under the consent agenda are considered to be routine and will be enacted in one motion. Should the Mayor or a Councilmember desire discussion of any item, that item will be removed from the Consent Agenda and will be considered separately.

1. Consider approval of minutes from the November 4, 2021, City Council Meeting.
2. Consider and act on an interlocal agreement between Denton County and the Lake Cities Fire Department to provide fire protection services to the unincorporated parts of Denton County that are within the boundaries of the LCFD response area.
3. Consider and act on an Interlocal Agreement between Denton County and the City of Corinth on behalf of the Lake Cities Fire Department to provide Ambulance Services to the unincorporated parts of Denton County that are within the boundaries of the LCFD response area.
4. Consider authorizing the purchase of bunker gear for Lake Cities Fire Department personnel, from Metro Fire through the Buy Board, in an amount not to exceed \$58,225, and authorizing the City Manager to execute the necessary documents.
5. Consider authorizing the purchase of replacement radios for the Fire Department, from Motorola Solutions, in an amount not to exceed \$560,000, and authorizing the City Manager to execute the necessary documents.
6. Consider authorizing the purchase of replacement radios for the Police Department, from Motorola Solutions, in an amount not to exceed \$350,506, and authorizing the City Manager to execute the necessary documents.
7. Consider authorizing the purchase of a new submersible pump and rebuilding an existing submersible pump with Global Pump Solutions for the Barrel Strap Lift Station, in an amount not to exceed \$75,000, and authorizing the City Manager to execute the necessary documents.
8. Consider approval of a Resolution authorizing the change of Authorized Representatives for the Texas Short Term Asset Reserve Program (TexSTAR).

- 9. Consider approval of a Resolution authorizing the change of Authorized Representatives for the Texas Local Government Investment Pool (TexPool).

Motion made by Mayor Pro Tem Burke to approve the Consent Agenda as presented. Seconded by Council Member Henderson.

Voting Yea: Mayor Pro Tem Burke, Council Member Holzwarth, Council Member Henderson, Council Member Pickens

BUSINESS AGENDA

- 10. Consider approval of the 2022-2027 Technology Strategic Plan to enhance the vitality and quality of life for all in Corinth through sustainable, reliable, efficient, and effective technology services, infrastructure, and smarter government.

Motion made by Mayor Pro Tem Burke to approve the 2022-2027 Technology Strategic Plan as prepared and presented. Seconded by Council Member Pickens.

Voting Yea: Mayor Pro Tem Burke, Council Member Holzwarth, Council Member Henderson, Council Member Pickens

- 11. Consider and act on an Interlocal Agreement (ILA) with Lake Dallas, Hickory Creek, and Shady Shores for Phase Two of the broadband initiative, with Corinth managing the contract terms.

Motion made by Council Member Henderson to approve the Interlocal Agreement with the Lake Cities, as presented. Seconded by Council Member Pickens.

Voting Yea: Mayor Pro Tem Burke, Council Member Holzwarth, Council Member Henderson, Council Member Pickens

COUNCIL COMMENTS & FUTURE AGENDA ITEMS

The purpose of this section is to allow each Council Member the opportunity to provide general updates and/or comments to fellow Council Members, the public, and/or staff on any issues or future events. Also, in accordance with Section 30.085 of the Code of Ordinances, at this time, any Council Member may direct that an item be added as a business item to any future agenda.

Council Member Henderson thanked staff for Thanksgiving lunch and inquired about a resident asking about converting city basketball hoops to pickle ball.

Mayor Heidemann recognized Logan Fehrenbacher for his achievement of becoming an Eagle Scout. He appreciated his efforts and stated that we need more people like him.

ADJOURN

Mayor Heidemann adjourned the Regular Meeting at 7:24 P.M.

Approved by Council on the ____ day of _____ 2021.

Lana Wylie, City Secretary
City of Corinth, Texas



CITY OF CORINTH
Staff Report

Meeting Date:	12/16/2021	Title: Minutes Approval of Meeting Minutes
Ends:	<input type="checkbox"/> Resident Engagement <input checked="" type="checkbox"/> Proactive Government <input type="checkbox"/> Organizational Development <input type="checkbox"/> Health & Safety <input type="checkbox"/> Regional Cooperation <input type="checkbox"/> Attracting Quality Development	
Governance Focus:	<i>Focus:</i> <input checked="" type="checkbox"/> Owner <input type="checkbox"/> Customer <input type="checkbox"/> Stakeholder	
	<i>Decision:</i> <input type="checkbox"/> Governance Policy <input checked="" type="checkbox"/> Ministerial Function	
Owner Support:	<input type="checkbox"/> Planning & Zoning Commission <input type="checkbox"/> Economic Development Corporation <input type="checkbox"/> Parks & Recreation Board <input type="checkbox"/> TIRZ Board #2 <input type="checkbox"/> Finance Audit Committee <input type="checkbox"/> TIRZ Board #3 <input type="checkbox"/> Keep Corinth Beautiful <input type="checkbox"/> Ethics Commission N/A	

Item/Caption

Consider and act on minutes from the December 2, 2021, Joint Workshop Meeting with the City Council and Corinth Economic Development Corporation (CEDC).

Item Summary/Background/Prior Action

Attached are the minutes, in draft form, and are not considered official until formally approved by the City Council.

Staff Recommendation/Motion

Staff recommends approval of the minutes.



CITY COUNCIL WORKSHOP SESSION - MINUTES
Thursday, December 02, 2021 at 5:30 PM
City Hall | 3300 Corinth Parkway

STATE OF TEXAS
COUNTY OF DENTON
CITY OF CORINTH

On this, the 2nd day of December 2021, the City Council and the Corinth Economic Development Corporation, of the City of Corinth, Texas, met in a Workshop Session at the Corinth City Hall at 5:30 P.M., located at 3300 Corinth Parkway, Corinth, Texas. The meeting date, time, place, and purpose as required by Title 5, Subtitle A, Chapter 551, Subchapter C, Section 551.041, Government Code, with the following members to wit:

Council Members Present:

- Bill Heidemann, Mayor
- Sam Burke, Mayor Pro Tem
- Scott Garber, Council Member
- Steve Holzwarth, Council Member
- Tina Henderson, Council Member
- Kelly Pickens, Council Member

Staff Members Present:

- Bob Hart, City Manager
- Lana Wylie, City Secretary
- Katherine Lindsey, Asst. to the City Manager/Deputy City Secretary
- Elise Back, Economic Development Director
- John Webb, Planning & Development Director
- Michelle Mixell, Planning and Development Manager
- Miguel Inclan, Planner
- Brenton Copeland, Technology Services Manager
- James Trussell, Multi-Media Specialist

Mayor Heidemann called the Workshop Session to order at 5:30 P.M.

WORKSHOP AGENDA

1. Conduct a joint workshop on economic development with the Corinth Economic Development Corporation and the Corinth City Council.

Elise Back introduced the guest speaker, Carlton Schwab, President of the Texas Economic Development Council.

Mr. Schwab shared a presentation on the economic development process.

ADJOURN WORKSHOP

Mayor Heidemann adjourned the Workshop Session at 7:35 P.M.

Approved by Council on the ____ day of _____ 2021.

Lana Wylie, City Secretary
City of Corinth, Texas



CITY OF CORINTH
Staff Report

Meeting Date:	12/16/2021	Title:	Contract LCFD Fire Training Field
Ends:	<input type="checkbox"/> Resident Engagement <input checked="" type="checkbox"/> Proactive Government <input type="checkbox"/> Organizational Development <input checked="" type="checkbox"/> Health & Safety <input checked="" type="checkbox"/> Regional Cooperation <input type="checkbox"/> Attracting Quality Development		
Governance Focus:	<i>Focus:</i> <input checked="" type="checkbox"/> Owner <input type="checkbox"/> Customer <input type="checkbox"/> Stakeholder		
	<i>Decision:</i> <input type="checkbox"/> Governance Policy <input checked="" type="checkbox"/> Ministerial Function		
Owner Support:	<input type="checkbox"/> Planning & Zoning Commission <input type="checkbox"/> Economic Development Corporation <input type="checkbox"/> Parks & Recreation Board <input type="checkbox"/> TIRZ Board #2 <input type="checkbox"/> Finance Audit Committee <input type="checkbox"/> TIRZ Board #3 <input type="checkbox"/> Keep Corinth Beautiful <input type="checkbox"/> Ethics Commission N/A		

Item/Caption

Consider and act on an amended Interlocal Agreement between the Lake Cities Fire Department (LCFD) and the Little Elm Fire Department to include North Central Texas College (NCTC) in the Fire Training Field collaboration regarding the ownership, management, use and rental, maintenance, and operation of the facility located at 2708 Shady Shores Road, behind the Lake Cities Fire Department.

Item Summary/Background/Prior Action

In 2015, the Lake Cities Fire Department and Town of Little Elm entered into an Interlocal Agreement to collaborate on the creation of a training field for fire personnel. This collaboration has extended to include North Central Texas College.

During the City Council Workshop Session on November 4, 2021, the Lake Cities Fire Department provided an update on the proposed training field with Little Elm and North Central Texas College and is now ready to enter into a new agreement to begin the process of building the facility. Included is a map of the facility.

Financial Impact

The department’s annual contribution will not change; adding NCTC to the Interlocal Agreement will add cost savings with the design and build of the facility, being shared by three entities.

Applicable Owner/Stakeholder Policy

ILA - November 3, 2015

Staff Recommendation/Motion

Staff recommends approval of the amended ILA, adding NCTC.

SHADY SHORES RD

RAILS AND TRAILS
OLD HWY 77

Fence

Class Room

24'

Denver Prop

Gravel

Technical Rescue

Awning

Confined Space and Maze

Building Site
Fire Building Prop. Ladder and High Rise with Smoke Lab Roof Prop Ventilation

Fire Hydrant

Fire Hydrant

Vehicle Extrication

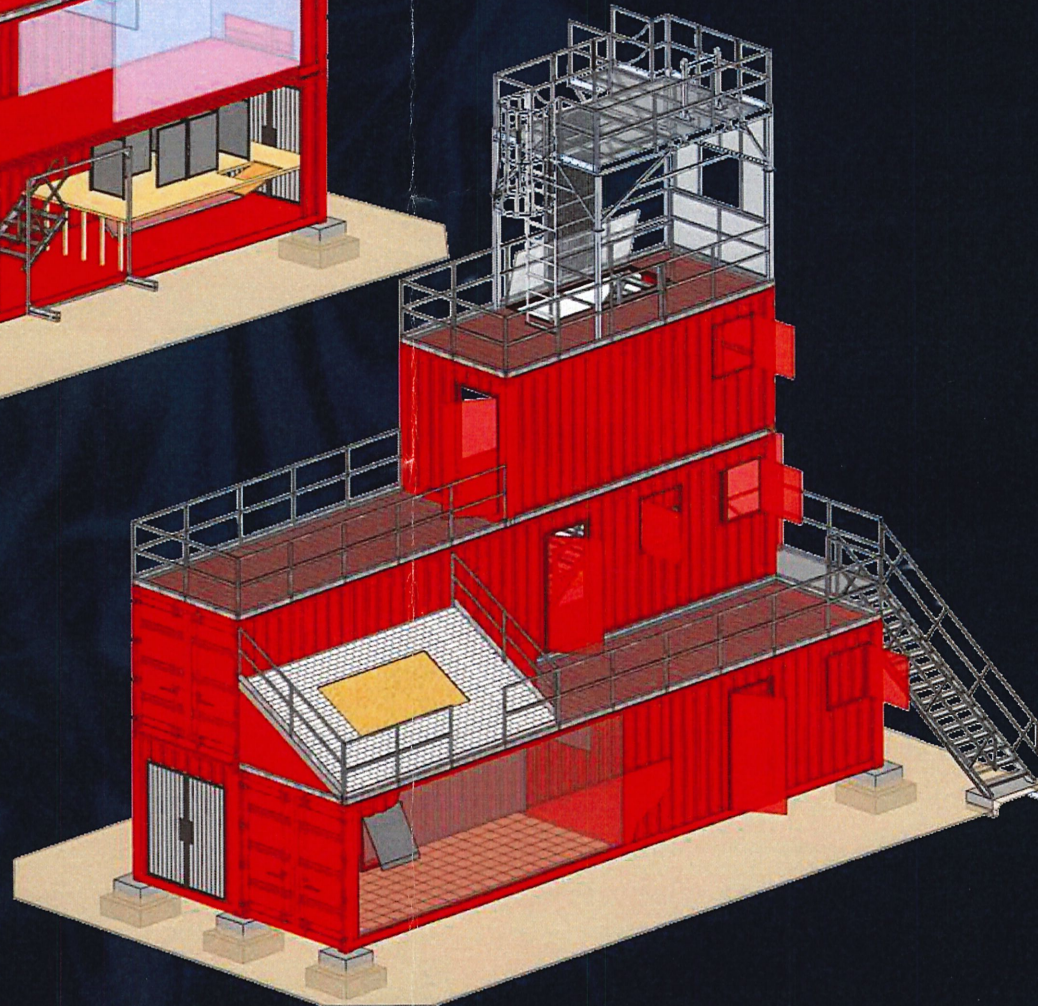
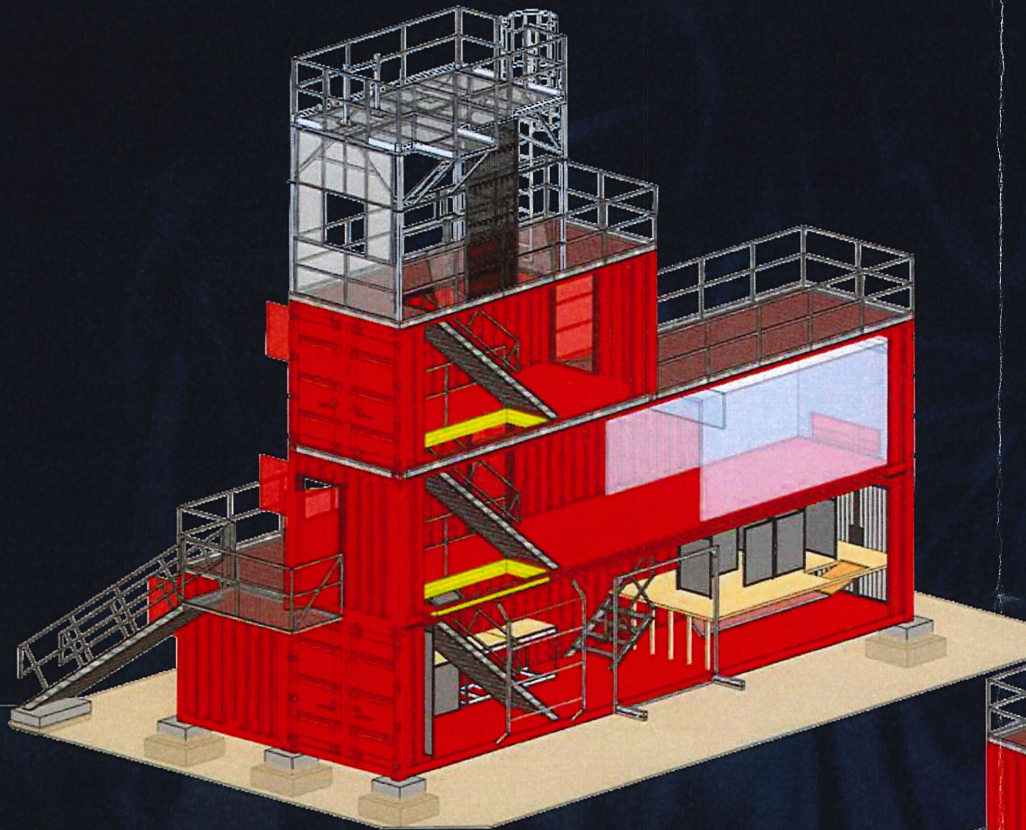
Awning

Gate

Gate to Public Works and Rubble Pile / Trench



West Coast: Phoenix, AZ
East Coast: Long Island, NY
1-877-268-8303
www.mobilefireunits.com



BULLHEAD SYSTEM

- 3 – 40' CONTAINERS
- 1 – 20' CONTAINER
- 2 – BURN ROOMS
- TEMPERATURE MONITORING SYSTEM
- RECONFIGURABLE SCBA MAZE
- SHORING PROP
- WALL BREACH PROP
- INTERIOR STAIRS
- EXTERIOR STAIRS
- ACTIVE ROOF
- OSHA COMPLIANT GUARDRAIL SYSTEM
- RAPPELLING TOWER
- STANDPIPE SYSTEM
- SPRINKLER SYSTEM
- PITCHED ROOF PROP
- FORCED ENTRY DOOR
- REBAR CUTTING PROP
- GARAGE DOOR PROP
- PERSONNEL DOORS
- DENVER WINDOW

**INTERLOCAL AGREEMENT BETWEEN THE CITY OF CORINTH,
TOWN OF LITTLE ELM AND NORTH CENTRAL TEXAS COLLEGE**

THIS AGREEMENT is made this _____ day of _____, 2021, by and between the **CITY OF CORINTH** (hereinafter “Corinth”), **TOWN OF LITTLE ELM**, (hereinafter “Little Elm”) and **NORTH CENTRAL TEXAS COLLEGE**, (hereinafter “NCTC”), all being located in Denton County, Texas (hereinafter collectively known as the “Parties”).

THIS AGREEMENT is intended to address ownership, management, use and rental, maintenance, and operation of the facility located at 2708 Shady Shores Road, behind Lake Cities Fire Department (hereinafter “LCFD”) Firehouse No. 2, Corinth, Texas, as depicted on Exhibit A to this agreement (the “Facility”)

WHEREAS, Corinth, Little Elm and NCTC desire to enter into an interlocal agreement to construct, operate and maintain the Facility; and

WHEREAS Chapter 791 of the Texas Chapter Government Code provides for interlocal agreements for governmental functions such as contemplated by this agreement; NOW, THEREFORE, upon the mutual covenants, conditions, and promises contained herein, the Parties hereby agree as follows:

Section 1. Interlocal Agreement; Term

- 1.0 This agreement is entered into and shall be construed pursuant to Chapter 791 of the Texas Government Code, the Texas Interlocal Cooperation Act.
- 1.1 This agreement shall become effective _____, 2021, and unless earlier terminated, as provided herein, will remain in effect until midnight, _____, _____, unless earlier terminated as provided herein.
- 1.2 Upon termination of this agreement, Corinth shall continue to own the facility, and any and all improvements and fixtures thereon.
- 1.3 The parties may mutually terminate this agreement at any time upon terms mutually agreeable to the parties.
- 1.4 The parties may terminate this agreement upon a months’ notice. There shall be no refunds or pro-rated refunds for previous payments.
- 1.5 The parties may terminate this agreement if the other parties are in breach of any of the terms and conditions of this agreement or has refused to comply with any operational requirements approved by the Operations Steering Committee (hereinafter known as the “Committee”).
- 1.6 Upon termination of this agreement, Little Elm and NCTC shall only reimburse LCFD for costs and supplies incurred as needed to make the facility available for their use.
- 1.7 During any post termination years (additional years), Little Elm and NCTC shall only reimburse LCFD for costs and supplies incurred as needed to make the facility available for their use.

Section 2. Operations Steering Committee; Annual Payments

- 2.0 The committee will provide input on the development, construction and operation of the facility.
- 2.1 The LCFD designee – will chair the committee and the Little Elm Fire Department Fire Chief’s designee shall Vice Chair the committee and NCTC designee shall hold the position of 2nd Vice Chair on the committee. Each of the parties shall appoint one member to be mutually agreed upon by the Chair, Vice Chair and 2nd Vice Chair. The members shall serve two-year terms at the pleasure of the Fire Chiefs, Chair, Vice Chair and 2nd Vice Chair may be removed at any time during their term by their sponsoring party by providing written notice to the other parties and the committee member being removed.
- 2.2 The activities of the committee shall be in accordance with the agreement. The Committee shall meet as needed.
- 2.3 The committee chair, along with the Vice Chair and 2nd Vice Chair will consider recommendations from the committee, shall also make recommendations to the Fire Chiefs relating to the operation of the facility. The need for additional and/or replacement equipment, and other items relating to the financial needs and management of the facility. The committee shall make an annual recommendation, during the budgeting process of the parties, for the annual budget for revenues and expenditures for the facility. Each year, the committee’s recommendation for the proposed next fiscal year budget expenditures will be submitted for approval by both Fire Chiefs and Emergency Services Division Chair. Once the amount is approved, Corinth shall include this sum (the “Annual Payment”) in the Corinth annual budget for the upcoming fiscal year.
- 2.4 Little Elm and NCTC shall pay an annual payment on or before October 15th of each year of the term of this agreement, with the annual payment in an amount to be determined by the budget process.
- 2.5 The committee shall make a recommendation to the Fire Chiefs and Emergency Services Division Chair for the recommended process to coordinate the use of the facility. They shall consider the recommendation and approve a written policy for the use of the facility.
- 2.6 All monies spent by any party for any purpose related to the operation, construction, or maintenance of the Facility shall be reported at the end of each fiscal year to the other parties and compiled into a single report of expenditures and revenues.
- 2.7 The committee shall not be authorized to make equipment purchases, authorize expenditures, and/or enter into contracts or agreements except in compliance with the City of Corinth Purchasing Policy.
- 2.8 Should Little Elm or NCTC fail to make the required “Annual Payment”, that party shall have limited use of the facility until such time as funding for its share of any previously approved expenditures has been paid to Corinth. This restriction is not intended as a limitation on the rights of the non-defaulting party hereto in the event a party should commit default of this agreement.

Section 3. Ownership and Maintenance

- 3.0 The facility is owned by the City of Corinth.
- 3.1 The committee shall oversee changes to the infrastructure with direction from the Fire Chiefs of LCFD, LEFD and NCTC designee.
- 3.2 The cost of maintenance, operation and associated expenses shall be equally shared by all parties. associated expenses include, but are not limited to, electrical service, building maintenance, fence repair, and maintenance of equipment.

Section 4. Use of Facility

- 4.0 Corinth, Little Elm and NCTC may allow other departments to use the facility if a written agreement providing for such is approved by all parties.
- 4.1 Each Party will provide facilitators for its classes or training exercises.
- 4.2 The fees for the use of the facility by a department other than LCFD, LEFD or NCTC shall be established in a fee schedule which shall be approved by the Fire Chiefs, upon recommendations of the Chair, Vice Chair and 2nd Vice Chair.
- 4.3 Any revenues obtained from the use of the facilities by departments other than LCFD, LEFD and NCTC shall be applied to the maintenance and operation costs for the facility.

Section 5. Default

- 5.0 A party shall be in default upon the failure to comply with any obligation to make a monetary payment provided for or required or described by this agreement within 30 days after the defaulting party has been given written notice of said failure or failure to comply with any term of this agreement.
- 5.1 In the event of a default hereunder, the defaulting party may cure the default by making payments to the other parties or performing requirements contained in this agreement. In the event of said payment and/or performance of the obligations, the defaulting party shall pay to the paying/performing party on written demand all sums paid of the reasonable value of the obligations performed on behalf of the defaulting party with interest at the rate of _____% annum.
- 5.2 Upon the failure of a party to timely cure any such default after notice thereof and expiration of the above cure periods, then the non-defaulting party(s) may terminate this agreement by written notice and pursue any legal remedies available under applicable law or principles of equity relating to such breach.

Section 6. Indemnity; Non-Waiver of Immunity

- 6.0 Little Elm, Corinth and NCTC each agree to accept full responsibility for the actions of their officers, agents and employees in the operation of the facility. The parties shall not be held liable for any claims, damages, costs, and attorneys fees arising from the negligent act or omissions of the others. If all parties are determined by

the court to be liable for any claims, damages, costs, expenses, or attorneys fees arising from the negligent acts or omissions of all parties, each shall be liable for a portion of the claim, damages, costs, expenses, and attorney’s fees that arise from the negligent acts or omissions of that party as determined by the court adjudicating the matter or as agreed in any settlement.

- 6.1 It is expressly understood and agreed that, in the execution of this agreement, no party waives, nor shall it be deemed to have waived, any immunity or defense that would otherwise be available to it against any claims arising in exercise of its governmental powers or functions.
- 6.2 In the event that any person, elected official, employee, agent or contractor of any party performing services pursuant to this agreement by cited as a party to a state or federal civil lawsuit arising out of performance of those services, that person, elected official, employee, agent or contractor shall be entitled to the same defenses that he would be entitled to receive as if such civil action and arisen out of the performance of his or her duties as an employee of the city which appointed him or where he is regularly employed and in the regular jurisdiction of the Party by which that person is regularly employed.

Section 7. Miscellaneous Provisions

- 7.0 If legal action is brought under this agreement, exclusive venue shall lie in Denton County and the proceedings shall be governed by the laws of the State of Texas.
- 7.1 In case any one or more of the terms, sentences, paragraphs or 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 term, sentence, paragraph or provision hereof, and this agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.
- 7.2 This agreement may be amended or modified only by the mutual written agreement, such amendment or modification being attached to and incorporated herein and approved by the governing bodies of all parties.
- 7.3 The agreement may be signed in multiple counterparts and shall be binding on the parties hereto when duly authorized by the governing body of each party.
- 7.4 This agreement contains all of the commitments of the parties.
- 7.5 All notices and communication concerning this agreement shall be in writing and address to the parties as follows:

City of Corinth
ATTN: Fire Chief
3501 FM 2181 Suite B
Corinth, TX 76210

Little Elm
ATTN: City Manager
100 W. Eldorado Pkwy.
Little Elm, TX 75068
contracts@littleelm.org

North Central Texas College
ATTN: Emergency Services
Division Chair
1500 N. Corinth St.
Corinth, TX 76208

Unless otherwise provided herein, notices and invoices shall be hand delivered, sent by registered or certified US Mail, postage prepaid, or by commercial overnight delivery service, and shall be deemed served or delivered to the addressee when received at the address for notice specified

above when hand delivered to the day after being sent when sent by overnight delivery services, or three United States Postal Service Business days after deposit in the mail when sent by U.S. Mail.

7.6 All payments and expenses made by any party hereto shall be made from the current revenues of the Party.

IN WITNESS WHEREOF, this agreement is executed this _____ day of _____, 2021, in duplicate originals.

TOWN OF LITTLE ELM, TEXAS

NORTH CENTRAL TEXAS COLLEGE

Matt Mueller
Town Manager
Date: _____

Dr. Brent Wallace
Chancellor
Date: _____

ATTEST:

ATTEST:

Caitlan Biggs, City Secretary

Name: _____

CITY OF CORINTH, TEXAS

Bob Hart
City Manager
Date: _____

ATTEST:

Lana Wylie, City Secretary



CITY OF CORINTH
Staff Report

Meeting Date:	12/16/2021 Title: Purchase Playscape for Meadowview Park
Ends:	<input type="checkbox"/> Resident Engagement <input checked="" type="checkbox"/> Proactive Government <input type="checkbox"/> Organizational Development <input checked="" type="checkbox"/> Health & Safety <input type="checkbox"/> Regional Cooperation <input type="checkbox"/> Attracting Quality Development
Governance Focus:	<i>Focus:</i> <input checked="" type="checkbox"/> Owner <input type="checkbox"/> Customer <input type="checkbox"/> Stakeholder
	<i>Decision:</i> <input type="checkbox"/> Governance Policy <input checked="" type="checkbox"/> Ministerial Function
Owner Support:	<input type="checkbox"/> Planning & Zoning Commission <input type="checkbox"/> Economic Development Corporation <input checked="" type="checkbox"/> Parks & Recreation Board <input type="checkbox"/> TIRZ Board #2 <input type="checkbox"/> Finance Audit Committee <input type="checkbox"/> TIRZ Board #3 <input type="checkbox"/> Keep Corinth Beautiful <input type="checkbox"/> Ethics Commission Click to enter recommendation/decision of supporting group.

Item/Caption

Consider and act on the purchase of Meadowview Playscape and maintenance materials with Child’s Play in an amount not to exceed \$133,860 using BuyBoard, Contract 592-19, and authorizing the City Manager to execute the necessary documents.

Item Summary/Background/Prior Action

Purchase of a Pirate-themed playscape and a warrior course in the amount of \$103,860 and to purchase maintenance materials in the amount of \$30,000. Public Works is requesting that the Board approves this purchase not to exceed \$133,860 and to authorizing the City Manager to execute the necessary documents.

Financial Impact

The purchase of these items was budgeted for FY 2022-23 using the Park Fund

Applicable Owner/Stakeholder Policy

Staff Recommendation/Motion

Approve as presented

**SERVICE CONTRACT
MEADOWVIEW PARK PLAYGROUND REBUILD SERVICES THROUGH
BUYBOARD CONTRACT #592-19**

This Contract is made and entered into this ___ day of December, 2021 by and between Child’s Play, Inc., a corporation organized under the laws of the State of Texas, (hereinafter called the “Contractor”) and the City of Corinth, Texas, a municipal corporation, organized and existing under laws of State of Texas, acting through its City Manager or other duly authorized designee, (hereinafter called the “City”).

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

1. TERM

This Contract shall commence beginning on the ___ day of _____ December 2021 and shall expire upon completion and acceptance of the project.

2. SCOPE OF SERVICES

The Contractor agrees to provide all equipment, materials, supplies, labor, permits, insurance and licenses as necessary to perform Meadowview Park playground rebuild Services in accordance with the provisions of this Contract and Attachments referenced below, which are incorporated for reference.

This Contract is composed of the following Contract Documents:

- a) This Contract
- b) Vendor quotes with cooperative pricing and contract number, including form 1295 electronically filed and signed - Attachment A
- c) The City’s Standard Terms & Conditions for Procurements, and Vendor Insurance Requirements– Attachment B
- d) Cooperative Contract Documentation with Child’s Play Inc. Buyboard #592-19– Attachment C

Any conflict in the foregoing documents shall be resolved by giving precedence first to this written Contract, and then to the Contract Documents in the sequential order listed above.

3. PAYMENT

Invoices shall be mailed or emailed directly to:

City of Corinth
Accounts Payable
3300 Corinth Parkway
Corinth, Texas 76208
accountspayable@cityofcorinth.com

The City shall pay invoices for services properly performed within 30 days of receipt; provided however, that in the event the City requests any supporting documentation for charges,

payment shall be made within 30 days of receipt of the documentation. The City's payment obligations are payable only and solely from funds available for the purposes of this Contract.

4. CHANGES

The City may, from time to time, require changes in the scope of services of the Contractor to be performed hereunder. Such changes, which are mutually agreed upon by and between the City and the Contractor, become effective when incorporated in a written amendment to this Contract executed by both parties.

5. TERMINATION OF CONTRACT

The City may terminate this Contract for any reason upon 10 days' notice to Contractor. Upon termination, the Contractor shall be entitled to payment of such amount as shall compensate Contractor for the services satisfactorily performed from the time of the last payment date to the termination date in accordance with this Contract, provided the Contractor shall have delivered to the City such statements, accounts, reports and other materials as required herein, and provided that Contractor shall have delivered to the City all reports, documents and other materials prepared by Contractor prior to termination. The City shall not be required to reimburse Contractor for any services performed or expenses incurred after the date of the termination notice.

6. COMPLETENESS OF CONTRACT

This contract and any additional or supplementary document or documents incorporated herein by specific reference contain all the terms and conditions agreed upon by the parties hereto, and no other agreements, oral or otherwise, regarding the subject matter of this Contract or any part thereof shall have any validity or bind any of the parties hereto.

7. INDEMNITY AND INSURANCE

- a) **The Contractor hereby agrees to and shall indemnify, hold harmless, and defend the City, its officers, agents and employees from and against any and all claims, losses, damages, demands, causes of action, suits and liability of every kind, including all expenses of litigation, court costs and attorneys' fees, for injury to or death of any person, for loss of use or revenue, or for damage to any property arising out of or in connection with the actual or alleged malfunction, design or workmanship in the manufacture of equipment, the fulfillment of this Contract, or the breach of any express or implied warranties under this Contract. Such indemnity shall apply where the claims, losses, damages, causes of action, suits or liability arise in part from (i) the negligence of the Contractor, and/or their respective officers, agents and/or employees or (ii) the negligence of the Contractor, its officers, agents and employees. It is the expressed intention of the parties hereto, both Contractor and the City, that the indemnity provided for in this paragraph is indemnity by Contractor to indemnify and protect the City from the consequence of (I) the Contractor's own negligence where that negligence is the cause of the injury, death, or damage. Furthermore, the indemnity provided for in this paragraph shall have no application to any claim, loss, damage, cause of action, suit and liability where in injury, death or damage results**

from the negligence of the City. In the event any action or proceeding is brought against the City by reason of any of the above, the Contractor agrees and covenants to defend the action or proceeding by counsel acceptable to the City. The indemnity provided for herein shall survive the termination or expiration of this Contract.

- b) Contractor shall maintain and shall be caused to be in force at all times during the term of this Contract the insurance coverages attached as Attachment B.
- c) This Contract is not intended to extend the liability of the parties beyond that provided by law. The City does not waive, limit, or surrender any immunity or defense available to the City.

8. ASSIGNMENT

The parties hereby agree that Contractor may not assign, convey or transfer its interest, rights and duties in this Agreement without the prior written consent of the City.

9. NOTICES

Any notices required by this Contract shall be sufficient if sent by the parties in the United States mail, postage paid, return receipt requested or via overnight delivery service, to the address noted below and shall be effective upon receipt:

Bob Hart
 City Manager
 City of Corinth
 3300 Corinth Parkway
 Corinth, TX 76208

Kathy Robertson
 Vice President
 Child’s Play, Inc.
 10661 Shady Trail
 Zip Dallas, TX 75220

Either party may change its address by giving written notice to become effective upon five days’ notice.

10. MISCELLANEOUS

- (a) This Contract shall be governed by the laws of the State of Texas and any action relating to this Contract shall be filed in district court in Denton County, Texas.
- (b) Contractor is an independent contractor and not an employee of the City.
- (c) In rendering services under this Contract, Contractor shall comply with all applicable federal, state and local laws, rules and regulations, including those pertaining to equal employment opportunity and shall not discriminate based on age, ancestry, color, gender, marital status, medical condition, national origin, physical or mental disability, race, religion or sexual orientation.
- (d) This Contract may be amended or supplemented only by the mutual written consent of the parties’ authorized representatives.
- (e) No provision of this Contract may be waived unless in writing and signed by both of the parties hereto. Waiver of a breach of any provision of this Contract shall not operate or be

construed as a waiver of any subsequent breach of such provision nor shall a waiver of any one provision of this Contract be deemed to be a waiver of any other provision.

- (g) The Section headings in this Contract are inserted only as a matter of convenience, and in no way define, limit, or extend or interpret the scope of this Contract or of any particular Section.
- (h) Nothing in this Contract shall be construed to create any right in any third party not a signatory to this Contract, and the parties do not intend to create any third-party beneficiaries by entering into this Contract.
- (i) The language of all parts of this Contract shall be construed as a whole according to its fair meaning, and the presumption or principle that the language herein is to be construed against either party shall not apply.

IN WITNESS WHEREOF, the City and the Contractor have executed this Contract as of the date first written above.

CITY OF CORINTH

Bob Hart, City Manager

ATTEST:

Lana Wylie, City Secretary

Child's Play Inc.

Kathy M. Robertson

Kathy Robertson

ATTEST:

Casey Weiss

By: CASEY WEISS
Title: SALES/TERRITORY REP

**Attachment A – Vendor Quotes with Cooperative Pricing &
Contract Number**

**Attachment B - City's Standard Terms & Conditions for
Procurements and Vendor Insurance Requirements**

**Attachment C – Vendor Cooperative Contract Documentation with
Child’s Play Inc., BuyBoard #592-19**

Child's Play, Inc.

10661 Shady Trail
Dallas, TX 75220
(P) 972-484-0600 (F) 972-484-0333

ADDRESS

Meadowview Park
Accounts Payable
3300 Corinth Parkway
Corinth, TX 76208

SHIP TO

Meadowview Park
Accounts Payable
3300 Corinth Parkway
Corinth, TX 76208

QUOTE #	DATE	EXPIRATION DATE
21-4215	12/07/2021	12/30/2021

PROJECT

Option 2 Pirate ship

SALES REP

CW

DESCRIPTION	QTY	PRICE EACH	AMOUNT
BCISynergy Custom Synergy Series Playground Structure Age Group 2-5	1	16,226.00	16,226.00
BCISNUIN Custom Nucleus/Intensity Series Playground Structure Age 5-12 (Pirate Ship Theme)	1	40,008.00	40,008.00
BCI560-0557 Treasure Chest	1	1,450.00	1,450.00
BCI550-0201 5" Single Post Swing	1	1,435.00	1,435.00
BCI550-0112 Molded Rubber Belt Seat w/8' Chain - Pair	1	223.00	223.00
BCIMisc BCI550-0184 TotBay, Add on, PVC Chain	1	931.00	931.00
BCI580-0098 One-Piece Adjustable Single Grill	2	375.00	750.00
BCI580-0176 6' Traditional Series Portable Picnic Table	1	1,350.00	1,350.00
BCIMisc Burke Fit-2769 Warrior Course	1	23,362.00	23,362.00
BCI046-0366 4' x 8"H StoneBorder Timber	54	45.00	2,430.00
APS-HalfRamp Half Playground Entrance Ramp	1	599.00	599.00
Site Work Site Work- 1. Remove all rubber mulch surfacing and set aside to access equipment 2. Demo and haul off existing playground equipment 3. Cut out concrete pad that connects from sidewalk to existing 5-12 playground	1	3,400.00	3,400.00
Geo Textile Fabric Geo Textile Fabric	3	650.00	1,950.00

DESCRIPTION	QTY	PRICE EACH	
LTR20003 76.9 Cu Ft - 2000# Supersack Rubber Mulch - Mocha Brown	20	580.00	11,600.00
Install Rubber Installation of Rubber Mulch	20	100.00	2,000.00
Installation Professional SUPERVISED Installation of Playground Equipment	1	6,500.00	6,500.00
Freight Freight	1	5,200.00	5,200.00
BCIMisc Burke "MOVE WITH US" Grant	1	-15,554.00	-15,554.00
Buyboard This is a Buyboard Purchasing Cooperative Quote. Pricing reflects Buyboard discounts as listed under Contract #592-19, Vendor #1501	1	0.00	0.00
BCIMAINT BCI Burke Maintenance Kit - FREE	1	0.00	0.00
NPPS NPPS Supervision Safety Kit - FREE	1	0.00	0.00
CPIWARR SUPPLEMENTAL WARRANTY: In addition to BCI Burke's non-prorated warranty, Child's Play, Inc. offers the value added service of 100% free replacement costs on all warranted BCI Burke products throughout the duration of the warranty period. The warranted items are shipped directly to Child's Play and installed free of charge by our installation crew. The result is zero out-of-pocket costs to the customer on all warranted BCI Burke products. It is BCI Burke's commitment to a higher quality product, which makes this "Special Supplemental Warranty" possible.	1	0.00	0.00
(2) FREE SITE VISITS: When Child's Play, Inc. installs the equipment, we will perform two FREE maintenance inspections per year. Customer to schedule in advance.			
Install Terms Installation charges, if quoted, are for a "standard" installation unless specifically noted otherwise. Installation charges are due upon completion. Standard installations generally require from 2-10 business days to complete, depending upon the amount and type of equipment, site conditions, weather, and schedule. Work may or may not be performed in consecutive days. The quote is based on the site being level and with no resilient surfacing (sand, gravel, bark, etc.) being in place. A charge will be assessed to level site or remove resilient surfacing based upon equipment/material costs and man hours required. Any and all permits and any fees associated with the permits are the responsibility of owner/contractor.	1	0.00	0.00
An additional charge will be required if digging of footing cannot be performed by equipment or if rock conditions are encountered. Additional man hours/jack hammers required to dig footings will be added to the contract price at a minimum of \$250/per jack hammer per day.			
Installation is based upon unrestricted access to site for equipment, i.e., Bobcats, concrete trucks, dump trucks, and miscellaneous work vehicles. Installers are not responsible for damages to irrigation, landscape and utilities. Protection for these items is the responsibility of the owner.			

TOTAL

\$10,000,000 Section J, Item 5.

Accepted By

Accepted Date

CERTIFICATE OF INTERESTED PARTIES

Section J, Item 5.

1 of 1

Complete Nos. 1 - 4 and 6 if there are interested parties.
Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

OFFICE USE ONLY CERTIFICATION OF FILING

Certificate Number:
2021-828653

Date Filed:
12/02/2021

Date Acknowledged:

1 Name of business entity filing form, and the city, state and country of the business entity's place of business.

Child's Play, Inc.
Dallas, TX United States

2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.

City of Corinth

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

21-4215
Meadowview Park Re-Build

4	Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
			Controlling	Intermediary

5 Check only if there is NO Interested Party.

6 UNSWORN DECLARATION

My name is Kathy M. Robertson, and my date of birth is .

My address is 10001 Shady Trail, Dallas, Tx, 75220, USA.
(street) (city) (state) (zip code) (country)

I declare under penalty of perjury that the foregoing is true and correct.

Executed in Dallas County, State of Texas, on the 2nd day of December, 2021.
(month) (year)

Kathy M. Robertson
Signature of authorized agent of contracting business entity
(Declarant)

CERTIFICATE OF INTERESTED PARTIES

Section J, Item 5.

FO

1 of 1

Complete Nos. 1 - 4 and 6 if there are interested parties.
 Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

OFFICE USE ONLY CERTIFICATION OF FILING

1 Name of business entity filing form, and the city, state and country of the business entity's place of business.
 Child's Play, Inc.
 Dallas, TX United States

Certificate Number:
 2021-828653

Date Filed:
 12/02/2021

2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.
 City of Corinth

Date Acknowledged:
 12/02/2021

3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.
 21-4215
 Meadowview Park Re-Build

4	Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
			Controlling	Intermediary

5 Check only if there is NO Interested Party.

6 UNSWORN DECLARATION

My name is _____, and my date of birth is _____.

My address is _____, _____, _____, _____, _____.
(street) (city) (state) (zip code) (country)

I declare under penalty of perjury that the foregoing is true and correct.

Executed in _____ County, State of _____, on the _____ day of _____, 20____.
(month) (year)

 Signature of authorized agent of contracting business entity
 (Declarant)

STANDARD TERMS AND CONDITIONS

The terms and conditions shall apply to all goods or services procured by the City and shall be incorporated into and be a part of any bids/proposals submitted to the City of Corinth for the goods and/or services specified. No other terms and conditions shall apply unless approved in writing by the City of Corinth, Texas.

1. **ADDENDA:** Any interpretations, corrections or changes to the information or specifications will be made by addenda. Sole issuing authority of addenda shall be vest in the City of Corinth Purchasing Agent. Addenda will be posted at <https://cityofcorinth.bonfirehub.com>. It is the responsibility of the Respondent to check the Bonfire website for addenda. Respondents shall acknowledge receipt of all addenda by submitting a signed copy with their bid/proposal.
2. **ADVERTISING:** The successful Respondent shall not advertise or publish, without the City's prior approval, the fact that the City has entered into a contract, except to the extent necessary to comply with proper requests for information from an authorized representative of the Federal, State, or local government.
3. **ALTERING BID/PROPOSAL PRICING:** Prices offered shall be submitted for units of quantity as specified in the bid/proposal document, extended and totaled. In the case of a discrepancy in the extended price, the unit price shall govern and control. Any alteration, strike-through or erasure made prior to bid/proposal opening shall be initialed by the signer of the bid/proposal, guaranteeing authenticity.

FOR BIDS ONLY: Prices offered **cannot** be altered or amended after the submission deadline. Bids may not be changed for the purpose of correcting an error in bid price after bid opening.

4. **ASSIGNMENT:** The successful respondent shall not sell, assign, transfer or convey the awarded contract, in whole or in part, without the prior written consent of the City.
5. **AWARD:** The City reserves the right to award by line item, section, or by entire bid/proposal; whichever is most advantageous to the City. The City may also consider administration costs when awarding to multiple vendors.

The City may award bids/proposals to the lowest responsive responsible vendor(s), or to the vendor(s) who provides goods or services at the best value to the City. If using the best value method, the selection criteria will be clearly identified in the bid/proposal document. The best value method may take into consideration, in whole or in part, by way of illustration and not limitation, the following criteria:

- A. The purchase price;
 - B. The reputation of the respondent and of the respondent's goods or services;
 - C. The quality of the respondent's goods or services;
 - D. The extent to which the goods or services meet the City's needs;
 - E. The respondent's past relationship with the City;
 - F. The total long-term cost to the City to acquire the respondent's goods or services;
 - G. Any relevant criteria specifically listed herein.
6. **BID/PROPOSAL SUBMITTAL:** The City utilizes Bonfire to advertise and receive bids/proposals electronically. Bids will be received in hard copy; or electronically through Bonfire as specified in the bid/proposal packet.

Electronic submittals must be submitted through the Bonfire portal at <https://cityofcorinth.bonfirehub.com>; and must include all required information and attachments; with required signatures in order to be considered. If a bid bond is required, a copy of the bid bond must be uploaded with the electronic submittal. The original bid bond document must be received in the Purchasing office within three (3) business days after the deadline for receipt of submittals. Original bid bond documents must be sent to City of Corinth, Attn: Purchasing Agent, 3300 Corinth Parkway, Corinth, TX 76208. The City may disqualify submissions from Respondents who do not comply with this requirement.

Hard copy bids must include all required information and attachments; with required signatures; and must be submitted in a sealed envelope or package to the office of the Purchasing Agent, 3300 Corinth Parkway, Corinth, Texas 76208. If a bid bond is required, the bid/proposal in paper format must include the original bid bond with their submission.

7. **BRAND NAME, CATALOG OR MANUFACTURER'S REFERENCE:** Any reference to brand name, catalog or manufacturer's reference is used to be descriptive, not restrictive, and is indicative of the type and quality the City desires to purchase. Bids/proposals on similar items of like quality may be considered if the bid/proposal is noted and fully descriptive brochures are enclosed. If notation of substitution is not made, it is assumed the respondent is proposing exact item specified. Successful respondent will not be allowed to make unauthorized substitutions after award.
8. **CHANGE ORDERS:** No oral statement of any person shall modify or otherwise change, or affect the terms, conditions or specifications stated in the resulting contract. The City of Corinth's Purchasing Agent will make all change orders to the contract in writing as allowed by law.
9. **COMMUNICATION:** The successful respondent shall direct all contact with the City through the Contract Administrator identified in the Contract. The Respondent will not directly respond to, make inquiries of, survey or solicit information from, or otherwise interact with any departments, divisions, employees, or agents of the City unless specifically approved, or requested by the Contract Administrator.
10. **COMPANIES ENGAGED IN BUSINESS WITH IRAN, SUDAN, OR FOREIGN TERRORIST ORGANIZATION:** Pursuant to Texas Government Code Chapter 2252, Subchapter F, Seller affirms that it is not identified on a list created by the Texas Comptroller of Public Accounts as a company known to have contracts with or provide supplies or services to a foreign terrorist organization.
11. **CONFLICT OF INTEREST:** In compliance with Local Government Code §176.006, all vendors shall file a completed Conflict of Interest Questionnaire with the City's Purchasing Office.

- 12. CONTRACT ADMINISTRATOR:** Under the contract, the City may appoint a contract administrator with designated responsibility to ensure compliance with contract requirements, such as but not limited to, acceptance, inspection and delivery. If appointed, the administrator will serve as liaison between the City and the successful contractor.
- 13. CONTRACT ENFORCEMENT:**
- A. The City reserves the right to enforce the performance of any contract that results from an award of this bid/proposal packet. Enforcement shall be in any manner prescribed by law or deemed to be in the best interest of the City in the event of breach or default of the contract. Breach of contract or default authorizes the City to make an award to another respondent, purchase the service elsewhere and to charge the full increase in cost and handling to the defaulting contractor. Additionally, the City will remove the defaulting contractor from the City's list of approved vendors for a period of two years.
 - B. Respondents who submit proposals for this service agree that the City shall not be liable to prosecution for damages in the event that the City declares the successful contractor in default.
 - C. Any notice provided by this bid/proposal packet (or required by law) to be given to the successful Respondent by the City shall be conclusively deemed to have been given and received on the next day after such written notice has been deposited in the mail at the City of Corinth, by Registered or Certified mail with sufficient postage affixed thereto, addressed to the successful Respondent at the address provided in the bid/proposal; this shall not prevent the giving of actual notice in any other manner.
 - D. The successful Respondent and the City agree that both parties have all rights, duties and remedies available as stated in the Uniform Commercial Code (UCC). In case of a conflict between the terms of this bid/proposal packet and the UCC, the bid/proposal packet will control.
- 14. DELIVERY:**
- A. Delivery date is important to the City and may be required to be a part of each bid/proposal. The City considers delivery time to be that period elapsing from the time the individual order is placed until that order is received by the City at the specified delivery location. The delivery date indicates a guaranteed delivery to the City of Corinth. Failure of the respondent to meet guaranteed delivery dates or service performance could affect future City orders.
 - B. The City may reject and refuse any delivery, which falls below the quality designated in the specifications. The cost of return and/or replacement will be at the Respondent's expense.
 - C. The City reserves the right to demand bond or penalty to guarantee delivery by the date indicated. If order is given and the Respondent fails to furnish the materials by the guaranteed date, the City reserves the right to cancel the order without liability on its part. Pricing shall include all charges for freight, F.O.B. inside to specified delivery location.
 - D. Whenever the Contractor encounters any difficulty which is delaying or threatens to delay timely performance (including actual or potential labor disputes), the Contractor shall immediately give notice thereof in writing to the Purchasing Agent, stating all relevant information with respect thereto. Such notice shall not in any way constitute a basis for an extension of the delivery or performance schedule or be construed as a waiver by the City of any rights or remedies to which it is entitled by law or pursuant to provisions herein. Failure to give such notice, however, may be grounds for denial of any request for an extension of the delivery or performance schedule because of such delivery.
- 15. ETHICS:** The Respondent shall not offer or accept gifts or anything of value nor enter into any business arrangement with any employee, official, or agent of the City except in accordance with City Policy.
- 16. EXCEPTIONS/SUBSTITUTIONS:** All proposals meeting the intent of this bid/proposal packet will be considered for award. Respondents taking exception to the instructions, specifications, terms and conditions or offering substitutions, shall state these exceptions in the section provided or by attachment as part of their bid/proposal. The absence of such a list shall indicate that the Respondent has not taken exceptions and shall hold the Respondent responsible to perform in strict accordance with the instructions, specifications, terms and conditions of the bid/proposal packet. The City of Corinth reserves the right to accept any and all or none of the exception(s)/substitution(s) deemed to be in the best interest of the City.
- 17. FELONY CRIMINAL CONVICTIONS:** The Respondent represents and warrants that neither the Respondent nor the Respondent's employees have been convicted of a felony criminal offense, or under investigation of such charge, or that, if such a conviction has occurred, the Respondent has fully advised the City as to the facts and circumstances surrounding the conviction.
- 18. FORCE MAJEURE:** *Force majeure* is defined as an act of God, war, strike, fire or explosion. Neither the successful Respondent nor the City is liable for delays or failures of performance due to *force majeure*. Each party must inform the other in writing with proof of receipt within three (3) business days of the occurrence of an event of *force majeure*.
- 19. INDEMNITY AGREEMENT:** The Contractor hereby agrees to and shall indemnify, hold harmless, and defend the City, its officers, agents and employees from and against any and all claims, losses, damages, demands, causes of action, suits and liability of every kind, including all expenses of litigation, court costs and attorneys' fees, for injury to or death of any person, for loss of use or revenue, or for damage to any property arising out of or in connection with the actual or alleged malfunction, design or workmanship in the manufacture of equipment, the fulfillment of this Contract, or the breach of any express or implied warranties under this Contract. Such indemnity shall apply where the claims, losses, damages, causes of action, suits or liability arise in part from (i) the negligence of the Contractor, and/or their respective officers, agents and/or employees or (ii) the negligence of the Contractor, its officers, agents and employees. It is the expressed intention of the parties hereto, both Contractor and the City, that the indemnity provided for in this paragraph is indemnity by Contractor to indemnify and protect the City from the consequence of (i) the Contractor's own negligence where that negligence is the cause of the injury, death, or damage. Furthermore, the indemnity provided for in this paragraph shall have no application to any claim, loss, damage, cause of action, suit and liability where in injury, death or damage results from the negligence of the City. In the event any action or proceeding is brought against the City by reason of any of the above, the Contractor agrees and covenants to defend the action or proceeding by counsel acceptable to the City. The indemnity provided for herein shall survive the termination or expiration of this Contract.

- 20. **INVOICES:** Each invoice shall be fully documented as to the Contractor's/vendor's name and address, receiving department's name and address, labor, materials and equipment provided, if applicable, and must reference the City of Corinth purchase order number in order to be processed. No payments shall be made on invoices not listing a purchase order number. Invoices shall be mailed directly to the City of Corinth, Attention: Accounts Payable, 3300 Corinth Pkwy., Corinth, Texas, 76208.
- 21. **LATE SUBMITTALS:** The City will reject late bids/proposals. The City is not responsible for lateness or non-delivery of mail, carrier, etc. and the date/time stamp in the Purchasing Office shall be the official time of receipt. The Respondent is responsible for ensuring that packets are delivered to the Purchasing Office. Respondents may confirm receipt of packets by contacting Cindy Troyer, Purchasing Agent at 940-498-3286.
- 22. **MINIMUM STANDARDS FOR RESPONSIBILITY:** A prospective vendor must affirmatively demonstrate responsibility. The City may request representation and other information sufficient to determine respondent's ability to meet the minimum standards including but not limited to:
 - A. Have adequate financial resources or the ability to obtain such resources.
 - B. Ability to comply with the required or proposed delivery schedule.
 - C. Have a satisfactory record of performance.
 - D. Have a satisfactory record of integrity and ethics.
 - E. Be otherwise qualified and eligible to receive an award.
- 23. **NO BOYCOTT OF ISRAEL:** Pursuant to Texas Government Code Chapter 2270, the successful Respondent agrees that acceptance of these Terms & Conditions serves as written verification that Contractor: (i) either meets an exemption criteria under Section 2270.002; or it does (1) does not boycott Israel, as defined by Texas Government Code Section 808.001; and (2) will not boycott Israel during the term of the contract. This requirement does not apply to sole proprietorships, companies with fewer than ten employees; or contracts that are less than \$100,000.00.
- 24. **NON-APPROPRIATION CLAUSE:** If the governing body of the City fails to specifically appropriate sufficient funds to make the payments due in any Fiscal Year under this Contract, an event of non-appropriation ("Event of Non-appropriation") will have occurred, the terms of this Contract will not be renewed, and Contractor or City may terminate this Contract at the end of the then current Fiscal Year, whereupon City will be obligated to pay those amounts then due subject to the provisions herein. Nothing in this Section or elsewhere in this Contract will be deemed in any way to obligate the City or create a debt of City beyond its current Fiscal Year. CONTRACTOR HAS NO RIGHT TO COMPEL CITY TO LEVY OR COLLECT TAXES TO MAKE ANY PAYMENTS REQUIRED HEREUNDER, OR TO EXPEND FUNDS BEYOND THE AMOUNT PROVIDED FOR IN THE THEN CURRENT FISCAL YEAR OF CITY.
- 25. **PATENTS/COPYRIGHTS:** The successful Respondent agrees to protect the City from claims involving infringements of patents and/or copyrights.
- 26. **PAYMENT:** Will be made upon receipt and acceptance by the City for item(s) and/or service(s) ordered and delivered after receipt of a valid invoice, in accordance with the State of Texas Prompt Payment Act, Chapter 2251, Government Code.
- 27. **PRICES HELD FIRM:**
 - A. All prices quoted in the proposals will remain firm for a minimum of 90 days from the date of the proposal unless it is otherwise specified by the City of Corinth.
 - B. If during the life of the contract, the successful Respondent's net prices to other customers for the items awarded herein are reduced below the contracted price, it is understood and agreed that the benefits of such reduction shall be extended to the City.
- 28. **PURCHASE ORDER:** The City shall generate a purchase order(s) to the successful Respondent. The purchase order number must appear on all itemized invoices.
- 29. **QUANTITIES:** Quantities indicated on the Bid/Proposal Form are estimates based upon the best available information. The City reserves the right to increase or decrease quantities to meet its actual needs without any adjustments in bid/proposal price. Individual purchase orders will be issued on an as-needed basis.
- 30. **REFERENCES:** The City requests each Respondent to supply, with its bid/proposal, a list of at least three (3) references where their firm supplied like services within the last three to five years. It is preferred that the list identify municipalities that are customers of Respondent. For each reference, include the name of firm, address, contact employee of firm, with telephone number and e-mail address, what services are provided to this reference, and how long your firm has provided this service to the reference entity.
- 31. **RELEASE OF INFORMATION AND PUBLIC INSPECTION:** After sealed bids have been opened, bids are open for public viewing upon request. If the bid contains trade secrets or confidential information, the Respondent must specifically list that portion as confidential. All other parts of the bid are open for public viewing upon request.

For processes other than low bid or best value bid, only the names of respondents will be read aloud at the scheduled opening. Pricing information will not be released until after award of the contract.
- 32. **REQUIRED DOCUMENTATION:** In response to this bid/proposal packet, all required documentation must be provided.
- 33. **SALES TAX:** The City is exempt by law from payment of Texas Sales Tax and Federal Excise Tax. Our taxpayer identification number is 75-1453222.
- 34. **SEVERABILITY:** If any section, subsection, paragraph, sentence, clause, phrase or word of these instructions, specifications, terms and conditions, shall be held invalid, such holding shall not affect the remaining portions of these instructions, specifications, terms and conditions and it is hereby declared that such remaining portions would have been included in these instructions, specifications, terms and conditions as though the invalid portion had been omitted.

- 35. **SILENCE OF SPECIFICATIONS:** The apparent silence of specifications as to any detail or to the apparent omission from it of a detailed description concerning any point shall be regarded as meaning that only the best commercial practices are to prevail. All interpretations of the specifications shall be made based on this statement.
- 36. **SUBCONTRACTORS:** The Contractor shall be the sole source of contact for the Contract. The City will not subcontract any work under the contract to any other firm and will not deal with any subcontractors. The Contractor is totally responsible for all actions and work performed by its subcontractors. All terms, conditions and requirements of the Contract shall apply without qualification to any services performed or goods provided by any subcontractor.
- 37. **TAX/DEBT ARREARAGE:** The City shall pay no money upon any claim, debt, demand, or account whatsoever, to any person, firm or corporation, who is in arrears to the City for taxes or otherwise; and, the City shall be entitled to a counter-claim and offset against any such debt, claim, demand, or account, in the amount of taxes or other debt in arrears, and no assignment or transfer of such debts are due, shall affect the right, authority, and power of the City to offset the taxes or other debts against the same.
- 38. **TERMINATION FOR DEFAULT:** The City reserves the right to enforce the performance of the contract in any manner prescribed by law or deemed to be in the best interest of the City in the event of breach or default of the contract. The City reserves the right to terminate the contract in the manner set forth in the attached Contract.

As soon as practicable after receipt of notice of termination, the Company shall submit a statement showing in detail the pro-rated payment, in a form satisfactory to the City, that reflects the appropriate charges. The City shall then pay the charges as required by law.

- 39. **TERMINATION OF CONTRACT:** The contract shall remain in effect until contract expires, delivery and acceptance of products and/or performance of services ordered or terminated by either party with a ten (10) day written notice prior to any cancellation. The successful Respondent must state therein the reasons for such cancellation. The City may, by written notice to the selected company, cancel this contract immediately without liability to the selected company if it is determined by the City that gratuities or bribes in the form of entertainment, gifts, or otherwise contrary to City Policy, were offered or given by the successful proposing party, or its agent or representative to any City officer, employee or elected representative with respect to the performance of the contract.
- 40. **TRAVEL AND DIRECT CHARGES:** The City shall not compensate the Respondent for any travel costs incurred in delivery of services under the contract.
- 41. **VENUE:** Respondent shall comply with all Federal and State laws and City Ordinances and Codes applicable to the Respondent's operation under this contract. The resulting specifications and the contract herefrom shall be fully governed by the laws of the State of Texas, and shall be fully performable in Denton County, Texas, where venue for any proceeding arising hereunder will lie.
- 42. **WITHDRAWAL OF PROPOSAL:** A proposal may be withdrawn any time prior to the official opening, as long as the request is received in writing from an authorized representative.

**CITY OF CORINTH
GENERAL SERVICES
INSURANCE REQUIREMENTS**

1.0 DEFINITION

Vendors/Contractors shall procure and maintain for the duration of the contract, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the vendor, his agents, representatives, employees or subcontractors. The cost of such insurance shall be borne by the vendor. A certificate of insurance meeting all requirements and provisions shall be provided to the City prior to any services being performed or rendered. Renewal certificates shall also be supplied upon expiration.

A. Minimum Scope of Insurance: Coverage shall be at least as broad as:

1. ISO Form Number GL 00 01 (or similar form) covering Commercial General Liability. "Occurrence" form only, "claims made" forms are unacceptable. Policy must include coverage for:
 - a. Premises/Operations
 - b. Broad Form Contractual Liability
 - c. Products and Completed Operations
 - d. Personal Injury
 - e. Broad Form Property Damage
 - f. Independent Contractors
2. Workers Compensation insurance as required by the Labor Code of the State of Texas, including Employers' Liability Insurance. Worker's Compensation /Employers' Liability insurance is only required if contractor/vendor will use their own employees for the provision of General or Professional services under the contract
3. Automobile Liability as required by the State of Texas, covering all owned, hired, or non-owned vehicles. Automobile Liability is only required if vehicle(s) will be used under the contract.
4. Professional Liability, also known as Errors and Omissions Coverage. Professional Liability is only required for Professional Services contracts.

B. Deductibles and Self-Insured Retentions: Any deductible or self-insured retention in excess of \$10,000 must be declared to and approved by the City.

C. Other Insurance Provisions: The policies are to contain, or be endorsed to contain the following provisions.

1. General Liability and Automobile Liability Coverage:
 - a. The City, its officers, officials, employees, boards and commissions and volunteers are to be added as "Additional Insured's" relative to liability arising out of activities

performed by or on behalf of the vendor/contractor, products and completed operations of the vendor, premises owned, occupied or used by the vendor/contractor. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, officials, employees or volunteers.

- b. The vendor/contractor insurance coverage shall be primary insurance in respects to the City, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees or volunteers shall be in excess of the vendor's insurance and shall not contribute with it.
 - c. Any failure to comply with reporting provisions of the policy shall not affect coverage provided to the City, its officers, officials, employees, boards, and commissions or volunteers.
 - d. The vendor/contractor insurance shall apply separately to each insured against whom the claim is made or suit is brought, except to the limits of the insured's limit of liability.
2. Workers Compensation and Employer's Liability Coverage: The insurer shall agree to waive all rights of subrogation against the City, its officers, officials, employees and volunteers for losses arising from work performed by the vendor for the City.
3. All Coverage: Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled or non-renewed by either party, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given the City. In the event the companies providing the required insurance are prohibited by law to provide any such specific endorsements, the vendor/contractor shall provide at least thirty (30) days prior written notice to the City of any cancellation, non-renewal and/or material changes to any of the policies of insurance. Failure to provide notification shall be deemed a default and/or breach of contract.
4. The City may request different limits of coverage depending on the scope or cost of the project.
- D. **Acceptability of Insurers:** The City prefers that insurance be placed with insurers with an A.M. Best's rating of no less than A-VI, or better.
- E. **Verification of Coverage:** Vendor/Contractor shall provide the City certificates of insurance indicating the coverage required. The certificates are to be signed by a person authorized by that insurer to bind coverage on its behalf. Certificates of Insurance similar to the ACORD Form are acceptable. City will not accept Memorandums of Insurance or Binders as proof of insurance. The City reserves the right to require complete, certified copies of all required insurance policies at any time.
- F. **Insurance Waiver Request.** Vendors/contractors requesting a waiver of the minimum limits of insurance identified in section 1.1.B must submit the request in writing. Please note, commercial general liability cannot be waived. Requests to waive other coverage requirements will be considered in the bid evaluation process. The vendor/contractor must also complete, sign, and return the Release Agreement form to the Purchasing Office prior to authorization to perform services for the City.

1.1 GENERAL SERVICES REQUIREMENTS

A. **Definition:** General Services are defined as services performed on City property, including but not limited to: Installation, Landscape, Maintenance, Custodial, Electrical, Painting, Welding, Plumbing, Transportation, Street Sweeping, Fireworks, Moving, Concessions, etc.

B. **Minimum Limits of Insurance:**

1. Commercial General Liability: \$500,000 per occurrence / \$2,000,000 in the aggregate for third party bodily injury, personal injury and property damage. Policy must include coverage listed in Section 1.A.1.

5. Workers Compensation and Employer's Liability: Workers Compensation limits as required by the Labor Code of the State of Texas and Statutory Employer's Liability minimum limits of \$100,000 each accident, \$300,000 Disease - Policy Limit, and \$100,000 Disease – Each Employee. Worker's Compensation /Employers' Liability insurance is only required if contractor/vendor will use their own employees for the provision of services under the contract.

2. Automobile Liability: \$500,000 Combined Single Limit. Limits can only be reduced if approved by the City. Automobile liability shall apply to all owned, hired, and non-owned autos. Automobile Liability is only required if vehicle(s) will be used under the contract.

August 2, 2021

Sent via email to: kathy@childsplayinc.net

Kathy Robertson
Child's Play, Inc.
10661 Shady Trail
Dallas, TX 75220

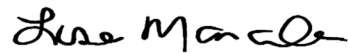
Re: Parks and Recreation Equipment and Field Lighting Products
BuyBoard Contract 592-19

The Local Government Purchasing Cooperative (BuyBoard) awarded your company a contract under Parks and Recreation Equipment and Field Lighting Products, Contract 592-19, for which the current term is set to expire September 30, 2021. At this time, the BuyBoard is renewing your contract through September 30, 2022. This will be the final renewal of this contract.

All discounts, terms, and conditions of your contract will remain the same. If you agree to this renewal, there is nothing you need to do. However, if you do not agree to this renewal, you must notify me via email at lisa.maraden@tasb.org prior to the start of the renewal term.

If you have questions or comments concerning this renewal, please contact me as soon as possible at lisa.maraden@tasb.org. We appreciate your interest in The Local Government Purchasing Cooperative.

Sincerely,



Lisa Maraden
Contract Administrator

final renewal v.02.13.2020

August 28, 2020

Sent via email to: kathy@childsplayinc.net

Kathy Robertson
Child's Play, Inc.
10661 Shady Trail
Dallas TX 75220

Re: Parks and Recreation Equipment and Field Lighting Products
BuyBoard Contract 592-19

The Local Government Purchasing Cooperative (BuyBoard) awarded your company a contract under Parks and Recreation Equipment and Field Lighting Products, Contract 592-19 effective October 1, 2019 through September 30, 2020, with two possible one-year renewals. At this time, the BuyBoard is renewing your contract through September 30, 2021.

All discounts, terms, and conditions of your contract will remain the same. If you agree to this renewal, there is nothing you need to do. However, if you do not agree to this renewal, you must notify me via email at connie.burkett@tasb.org prior to the start of the renewal term.

Reminder: Once a BuyBoard contract is awarded, vendors must generate a minimum of \$15,000 annually or they may not be offered a contract renewal.

If you have questions or comments concerning this renewal, please contact me as soon as possible at connie.burkett@tasb.org. We appreciate your interest in The Local Government Purchasing Cooperative.

Sincerely,



Connie W Burkett, CTSBO
Contract Administrator

1st renewal v.02.13.2020

P.O. Box 400
Austin, TX 78767-0400
800.695.2919 | 512.467.0222 | Fax: 800.211.5454
buyboard.com

July 18, 2019

Sent Via Email: kathy@childsplayinc.net

Kathy Robertson
Child s Play, Inc.
10661 Shady Trail
Dallas, TX 75220

Welcome to BuyBoard!

Re: Notice of The Local Government Purchasing Cooperative Award

Proposal Name and Number: Parks and Recreation Equipment and Field Lighting Products and Installation, Proposal No. 592-19

Congratulations, The Local Government Purchasing Cooperative (Cooperative) has awarded your company a BuyBoard® contract based on the above-referenced Proposal. The contract is effective 10/1/2019 through 9/30/2020, with two possible one-year renewals. The contract documents are those identified in Section 3 of the General Terms and Conditions of the specifications.

To view the items your company has been awarded, please review the proposal tabulation No. 592-19 on the following web-site: www.buyboard.com/vendor. Only items marked as awarded to your company can be sold through the BuyBoard contract. In addition, on this website you will find the membership list which will provide you with the names of all entities with membership in our purchasing cooperative.

Enclosed with this letter you will find the following documents:

1. Vendor Quick Reference Guide
2. BuyBoard License and Identity Standards

You are advised that receipt of a purchase order directly from a Cooperative member is not within the guidelines of the Cooperative. Accepting purchase orders directly from Cooperative members may result in a violation of the State of Texas competitive bid statute and termination of this Cooperative BuyBoard contract. **Therefore, all purchase orders must be processed through the BuyBoard in order to comply.** Please forward by email to info@buyboard.com any order received directly from a Cooperative member. If you inadvertently process a purchase order sent directly to you by a Cooperative member, please email the order info@buyboard.com and note it as **RECORD ONLY** to prevent duplication.

As an awarded vendor a BuyBoard user id and password will be sent via e-mail 2 to 3 business days prior to the start of your contract.

On behalf of the Texas Association of School Boards, we appreciate your interest in the Cooperative and we are looking forward to your participation in the program. If you have any questions, please contact **Cooperative Procurement Staff** at 800-695-2919.

Sincerely,



Arturo Salinas
Department Director, Cooperative Procurement

v.6.5

September 4, 2019

Sent Via Email: kathy@childsplayinc.net

Kathy Robertson
Child s Play, Inc.
10661 Shady Trail
Dallas, TX 75220

Welcome to BuyBoard!

Re: *Notice of National Purchasing Cooperative Piggy-Back Award*

Proposal Name and Number: Parks and Recreation Equipment and Field Lighting Products and Installation, Proposal No. 592-19

Congratulations, The National Purchasing Cooperative (National Cooperative) has awarded your company a BuyBoard® contract based on the above-referenced Proposal. As provided for in the Proposal and your National Purchasing Cooperative Vendor Award Agreement, you are authorized to sell the goods and services awarded under the Proposal to National Cooperative members in states other than Texas through the BuyBoard. The contract is effective 10/1/2019 through 9/30/2020, with two possible one-year renewals.

The National Cooperative membership list is available at our website www.buyboard.com/vendor. The list identifies the current members that may purchase awarded goods and services under your National Cooperative BuyBoard contract.

You are advised that receipt of a purchase order directly from a National Cooperative member is not within BuyBoard guidelines. Accepting purchase orders directly from Cooperative members may result in a violation of applicable competitive procurement law and termination of this National Cooperative BuyBoard contract. **Therefore, all purchase orders from National Cooperative members must be processed through the BuyBoard.** Please forward by e-mail to info@buyboard.com any order received directly from a National Cooperative member. If you inadvertently process a purchase order sent directly to you by a National Cooperative member, please fax the order to the above number and note it as **RECORD ONLY** to prevent duplication.

As an awarded vendor a BuyBoard user id and password will be sent via e-mail 2 to 3 business days prior to the start of your contract.

On behalf of the National Cooperative, we are looking forward to your participation in the program. If you have any questions, please contact **Cooperative Procurement Staff at 800-695-2919.**

Sincerely,



Arturo Salinas
Department Director, Cooperative Procurement
v.6.5



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PROPOSER'S AGREEMENT AND SIGNATURE

Proposal Name: Parks and Recreation Equipment and Field Lighting Products

Proposal Due Date/Opening Date and Time: January 24, 2019 at 4:00 PM

Proposal Number: 592-19

Location of Proposal Opening:
Texas Association of School Boards, Inc.
BuyBoard Department
12007 Research Blvd.
Austin, TX 78759

Contract Time Period: October 1, 2019 through September 30, 2020 with two (2) possible one-year renewals.

Anticipated Cooperative Board Meeting Date: July 2019

Child's Play Inc

Name of Proposing Company

1/23/2018

Date

10661 Shady Trail

Street Address

Signature of Authorized Company Official

Dallas, TX 75220

City, State, Zip

Kathy M. Robertson

Printed Name of Authorized Company Official

972-484-0600

Telephone Number of Authorized Company Official

VP

Position or Title of Authorized Company Official

972-484-0333

Fax Number of Authorized Company Official

75-2670715

Federal ID Number



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VENDOR CONTACT INFORMATION

Company: Child's Play ,Inc.

Vendor Contact Name and Mailing Address for Notices: Kathy M. Robertson, 10661 Shady Trail, Dallas, TX 75220

Company Website: www.childsplayinc.net

Purchase Orders: All purchase orders from Cooperative members will be available through the Internet.

Vendors need Internet access and at least one e-mail address so that notification of new orders can be sent to the Internet contact when a new purchase order arrives. An information guide will be provided to vendors to assist them with retrieving their orders.

Please select options below for receipt of purchase orders and provide the requested information:

- I will use the internet to receive purchase orders at the following address.
 E-mail Address: kathy@childsplayinc.net
 Internet Contact: Kathy M. Robertson Phone: 972-484-0600
 Alternate E-mail Address: info@childsplayinc.net
 Alternate Internet Contact: Carole Dearing Phone: 972-484-0600

Purchase orders may be received by the Designated Dealer(s) identified on my company's Dealer Designation form as provided to the Cooperative administrator. I understand that my company shall remain responsible for the Contract and the performance of all Designated Dealers under and in accordance with the Contract.

Request for Quotes ("RFQ"): Cooperative members will send RFQs to you by e-mail. Please provide e-mail addresses for the receipt of RFQs:

E-mail Address: kathy@childsplayinc.net
Alternate E-mail Address: info@childsplayinc.net

Invoices: Your company will be billed monthly for the service fee due under a contract awarded under this Proposal Invitation. **All invoices are available on the BuyBoard website and e-mail notifications will be sent when they are ready to be retrieved.** Please provide the following address, contact and e-mail information for receipt of service fee invoices and related communications:



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Please choose only one (1) of the following options for receipt of invoices and provide the requested information:

Service fee invoices and related communications should be provided directly to my company at:

Mailing address: 10661 Shady Trail Department: Accounting

City: Dallas State: TX Zip Code: 75220

Contact Name: Kathy M. Robertson Phone: 972-484-0600

Fax: 972-484-0333 E-mail Address: kathy@childsplayinc.net

Alternative E-mail Address: info@childsplayinc.net

In lieu of my company, I request and authorize all service fee invoices to be provided directly to the following billing agent**:

Mailing address: _____ Department: _____

City: _____ State: _____ Zip Code: _____

Contact Name: _____ Phone: _____

Fax: _____ E-mail Address: _____

Alternative E-mail Address: _____

In lieu of my company, I request and authorize service fee invoices to be provided to the Designated Dealer(s) receiving the purchase order(s) to which the invoiced service fees relate at the address and contact information designated on my company's Dealer Designation form as provided to the Cooperative administrator.**

**** If Vendor authorizes a billing agent or Designated Dealer(s) to receive and process service fee invoices, in accordance with the General Terms and Conditions of the Contract, Vendor specifically acknowledges and agrees that nothing in that designation shall relieve Vendor of its responsibilities and obligations under the Contract including, but not limited to, payment of all service fees under any Contract awarded Vendor.**



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FELONY CONVICTION DISCLOSURE AND DEBARMENT CERTIFICATION

FELONY CONVICTION DISCLOSURE

Subsection (a) of Section 44.034 of the Texas Education Code (Notification of Criminal History of Contractor) states: "A person or business entity that enters into a contract with a school district must give advance notice to the district if the person or an owner or operator has been convicted of a felony. The notice must include a general description of the conduct resulting in the conviction of a felony."

Section 44.034 further states in Subsection (b): "A school district may terminate a contract with a person or business entity if the district determines that the person or business entity failed to give notice as required by Subsection (a) or misrepresented the conduct resulting in the conviction. The district must compensate the person or business entity for services performed before the termination of the contract."

Please check (√) one of the following:

- My company is a publicly-held corporation. (Advance notice requirement does not apply to publicly-held corporation.)
- My company is not owned or operated by anyone who has been convicted of a felony.
- My company is owned/operated by the following individual(s) who has/have been convicted of a felony:

Name of Felon(s): _____

Details of Conviction(s): _____

By signature below, I certify that the above information is true, complete and accurate and that I am authorized by my company to make this certification.

Child's Play, Inc.

Company Name

Kathy M. Robertson
Signature of Authorized Company Official

Kathy M. Robertson
Printed Name

DEBARMENT CERTIFICATION

Neither my company nor an owner or principal of my company has been debarred, suspended or otherwise made ineligible for participation in Federal Assistance programs under Executive Order 12549, "Debarment and Suspension," as described in the Federal Register and Rules and Regulations. Neither my company nor an owner or principal of my company is currently listed on the government-wide exclusions in SAM, debarred, suspended, or otherwise excluded by agencies or declared ineligible under any statutory or regulatory authority. My company agrees to immediately notify the Cooperative and all Cooperative members with pending purchases or seeking to purchase from my company if my company or an owner or principal is later listed on the government-wide exclusions in SAM, or is debarred, suspended, or otherwise excluded by agencies or declared ineligible under any statutory or regulatory authority.

By signature below, I certify that the above is true, complete and accurate and that I am authorized by my company to make this certification.

Child's Play, Inc.

Company Name

Kathy M. Robertson
Signature of Authorized Company Official

Kathy M. Robertson
Printed Name



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RESIDENT / NONRESIDENT CERTIFICATION

Chapter 2252, Subchapter A, of the Texas Government Code establishes certain requirements applicable to proposers who are not Texas residents. Under the statute, a "resident" proposer is a person whose principal place of business is in Texas, including a contractor whose ultimate parent company or majority owner has its principal place of business in Texas. A "nonresident" proposer is a person who is not a Texas resident. Please indicate the status of your company as a "resident" proposer or a "nonresident" proposer under these definitions.

Please check (✓) one of the following:

- I certify that my company is a **Resident Proposer.**
- I certify that my company is a **Nonresident Proposer.**

If your company is a Nonresident Proposer, you must provide the following information for your resident state (the state in which your company's principal place of business is located):

Company Name _____ Address _____

City _____ State _____ Zip Code _____

- A. Does your resident state require a proposer whose principal place of business is in Texas to under-price proposers whose resident state is the same as yours by a prescribed amount or percentage to receive a comparable contract?
 Yes No
- B. What is the prescribed amount or percentage? \$ _____ or _____ %

VENDOR EMPLOYMENT CERTIFICATION

Section 44.031(b) of the Texas Education Code establishes certain criteria that a school district must consider when determining to whom to award a contract. Among the criteria for certain contracts is whether the vendor or the vendor's ultimate parent or majority owner (i) has its principal place of business in Texas; or (ii) employs at least 500 people in Texas.

If neither your company nor the ultimate parent company or majority owner has its principal place of business in Texas, does your company, ultimate parent company, or majority owner employ at least 500 people in Texas?

Please check (✓) one of the following:

- Yes No

By signature below, I certify that the information in Sections 1 (*Resident/Nonresident Certification*) and 2 (*Vendor Employment Certification*) above is true, complete and accurate and that I am authorized by my company to make this certification.

Child's Play, Inc.
Company Name

Signature of Authorized Company Official

Kathy M. Robertson
Printed Name



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NO ISRAEL BOYCOTT CERTIFICATION

Effective September 1, 2017, a Texas governmental entity may not enter 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. (TEX. GOV'T CODE Ch. 2270)

"Boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes. TEX. GOV'T CODE §808.001(1).

By signature below, I certify and verify that Vendor does not boycott Israel and will not boycott Israel during the term of any contract awarded under this Proposal Invitation, that this certification is true, complete and accurate, and that I am authorized by my company to make this certification.

Child's Play, Inc.

Company Name

Signature of Authorized Company Official

Kathy M. Robertson

Printed Name

NO EXCLUDED NATION OR FOREIGN TERRORIST ORGANIZATION CERTIFICATION

Effective September 1, 2017, Chapter 2252 of the Texas Government Code provides that a Texas governmental entity may not enter into a contract with a company engaged in active business operations with Sudan, Iran, or a foreign terrorist organization – specifically, any company identified on a list prepared and maintained by the Texas Comptroller under Texas Government Code §§806.051, 807.051, or 2252.153. (A company that the U.S. Government affirmatively declares to be excluded from its federal sanctions regime relating to Sudan, Iran, or any federal sanctions regime relating to a foreign terrorist organization is not subject to the contract prohibition.)

By signature below, I certify and verify that Vendor is not on the Texas Comptroller's list identified above; that this certification is true, complete and accurate; and that I am authorized by my company to make this certification.

Child's Play, Inc.

Company Name

Signature of Authorized Company Official

Kathy M. Robertson

Printed Name



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HISTORICALLY UNDERUTILIZED BUSINESS CERTIFICATION

A proposer that has been certified as a Historically Underutilized Business (also known as a Minority/Women Business Enterprise or "MWBE" and all referred to in this form as a "HUB") is encouraged to indicate its HUB certification status when responding to this Proposal Invitation. The electronic catalogs will indicate HUB certifications for vendors that properly indicate and document their HUB certification on this form.

Please check (✓) all that apply:

- I certify that my company has been certified as a HUB in the following categories:
 - Minority Owned Business**
 - Women Owned Business**
 - Service-Disabled Veteran Owned Business (veteran defined by 38 U.S.C. §101(2), who has a service-connected disability as defined by 38 U.S.C. § 101(16), and who has a disability rating of 20% or more as determined by the U. S. Department of Veterans Affairs or Department of Defense)**

Certification Number:

Name of Certifying Agency:

- My company has **NOT** been certified as a HUB.

By signature below, I certify that the above is true, complete and accurate and that I am authorized by my company to make this certification.

Child's Play, Inc.

Company Name

Kathy M. Robertson

Printed Name


Signature of Authorized Company Official



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CONSTRUCTION-RELATED GOODS AND SERVICES AFFIRMATION

A contract awarded under this Proposal Invitation covers only the specific goods and services awarded by the BuyBoard. As explained in the BuyBoard Procurement and Construction Related Goods and Services Advisory for Texas Members ("Advisory"), **Texas law prohibits the procurement of architecture or engineering services through a purchasing cooperative. This BuyBoard contract does not include such services. Architecture or engineering services must be procured by a Cooperative member separately, in accordance with the Professional Services Procurement Act (Chapter 2254 of the Texas Government Code) and other applicable law and local policy.**

The Advisory, available at buyboard.com/Vendor/Resources.aspx, provides an overview of certain legal requirements that are potentially relevant to a Cooperative member's procurement of construction or construction-related goods and services, including those for projects that may involve or require architecture, engineering or independent testing services. A copy of the Advisory can also be provided upon request.

By signature below, the undersigned affirms that Proposer has obtained a copy of the Advisory, has read and understands the Advisory, and is authorized by Proposer to make this affirmation. If Proposer sells construction-related goods or services to a Cooperative member under a BuyBoard contract awarded under this Proposal Invitation, Proposer will comply with the Advisory and applicable legal requirements, make a good faith effort to make its Cooperative member customers or potential Cooperative member customers aware of such requirements, and provide a Cooperative member with a copy of the Advisory before executing a Member Construction Contract with the member or accepting the member's purchase order for construction-related goods or services, whichever comes first.

Child's Play, Inc.

Company Name


Signature of Authorized Company Official

Kathy M. Robertson

Printed Name

01/23/2019

Date



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DEVIATION AND COMPLIANCE

If your company intends to deviate from the General Terms and Conditions, Proposal Specifications or other requirements associated with this Proposal Invitation, you MUST list all such deviations on this form, and provide complete and detailed information regarding the deviations on this form or an attachment to this form. The Cooperative will consider any deviations in its contract award decision, and reserves the right to accept or reject a proposal based upon any submitted deviation.

In the absence of any deviation identified and described in accordance with the above, your company must fully comply with the General Terms and Conditions, Proposal Specifications and all other requirements associated with this Proposal Invitation if awarded a contract under this Proposal Invitation. A deviation will not be effective unless accepted by the Cooperative. The Cooperative may, in its sole discretion, seek clarification from and/or communicate with Proposer(s) regarding any submitted deviation, consistent with general procurement principles of fair competition. The Cooperative reserves the right to accept or reject a proposal based upon any submitted deviation.

Please check (✓) one of the following:

- No;** Deviations
- Yes;** Deviations

List and fully explain any deviations you are submitting:

PLEASE PROVIDE THE FOLLOWING INFORMATION:

1. Shipping Via: Common Carrier Company Truck Prepaid and Add to Invoice Other:

2. Payment Terms: Net 30 days 1% in 10/Net 30 days Other:

3. Number of Days for Delivery: 45 ARO

4. Vendor Reference/Quote Number: _____

5. State your return policy: All returns must be approved first by Child's Play

6. Are electronic payments acceptable? Yes No

7. Are credit card payments acceptable? Yes No

Child's Play, Inc.

Company Name


Signature of Authorized Company Official

Kathy M. Robertson

Printed Name

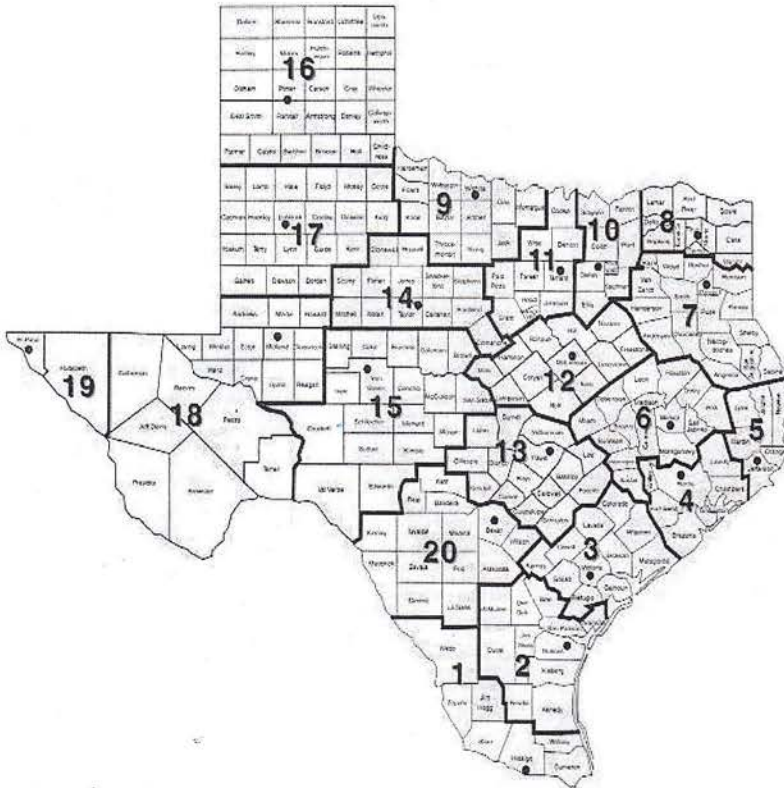


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TEXAS REGIONAL SERVICE DESIGNATION

The Cooperative (referred to as "Texas Cooperative" in this form and in the State Service Designation form) offers vendors the opportunity to service its members throughout the entire State of Texas. If you do not plan to service all Texas Cooperative members statewide, you **must** indicate the specific regions you will service on this form. ***If you propose to serve different regions for different products or services included in your proposal, you must complete and submit a separate Texas Regional Service Designation form for each group of products and clearly indicate the products or services to which the designation applies in the space provided at the end of this form. By designating a region or regions, you are certifying that you are authorized and willing to provide the proposed products and services in those regions. Designating regions in which you are either unable or unwilling to provide the specified products and services shall be grounds for either rejection of your proposal or, if awarded, termination of your Contract.*** Additionally, if you do not plan to service Texas Cooperative members (i.e., if you will service only states other than Texas), you must so indicate on this form.

Regional Education Service Centers



- I will service Texas Cooperative members statewide.
- I will not service Texas Cooperative members statewide. I will only service members in the regions checked below:

<u>Region</u>	<u>Headquarters</u>
<input type="checkbox"/>	1 Edinburg
<input type="checkbox"/>	2 Corpus Christi
<input type="checkbox"/>	3 Victoria
<input type="checkbox"/>	4 Houston
<input checked="" type="checkbox"/>	5 Beaumont
<input checked="" type="checkbox"/>	6 Huntsville
<input checked="" type="checkbox"/>	7 Kilgore
<input checked="" type="checkbox"/>	8 Mount Pleasant
<input checked="" type="checkbox"/>	9 Wichita Falls
<input checked="" type="checkbox"/>	10 Richardson
<input checked="" type="checkbox"/>	11 Fort Worth
<input checked="" type="checkbox"/>	12 Waco
<input checked="" type="checkbox"/>	13 Austin
<input checked="" type="checkbox"/>	14 Abilene
<input type="checkbox"/>	15 San Angelo
<input type="checkbox"/>	16 Amarillo
<input type="checkbox"/>	17 Lubbock
<input type="checkbox"/>	18 Midland
<input type="checkbox"/>	19 El Paso
<input type="checkbox"/>	20 San Antonio

I will not service members of the Texas Cooperative.

Child's Play, Inc.

Company Name

Kathy M. Robertson

Signature of Authorized Company Official

Kathy M. Robertson

Printed Name



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STATE SERVICE DESIGNATION

The Cooperative offers vendors the opportunity to service other governmental entities in the United States, including intergovernmental purchasing cooperatives such as the National Purchasing Cooperative BuyBoard. You must complete this form if you plan to service the entire United States, or will service only the specific states indicated. (Note: If you plan to service Texas Cooperative members, be sure that you complete the Texas Regional Service Designation form.)

If you serve different states for different products or services included in your proposal, you must complete and submit a separate State Service Designation form for each group of products and clearly indicate the products or services to which the designation applies in the space provided at the end of this form. By designating a state or states, you are certifying that you are authorized and willing to provide the proposed products and services in those states. Designating states in which you are either unable or unwilling to provide the specified products and services shall be grounds for either rejection of your proposal or, if awarded, termination of your Contract.

Please check (√) all that apply:

I will service all states in the United States.

I will not service all states in the United States. I will service only the states checked below:

- | | |
|--|--|
| <input type="checkbox"/> Alabama | <input type="checkbox"/> Nebraska |
| <input type="checkbox"/> Alaska | <input type="checkbox"/> Nevada |
| <input type="checkbox"/> Arizona | <input type="checkbox"/> New Hampshire |
| <input type="checkbox"/> Arkansas | <input type="checkbox"/> New Jersey |
| <input type="checkbox"/> California (Public Contract Code 20118 & 20652) | <input type="checkbox"/> New Mexico |
| <input type="checkbox"/> Colorado | <input type="checkbox"/> New York |
| <input type="checkbox"/> Connecticut | <input type="checkbox"/> North Carolina |
| <input type="checkbox"/> Delaware | <input type="checkbox"/> North Dakota |
| <input type="checkbox"/> District of Columbia | <input type="checkbox"/> Ohio |
| <input type="checkbox"/> Florida | <input checked="" type="checkbox"/> Oklahoma |
| <input type="checkbox"/> Georgia | <input type="checkbox"/> Oregon |
| <input type="checkbox"/> Hawaii | <input type="checkbox"/> Pennsylvania |
| <input type="checkbox"/> Idaho | <input type="checkbox"/> Rhode Island |
| <input type="checkbox"/> Illinois | <input type="checkbox"/> South Carolina |
| <input type="checkbox"/> Indiana | <input type="checkbox"/> South Dakota |
| <input type="checkbox"/> Iowa | <input type="checkbox"/> Tennessee |
| <input type="checkbox"/> Kansas | <input checked="" type="checkbox"/> Texas |
| <input type="checkbox"/> Kentucky | <input type="checkbox"/> Utah |
| <input type="checkbox"/> Louisiana | <input type="checkbox"/> Vermont |
| <input type="checkbox"/> Maine | <input type="checkbox"/> Virginia |
| <input type="checkbox"/> Maryland | <input type="checkbox"/> Washington |
| <input type="checkbox"/> Massachusetts | <input type="checkbox"/> West Virginia |
| <input type="checkbox"/> Michigan | <input type="checkbox"/> Wisconsin |
| <input type="checkbox"/> Minnesota | <input type="checkbox"/> Wyoming |
| <input type="checkbox"/> Mississippi | |
| <input type="checkbox"/> Missouri | |
| <input type="checkbox"/> Montana | |



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This form will be used to ensure that you can service other governmental entities throughout the United States as indicated. Your signature below confirms that you understand your service commitments during the term of a contract awarded under this proposal.

Child's Play, Inc.

Company Name

Signature of Authorized Company Official

Kathy M. Robertson

Printed Name

If this State Service Designation form applies to only one or some of the products and services proposed by Vendor, list the products and services to which this form applies here:



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NATIONAL PURCHASING COOPERATIVE VENDOR AWARD AGREEMENT

In accordance with the Terms and Conditions associated with this Proposal Invitation, a contract awarded under this Proposal Invitation may be "piggy-backed" by another governmental entity. The National Purchasing Cooperative is an intergovernmental purchasing cooperative formed by certain school districts outside of Texas to serve its members throughout the United States. If you agree to be considered for a piggy-back award by the National Purchasing Cooperative, you agree to the following terms and agree to serve National Purchasing Cooperative members in the states you have indicated on the State Service Designation form, in your Proposal.

By signing this form, Proposer (referred to in this Agreement as "Vendor") agrees as follows:

- 1. Vendor acknowledges that if The Local Government Purchasing Cooperative ("Texas Cooperative") awards Vendor a contract under this Proposal Invitation ("Underlying Award"), the National Purchasing Cooperative ("National Cooperative") may - but is not required to - "piggy-back" on or re-award all or a portion of that Underlying Award ("Piggy-Back Award"). By signing this National Cooperative Vendor Award Agreement ("Agreement"), Vendor accepts and agrees to be bound by any such Piggy-Back Award as provided for herein.
- 2. In the event National Cooperative awards Vendor a Piggy-Back Award, the National Cooperative Administrator ("BuyBoard Administrator") will notify Vendor in writing of such Piggy-Back Award, which award shall commence on the effective date stated in the Notice and end on the expiration date of the Underlying Award, subject to annual renewals as authorized in writing by the BuyBoard Administrator. Vendor agrees that no further signature or other action is required of Vendor in order for the Piggy-Back Award and this Agreement to be binding upon Vendor. Vendor further agrees that no interlineations or changes to this Agreement by Vendor will be binding on National Cooperative, unless such changes are agreed to by its BuyBoard Administrator in writing.
- 3. Vendor agrees that it shall offer its goods and services to National Cooperative members at the same unit pricing and same general terms and conditions, subject to applicable state laws in the state of purchase, as required by the Underlying Award. However, nothing in this Agreement prevents Vendor from offering National Cooperative members better (i.e., lower) competitive pricing and more favorable terms and conditions than those in the Underlying Award.
- 4. Vendor hereby agrees and confirms that it will serve those states it has designated on the State Service Designation Form of this Proposal Invitation. Any changes to the states designated on the State Service Designation Form must be approved in writing by the BuyBoard Administrator.
- 5. Vendor agrees to pay National Cooperative the service fee provided for in the Underlying Award based on the amount of purchases generated from National Cooperative members through the Piggy-Back Award. Vendor shall remit payment to National Cooperative on such schedule as it specifies (which shall not be more often than monthly). Further, upon request, Vendor shall provide National Cooperative with copies of all purchase orders generated from National Cooperative members for purposes of reviewing and verifying purchase activity. Vendor further agrees that National Cooperative shall have the right, upon reasonable written notice, to review Vendor's records pertaining to purchases made by National Cooperative members in order to verify the accuracy of service fees.
- 6. Vendor agrees that the Underlying Award, including its General Terms and Conditions, are adopted by reference to the fullest extent such provisions can reasonably apply to the post-proposal/contract award phase. The rights and responsibilities that would ordinarily inure to the Texas Cooperative pursuant to the Underlying Award shall inure to National Cooperative; and, conversely, the rights and responsibilities that would ordinarily inure to Vendor in the Underlying Award shall inure to Vendor in this Agreement. Vendor recognizes and agrees that Vendor and National Cooperative are the only parties to this Agreement, and that nothing in this Agreement has application to other third parties, including the Texas Cooperative. In the event of conflict between this Agreement and the terms of the Underlying Award, the terms of this Agreement shall control, and then only to the extent necessary to reconcile the conflict.



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7. This Agreement shall be governed and construed in accordance with the laws of the State of Rhode Island and venue for any dispute shall lie in the federal district court of Alexandria, Virginia.

8. Vendor acknowledges and agrees that the award of a Piggy-Back Award is within the sole discretion of National Cooperative, and that this Agreement does not take effect unless and until National Cooperative awards Vendor a Piggy-Back Award and the BuyBoard Administrator notifies Vendor in writing of such Piggy-Back Award as provided for herein.

WHEREFORE, by signing below Vendor agrees to the foregoing and warrants that it has the authority to enter into this Agreement.

Child's Play, Inc.

592-19

Name of Vendor

Proposal Invitation Number

Kathy M. Robertson
Signature of Authorized Company Official

Kathy M. Robertson
Printed Name of Authorized Company Official

1/23/19
Date



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FEDERAL AND STATE/PURCHASING COOPERATIVE EXPERIENCE

The Cooperative strives to provide its members with the best services and products at the best prices available from vendors with the technical resources and ability to serve Cooperative members. Please respond to the following questions.

1. Provide the dollar value of sales to or through purchasing cooperatives at or based on an established catalog or market price during the previous 12-month period or the last fiscal year: \$ 885,650. (The period of the 12 month period is 01/2018 / 12/2018). In the event that a dollar value is not an appropriate measure of the sales, provide and describe your own measure of the sales of the item(s).
2. By submitting a proposal, you agree that, based on your written discounting policies, the discounts you offer the Cooperative are equal to or better than the best price you offer other purchasing cooperatives for the same items under equivalent circumstances.
3. Provide the information requested below for other purchasing cooperatives for which Proposer currently serves, or in the past has served, as an awarded vendor. Rows should be added to accommodate as many purchasing cooperatives as required.

PURCHASING GROUP	CURRENT VENDOR? (Y/N)	FORMER VENDOR (Y/N)? – IF YES, LIST YEARS AS VENDOR	AWARDED COMMODITY CATEGORY(IES)
1. Federal General Services Administration	N		
2. T-PASS (State of Texas)	N		
3. U.S. Communities Purchasing Alliance	N		
4. National IPA/TCPN	Y	Y - 3	Playground
5. Houston-Galveston Area Council (HGAC)	N		
6. National Joint Powers Alliance (NJPA)	N		
7. E&I Cooperative			
8. The Interlocal Purchasing System (TIPS)	Y	Y-3	Playground
9. Other			

MY COMPANY DOES NOT CURRENTLY HAVE ANY OF THE ABOVE OR SIMILAR TYPE CONTRACTS.

CURRENT BUYBOARD VENDORS

If you are a current BuyBoard vendor in the same contract category as proposed in this Proposal Invitation, indicate the discount for your current BuyBoard contract and the proposed discount in this Proposal. Explain any difference between your current and proposed discounts.

Current Discount (%): 7

Proposed Discount (%): 7

Explanation: _____



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By signature below, I certify that the above is true, complete and accurate and that I am authorized by my company to make this certification.

Child's Play, Inc.

Company Name


Signature of Authorized Company Official

Kathy M. Robertson

Printed Name



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GOVERNMENTAL REFERENCES

For your Proposal to be considered, you must supply a minimum of five (5) individual governmental entity references. The Cooperative may contact any and all references provided as part of the Proposal evaluation. Provide the information requested below, including the existing price/discounts you offer each customer. The Cooperative may determine whether prices/discounts are fair and reasonable by comparing prices/discounts stated in your Proposal with the prices/discounts you offer other governmental customers. Attach additional pages if necessary.

Entity Name	Contact	Phone#	Email Address	Discount	Quantity/ Volume
1. Town of Flower Mound	Kari Biddix	972-874-6278	kari.biddix@flower-mound.com	7% - \$375,000	
2. City of Fort Worth	Carlos Gonzales	817-392-5734	carlos.gonzales@fortworthtexas.gov	7% - \$350,000	
3. Lancaster ISD	Greg Buchanan	(972) 218-1485	gregorybuchanan@lancasterisd.org	7% - \$385,000	
4. City of Richardson	Kurt Beilharz	(972) 744-4307	kurt.beilharz@cor.gov	7% - \$245,000	
5. City of Texarkana	Robby Robertson	(903) 798-3999	rrobertson@txkusa.org	7% - \$87,000	

Do you ever modify your written policies or standard governmental sales practices as identified in the above chart to give better discounts (lower prices) than indicated? **YES** **NO** If YES, please explain:

Vendor Special Sales Events during the year

By signature below, I certify that the above is true and correct and that I am authorized by my company to make this certification.

Child's Play, Inc.

Company Name

Kathy M. Robertson
Signature of Authorized Company Official

Kathy M. Robertson

Printed Name



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MARKETING STRATEGY

For your Proposal to be considered, you must submit the Marketing Strategy you will use if the Cooperative accepts all or part of your Proposal. *(Example: Explain how your company will initially inform Cooperative members of your BuyBoard contract, and how you will continue to support the BuyBoard for the duration of the contract period.)*

Attach additional pages if necessary.

Trade Show Banners

Catalog mailers with Buyboard Sticker

Website Buyboard Member

Child's Play, Inc.

Company Name

Kathy M. Robertson
Signature of Authorized Company Official

Kathy M. Robertson

Printed Name



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CONFIDENTIAL / PROPRIETARY INFORMATION

A. Public Disclosure Laws

All Proposals, forms, documentation, or other materials submitted by Vendor to the Cooperative in response to this Proposal Invitation, including catalogs and pricelists, may be subject to the disclosure requirements of the Texas Public Information Act (Texas Government Code chapter 552.001, *et. seq.*) or similar disclosure law. Proposer must clearly identify on this form any information in its Proposal (including forms, documentation, or other materials submitted with the Proposal) that Proposer considers proprietary or confidential. If Proposer fails to properly identify the information, the Cooperative shall have no obligation to notify Vendor or seek protection of such information from public disclosure should a member of the public or other third party request access to the information under the Texas Public Information Act or similar disclosure law. Proposer will be notified of any third party request for information in a Proposal that Proposer has identified in this form as proprietary or confidential.

Does your Proposal (including forms, documentation, or other materials submitted with the Proposal) contain information which Vendor considers proprietary or confidential?

Please check (✓) one of the following:

NO, I certify that none of the information included with this Proposal is considered confidential or proprietary.

YES, I certify that this Proposal contains information considered confidential or proprietary and all such information is specifically identified on this form.

If you responded "YES", you must identify below the specific information you consider confidential or proprietary. List each page number, form number, or other information sufficient to make the information readily identifiable. The Cooperative and its Administrator will not be responsible for a Proposer's failure to clearly identify information considered confidential or proprietary. Further, by submitting a Proposal, Proposer acknowledges that the Cooperative and its Administrator will disclose information when required by law, even if such information has been identified herein as information the vendor considers confidential or proprietary.

Confidential / Proprietary Information:

(Attach additional sheets if needed.)



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B. Copyright Information

Does your Proposal (including forms, documentation, or other materials submitted with the Proposal) contain copyright information?

Please check (✓) one of the following:

- NO**, Proposal (including forms, documentation, or other materials submitted with the Proposal) does not contain copyright information.
- YES**, Proposal (including forms, documentation, or other materials submitted with the Proposal) does contain copyright information.

If you responded "YES", identify below the specific documents or pages containing copyright information.

Copyright Information: _____

(Attach additional sheets if needed.)

C. Consent to Release Confidential/Proprietary/Copyright Information to BuyBoard Members

BuyBoard members (Cooperative and nonprofit members) seeking to make purchases through the BuyBoard may wish to view information included in the Proposals of awarded Vendors. If you identified information on this form as confidential, proprietary, or subject to copyright, and you are awarded a BuyBoard contract, your acceptance of the BuyBoard contract award constitutes your consent to the disclosure of such information to BuyBoard members, including posting of such information on the secure BuyBoard website for members. Note: Neither the Cooperative nor its Administrator will be responsible for the use or distribution of information by BuyBoard members or any other party.

D. Consent to Release Proposal Tabulation

Notwithstanding anything in this Confidential/Proprietary Information form to the contrary, by submitting a Proposal, Vendor consents and agrees that, upon Contract award, the Cooperative may publically release, including posting on the public BuyBoard website, a copy of the proposal tabulation for the Contract including Vendor name; proposed catalog/pricelist name(s); proposed percentage discount(s), hourly labor rate(s), or other specified pricing; and Vendor award or non-award information.

By signature below, I certify that the information in this form is true, complete, and accurate and that I am authorized by my company to make this certification and all consents and agreements contained herein.

Child's Play, Inc.

Company Name

Signature of Authorized Company Official

Kathy M. Robertson

Printed Name

1/23/19

Date



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VENDOR BUSINESS NAME

By submitting a Proposal, Proposer is seeking to enter into a legal contract with the Cooperative. As such, a Proposer must be an individual or legal business entity capable of entering into a binding contract. Proposers, must completely and accurately provide the information requested below or your Proposal may be deemed non-responsive.

Name of Proposing Company: Child's Play, Inc.

*(List the **legal** name of the company seeking to contract with the Cooperative. Do **NOT** list an assumed name, dba, aka, etc. here. Such information may be provided below. If you are submitting a joint proposal with another entity to provide the same proposed goods or services, each submitting entity should complete a separate vendor information form. Separately operating legal business entities, even if affiliated entities, which propose to provide goods or services separately must submit their own Proposals.)*

Please check (✓) one of the following:

Type of Business:

- Individual/Sole Proprietor _____
- Corporation _____
- Limited Liability Company _____
- Partnership _____
- Other _____ If other, identify _____

State of Incorporation (if applicable): TX

Federal Employer Identification Number: 75-2670715
*(Vendor must include a completed **IRS W-9** form with their proposal)*

List the Name(s) by which Vendor, if awarded, wishes to be identified on the BuyBoard: *(Note: If different than the Name of Proposing Company listed above, only valid trade names (dba, aka, etc.) of the Proposing Company may be used and a copy of your Assumed Name Certificate(s), if applicable, must be attached.)*

- CPI Installations, LLC
- RubberScapes

Request for Taxpayer Identification Number and Certification

Give Form to the requester. Do not send to the IRS.

Go to www.irs.gov/FormW9 for instructions and the latest information.

Print or type.
See Specific Instructions on page 3.

1 Name (as shown on your income tax return). Name is required on this line; do not leave this line blank.
Child's Play, Inc.

2 Business name/disregarded entity name, if different from above

3 Check appropriate box for federal tax classification of the person whose name is entered on line 1. Check only **one** of the following seven boxes.

Individual/sole proprietor or single-member LLC C Corporation S Corporation Partnership Trust/estate

Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=Partnership) ▶ _____

Note: Check the appropriate box in the line above for the tax classification of the single-member owner. Do not check LLC if the LLC is classified as a single-member LLC that is disregarded from the owner unless the owner of the LLC is another LLC that is **not** disregarded from the owner for U.S. federal tax purposes. Otherwise, a single-member LLC that is disregarded from the owner should check the appropriate box for the tax classification of its owner.

Other (see instructions) ▶ _____

4 Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3):

Exempt payee code (if any) _____

Exemption from FATCA reporting code (if any) _____

(Applies to accounts maintained outside the U.S.)

5 Address (number, street, and apt. or suite no.) See instructions.
10661 Shady Trail

6 City, state, and ZIP code
Dallas, Tx 75220

7 List account number(s) here (optional)

Requester's name and address (optional)

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the instructions for Part I, later. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN*, later.

Note: If the account is in more than one name, see the instructions for line 1. Also see *What Name and Number To Give the Requester* for guidelines on whose number to enter.

Social security number

			-						
--	--	--	---	--	--	--	--	--	--

or

Employer identification number

7	5	-	2	6	7	0	7	1	5
---	---	---	---	---	---	---	---	---	---

Part II Certification

Under penalties of perjury, I certify that:

- The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
- I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
- I am a U.S. citizen or other U.S. person (defined below); and
- The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions for Part II, later.

Sign Here Signature of U.S. person ▶ *Kathy M. Kdator* Date ▶ *1/14/19*

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Future developments. For the latest information about developments related to Form W-9 and its instructions, such as legislation enacted after they were published, go to www.irs.gov/FormW9.

Purpose of Form

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) which may be your social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN), to report on an information return the amount paid to you, or other amount reportable on an information return. Examples of information returns include, but are not limited to, the following.

- Form 1099-INT (interest earned or paid)

- Form 1099-DIV (dividends, including those from stocks or mutual funds)
- Form 1099-MISC (various types of income, prizes, awards, or gross proceeds)
- Form 1099-B (stock or mutual fund sales and certain other transactions by brokers)
- Form 1099-S (proceeds from real estate transactions)
- Form 1099-K (merchant card and third party network transactions)
- Form 1098 (home mortgage interest), 1098-E (student loan interest), 1098-T (tuition)
- Form 1099-C (canceled debt)
- Form 1099-A (acquisition or abandonment of secured property)
- Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN.

If you do not return Form W-9 to the requester with a TIN, you might be subject to backup withholding. See What is backup withholding, later.



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12. General Compliance and Cooperation with Cooperative Members:

In addition to the foregoing specific requirements, Vendor agrees, in accepting any Purchase Order from a Cooperative member, it shall make a good faith effort to work with Cooperative members to provide such information and to satisfy such requirements as may apply to a particular Cooperative member purchase or purchases including, but not limited to, applicable recordkeeping and record retention requirements.

Vendor Certification Item No.	Vendor Certification: YES, I agree or NO, I do NOT agree	Initial
1. Vendor Violation or Breach of Contract Terms	Yes	KMR
2. Termination for Cause or Convenience	Yes	KMR
3. Equal Employment Opportunity	Yes	KMR
4. Davis-Bacon Act	Yes	KMR
5. Contract Work Hours and Safety Standards Act	Yes	KMR
6. Right to Inventions Made Under a Contract or Agreement	Yes	KMR
7. Clean Air Act and Federal Water Pollution Control Act	Yes	KMR
8. Debarment and Suspension	Yes	KMR
9. Byrd Anti-Lobbying Amendment	Yes	KMR
10. Procurement of Recovered Materials	Yes	KMR
11. Profit as a Separate Element of Price	Yes	KMR
12. General Compliance and Cooperation with Cooperative Members	Yes	KMR

By signature below, I certify that the information in this form is true, complete, and accurate and that I am authorized by my company to make this certification and all consents and agreements contained herein.

Child's Play, Inc.

Company Name

Kathy M. Robertson

Signature of Authorized Company Official

Kathy M. Robertson

Printed Name



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PROPOSAL INVITATION QUESTIONNAIRE

The Cooperative will use your responses to the questions below in evaluating your Proposal and technical and financial resources to provide the goods and perform the services ("Work") under the BuyBoard contract contemplated by this Proposal Invitation ("Contract"). Proposers must fully answer each question, numbering your responses to correspond to the questions/numbers below. Proposers must complete below or attach your responses to this questionnaire, sign where indicated below, and submit the signed questionnaire and your responses to all questions in one document with your Proposal. **You must submit the signed questionnaire and responses with your Proposal or the Proposal will not be considered.**

- 1. List the number of years Proposer has been in business and former business names (if applicable). Note whether your company is currently for sale or involved in any transaction that would significantly alter its business or result in acquisition by another entity.

22

- 2. Describe Proposer's direct experience (not as a subcontractor) performing the work proposed under this contract. Include a brief description of the projects you have completed for Texas governmental entities in the last 5 years, and include for each the project name, scope, value, and date, and the name of the procuring government entity and entity contact person. Identify the contracts that best represent Proposer's capabilities relative to this contract.

Child's Play has been a Buyboard vendor for at least the last 15 years.

We have contracted with numerous cities/schools of which on list on our reference sheet.

- 3. Describe the resources Proposer has to manage staff and successfully perform the Work contemplated under this Contract. State the number and summarize the experience of company personnel who may be utilized for the Work, including those who will be available to Cooperative members for assistance with project development, technical issues, and product selection for Work associated with this Contract.

Sales - 6 with over 7 years each in the industry

Installation - 10 years providing turn-key services

Excellent customer service



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- 4. The Contract does not include architectural or engineering services, which must be procured separately, outside of the Cooperative, in accordance with Chapter 2254 of the Texas Government Code (Professional Services Procurement Act). If you are performing work under the contract on a project that requires the services of an architect or professional engineer, how will you work with a Cooperative member and its designated architect or engineer with respect to services that must be procured outside the contract?

We work with architects and can refer some to the customers

- 5. Describe the tasks and functions that can be completed by Proposer in-house without the use of a subcontractor or other third party.

Design & installation of purchased items

- 6. Describe Proposer's financial capability to perform the Contract. State or describe the firm's financial strength and rating, bonding capacity, and insurance coverage limits. State whether the firm, or any of the firm's past or present owners, principal shareholders or stockholders, or officers, have been a debtor party to a bankruptcy, receivership, or insolvency proceeding in the last 7 years, and identify any such debtor party by name and relationship to or position with your firm.

Child's Play has been in business for 23 years, bonding capacity and no bankruptcy.

- 7. Does your company have any outstanding financial judgments and/or is it currently in default on any loan or financing agreement? If so, provide detailed information on the nature of such items and prospects for resolution.

No



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8. List all contracts, if any, in the last 10 years on which Proposer has defaulted, failed to complete or deliver the work, or that have been terminated for any reason. Include any contract for which the surety was notified of a potential claim in regards to a payment or performance bond. For each such contract, provide the project name, scope, value and date and the name of the procuring entity. Fully explain the circumstances of the default, notice to surety, failure to complete or deliver the work, or termination.

None

Four horizontal lines for text entry.

9. List all litigation or other legal proceedings (including arbitration proceedings and/or claims filed with a surety in regards to a payment or performance bond), if any, in the last 10 years brought against your firm, or any of the firm's past or present owners, principal shareholders or stockholders, officers, agents or employees, that relates to or arises from a contract similar to this Contract or the work contemplated under this Contract. Provide the style of the lawsuit or proceeding (name of parties and court or tribunal in which filed), if applicable, nature of the claim, and resolution or current status.

None

Four horizontal lines for text entry.

10. Describe in detail the quality control system Proposer will use, including third party auditing certification, to support the long-term performance and structural strength of the products to be used in a project under the Contract.

CPSI Certified

Manufacturer Installation Certified

Four horizontal lines for text entry.

11. If the work will require Proposer to tender performance or payment bonds, provide the name of the bonding company or surety that will issue such bonds.

By project requirements basis

Four horizontal lines for text entry.



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12. Describe in detail all documented safety issues, if any, that have involved Proposer in the last three (3) years related to the type of work contemplated under this contract. Provide a 3-year history of your firm's workers compensation experience modifier.

None

Modifier - .875 for last 5 years

By signature below, I certify that the information contained in and/or attached to this Proposal Invitation Questionnaire in response to the above questions is true and correct and that I am authorized by my company to make this certification.

Child's Play, Inc.

Company Name

Kathy W. Rolston
Signature of Authorized Company Official

Proposal Invitation No. 592-19-Parks and Recreation Equipment and Field Lighting Products

(Catalogs/Pricelists must be submitted with Proposal or Proposal will not be considered¹.)

NOTE 1: Vendors proposing various manufacturer product lines per line item on the Proposal Specification Form must submit the information as follows or proposal may not be considered:
Manufacturers shall be listed in alphabetical order
Vendor's must list one specific percentage discount for each Manufacturer listed.
 If a vendor's response to Proposal Specification Form states "please see attachment sheet," all manufacturers listed on the attachment sheet must indicate per manufacturer the line item that correlates to Proposal Specification Form or Vendor's proposal may not be considered.

NOTE 2: Vendors proposing must be approved by the manufacturer to sell, install, and service the brand of equipment submitted. Proposer's responding to this Proposal Invitation should submit an approval letter from each manufacturer. Manufacturer authorization letters must include the regions in which equipment may be sold.

Section I: Park Equipment, Products, and Supplies

Item No.	Short Description	Full Description	State Percent (%) of Discount off Catalog/Pricelist ¹	State Name of Catalog/Pricelist ¹	Exceptions to Discount
1	Discount (%) Off Catalog/Pricelist for Park and Playground Equipment	Please state the discount (%) off catalog/pricelist for Park and Playground Equipment, Attachments, and Accessories. Catalog/Pricelist MUST be included or proposal will not be considered.	<u>7, 7, 11</u> %	BCI Burke Dynamo Ultra Site	Special Sales N/A N/A
2	Discount (%) Off Catalog/Pricelist for Park and Playground Sports Equipment	Please state the discount (%) off catalog/pricelist for Park and Playground Sports Equipment. Catalog/Pricelist MUST be included or proposal will not be considered.	<u>5, 5, 5, 5</u> %	BCI Burke Dynamo First Team JayPro	N/A N/A N/A N/A
3	Discount (%) Off Catalog/Pricelist for Park and Playground Amenities	Please state the discount (%) off catalog/pricelist for Park and Playground Amenities (tables, benches, litter receptacles and similar related equipment). Catalog/Pricelist MUST be included or proposal will not be considered.	<u>5, 7, 7, 5, 11, 7</u> %	BCI Burke My T Coat PW Athletic Site Scapes Ultra Site WebCoat	N/A N/A N/A N/A N/A
4	Discount (%) Off Catalog/Pricelist for Park and Playground Drinking Fountains	Please state the discount (%) off catalog/pricelist for Park and Playground Drinking Fountains, Attachments, and Accessories. Catalog/Pricelist MUST be included or proposal will not be considered.	<u>5</u> %	Most Dependable	N/A
5	Discount (%) Off Catalog/Pricelist for Park and Playground Safety Surfacing	Please state the discount (%) off catalog/pricelist for Park and Playground Safety Surfacing Products. Catalog/Pricelist MUST be included or proposal will not be considered.	<u>7,7,7,7,7,7</u> %	Bailey Bark Fibar GWG Wood IMC Rubber Vitriturf Zeager	N/A N/A N/A N/A N/A N/A

PROPOSAL NOTE

1. Catalogs/Pricelists are required to be submitted with Proposal

Proposal Invitation No. 592-19-Parks and Recreation Equipment and Field Lighting Products

(Catalogs/Pricelists must be submitted with Proposal or Proposal will not be considered¹.)

Item No.	Short Description	Full Description	State Percent (%) of Discount off Catalog/Pricelist ¹	State Name of Catalog/Pricelist ¹	Exceptions to Discount
6	Discount (%) Off Catalog/Pricelist for Park and Playground Bikes	Please state the discount (%) off catalog/pricelist for Park and Playground Bikes . Catalog/Pricelist MUST be included or proposal will not be considered.	<u>5,5,5,11</u> %	BCI Burke Dero Site Scapes Ultra Site	N/A N/A N/A N/A
7	Discount (%) Off Catalog/Pricelist for Park and Playground Animal Washing Stations	Please state the discount (%) off catalog/pricelist for Park and Playground Animal Washing Stations . Catalog/Pricelist MUST be included or proposal will not be considered.	<u>7,11</u> %	Dog On It Ultra Site	N/A N/A
8	Discount (%) Off Catalog/Pricelist for Shade Canopies and Structures	Please state the discount (%) off catalog/pricelist for Shade Canopies and Structures, Attachments, and Accessories . Catalog/Pricelist MUST be included or proposal will not be considered.	<u>7,10,10,10</u> %	BCI Burke SunPorts Ultra Shade USA Shade	Special Sales N/A N/A N/A
9	Discount (%) Off Catalog/Pricelist for Portable Restrooms, Portable Park Buildings and Shelters	Please state the discount (%) off catalog/pricelist for Portable Restrooms, Pre-fabricated Portable Park Buildings and Shelters (picnic shelters, cabins, pavilions and similar related portable buildings). Catalog/Pricelist MUST be included or proposal will not be considered.	<u>12, 11</u> %	Americana Ultra Shelter	N/A N/A
10	Discount (%) Off Catalog/Pricelist for Aquatic Playground and Pool Equipment	Please state the discount (%) off catalog/pricelist for Aquatic Playground and Pool Equipment, Attachments, and Accessories . Catalog/Pricelist MUST be included or proposal will not be considered.	<u>No Bid</u> %	N/A	N/A
11	Discount (%) Off Catalog/Pricelist for Skate Parks	Please state the discount (%) off catalog/pricelist for Skate Park Products, Attachments, and Accessories . Catalog/Pricelist MUST be included or proposal will not be considered.	<u>No Bid</u> %	N/A	N/A
12	Discount (%) Off Catalog/Pricelist for Water Parks	Please state the discount (%) off catalog/pricelist for Water Park Products, Attachments, and Accessories . Catalog/Pricelist MUST be included or proposal will not be considered.	<u>No Bid</u> %	N/A	N/A

PROPOSAL NOTE

1. Catalogs/Pricelists are required to be submitted with Proposal

Proposal Invitation No. 592-19-Parks and Recreation Equipment and Field Lighting Products

(Catalogs/Pricelists must be submitted with Proposal or Proposal will not be considered¹.)

Item No.	Short Description	Full Description	State Percent (%) of Discount off Catalog/Pricelist ¹	State Name of Catalog/Pricelist ¹	Exceptions to Discount
13	Discount (%) Off Catalog/Pricelist for Lake, River and Waterway Equipment	Please state the discount (%) off catalog/pricelist for Lake, River and Waterway Equipment (dock floats, decking, waterway barriers, buoys, markers, and similar related equipment). Catalog/Pricelist MUST be included or proposal will not be considered.	No Bid %	N/A	N/A
14	Discount (%) Off Catalog/Pricelist for Outdoor Bleacher and Seating Systems	Please state the discount (%) off catalog/pricelist for Outdoor Bleacher and Seating Systems, Attachments, and Accessories. Catalog/Pricelist MUST be included or proposal will not be considered.	11 %	Ultra Site	N/A
15	Discount (%) Off Catalog/Pricelist for Outdoor Scoreboards	Please state the discount (%) off catalog/pricelist for Outdoor Scoreboards, Attachments, and Accessories. Catalog/Pricelist MUST be included or proposal will not be considered.	No Bid %	N/A	N/A
16	Discount (%) Off Catalog/Pricelist for Signage and Marquees	Please state the discount (%) off catalog/pricelist for Signage and Marquees, Attachments, and Accessories. Catalog/Pricelist MUST be included or proposal will not be considered.	5 %	BCI Burke	Special Sales
17	Discount (%) Off Catalog/Pricelist for Fireworks Display Services	Please state the discount (%) off catalog/pricelist for Fireworks Display Services (services shall include the products, labor, licenses and resources necessary to coordinate and perform such displays for Cooperative members). Catalog/Pricelist MUST be included or proposal will not be considered.	No Bid %	N/A	N/A
18	Discount (%) Off Catalog/Pricelist for All Other Parks and Recreation Equipment/Products	Please state the discount (%) off catalog/pricelist for All Other Parks and Recreation Equipment/Products, Attachments, and Accessories. Catalog/Pricelist MUST be included or proposal will not be considered.	5,7,5,7,7,11,11 %	BCI Buke Childs Play Dynamo FreeNotes Harmony Percussion Play Ultra Play Ultra Site	Special Sales Special Sales N/A N/A N/A N/A N/A

PROPOSAL NOTE

1. Catalogs/Pricelists are required to be submitted with Proposal

Proposal Invitation No. 592-19-Parks and Recreation Equipment and Field Lighting Products

(Catalogs/Pricelists must be submitted with Proposal or Proposal will not be considered¹.)

Section II: Field Lighting Products - Vendors shall provide a catalog/pricelist that includes the manufacturer design number, light system fixtures, equipment and pricing associated with all types of field lighting products for various pole setbacks, base paths and foot candle ranges. Prices for lighting system equipment shall be based on various wind speeds (i.e. 90 MPH, 110 MPH, 130 MPH) and shall include delivery and meet the most recent IBC building code requirements.

An awarded Vendor must be approved by the manufacturer to sell, install, and service the brand of equipment submitted. Proposer's responding to this Proposal Invitation should submit an approval letter from each manufacturer. Manufacturer authorization letters must include the regions in which equipment may be sold.

Item No.	Short Description	Full Description	State Percent (%) of Discount off Catalog/Pricelist ¹	State Name of Catalog/Pricelist ¹	Exceptions to Discount
19	Discount (%) Off Catalog/Pricelist for Football Field Lighting Products	Please state the discount (%) off catalog/pricelist for Football Field Lighting Products, Equipment and related items. Catalog/Pricelist MUST be included or proposal will not be considered.	<u>5, 5</u> %	Athletic Connection First Team	N/A
20	Discount (%) Off Catalog/Pricelist for Baseball Field Lighting Products	Please state the discount (%) off catalog/pricelist for Baseball Field Lighting Products, Equipment and related items. Catalog/Pricelist MUST be included or proposal will not be considered.	<u>5</u> %	Athletic Connection	N/A
21	Discount (%) Off Catalog/Pricelist for Softball Field Lighting Products	Please state the discount (%) off catalog/pricelist for Softball Field Lighting Products, Equipment and related items. Catalog/Pricelist MUST be included or proposal will not be considered.	<u>No Bid</u> %	N/A	N/A
22	Discount (%) Off Catalog/Pricelist for Soccer Field Lighting Products	Please state the discount (%) off catalog/pricelist for Soccer Field Lighting Products, Equipment and related items. Catalog/Pricelist MUST be included or proposal will not be considered.	<u>5, 5, 5</u> %	Athletic Connection BCI Burke First Team	N/A N/A N/A
23	Discount (%) Off Catalog/Pricelist for Tennis Court Lighting Products	Please state the discount (%) off catalog/pricelist for Tennis Court Lighting Products, Equipment and related items. Catalog/Pricelist MUST be included or proposal will not be considered.	<u>No Bid</u> %	N/A	N/A
24	Discount (%) Off Catalog/Pricelist for All Other Field Lighting Products	Please state the discount (%) off catalog/pricelist for All Other Lighting Products, Equipment and related items. Catalog/Pricelist MUST be included or proposal will not be considered.	<u>5, 7</u> %	BCI Burke Childs Play	N/A N/A

PROPOSAL NOTE

1. Catalogs/Pricelists are required to be submitted with Proposal

Proposal Invitation No. 592-19-Parks and Recreation Equipment and Field Lighting Products

(Catalogs/Pricelists must be submitted with Proposal or Proposal will not be considered¹.)

Section III: Repair/Replacement Parts					
Item No.	Short Description	Full Description	State Percent (%) of Discount off Catalog/Pricelist ¹	State Name of Catalog/Pricelist ¹	Exceptions to Discount
25	Discount (%) Off Catalog/Pricelist for Repair/Replacement Parts on Parks and Recreation Products	Please state the discount (%) off catalog/pricelist for Repair/Replacement Parts on Parks and Recreation Products. Catalog/Pricelist MUST be included or proposal will not be considered.	5, 7 %	BCI Burke Dynamo	N/A N/A
Section IV: Installation and Repair Service for Park and Playground Equipment and Products - Vendors charging for installation and repair on a hourly basis must provide the not to exceed hourly labor rate in Item 26. Vendors charging for installation as a percentage of the total cost of equipment/products must complete Item 27 and provide both Vendor's detailed installation rate and the proposed percent discount off Vendor's installation rate.					
Item No.	Short Description	Full Description	Not to Exceed Hourly Labor Rate	Detailed Information on Hourly Labor Rate	Exceptions to Hourly Labor Rate
26	Not to Exceed Hourly Labor Rate for Installation/Repair Service of Park and Playground Equipment and Products	Hourly Labor Rate for Installation/Repair Service of Park and Playground Equipment and Products - State the Not to Exceed hourly labor rate for Installation/Repair Service of Equipment and Products.	\$ 125 /Hour	Repair/Service	Min. of \$250
Item No.	Short Description	Full Description	State Percent (%) of Discount off Installation Rate	Detailed Information on Installation Rate	Exceptions to Discount
27	Discount (%) Off the Installation Rate for Park and Playground Equipment and Products	Please state the discount (%) off from the Installation Rate ONLY of Park and Playground Equipment and Products (for labor as a percent (%) of the total cost of equipment/products to be installed).	5 %	35% of Equipment List Pricing	Min. of \$250

PROPOSAL NOTE

1. Catalogs/Pricelists are required to be submitted with Proposal

Proposal Invitation No. 592-19-Parks and Recreation Equipment and Field Lighting Products

(Catalogs/Pricelists must be submitted with Proposal or Proposal will not be considered¹.)

Section V: Installation and Repair Service for Other Parks and Recreation Equipment and Products

Item No.	Short Description	Full Description	Not to Exceed Hourly Labor Rate	Detailed Information on Hourly Labor Rate	Exceptions to Hourly Labor Rate
28	Not to Exceed Hourly Labor Rate for Installation/Repair Service of Shade Canopies	Hourly Labor Rate for Installation/Repair Service of Shade Canopies, Equipment and Products - State the Not to Exceed hourly labor rate for Installation/Repair Service of Equipment and Products.	\$ <u>125</u> /Hour	Repair/Service	Min. of \$250
29	Not to Exceed Hourly Labor Rate for Installation/Repair Service of Portable Restrooms, Park Buildings and Shelters	Hourly Labor Rate for Installation/Repair Service of Portable Restrooms, Park Buildings and Shelters - State the Not to Exceed hourly labor rate for Installation/Repair Service of Equipment and Products.	\$ <u>175</u> /Hour	Repair/Service	Min. of \$350
30	Not to Exceed Hourly Labor Rate for Installation/Repair Service of Aquatic Playground Equipment and Products	Hourly Labor Rate for Installation/Repair Service of Aquatic Playground Equipment and Products - State the Not to Exceed hourly labor rate for Installation/Repair Service of Equipment and Products.	\$ <u>N/A</u> /Hour	N/A	N/A
31	Not to Exceed Hourly Labor Rate for Installation/Repair Service of Skate Park Equipment and Products	Hourly Labor Rate for Installation/Repair Service of Skate Park Equipment and Products - State the Not to Exceed hourly labor rate for Installation/Repair Service of Equipment and Products.	\$ <u>N/A</u> /Hour	N/A	N/A
32	Not to Exceed Hourly Labor Rate for Installation/Repair Service of Water Park Equipment and Products	Hourly Labor Rate for Installation/Repair Service of Water Park Equipment and Products - State the Not to Exceed hourly labor rate for Installation/Repair Service of Equipment and Products.	\$ <u>N/A</u> /Hour	N/A	N/A

PROPOSAL NOTE

1. Catalogs/Pricelists are required to be submitted with Proposal

Proposal Invitation No. 592-19-Parks and Recreation Equipment and Field Lighting Products

(Catalogs/Pricelists must be submitted with Proposal or Proposal will not be considered¹.)

Item No.	Short Description	Full Description	Not to Exceed Hourly Labor Rate	Detailed Information on Hourly Labor Rate	Exceptions to Hourly Labor Rate
33	Not to Exceed Hourly Labor Rate for Installation/Repair Service of Lake, River and Waterway Equipment	Hourly Labor Rate for Installation/Repair Service of Lake, River and Waterway Equipment (dock floats, decking, waterway barriers, buoys and markers, similar related equipment.) - State the Not to Exceed hourly labor rate for Installation/Repair Service of Equipment and Products.	\$ <u>N/A</u> /Hour	N/A	N/A
34	Not to Exceed Hourly Labor Rate for Installation/Repair Service of Outdoor Bleachers and Seating Systems	Hourly Labor Rate for Installation/Repair Service of Outdoor Bleachers and Seating Systems - State the Not to Exceed hourly labor rate for Installation/Repair Service of Equipment and Products.	\$ <u>125</u> /Hour	Repair/Service	Min. of \$250
35	Not to Exceed Hourly Labor Rate for Installation/Repair Service of Outdoor Scoreboards	Hourly Labor Rate for Installation/Repair Service of Outdoor Scoreboards - State the Not to Exceed hourly labor rate for Installation/Repair Service of Equipment and Products.	\$ <u>N/A</u> /Hour	N/A	N/A
36	Not to Exceed Hourly Labor Rate for Installation/Repair Service of Signage Products, Marquees, Similar Related Equipment	Hourly Labor Rate for Installation/Repair Service of Signage Products, Marquees, Similar Related Equipment - State the Not to Exceed hourly labor rate for Installation/Repair Service of Equipment and Products.	\$ <u>125</u> /Hour	Repair/Service	Min. of \$250
37	Not to Exceed Hourly Labor Rate for Installation/Repair Service of Natural Grass Turf Removal, Tilling or Grading related to Parks and Recreation	Hourly Labor Rate for Installation/Repair Service of Natural Grass Turf Removal, Tilling or Grading related to Parks and Recreation - State the Not to Exceed hourly labor rate for Installation/Repair Service of Equipment and Products.	\$ <u>N/A</u> /Hour	N/A	N/A

PROPOSAL NOTE

1. Catalogs/Pricelists are required to be submitted with Proposal

Proposal Invitation No. 592-19-Parks and Recreation Equipment and Field Lighting Products

(Catalogs/Pricelists must be submitted with Proposal or Proposal will not be considered¹.)

Item No.	Short Description	Full Description	Not to Exceed Hourly Labor Rate	Detailed Information on Hourly Labor Rate	Exceptions to Hourly Labor Rate
38	Not to Exceed Hourly Labor Rate for Installation/Repair Service of All Other Park and Recreation Related Equipment and Products	Hourly Labor Rate for Installation/Repair Service of All Other Park and Recreation Related Equipment and Products - State the Not to Exceed hourly labor rate for Installation/Repair Service of Equipment and Products.	\$ <u>125</u> /Hour	Repair/Service	Min. of \$250
<p>Section VI: Installation and Repair Service for Field Lighting Products - Vendors proposing to provide Installation and Repair Service for Field Lighting Products may propose either a not-to-exceed hourly labor rate or a coefficient from the RSMeans Unit Price Book, or both. A coefficient proposed should be the price multiplier that vendor proposes to be applied to the unit price book(s) identified in the Proposal specifications. Coefficients shall be "net" (e.g. 1.0) or a percentage "decrease from" (e.g. 0.95) or "increase from" (e.g. 1.21) the unit prices listed in the unit price book. Coefficient factors are to be carried no further than two (2) decimal places.</p>					
Item No.	Short Description	Full Description	Not to Exceed Hourly Labor Rate	Detailed Information on Hourly Labor Rate	Exceptions to Hourly Labor Rate
39	Not to Exceed Hourly Labor Rate for Installation/Repair Service of Field Lighting Products	Hourly Labor Rate for Installation/Repair Service of Field Lighting Products - State the Not to Exceed hourly labor rate for Installation/Repair Service of Equipment and Products.	\$ <u>N/A</u> /Hour	N/A	N/A
Item No.	Short Description	Full Description	Proposer's Coefficient (RSMeans)	DEFINE SERVICES Clearly define the services that are proposed to be provided and attach detailed information. (NOTE: IF DETAILED INFORMATION IS NOT SUBMITTED, PROPOSAL WILL NOT BE CONSIDERED!!)	
40	Coefficient for Standard Hours (RSMeans)	Coefficient for Standard Hours as listed in RSMeans Cost Data Book -- RSMeans Cost Data from the Total INCL O&P column (most current edition).	<u>N/A</u>	N/A	
41	Coefficient for Non-Standard Hours (RSMeans)	Coefficient for Non-Standard Hours as listed in RSMeans Cost Data Book -- RSMeans Cost Data from the Total INCL O&P column (most current edition).	<u>N/A</u>	N/A	

PROPOSAL NOTE

1. Catalogs/Pricelists are required to be submitted with Proposal



January 24, 2019

To: The Local Government Purchasing Cooperative
Attn: Proposal Administration Manager
12007 Research Blvd.
Austin, TX 78759

Please accept this letter of authorization that Child's Play, Inc. is an authorized representative to sell, service, and install BCI Burke equipment in the states of Texas and Oklahoma.

We appreciate any business opportunities available. Please let me know if I may assist you further.

Sincerely,

A handwritten signature in cursive script that reads "Whitney Market".

Whitney Market
Regional Sales Manger
BCI Burke
(920) 517-2451
wmarket@bciburke.com



USA Headquarters
2580 Esters Blvd., Suite 100
DFW Airport, TX 75261
FedEx and UPS Shipments

Mailing Address
P.O. Box 3467
Coppell, TX 75019
US Postal Service

January 23, 2019

To: The Local Government Purchasing Cooperative

Attn: Proposal Administration Manager

12007 Research Blvd.
Austin, TX 78759

Please accept this letter of authorization that Child's Play, Inc. is an authorized representative, to sell, service, and install USA Shade/Sun Ports in the states of Texas and Oklahoma.

We appreciate any business opportunities available. Please let me know if I may assist you further.

Sincerely,

A handwritten signature in cursive script that reads "Melissa Houchin".

Melissa Houchin
Company Sales Division
(972)-354-1941 - mhouchin@usa-shade.com



CITY OF CORINTH
Staff Report

Meeting Date:	12/16/2021	Title:	Contract Street and Sidewalk Maintenance – Floyd Smith Concrete								
Ends:	<input type="checkbox"/> Resident Engagement <input checked="" type="checkbox"/> Proactive Government <input type="checkbox"/> Organizational Development <input checked="" type="checkbox"/> Health & Safety <input type="checkbox"/> Regional Cooperation <input type="checkbox"/> Attracting Quality Development										
Governance Focus:	<i>Focus:</i> <input checked="" type="checkbox"/> Owner <input type="checkbox"/> Customer <input type="checkbox"/> Stakeholder										
	<i>Decision:</i> <input type="checkbox"/> Governance Policy <input checked="" type="checkbox"/> Ministerial Function										
Owner Support:	<table style="width: 100%; border: none;"> <tr> <td style="width: 50%; border: none;"><input type="checkbox"/> Planning & Zoning Commission</td> <td style="width: 50%; border: none;"><input type="checkbox"/> Economic Development Corporation</td> </tr> <tr> <td style="border: none;"><input type="checkbox"/> Parks & Recreation Board</td> <td style="border: none;"><input type="checkbox"/> TIRZ Board #2</td> </tr> <tr> <td style="border: none;"><input type="checkbox"/> Finance Audit Committee</td> <td style="border: none;"><input type="checkbox"/> TIRZ Board #3</td> </tr> <tr> <td style="border: none;"><input type="checkbox"/> Keep Corinth Beautiful</td> <td style="border: none;"><input type="checkbox"/> Ethics Commission</td> </tr> </table>			<input type="checkbox"/> Planning & Zoning Commission	<input type="checkbox"/> Economic Development Corporation	<input type="checkbox"/> Parks & Recreation Board	<input type="checkbox"/> TIRZ Board #2	<input type="checkbox"/> Finance Audit Committee	<input type="checkbox"/> TIRZ Board #3	<input type="checkbox"/> Keep Corinth Beautiful	<input type="checkbox"/> Ethics Commission
<input type="checkbox"/> Planning & Zoning Commission	<input type="checkbox"/> Economic Development Corporation										
<input type="checkbox"/> Parks & Recreation Board	<input type="checkbox"/> TIRZ Board #2										
<input type="checkbox"/> Finance Audit Committee	<input type="checkbox"/> TIRZ Board #3										
<input type="checkbox"/> Keep Corinth Beautiful	<input type="checkbox"/> Ethics Commission										

Item/Caption

Consider and act on a two-year piggyback contract with the City of Denton to use Floyd Smith for concrete street and sidewalk repairs in the amount not to exceed \$90,000 for the fiscal year 2021-22, and not to exceed \$100,000 in the fiscal year 2022-23 and authorizing the City Manager to execute the necessary documents.

Item Summary/Background/Prior Action

The Street Division will use this contract to complete the larger more time-consuming projects. This contract ensures that the expectations of the Residents of Corinth are met in a timely manner. Public Works is requesting that Council approves the two-year contract not to exceed \$190,000 over the next two years and authorize the City Manager to execute the necessary documents.

Financial Impact

The maintenance of streets and sidewalks is budgeted annually.

Applicable Owner/Stakeholder Policy

Staff Recommendation/Motion

Staff recommends approval as presented.

**SERVICE CONTRACT
CONCRETE REPAIR AND INSTALLATION SERVICES THROUGH
CITY OF DENTON CONTRACT #7777**

This contract is made and entered into this ___ day of December, 2021 by and between Floyd Smith Concrete, Inc., a corporation organized under the laws of the State of Texas, (hereinafter called the “Contractor”) and the City of Corinth, Texas, a municipal corporation, organized and existing under laws of State of Texas, acting through its City Manager or other duly authorized designee, (hereinafter called the “City”).

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

1. TERM

This Contract shall commence beginning on the ___ day of December, 2021, and shall be in expire at midnight, October 19, 2023, unless earlier terminated by either party in accordance with the terms of this Contract. Contract terms and renewals are subject to the agreement between the lead bidding agency and the awarded vendor.

2. SCOPE OF SERVICES

The Contractor agrees to provide all equipment, materials, supplies, labor, permits, insurance and licenses as necessary to perform Concrete Repair and Installation Services in accordance with the provisions of this Contract and Attachments referenced below, which are incorporated for reference.

This Contract is composed of the following Contract Documents:

- a) This Contract
- b) Vendor quotes with cooperative pricing and contract number including Form 1295 electronically filed and signed - Attachment A
- c) The City’s Standard Terms & Conditions for Procurements, and Vendor Insurance Requirements– Attachment B
- d) Vendor Contract Documentation with City of Denton Contract #7777– Attachment C

Any conflict in the foregoing documents shall be resolved by giving precedence first to this written Contract, and then to the Contract Documents in the sequential order listed above.

3. PAYMENT

Invoices shall be mailed or emailed directly to:

City of Corinth
Accounts Payable
3300 Corinth Parkway
Corinth, Texas 76208
accountspayable@cityofcorinth.com

The City shall pay invoices for services properly performed within 30 days of receipt; provided however, that in the event the City requests any supporting documentation for charges,

payment shall be made within 30 days of receipt of the documentation. The City's payment obligations are payable only and solely from funds available for the purposes of this Contract.

4. CHANGES

The City may, from time to time, require changes in the scope of services of the Contractor to be performed hereunder. Such changes, which are mutually agreed upon by and between the City and the Contractor, become effective when incorporated in a written amendment to this Contract executed by both parties.

5. TERMINATION OF CONTRACT

The City may terminate this Contract for any reason upon 10 days' notice to Contractor. Upon termination, the Contractor shall be entitled to payment of such amount as shall compensate Contractor for the services satisfactorily performed from the time of the last payment date to the termination date in accordance with this Contract, provided the Contractor shall have delivered to the City such statements, accounts, reports and other materials as required herein, and provided that Contractor shall have delivered to the City all reports, documents and other materials prepared by Contractor prior to termination. The City shall not be required to reimburse Contractor for any services performed or expenses incurred after the date of the termination notice.

6. COMPLETENESS OF CONTRACT

This contract and any additional or supplementary document or documents incorporated herein by specific reference contain all the terms and conditions agreed upon by the parties hereto, and no other agreements, oral or otherwise, regarding the subject matter of this Contract or any part thereof shall have any validity or bind any of the parties hereto.

7. INDEMNITY AND INSURANCE

- a) **The Contractor hereby agrees to and shall indemnify, hold harmless, and defend the City, its officers, agents and employees from and against any and all claims, losses, damages, demands, causes of action, suits and liability of every kind, including all expenses of litigation, court costs and attorneys' fees, for injury to or death of any person, for loss of use or revenue, or for damage to any property arising out of or in connection with the actual or alleged malfunction, design or workmanship in the manufacture of equipment, the fulfillment of this Contract, or the breach of any express or implied warranties under this Contract. Such indemnity shall apply where the claims, losses, damages, causes of action, suits or liability arise in part from (i) the negligence of the Contractor, and/or their respective officers, agents and/or employees or (ii) the negligence of the Contractor, its officers, agents and employees. It is the expressed intention of the parties hereto, both Contractor and the City, that the indemnity provided for in this paragraph is indemnity by Contractor to indemnify and protect the City from the consequence of (I) the Contractor's own negligence where that negligence is the cause of the injury, death, or damage. Furthermore, the indemnity provided for in this paragraph shall have no application to any claim, loss, damage, cause of action, suit and liability where in injury, death or damage results**

from the negligence of the City. In the event any action or proceeding is brought against the City by reason of any of the above, the Contractor agrees and covenants to defend the action or proceeding by counsel acceptable to the City. The indemnity provided for herein shall survive the termination or expiration of this Contract.

- b) Contractor shall maintain and shall be caused to be in force at all times during the term of this Contract the insurance coverages attached as Attachment B.
- c) This Contract is not intended to extend the liability of the parties beyond that provided by law. The City does not waive, limit, or surrender any immunity or defense available to the City.

8. ASSIGNMENT

The parties hereby agree that Contractor may not assign, convey or transfer its interest, rights and duties in this Agreement without the prior written consent of the City.

9. NOTICES

Any notices required by this Contract shall be sufficient if sent by the parties in the United States mail, postage paid, return receipt requested or via overnight delivery service, to the address noted below and shall be effective upon receipt:

Bob Hart
City Manager
City of Corinth
3300 Corinth Parkway
Corinth, TX 76208

Carlos Salazar
General Superintendent
Floyd Smith Concrete
P.O. Box 1781
Denton, Texas 76202

Either party may change its address by giving written notice to become effective upon five days' notice.

10. MISCELLANEOUS

- (a) This Contract shall be governed by the laws of the State of Texas and any action relating to this Contract shall be filed in district court in Denton County, Texas.
- (b) Contractor is an independent contractor and not an employee of the City.
- (c) In rendering services under this Contract, Contractor shall comply with all applicable federal, state and local laws, rules and regulations, including those pertaining to equal employment opportunity and shall not discriminate based on age, ancestry, color, gender, marital status, medical condition, national origin, physical or mental disability, race, religion or sexual orientation.
- (d) This Contract may be amended or supplemented only by the mutual written consent of the parties' authorized representatives.
- (e) No provision of this Contract may be waived unless in writing and signed by both of the parties hereto. Waiver of a breach of any provision of this Contract shall not operate or be

construed as a waiver of any subsequent breach of such provision nor shall a waiver of any one provision of this Contract be deemed to be a waiver of any other provision.

- (g) The Section headings in this Contract are inserted only as a matter of convenience, and in no way define, limit, or extend or interpret the scope of this Contract or of any particular Section.
- (h) Nothing in this Contract shall be construed to create any right in any third party not a signatory to this Contract, and the parties do not intend to create any third-party beneficiaries by entering into this Contract.
- (i) The language of all parts of this Contract shall be construed as a whole according to its fair meaning, and the presumption or principle that the language herein is to be construed against either party shall not apply.

IN WITNESS WHEREOF, the City and the Contractor have executed this Contract as of the date first written above.

CITY OF CORINTH

Floyd Smith Concrete, Inc.

Bob Hart, City Manager

Carlos Salazar

Carlos Salazar, General Superintendent

ATTEST:

ATTEST:

Lana Wylie, City Secretary

Lexie Avera

By: Lexie Avera
Title: Accounts Receivables

**Attachment A – Vendor Quotes with Cooperative Pricing &
Contract Number**

**Attachment B - City's Standard Terms & Conditions for
Procurements and Vendor Insurance Requirements**

**Attachment C – Vendor Contract Documentation with City of
Denton #7777**

Attachment A

Floyd Smith Concrete, Inc.

Item Price List

November 16, 2021

Section J, Item 6.

City Contract #7777

City of Corinth - 3300 Corinth Parkway Corinth, TX 76208. City of Denton's contract #7777 -

Item	Description	Price 2021/2022
/:2.1	Dowel-On Integral	13.55
/:2.2	Concrete Curb & Gutter (0 to 250 LF)	34.00
/:2.3	Concrete Curb & Gutter (251 to 1000 LF)	28.50
/:2.4	Concrete Curb & Gutter (1001 to 5000 LF)	25.00
/:2.5	Concrete Curb & Gutter (> 5001 LF)	22.50
/:2.6	30" Surmountable Curb (1 to 250 LF)	27.50
/:2.7	30" Surmountable Curb (251 - 1000 LF)	22.50
/:3.1	6" Concrete Sidewalk With Fiber (0 to 50 SY)	81.00
/:3.2	6" Concrete Sidewalk With Fiber (51 to 100 SY)	78.75
/:3.3	6" Concrete Sidewalk With Fiber (101 to 500 SY)	76.50
/:3.4	6" Concrete Sidewalk With Fiber (501 to 1000 SY)	74.25
/:3.5	6" Concrete Sidewalk With Steel (0 to 50 SY)	85.50
/:3.6	6" Concrete Sidewalk With Steel (51 to 100 SY)	83.25
/:3.7	6" Concrete Sidewalk With Steel (101 to 500 SY)	81.00
/:3.8	6" Concrete Sidewalk With Steel (501 to 1000 SY)	78.75
/:3.9	5" Concrete Sidewalk With Fiber (0 to 50 SY)	76.50
/:3.10	5" Concrete Sidewalk With Fiber (50 to 100 SY)	74.25
/:3.11	5" Concrete Sidewalk With Fiber (101 to 500 SY)	72.00
/:3.12	5" Concrete Sidewalk With Fiber (501 to 1000 SY)	69.75
/:3.13	5" Concrete Sidewalk With Steel (0 to 50 SY)	85.50
/:3.14	5" Concrete Sidewalk With Steel (51 to 100 SY)	83.25
/:3.15	5" Concrete Sidewalk With Steel (101 to 500 SY)	81.00
/:3.16	5" Concrete Sidewalk With Steel (500 to 1000 SY)	78.75
/:3.17	4" Concrete Sidewalk With Fiber (0 to 50 SY)	67.50
/:3.18	4" Concrete Sidewalk With Fiber (51 to 100 SY)	63.00
/:3.19	4" Concrete Sidewalk With Fibers (101 to 500 SY)	54.00
/:3.20	4" Concrete Sidewalk With Fiber (501 to 1000 SY)	49.50
/:3.21	4' Type I Barrier Free Ramp (All With ADA Brick Inserts)	1,500.00
/:3.22	5' Type I Barrier Free Ramp (All With ADA Brick Inserts)	1,550.00
/:3.23	8' Type I Barrier Free Ramp (All With ADA Brick Inserts)	1,750.00
/:3.24	10' Type I Barrier Free Ramp (All With ADA Brick Inserts)	1,950.00
/:3.25	4' Type II Barrier Free Ramp (All With ADA Brick Inserts)	2,800.00
/:3.26	5' Type II Barrier Free Ramp (All With ADA Brick Inserts)	2,900.00
/:3.27	6' Type I Barrier Free Ramp (All With ADA Brick Inserts)	1,600.00
/:3.28	6' Type II Barrier Free Ramp (All With ADA Brick Inserts)	2,900.00
/:3.29	8' Type II Barrier Free Ramp (All With ADA Brick Inserts)	2,900.00
/:3.30	10' Type II Barrier Free Ramp (All With ADA Brick Inserts)	3,000.00
/:3.31	4' Type III Barrier Free Ramp (All With ADA Brick Inserts)	2,500.00
/:3.32	5' Type III Barrier Free Ramp (All With ADA Brick Inserts)	2,600.00
/:3.33	8' Type III Barrier Free Ramp (All With ADA Brick Inserts)	2,800.00
/:3.34	10' Type III Barrier Free Ramp (All With ADA Brick Inserts)	2,900.00
/:3.35	Concrete Steps	55.00
/:3.36	Install Sidewalk Safety Railing	55.00
/:4.1	Saw Cut (Existing Concrete)	4.75
/:4.2	Remove Concrete Curb & Gutter	12.95
/:4.3	Remove 4" Concrete Pavement/Sidewalk	41.50
/:4.4	Remove 6" Concrete Pavement/Driveway Approaches	47.25
/:4.5	Remove 8" Concrete Pavement	48.50

Floyd Smith Concrete, Inc.
Item Price List
November 16, 2021

Section J, Item 6.

Item	Description	Price 2021/2022
/:4.6	Remove 10" Concrete Pavement	48.50
/:4.7	Remove 12" Concrete Pavement	48.50
/:4.8	6" Concrete Pavement (0 to 50 SY)	83.25
/:4.9	6" Concrete Pavement (51 to 100 SY)	81.00
/:4.10	6" Concrete Pavement (101 to 500 SY)	78.75
/:4.11	6" Concrete Pavement (500 to 1000 SY)	76.50
/:4.12	8" Concrete Pavement (0 to 50 SY) With 1/2" Steel on 18" Centers	87.75
/:4.13	8" Concrete Pavement (51 to 100 SY) With 1/2" Steel on 18" Centers	85.50
/:4.14	8" Concrete Pavement (101 to 500 SY) With 1/2" Steel on 18" Centers	83.25
/:4.15	10" Concrete Pavement (Radius, Ect.)(0 to 50 SY) With 1/2" Steel on 18" Centers	89.00
/:4.16	10" Concrete Pavement (51 to 100 SY) With 1/2" Steel on 18" Centers	86.50
/:4.17	10" Concrete Pavement (101 to 500 SY) With 1/2" Steel on 18" Centers	84.50
/:4.18	12" Concrete Pavement (0 to 50 SY) With 1/2" Steel on 18" Centers	94.50
/:4.19	12" Concrete Pavement (51 to 100 SY) With 1/2" Steel on 18" Centers	94.50
/:4.20	12" Concrete Pavement (Radius, ECT) With 1/2" Steel on 18" Centers (101 to 500 SY)	90.00
/:4.21	High Early Strenght Concrete (6 Sack) Concrete Pavement	161.00
/:4.22	Concrete Rip-Rap And Frainage Flumes 6"q	87.75
/:4.23	Concrete Flumes 6"-7' Wide W/ 6" Curbs	95.00
/:4.24	Concrete Flumes 6"-11' Wide W/ 6" Curbs	125.00
/:4.25	Structural Concrete - (Class A) 5-Sack	645.00
/:4.26	Structural Concrete - (Class C) 5 1/2 Sack	660.00
/:4.27	Structural Concrete - (Class S) 6-Sack	675.00
/:4.28	Concrete For Light Standard Bases	650.00
/:4.29	Concrete Foundation For Traffic Controller Box	740.00
/:4.30	Water Service Adjustments	500.00
/:4.31	Ring & Cover (Inlets 24" Locking 124C)	330.00
/:4.32	Ring & Cover (Inlets 30" Locking 124C)	345.00
/:4.33	Unclassified Excavation	29.75
/:4.34	Supply And Install Type I Flex Base	148.00
/:4.35	Compacted Fill/Embankment	45.00
/:4.36	Misc. Spinkler System Adjustments	500.00
/:4.37	ST. Augustine Sod	12.25
/:4.38	Bermuda Sod	10.25
/:5.1	Saw Cut (Existing Asphalt)	3.75
/:5.2	0" to 2" Asphalt Pave (Type D Patch Material)	30.00
/:5.3	2" to 4" Asphalt Pave (Type D Patch Material)	45.00
/:5.4	4" to 6" Asphalt Pave (Type B Patch Material)	54.00
/:5.5	6" to 8" Asphalt Pave (Type B Patch Material)	63.00
/:5.6	Concrete Medians Patterned	132.75
/:5.7	4" Concrete Latework (color/textured)(0 to 100 SY)	120.00
/:5.8	4" Concrete Flatwork (Colored/Textured)(101 to 500 SY)	118.00
/:5.9	4" Concrete Flatwork (Colored/Textured>(>501 SY)	98.00
/:5.10	1 1/2 Sack Concrete Backfill	130.00
/:5.11	5 Sack Concrete	148.00
/:6.1	"Y" Inlet (Includes Apron, Ring, And Cover)	3,900.00
/:6.2	4' Inlet - Rebuilt Inlet (Remove & Replace Top)	2,600.00
/:6.3	6' Inlet - Rebuilt Inlet (Remove & Replace Top)	2,700.00
/:6.4	8' Inlet - Rebuilt Inlet (Remove & Replace Top)	2,900.00
/:6.5	10' Inlet - Rebuilt Inlet (Remove & Replace Top)	3,200.00
/:6.6	5 Sack Concrete Grout (No Rock)	145.00

Item Price List

November 16, 2021

Item	Description	Price 2021/2022
/:6.7	5 Sack Concrete Grout In Place Over Rip Rap	330.00
/:6.8	Adjust Manhole & Inlets	965.00
/:6.9	Type A Headwalls (15" to 36" Per Pipe)	3,000.00
/:6.10	Type A Headwalls (39" to 72" Per Pipe)	6,500.00
/:6.11	Type B Headwalls (15" to 36" Per Pipe)	2,000.00
/:6.12	Type B Headwalls (39" to 72" Per Pipe)	4,500.00
/:6.13	6:1 Sets Headwalls for 15" Pipe	1,500.00
/:6.14	6:1 Sets Headwalls For 18" Pipe	1,600.00
/:6.15	6:1 Sets Headwalls For 24" Pipe	1,900.00
/:6.16	6:1 Sets Headwalls For 30" Pipe	2,200.00
/:6.17	6:1 Sets Headwalls For 36" Pipe	2,500.00
/:6.18	4:1 Set Headwalls For 15" Pipe	1,400.00
/:6.19	4:1 Sets Headwalls For 18" Pipe	1,500.00
/:6.20	4:1 Sets Headwall For 24" Pipe	1,800.00
/:6.21	4:1 Sets Headwalls for 30" Pipe	2,100.00
/:6.22	4:1 Sets Headwalls For 36" Pipe	2,400.00
/:6.23	4' ID Manhole (0 to 6" Depth)	2,895.00
/:6.24	Extra Depth	321.67
/:6.25	5' X 5" Junction Box (0' to 6' Depth)	4,125.00
/:6.26	Extra Depth	20.00
/:6.27	4' X 4' Junction Box (0' to 6' Depth)	4,000.00
/:6.28	Extra Depth	150.00
/:6.29	6' X 6' Junction Box (0' to 6' Depth)	4,250.00
/:6.30	Extra Depth	200.00
/:6.31	5' Inlet (0' to 6' Depth)	4,000.00
/:6.32	Extra Depth	100.00
/:6.33	8' Inlet (0' to 6' Depth)	4,250.00
/:6.34	Extra Depth	125.00
/:6.35	10' Inlet (0' to 6' Depth)	5,000.00
/:6.36	Extra Depth	150.00
/:6.37	12' Inlet (0' to 6' Depth)	5,250.00
/:6.38	Extra Depth	175.00
/:6.39	15' Inlet (0' to 6' Depth)	6,000.00
/:6.40	Extra Depth	200.00
/:6.41	20' Inlet (0' to 6' Depth)	7,500.00
/:6.42	Extra Depth	300.00
/:6.43	10' Recessed Inlet	4,950.00
/:6.44	12' Recessed Inlet	5,250.00

CERTIFICATE OF INTERESTED PARTIES

Section J, Item 6.

1 of 1

Complete Nos. 1 - 4 and 6 if there are interested parties.
 Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

OFFICE USE ONLY CERTIFICATION OF FILING

1 Name of business entity filing form, and the city, state and country of the business entity's place of business.

Floyd Smith Concrete
 Denton, TX United States

Certificate Number:
 2021-830017

Date Filed:
 12/07/2021

2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.

City of Corinth

Date Acknowledged:

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

7777
 Piggy Backing on City of Denton Contract 7777. Flat work construction installation and repair, concrete sawing, concrete removal, concrete disposal and decorative concrete

4	Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
			Controlling	Intermediary

5 Check only if there is NO Interested Party.

6 UNSWORN DECLARATION

My name is Carlos Salazar, and my date of birth is 4/12/1967.

My address is 1003 W. Collins St., Denton, TX, 76201, USA.
(street) (city) (state) (zip code) (country)

I declare under penalty of perjury that the foregoing is true and correct.

Executed in Denton County, State of Texas, on the 7 day of December, 2021.
(month) (year)

Carlos Salazar
 Signature of authorized agent of contracting business entity (Declarant)

STANDARD TERMS AND CONDITIONS

The terms and conditions shall apply to all goods or services procured by the City and shall be incorporated into and be a part of any bids/proposals submitted to the City of Corinth for the goods and/or services specified. No other terms and conditions shall apply unless approved in writing by the City of Corinth, Texas.

1. **ADDENDA:** Any interpretations, corrections or changes to the information or specifications will be made by addenda. Sole issuing authority of addenda shall be vest in the City of Corinth Purchasing Agent. Addenda will be posted at <https://cityofcorinth.bonfirehub.com>. It is the responsibility of the Respondent to check the Bonfire website for addenda. Respondents shall acknowledge receipt of all addenda by submitting a signed copy with their bid/proposal.
2. **ADVERTISING:** The successful Respondent shall not advertise or publish, without the City's prior approval, the fact that the City has entered into a contract, except to the extent necessary to comply with proper requests for information from an authorized representative of the Federal, State, or local government.
3. **ALTERING BID/PROPOSAL PRICING:** Prices offered shall be submitted for units of quantity as specified in the bid/proposal document, extended and totaled. In the case of a discrepancy in the extended price, the unit price shall govern and control. Any alteration, strike-through or erasure made prior to bid/proposal opening shall be initialed by the signer of the bid/proposal, guaranteeing authenticity.

FOR BIDS ONLY: Prices offered **cannot** be altered or amended after the submission deadline. Bids may not be changed for the purpose of correcting an error in bid price after bid opening.

4. **ASSIGNMENT:** The successful respondent shall not sell, assign, transfer or convey the awarded contract, in whole or in part, without the prior written consent of the City.
5. **AWARD:** The City reserves the right to award by line item, section, or by entire bid/proposal; whichever is most advantageous to the City. The City may also consider administration costs when awarding to multiple vendors.

The City may award bids/proposals to the lowest responsive responsible vendor(s), or to the vendor(s) who provides goods or services at the best value to the City. If using the best value method, the selection criteria will be clearly identified in the bid/proposal document. The best value method may take into consideration, in whole or in part, by way of illustration and not limitation, the following criteria:

- A. The purchase price;
- B. The reputation of the respondent and of the respondent's goods or services;
- C. The quality of the respondent's goods or services;
- D. The extent to which the goods or services meet the City's needs;
- E. The respondent's past relationship with the City;
- F. The total long-term cost to the City to acquire the respondent's goods or services;
- G. Any relevant criteria specifically listed herein.

6. **BID/PROPOSAL SUBMITTAL:** The City utilizes Bonfire to advertise and receive bids/proposals electronically. Bids will be received in hard copy; or electronically through Bonfire as specified in the bid/proposal packet.

Electronic submittals must be submitted through the Bonfire portal at <https://cityofcorinth.bonfirehub.com>; and must include all required information and attachments; with required signatures in order to be considered. If a bid bond is required, a copy of the bid bond must be uploaded with the electronic submittal. The original bid bond document must be received in the Purchasing office within three (3) business days after the deadline for receipt of submittals. Original bid bond documents must be sent to City of Corinth, Attn: Purchasing Agent, 3300 Corinth Parkway, Corinth, TX 76208. The City may disqualify submissions from Respondents who do not comply with this requirement.

Hard copy bids must include all required information and attachments; with required signatures; and must be submitted in a sealed envelope or package to the office of the Purchasing Agent, 3300 Corinth Parkway, Corinth, Texas 76208. If a bid bond is required, the bid/proposal in paper format must include the original bid bond with their submission.

7. **BRAND NAME, CATALOG OR MANUFACTURER'S REFERENCE:** Any reference to brand name, catalog or manufacturer's reference is used to be descriptive, not restrictive, and is indicative of the type and quality the City desires to purchase. Bids/proposals on similar items of like quality may be considered if the bid/proposal is noted and fully descriptive brochures are enclosed. If notation of substitution is not made, it is assumed the respondent is proposing exact item specified. Successful respondent will not be allowed to make unauthorized substitutions after award.
8. **CHANGE ORDERS:** No oral statement of any person shall modify or otherwise change, or affect the terms, conditions or specifications stated in the resulting contract. The City of Corinth's Purchasing Agent will make all change orders to the contract in writing as allowed by law.
9. **COMMUNICATION:** The successful respondent shall direct all contact with the City through the Contract Administrator identified in the Contract. The Respondent will not directly respond to, make inquiries of, survey or solicit information from, or otherwise interact with any departments, divisions, employees, or agents of the City unless specifically approved, or requested by the Contract Administrator.
10. **COMPANIES ENGAGED IN BUSINESS WITH IRAN, SUDAN, OR FOREIGN TERRORIST ORGANIZATION:** Pursuant to Texas Government Code Chapter 2252, Subchapter F, Seller affirms that it is not identified on a list created by the Texas Comptroller of Public Accounts as a company known to have contracts with or provide supplies or services to a foreign terrorist organization.
11. **CONFLICT OF INTEREST:** In compliance with Local Government Code §176.006, all vendors shall file a completed Conflict of Interest Questionnaire with the City's Purchasing Office.

- 12. **CONTRACT ADMINISTRATOR:** Under the contract, the City may appoint a contract administrator with designated responsibility to ensure compliance with contract requirements, such as but not limited to, acceptance, inspection and delivery. If appointed, the administrator will serve as liaison between the City and the successful contractor.
- 13. **CONTRACT ENFORCEMENT:**
 - A. The City reserves the right to enforce the performance of any contract that results from an award of this bid/proposal packet. Enforcement shall be in any manner prescribed by law or deemed to be in the best interest of the City in the event of breach or default of the contract. Breach of contract or default authorizes the City to make an award to another respondent, purchase the service elsewhere and to charge the full increase in cost and handling to the defaulting contractor. Additionally, the City will remove the defaulting contractor from the City's list of approved vendors for a period of two years.
 - B. Respondents who submit proposals for this service agree that the City shall not be liable to prosecution for damages in the event that the City declares the successful contractor in default.
 - C. Any notice provided by this bid/proposal packet (or required by law) to be given to the successful Respondent by the City shall be conclusively deemed to have been given and received on the next day after such written notice has been deposited in the mail at the City of Corinth, by Registered or Certified mail with sufficient postage affixed thereto, addressed to the successful Respondent at the address provided in the bid/proposal; this shall not prevent the giving of actual notice in any other manner.
 - D. The successful Respondent and the City agree that both parties have all rights, duties and remedies available as stated in the Uniform Commercial Code (UCC). In case of a conflict between the terms of this bid/proposal packet and the UCC, the bid/proposal packet will control.
- 14. **DELIVERY:**
 - A. Delivery date is important to the City and may be required to be a part of each bid/proposal. The City considers delivery time to be that period elapsing from the time the individual order is placed until that order is received by the City at the specified delivery location. The delivery date indicates a guaranteed delivery to the City of Corinth. Failure of the respondent to meet guaranteed delivery dates or service performance could affect future City orders.
 - B. The City may reject and refuse any delivery, which falls below the quality designated in the specifications. The cost of return and/or replacement will be at the Respondent's expense.
 - C. The City reserves the right to demand bond or penalty to guarantee delivery by the date indicated. If order is given and the Respondent fails to furnish the materials by the guaranteed date, the City reserves the right to cancel the order without liability on its part. Pricing shall include all charges for freight, F.O.B. inside to specified delivery location.
 - D. Whenever the Contractor encounters any difficulty which is delaying or threatens to delay timely performance (including actual or potential labor disputes), the Contractor shall immediately give notice thereof in writing to the Purchasing Agent, stating all relevant information with respect thereto. Such notice shall not in any way constitute a basis for an extension of the delivery or performance schedule or be construed as a waiver by the City of any rights or remedies to which it is entitled by law or pursuant to provisions herein. Failure to give such notice, however, may be grounds for denial of any request for an extension of the delivery or performance schedule because of such delivery.
- 15. **ETHICS:** The Respondent shall not offer or accept gifts or anything of value nor enter into any business arrangement with any employee, official, or agent of the City except in accordance with City Policy.
- 16. **EXCEPTIONS/SUBSTITUTIONS:** All proposals meeting the intent of this bid/proposal packet will be considered for award. Respondents taking exception to the instructions, specifications, terms and conditions or offering substitutions, shall state these exceptions in the section provided or by attachment as part of their bid/proposal. The absence of such a list shall indicate that the Respondent has not taken exceptions and shall hold the Respondent responsible to perform in strict accordance with the instructions, specifications, terms and conditions of the bid/proposal packet. The City of Corinth reserves the right to accept any and all or none of the exception(s)/substitution(s) deemed to be in the best interest of the City.
- 17. **FELONY CRIMINAL CONVICTIONS:** The Respondent represents and warrants that neither the Respondent nor the Respondent's employees have been convicted of a felony criminal offense, or under investigation of such charge, or that, if such a conviction has occurred, the Respondent has fully advised the City as to the facts and circumstances surrounding the conviction.
- 18. **FORCE MAJEURE:** *Force majeure* is defined as an act of God, war, strike, fire or explosion. Neither the successful Respondent nor the City is liable for delays or failures of performance due to *force majeure*. Each party must inform the other in writing with proof of receipt within three (3) business days of the occurrence of an event of *force majeure*.
- 19. **INDEMNITY AGREEMENT:** The Contractor hereby agrees to and shall indemnify, hold harmless, and defend the City, its officers, agents and employees from and against any and all claims, losses, damages, demands, causes of action, suits and liability of every kind, including all expenses of litigation, court costs and attorneys' fees, for injury to or death of any person, for loss of use or revenue, or for damage to any property arising out of or in connection with the actual or alleged malfunction, design or workmanship in the manufacture of equipment, the fulfillment of this Contract, or the breach of any express or implied warranties under this Contract. Such indemnity shall apply where the claims, losses, damages, causes of action, suits or liability arise in part from (i) the negligence of the Contractor, and/or their respective officers, agents and/or employees or (ii) the negligence of the Contractor, its officers, agents and employees. It is the expressed intention of the parties hereto, both Contractor and the City, that the indemnity provided for in this paragraph is indemnity by Contractor to indemnify and protect the City from the consequence of (1) the Contractor's own negligence where that negligence is the cause of the injury, death, or damage. Furthermore, the indemnity provided for in this paragraph shall have no application to any claim, loss, damage, cause of action, suit and liability where in injury, death or damage results from the negligence of the City. In the event any action or proceeding is brought against the City by reason of any of the above, the Contractor agrees and covenants to defend the action or proceeding by counsel acceptable to the City. The indemnity provided for herein shall survive the termination or expiration of this Contract.

- 20. **INVOICES:** Each invoice shall be fully documented as to the Contractor's/vendor's name and address, receiving department's name and address, labor, materials and equipment provided, if applicable, and must reference the City of Corinth purchase order number in order to be processed. No payments shall be made on invoices not listing a purchase order number. Invoices shall be mailed directly to the City of Corinth, Attention: Accounts Payable, 3300 Corinth Pkwy., Corinth, Texas, 76208.
- 21. **LATE SUBMITTALS:** The City will reject late bids/proposals. The City is not responsible for lateness or non-delivery of mail, carrier, etc. and the date/time stamp in the Purchasing Office shall be the official time of receipt. The Respondent is responsible for ensuring that packets are delivered to the Purchasing Office. Respondents may confirm receipt of packets by contacting Cindy Troyer, Purchasing Agent at 940-498-3286.
- 22. **MINIMUM STANDARDS FOR RESPONSIBILITY:** A prospective vendor must affirmatively demonstrate responsibility. The City may request representation and other information sufficient to determine respondent's ability to meet the minimum standards including but not limited to:
 - A. Have adequate financial resources or the ability to obtain such resources.
 - B. Ability to comply with the required or proposed delivery schedule.
 - C. Have a satisfactory record of performance.
 - D. Have a satisfactory record of integrity and ethics.
 - E. Be otherwise qualified and eligible to receive an award.
- 23. **NO BOYCOTT OF ISRAEL:** Pursuant to Texas Government Code Chapter 2270, the successful Respondent agrees that acceptance of these Terms & Conditions serves as written verification that Contractor: (i) either meets an exemption criteria under Section 2270.002; or it does (1) does not boycott Israel, as defined by Texas Government Code Section 808.001; and (2) will not boycott Israel during the term of the contract. This requirement does not apply to sole proprietorships, companies with fewer than ten employees; or contracts that are less than \$100,000.00.
- 24. **NON-APPROPRIATION CLAUSE:** If the governing body of the City fails to specifically appropriate sufficient funds to make the payments due in any Fiscal Year under this Contract, an event of non-appropriation ("Event of Non-appropriation") will have occurred, the terms of this Contract will not be renewed, and Contractor or City may terminate this Contract at the end of the then current Fiscal Year, whereupon City will be obligated to pay those amounts then due subject to the provisions herein. Nothing in this Section or elsewhere in this Contract will be deemed in any way to obligate the City or create a debt of City beyond its current Fiscal Year. **CONTRACTOR HAS NO RIGHT TO COMPEL CITY TO LEVY OR COLLECT TAXES TO MAKE ANY PAYMENTS REQUIRED HEREUNDER, OR TO EXPEND FUNDS BEYOND THE AMOUNT PROVIDED FOR IN THE THEN CURRENT FISCAL YEAR OF CITY.**
- 25. **PATENTS/COPYRIGHTS:** The successful Respondent agrees to protect the City from claims involving infringements of patents and/or copyrights.
- 26. **PAYMENT:** Will be made upon receipt and acceptance by the City for item(s) and/or service(s) ordered and delivered after receipt of a valid invoice, in accordance with the State of Texas Prompt Payment Act, Chapter 2251, Government Code.
- 27. **PRICES HELD FIRM:**
 - A. All prices quoted in the proposals will remain firm for a minimum of 90 days from the date of the proposal unless it is otherwise specified by the City of Corinth.
 - B. If during the life of the contract, the successful Respondent's net prices to other customers for the items awarded herein are reduced below the contracted price, it is understood and agreed that the benefits of such reduction shall be extended to the City.
- 28. **PURCHASE ORDER:** The City shall generate a purchase order(s) to the successful Respondent. The purchase order number must appear on all itemized invoices.
- 29. **QUANTITIES:** Quantities indicated on the Bid/Proposal Form are estimates based upon the best available information. The City reserves the right to increase or decrease quantities to meet its actual needs without any adjustments in bid/proposal price. Individual purchase orders will be issued on an as-needed basis.
- 30. **REFERENCES:** The City requests each Respondent to supply, with its bid/proposal, a list of at least three (3) references where their firm supplied like services within the last three to five years. It is preferred that the list identify municipalities that are customers of Respondent. For each reference, include the name of firm, address, contact employee of firm, with telephone number and e-mail address, what services are provided to this reference, and how long your firm has provided this service to the reference entity.
- 31. **RELEASE OF INFORMATION AND PUBLIC INSPECTION:** After sealed bids have been opened, bids are open for public viewing upon request. If the bid contains trade secrets or confidential information, the Respondent must specifically list that portion as confidential. All other parts of the bid are open for public viewing upon request.

For processes other than low bid or best value bid, only the names of respondents will be read aloud at the scheduled opening. Pricing information will not be released until after award of the contract.
- 32. **REQUIRED DOCUMENTATION:** In response to this bid/proposal packet, all required documentation must be provided.
- 33. **SALES TAX:** The City is exempt by law from payment of Texas Sales Tax and Federal Excise Tax. Our taxpayer identification number is 75-1453222.
- 34. **SEVERABILITY:** If any section, subsection, paragraph, sentence, clause, phrase or word of these instructions, specifications, terms and conditions, shall be held invalid, such holding shall not affect the remaining portions of these instructions, specifications, terms and conditions and it is hereby declared that such remaining portions would have been included in these instructions, specifications, terms and conditions as though the invalid portion had been omitted.

- 35. **SILENCE OF SPECIFICATIONS:** The apparent silence of specifications as to any detail or to the apparent omission from a detailed description concerning any point shall be regarded as meaning that only the best commercial practices are to prevail. All interpretations of the specifications shall be made based on this statement.
- 36. **SUBCONTRACTORS:** The Contractor shall be the sole source of contact for the Contract. The City will not subcontract any work under the contract to any other firm and will not deal with any subcontractors. The Contractor is totally responsible for all actions and work performed by its subcontractors. All terms, conditions and requirements of the Contract shall apply without qualification to any services performed or goods provided by any subcontractor.
- 37. **TAX/DEBT ARREARAGE:** The City shall pay no money upon any claim, debt, demand, or account whatsoever, to any person, firm or corporation, who is in arrears to the City for taxes or otherwise; and, the City shall be entitled to a counter-claim and offset against any such debt, claim, demand, or account, in the amount of taxes or other debt in arrears, and no assignment or transfer of such debts are due, shall affect the right, authority, and power of the City to offset the taxes or other debts against the same.
- 38. **TERMINATION FOR DEFAULT:** The City reserves the right to enforce the performance of the contract in any manner prescribed by law or deemed to be in the best interest of the City in the event of breach or default of the contract. The City reserves the right to terminate the contract in the manner set forth in the attached Contract.

As soon as practicable after receipt of notice of termination, the Company shall submit a statement showing in detail the pro-rated payment, in a form satisfactory to the City, that reflects the appropriate charges. The City shall then pay the charges as required by law.
- 39. **TERMINATION OF CONTRACT:** The contract shall remain in effect until contract expires, delivery and acceptance of products and/or performance of services ordered or terminated by either party with a ten (10) day written notice prior to any cancellation. The successful Respondent must state therein the reasons for such cancellation. The City may, by written notice to the selected company, cancel this contract immediately without liability to the selected company if it is determined by the City that gratuities or bribes in the form of entertainment, gifts, or otherwise contrary to City Policy, were offered or given by the successful proposing party, or its agent or representative to any City officer, employee or elected representative with respect to the performance of the contract.
- 40. **TRAVEL AND DIRECT CHARGES:** The City shall not compensate the Respondent for any travel costs incurred in delivery of services under the contract.
- 41. **VENUE:** Respondent shall comply with all Federal and State laws and City Ordinances and Codes applicable to the Respondent's operation under this contract. The resulting specifications and the contract herefrom shall be fully governed by the laws of the State of Texas, and shall be fully performable in Denton County, Texas, where venue for any proceeding arising hereunder will lie.
- 42. **WITHDRAWAL OF PROPOSAL:** A proposal may be withdrawn any time prior to the official opening, as long as the request is received in writing from an authorized representative.

CITY OF CORINTH

**CONSTRUCTION SERVICES
INSURANCE REQUIREMENTS**

1.0 DEFINITION

Vendors/Contractors shall procure and maintain for the duration of the contract, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the vendor, his agents, representatives, employees or subcontractors. The cost of such insurance shall be borne by the vendor. A certificate of insurance meeting all requirements and provisions shall be provided to the City prior to any services being performed or rendered. Renewal certificates shall also be supplied upon expiration.

A. Minimum Scope of Insurance: Coverage shall be at least as broad as:

1. ISO Form Number GL 00 01 (or similar form) covering Commercial General Liability. "Occurrence" form only, "claims made" forms are unacceptable. Policy must include coverage for:
 - a. Premises/Operations
 - b. Broad Form Contractual Liability
 - c. Products and Completed Operations
 - d. Personal Injury
 - e. Broad Form Property Damage
 - f. Independent Contractors
2. Workers Compensation insurance as required by the Labor Code of the State of Texas, including Employers' Liability Insurance. Worker's Compensation /Employers' Liability insurance is only required if contractor/vendor will use their own employees for the provision of General or Professional services under the contract
3. Automobile Liability as required by the State of Texas, covering all owned, hired, or non-owned vehicles. Automobile Liability is only required if vehicle(s) will be used under the contract.
4. Professional Liability, also known as Errors and Omissions Coverage. Professional Liability is only required for Professional Services contracts.

B. Deductibles and Self-Insured Retentions: Any deductible or self-insured retention in excess of \$10,000 must be declared to and approved by the City.

C. Other Insurance Provisions: The policies are to contain, or be endorsed to contain the following provisions.

1. General Liability and Automobile Liability Coverage:

- a. The City, its officers, officials, employees, boards and commissions and volunteers are to be added as "Additional Insured's" relative to liability arising out of activities performed by or on behalf of the vendor/contractor, products and completed operations of the vendor, premises owned, occupied or used by the vendor/contractor. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, officials, employees or volunteers.
- b. The vendor/contractor insurance coverage shall be primary insurance in respects to the City, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees or volunteers shall be in excess of the vendor's insurance and shall not contribute with it.
- c. Any failure to comply with reporting provisions of the policy shall not affect coverage provided to the City, its officers, officials, employees, boards, and commissions or volunteers.
- d. The vendor/contractor insurance shall apply separately to each insured against whom the claim is made or suit is brought, except to the limits of the insured's limit of liability.

2. Workers Compensation and Employer's Liability Coverage: The insurer shall agree to waive all rights of subrogation against the City, its officers, officials, employees and volunteers for losses arising from work performed by the vendor for the City.

3. All Coverage: Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled or non-renewed by either party, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given the City. In the event the companies providing the required insurance are prohibited by law to provide any such specific endorsements, the vendor/contractor shall provide at least thirty (30) days prior written notice to the City of any cancellation, non-renewal and/or material changes to any of the policies of insurance. Failure to provide notification shall be deemed a default and/or breach of contract.

4. The City may request different limits of coverage depending on the scope or cost of the project.

D. **Acceptability of Insurers:** The City prefers that insurance be placed with insurers with an A.M. Best's rating of no less than A-VI, or better.

E. **Verification of Coverage:** Vendor/Contractor shall provide the City certificates of insurance indicating the coverage required. The certificates are to be signed by a person authorized by that insurer to bind coverage on its behalf. Certificates of Insurance similar to the ACORD Form are acceptable. City will not accept Memorandums of Insurance or Binders as proof of insurance. The City reserves the right to require complete, certified copies of all required insurance policies at any time.

F. **Insurance Waiver Request.** Vendors/contractors requesting a waiver of the minimum limits of insurance identified in section 1.1.B, 1.2.B, or 1.3 B must submit the request in writing. Please note, commercial general liability cannot be waived. Requests to waive other coverage requirements will be considered in the bid evaluation process. The vendor/contractor must also complete, sign, and return the Release Agreement form to the Purchasing Office prior to authorization to perform services for the City.

1.2 CONSTRUCTION SERVICES REQUIREMENTS

A. Definition: Construction Services are defined as services for construction projects, including but not limited to: General Contractors, Demolition Contractors, Utility Contractors, Building Contractors, Street and Road Contractors, etc.

B. Minimum Limits of Insurance:

1. Commercial General Liability: \$1,000,000 per occurrence / \$2,000,000 in the aggregate for third party bodily injury, personal injury and property damage. Policy must include coverage listed in Section 1.A.1.
1. Workers Compensation and Employer's Liability: Workers Compensation limits as required by the Labor Code of the State of Texas and Statutory Employer's Liability minimum limits of \$100,000 each accident, \$300,000 Disease - Policy Limit, and \$100,000 Disease – Each Employee
3. Automobile Liability: \$1,000,000 Combined Single Limit. Limits can only be reduced if approved by the City. Automobile liability shall apply to all owned, hired, and non-owned autos. Automobile Liability is only required if vehicle(s) will be used under the contract.

C. Additional Insurance Coverage: The City may request the following additional insurance coverage for building and construction projects. If requested by the City, the vendor must provide certificate of insurance prior to authorization to perform services for the City.

1. Builder's Risk Insurance: Completed value form, insurance carried must be equal to the completed value of the structure. City shall be listed as Loss Payee.
2. Umbrella Liability - \$1,000,000: Limit that follows form over underlying Automobile Liability, General Liability, and Employers Liability coverage.



DocuSign City Council Transmittal Coversheet

RFP	7777
File Name	Concrete Repair and Installation Services
Purchasing Contact	Cori Power
City Council Target Date	OCTOBER 19, 2021
Piggy Back Option	Yes
Contract Expiration	OCTOBER 19, 2026
Ordinance	21-2176

**CONTRACT BY AND BETWEEN
CITY OF DENTON, TEXAS AND FLOYD SMITH CONCRETE, INC.
(CONTRACT 7777)**

THIS CONTRACT is made and entered into this date 10/19/2021, by and between Floyd Smith Concrete, Inc., a Texas corporation, whose address is 1519 Willowood Dr., Denton, TX 76205, hereinafter referred to as "Contractor," and the CITY OF DENTON, TEXAS, a Texas Municipal Corporation and Home-Rule City, hereinafter referred to as "City," to be effective upon approval of the Denton City Council and the 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 construction services in accordance with the City's RFP 7777- Concrete Repair and Installation, a copy of which is on file at the office of Purchasing Agent and incorporated herein for all purposes as "Exhibit B". 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 Request for Proposal #7777 (**Exhibit "B" on file at Office of Purchasing Agent**);
- (c) General Provisions-Standard Terms and Conditions (**Exhibit "C"**);
- (d) Payment and Performance Bond Requirements (**Exhibit "D"**);
- (e) Insurance Requirements (**Exhibit "E"**);
- (f) Certificate of Interested Parties Electronic Filing (**Exhibit "F"**);
- (g) Contractor's Proposal (**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 this written Contract, and then to the Contract documents in the sequential 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 2270 of the Texas Government Code, City is prohibited from entering into a contract with a company for goods or services unless the contract contains a written verification from the company that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the contract. The terms "boycott Israel" and "company" shall have the meanings ascribed to those terms in Section 808.001 of the Texas Government Code. *By signing this agreement, 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 Doing Business with Iran, Sudan, or a Foreign Terrorist Organization

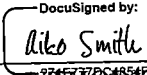
Section 2252 of the Texas Government Code restricts CITY from contracting with companies that do business with Iran, Sudan, or a foreign terrorist organization. *By signing this agreement, Contractor certifies that Contractor's signature provides written verification to the City that Contractor, pursuant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

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.

SIGNATURE PAGE TO FOLLOW

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

CONTRACTOR

BY: 
AUTHORIZED SIGNATURE

Printed Name: Aiko Smith

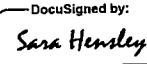
Title: President, CEO

940-565-0114
PHONE NUMBER

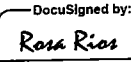
fscincl@verizon.net
EMAIL ADDRESS

2021-797217
TEXAS ETHICS COMMISSION
CERTIFICATE NUMBER

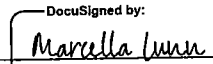
CITY OF DENTON, TEXAS
A Texas Municipal Corporation

BY: 
SARA HENSLEY, INTERIM CITY MANAGER

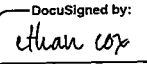
ATTEST:
ROSA RIOS, CITY SECRETARY

BY: 

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

BY: 

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

 ethan cox
SIGNATURE PRINTED NAME

General Manager of Public works
TITLE

Public Works
DEPARTMENT

EXHIBIT A
SPECIAL TERMS AND CONDITIONS

1. Total Contract Amount

The contract total for services shall not exceed \$39,000,000. Pricing shall be per Exhibit G attached.

2. The Quantities

The quantities indicated on Exhibit G 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 two (2) years, effective from date of award. The City and the Supplier shall have the option to renew this contract for an additional three (3) 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 noting the solicitation number.

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

5. Performance Liquidated Damages

Contractor recognizes that time is of the essence of this Agreement and that City will suffer financial loss if the Work is not completed within the times specified in each task order, plus any extension thereof allowed in accordance with Article 12 of the General Conditions. The Contractor also recognizes the delays, expense and difficulties involved in proving in a legal proceeding the actual loss suffered by the City if the Work is not completed on time. Accordingly, instead of requiring any such proof, Contractor agree that as liquidated damages for delay (but not as a penalty), Contractor shall pay City one thousand dollars (\$1,000) for each day that expires after the time specified in each task order for Final Acceptance until the City issues the Final Letter of Acceptance.

Public Works Construction Standards

NCTCOG 5th Edition

Section 108.8

Schedule 109.8.1 Liquidate Damages

Amount of contract (\$)	Amount of liquidated damages (\$)
Less than 25,000.000	200.00 Per Day
25,000.00 to 99,999.99	350.00 Per Day
100,000.00 to 999,999.99	500.00 Per Day
More Than 1,000,000.00	1000.00 Per Day

6. Post Award Additional Requirements

Pre-Construction Meeting: Prior to commencement of the services, the City and the Contractor will conduct a pre-construction meeting to review the overall scope, schedule, deliverables, planning process, and to ensure that all relevant parties to the project are introduced.

Environmental Hazards: There are no known safety or environmental hazards existing on the project site at the time of issue of this solicitation. The City does not warrant or guarantee against the possibility that safety or environmental hazards or potential hazards may exist at the City's facilities. The Contractor shall be responsible for identifying any hazardous

conditions and notifying the City verbally of such conditions as soon as possible after discovery and shall follow up in writing within 10 days of such discovery. The costs for necessary investigations or any potential corrective actions will be negotiated between the City and the Contractor.

Contractor Standards of Performance: The contractor shall prosecute the work diligently with skilled craftsmen and with state-of-the-art methods to complete the work within the time stated in the contract or such time extensions as may be granted.

Monthly Reports: The awarded Contractor shall provide to the City of Denton, detailed reports of daily work conditions, daily man power availability, equipment problems, and work accomplished on a monthly basis.

Safety: All contractors to the City of Denton are required to ensure absolute safety standards are applied and enforced. The City of Denton will not be responsible for individual contractor safety, and the awarded contractor shall not hold the City of Denton responsible. Known hazards shall immediately be reported to the Project Manager and all safety precautions shall be taken to prevent potential safety issues from occurring.

7. Asbestos Free Materials

The contractor shall provide asbestos-free materials as represented by the Manufacturer's "Materials Safety Data Sheets".

8. Prevailing Wage Rates

In accordance with Texas Government Code 2258, the awarded contractor shall comply with prevailing wage rates as defined by the United States Department of Labor Davis-Bacon Wage Determination at <http://www.dol.gov/whd/contracts/dbra.htm> and at the Wage Determinations website www.wdol.gov for Denton County, Texas (WD-2509).

Notwithstanding any other provision of this Contract, the awarded contractor hereby represents and warrants that the contractor shall pay to each of its employees a wage not less than what is currently known as the "Federal Minimum Wage" and any increase or amendments thereto. Furthermore, contractor shall produce proof of compliance with this provision by contractor to the City. The City shall withhold payments due to contractor until contractor has complied with this provision. Prior to any payment being made for work satisfactorily completed and accepted, contractor shall submit wage rate affidavits with its billing documents affirming that all employees have been paid not less than the current "Federal Minimum Wage".

9. Remedies

a. COMPLETION OF CONTRACTOR'S DEFAULT: If default shall be made by the Contractor or by any subcontractor in the performance of any of the terms of this proposal, the City, without in any manner limiting its legal and equitable remedies in the circumstances, may serve upon the Contractor and the Surety or Sureties upon the Contractor's bond or bonds a written notice requiring the Contractor to cause such default to be corrected forthwith. Unless within twenty (20) days after the service of such notice upon the Contractor such default shall be corrected or arrangements for the correction thereof satisfactory to the City and/or Engineer shall be made by the Contractor or its Surety or Sureties, the City may take

over the construction of the project and prosecute the same to completion by contract or otherwise for the account and at the expense of the Contractor, and the Contractor and its Surety or Sureties shall be liable to the City for any cost or expense in excess of the contract price occasioned thereby. In such event the City may take possession of and utilize, in completing the construction of the project, any materials, tools, supplies, equipment, appliances, and plant belonging to the Contractor or any of its subcontractors, which may be situated at the site of the project. The City in such contingency may exercise any rights, claims or demands which the Contractor may have against third persons in connection with this contract and for such purpose the Contractor does hereby assign, transfer and set over unto the City all such rights claims and demands.

b. LIQUIDATED DAMAGES: Respondent must agree to commence work on or before a date to be specified in written "Notice to Proceed" by the Owner, and to fully complete the project within the time stated on proposal. As failure to complete project within the stated time, respondent agrees to pay as liquidated damages, the sums indicated in the Solicitation Main Document Section 10, for each working day of delay until work is completed and accepted. Delays because of strikes, fire, weather, or any cause beyond the contractors control shall be granted but claims for extension shall be in writing within a reasonable time after the occurrence. Contractor shall submit request for delay on a monthly basis in a letter form indicating reason and date of delay. Failure to do so on a monthly basis means contractor will forfeit those delay days. Liquidated damages in the amount per day shown in Main Solicitation Document, Section 10 "Liquidated Damages", will be assessed against the Contractor for each calendar day or portion thereof that:

(1) the Contractor has not fully and timely completed the specific portion or part of the work to be completed by the end of the current month as provided in the detailed description of work and/or schedule previously submitted by the Contractor on the first day of that particular month, after accounting for any agreed-upon changed orders, which will entitle the Owner to withhold the liquidated damages from the payment otherwise owed to the Contractor for work completed in that particular month;

(2) the Contractor has not substantially completed all work following the expiration of the number of calendar days to complete the work as agreed upon in the contract, after accounting for any agreed-upon changed orders; or

(3) all items listed as incomplete and attached to the Certificate of Substantial Completion are not completed or corrected after expiration of the agreed time allotted for completion and correction, including any approved extensions of time granted. These liquidated damages are cumulative. The sum of the liquidated damages will be deducted from any monies due the Contractor. If no money is due the Contractor, said sum may be recovered by the Owner from the Contractor or the Contractor's surety, or from both combined. These deductions are to cover liquidated damages to the Owner for losses to Owner that include, but are not limited to, additional expenses of Contract administration, overhead and other costs resulting from failure of the Contractor to complete the Work within the designated time, and are not to be considered as penalties. The Owner shall not be considered liable for any extra or

additional payment to the Contractor as a bonus or premium for early completion. Any failure on the part of the Owner to request or require payment or withholding of liquidated damages in any particular month shall not constitute a waiver of Contractor's requirement to pay, or the Owner's ability to withhold from payments owed to Contractor, any liquidated damages for work performed or completed in that particular month, in any prior or subsequent month, or at the time all work has been completed.

c. CUMULATIVE REMEDIES: Every right or remedy herein conferred upon or reserved to the City shall be cumulative, shall be in addition to every right and remedy now or hereafter existing at law or in equity or by statute, and the pursuit of any right or remedy shall not be construed as an election. Provided, however, that the provisions of the REMEDIES SECTION shall be the exclusive measure of damages for failure by the Contractor to complete the construction of the project within the time herein agreed upon.

10. Payment and Performance Requirements

a. PAYMENT AND INVOICES:

Payment processing: The City review, inspection, and processing procedures for invoices ordinarily require thirty (30) days after receipt of invoices, materials, or services. Submissions which call for payment before thirty (30) days from receipt of invoice, or cash discounts given on such payment, will be considered only if, in the opinion of the Purchasing Manager, the review, inspection, and processing procedures can be completed as specified. It is the intention of the City of Denton to make payment within thirty days after receipt of valid invoices for which items or services have been received unless unusual circumstances arise. The 30 day processing period for invoices will begin on the date the invoice is received or the date the items or services are received, whichever is later.

Direct deposit for payments: Contractors are encouraged to arrange for receiving payments through direct deposit. Information regarding direct deposit payments is available from the City of Denton Purchasing website: www.dentonpurchasing.com.

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 as identified in the Notice to Proceed. 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.**

b. PAYMENT TO PERFORMANCE MILESTONES: Awarded contractor shall prepare and submit invoices after completion of specific project milestones. The invoice shall detail the major milestones accomplished and detailed cost information for project. These milestones shall be submitted to the City of Denton and the City's Project Staff shall review such for completion and accuracy, prior to payment authorization.

c. TAX EXEMPTION: The City of Denton qualifies for sales tax exemption pursuant to the provisions of Article 20.04 (F) of the Texas Limited Sales, Excise and Use Tax Act. Any Contractor performing work under this contract for the City of Denton may purchase materials and supplies and rent or lease equipment sales tax free. This is accomplished by issuing exemption certificates to suppliers. Certificates must comply with State Comptroller's ruling #95-0.07 and #95-0.09.

d. RELEASE OF LIENS AND CERTIFICATE OF CONTRACTOR: Upon award of the contract, the Contractor shall inform the City of the subcontractors and material sources that will be used. Upon the completion by the Contractor of the construction of the project, but prior to final payment to the Contractor, the Contractor shall deliver to the City releases of all liens, and of rights to claim any lien, from all manufacturers, material-men, and subcontractors furnishing services or materials for the project, to the effect that all materials or services used on or for the project have been paid for and indicating that the City is released from all such claims.

e. PAYMENTS TO MATERIAL-MEN AND SUBCONTRACTORS: The Contractor shall pay each material-men, and each subcontractor, if any, not later than five (5) days after receipt of any payment from the City, the amount thereof allowed the Contractor for and on account of materials furnished or construction performed by each material-men or each subcontractor.

11. General Provisions – Special Notices and Requirements

a. CONTRACT ADMINISTRATION SUBMITTALS AND REQUIREMENTS:

General: The General Conditions, Supplementary Conditions and Special Conditions provide definite times for Contractor to submit certain lists, qualifications, price breakdowns and schedules for administrative procedures including but not necessarily limited to the following:

List of Subcontractors: Before the execution of the Contract, the respondent awarded the contract will submit to the City for approval a list of all Subcontractors, and/or his major Subcontractors, proposed to use. This list will include each Subcontractor's correct name, mailing address and phone number.

Contractor's Superintendent: The Contractor shall submit the name and qualifications of the person designated as Project Superintendent within ten (10) days of the receipt of the Notice of Award Letter.

Contract Price Breakdown: Upon execution of the Contract, the Contractor shall submit to the City for approval a breakdown of the Contract price, itemizing material and labor for various classifications of work.

1. The City will provide forms for the Contractor to use to prepare the schedule of values.
2. Unit Price items will be multiplied by the estimated quantities to give the item totals. The total item will then be divided into "material" and "labor" and listed on the breakdown. The breakdown of unit price items into material and labor is required

so the City may make progress payments on materials delivered before the labor is performed.

Work Progress Schedule: Within three (3) weeks after receipt of a work order, the Contractor shall submit in duplicate to the City for approval an estimated progress schedule for the work in relation to the entire project, over the total contract time. Schedules showing less than the stipulated contract time will be rejected. See details for this requirement in the attached STANDARD PURCHASE TERMS AND CONDITIONS FOR FACILITY CONSTRUCTION SERVICES, Article 1, paragraph 3.10 "Contractors Construction Schedule".

Testing and Quality Control: Observation of the Contractor's work to determine compliance with the plans and specifications may include testing of material installed on the project. A Testing Laboratory located by the Contractor shall do testing of materials furnished and work performed. The Contractor shall use only materials in the work, which meet the requirements of the specifications. The Contractor shall furnish at his own expense all necessary tests and specimens for testing of the material and when requested shall furnish a complete written statement of the origin, composition, and/or manufacturer of any or all materials that are to be used in the work. All materials not conforming to the requirements of the specifications will be rejected.

THIS QUALITY CONTROL SERVICE DOES NOT RELIEVE THE CONTRACTOR OF HIS RESPONSIBILITY WITH REGARD TO CONSTRUCTING THE WORK IN ACCORDANCE WITH THE CONTRACT.

Contractor shall submit appropriate tests including, but not limited to:

- Any test required in the technical specifications
- Any structural element called for on the plans, including, but not limited to dam construction, concrete asphalt roads or paths, shelters, bridges or other structure tests, pressure test of irrigation.
- Test to prove adequacy of design and construction of any feature that may have been accepted by Owner under contractor's "Alternate Proposal".
- Any test that may be occasioned by any local, state, or federal law.

As-Built Drawings: The contractor shall maintain a complete set of contract drawings in his possession, upon which he is required to note in red, or other clear manner, all deviations, final dimensions and explanatory notes arising out of actual work installed or performed in the field, and showing exact locations of such work, including trades. Notes on these drawings shall indicate installed locations and dimensioned clearances. Contractor to furnish an as-built drawn from an aerial photo identifying course, irrigation (including all components, buried or otherwise), major and minor drainage lines and related structures, all underground utilities, location of buried trees and debris, limits of topsoil, extra borrow areas, and other significant construction which could reasonably be foreseen to affect future operation. All as-built(s) shall be supplied in CAD format.

Project Manuals: Contractor shall supply City a project manual for operations of all mechanical systems to be included under this contract in a manner satisfactory to the design professional, his sub-consultants and City's representatives.

Schedule of Tests, Submittals: A schedule of anticipated tests and submittals begins on the next page. Additional submittals may be required.

b. MEETINGS:

Pre-Construction Conference: Prior to start of work, a conference between the City and Contractor will be held to discuss provisions of the contract documents, explain administrative procedures and coordinate the work effort. Time of pre-construction conference will be stated in the Work Order letter for the Contractor. Attendance by Contractor and Contractor's Superintendents is mandatory.

1. City will schedule meeting and provide meeting place.
2. Attendance: The following are expected to attend:
 - City's Representative.
 - Consultant's Construction Administrator.
 - Representatives from Sub-Consultants Contractor's Project Manager, Project Superintendent and Project Coordinator Representatives of major subcontractors
3. Agenda Items:
 - List of major Subcontractors and Suppliers
 - Tentative construction schedule
 - Critical work sequencing
 - Major equipment deliveries
 - Designation of responsible personnel
 - Procedures and processing of field decisions, proposal requests, submittals color coordination, change orders, and applications for payment.
 - Adequacy of distribution of Contract Documents.
 - Procedures for maintaining Record Documents
 - Use of Premises: office, work, storage, staging areas; Owner's requirements
 - Construction facilities, controls and construction aids
 - Temporary utilities
 - Safety and first aid procedures
 - Security procedures
 - Housekeeping procedures
 - Other business
4. The City's Representative will preside over the meeting.

Progress Meetings: Construction progress meetings may be called by the Project Manager, Project Inspector or the General Contractor to review job progress or problems.

1. Schedule meeting and notify in writing those concerned at least one week in advance of meeting.

2. Provide a convenient, comfortable meeting place.
3. Contractor's Project Superintendent or Project Manager shall preside over meeting.
4. Attendance: The following are expected to attend: City's Representative Consultant's Construction Administrator Sub-consultant's unless notified otherwise Contractor's General Superintendent, Project Superintendent and Project Coordinator. Subcontractors having work in progress Subcontractors whose work will start within the next month Others as requested by City, A/E, or Contractor
5. Agenda Review, approval of minutes or previous meeting Review of work progress since previous meeting Field observation, problems, conflicts Problems which impede construction schedule Review of off-site fabrication, and delivery schedules Corrective measures and procedures to regain projected schedule. Revisions to construction schedules Progress schedules for succeeding period Schedule coordination Review proposed changes for effect on construction schedule, on completion date, and effect on other contracts of project Maintenance of quality standards Pending changes and substitutions Other business
6. The Contractors Project Manager will preside over the meeting. C. Minutes of Meetings: Contractor shall take notes at pre- construction and progress meetings and distribute them to those concerned in the form of minutes within four (4) calendar days after meeting.

c. SURVEYS, MEASUREMENTS AND LAYOUTS

General: The City will provide property surveys. The Contractor shall be responsible for all control point staking as required. The Contractor's responsibility for verifying conditions is defined in the Standard General Conditions.

Surveys, Measurements and Layout Out of Work: The Contractor will establish from survey information on drawings all lines, grades, and levels and will be responsible for maintenance and accuracy thereof.

d. MISCELLANEOUS REQUIREMENTS

Additional safety precautions shall be instituted by the awarded contractor, as the work environment will be in an area where citizens and employees may be present, and work safety must be coordinated with the owner.

The Contractor shall be responsible for all spoil removals, and any excess soil that will require removal.

It is understood that the basis for payment on the work to be done according to the final plans and specifications shall be a lump sum fee as set forth in Contractor's submission. Any quantity estimates supplied by Designer or City are intended only as a guide to the respondent. Respondent is responsible for making his own quantity estimates and pricing from his own examination of the work to be done.

A schedule of Respondent's Quantities and Unit Prices is to be filled out as a part of this solicitation. Extensions of units and unit prices must total up correctly

EXHIBIT C**CITY OF DENTON STANDARD PURCHASE TERMS AND CONDITIONS
FOR CONSTRUCTION SERVICES****ARTICLE 1 GENERAL PROVISIONS****GENERAL DEFINITIONS****1.1 The following definitions apply throughout these General Conditions and to the other Contract Documents:****a) THE CONTRACT DOCUMENTS**

The Contract Documents consist of the formal Building Construction Services Agreement between the Owner and the Prime Contractor, these General Conditions and other supplementary conditions included by special provisions or addenda, drawings, specifications, addenda issued prior to execution of the Contract, other documents listed in the Contract, and Amendments issued after execution of the Contract. For purposes of these General Conditions, an Amendment is:

- (1) a written Supplemental Agreement to the Contract signed by authorized representatives of both parties;
- (2) a Change Order, including Change Orders signed only by the Owner as described in Subparagraph 7.1(b) and Subparagraph 7.1(e); or
- (3) a written order for a minor change in the Work issued by the Architect/Engineer as described in Paragraph 7.3.

The Contract Documents also include bid documents such as the Owner's Instructions to Bidders, sample forms, the Prime Contractor's Bid Proposal and portions of addenda relating to any of these documents, and any other documents, exhibits or attachments specifically enumerated in the Building Construction Services Agreement, but specifically exclude geotechnical and subsurface reports that the Owner may have provided to the Prime Contractor.

b) THE CONTRACT

The Contract Documents, as defined in Paragraph 1.1, are expressly incorporated into and made a part of the formal Building Construction Services Agreement between the Owner and the Prime Contractor by reference in this Paragraph and Paragraph 1.1 (which documents are sometimes also referred to collectively in these General Conditions as the "Contract"). The Contract Documents represent the entire and integrated agreement between the Owner and the Prime Contractor and supersede all prior negotiations, representations or agreements, either written or oral. The terms and conditions of the

Contract Documents may be changed only by an Amendment. The Contract Documents shall not be construed to create a contractual relationship of any kind:

- (1) between the Architect/Engineer and Prime Contractor;
- (2) between the Owner and a Subcontractor or -subcontractor; or
- (3) between any persons or entities other than the Owner and Prime Contractor.

The Architect/Engineer shall, however, be entitled to performance and enforcement of obligations under the Contract Documents intended to facilitate performance of the Architect/Engineer's duties.

c) THE WORK

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all labor, materials, equipment, and services provided or to be provided by the Prime Contractor, or any Subcontractors, Sub-subcontractors, material suppliers, or any other entity for whom the Prime Contractor is responsible, to fulfill the Prime Contractor's obligations. The Work may constitute the whole or a part of the Project.

d) THE PROJECT

The Project is the total construction more particularly described in the Building Construction Services Agreement, of which the Work performed under the Contract Documents may be the whole or a part of the Project and which may include construction by the Owner or by separate contractors. All references in these General Conditions to or concerning the Work or the site of the Work will use the term "Project," notwithstanding that the Work may only be a part of the Project.

e) THE DRAWINGS

The Drawings (also known as the "Plans") are the graphic and pictorial portions of the Contract Documents, wherever located and whenever issued, showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules, and diagrams.

f) THE SPECIFICATIONS

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, construction systems, standards, and workmanship for the Work, performance of related services, and other technical requirements.

g) THE PROJECT MANUAL

The Project Manual is the volume or volumes which contain the bidding requirements,

sample forms, General Conditions for Building Construction, special provisions, and Specifications. The Project Manual may be modified by written addendums issued by the Owner during bidding, in which case the written addendums become a part of the Project Manual upon their issuance, unless otherwise indicated by the Owner in writing.

h) ALTERNATE

An Alternate is a variation in the Work on which the Owner requires a price separate from the City Building General Conditions Base Bid. If an Alternate is accepted by the Owner, the variation will become a part of the Contract through the execution of a change order or amendment to the Contract and the Base Bid will be adjusted to include the amount quoted. If an alternate is accepted by the Owner, and later deleted prior to any Work under the alternate being performed or materials delivered to the Project site, the Owner will be entitled to a credit in the full value of the alternate as priced in the Prime Contractor's Bid.

i) BASE BID

The Base Bid is the price quoted for the Work before Alternates are considered.

j) HAZARDOUS SUBSTANCE

The term Hazardous Substance is defined to include the following:

- (1) any asbestos or any material which contains any hydrated mineral silicate, including chrysolite, amosite, crocidolite, tremolite, anthophyllite or actinolite, whether friable or non-friable;
- (2) any polychlorinated biphenyls ("PCBs"), or PCB-containing materials, or fluids;
- (3) radon;
- (4) any other hazardous, radioactive, toxic or noxious substance, material, pollutant, or solid, liquid or gaseous waste;
- (5) any pollutant or contaminant (including but not limited to petroleum, petroleum hydrocarbons, petroleum products, crude oil or any fractions thereof, any oil or gas exploration or production waste, any natural gas, synthetic gas or any mixture thereof, lead, or other toxic metals) which in its condition, concentration or area of release could have a significant effect on human health, the environment, or natural resources;
- (6) any substance that, whether by its nature or its use, is subject to regulation or requires environmental investigation, monitoring, or remediation under any federal, state, or local environmental laws, rules, or regulations;
- (7) any underground storage tanks, as defined in 42 U.S.C. Section 6991(1)(A)(I) (including those defined by Section 9001(1) of the 1984 Hazardous and Solid Waste Amendments to the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901

et seq.; the Texas Water Code Annotated Section 26.344; and Title 30 of the Texas Administrative Code Sections 334.3 and 334.4), whether empty, filled or partially filled with any substance; and

- (8) any other hazardous material, hazardous waste, hazardous substance, solid waste, and toxic substance as those or similar terms are defined under any federal, state, or local environmental laws, rules, or regulations.

k) OTHER DEFINITIONS

As used in the Contract Documents, the following additional terms have the following meanings:

- (1) “provide” means to furnish, install, fabricate, deliver and erect, including all services, materials, appurtenances and other expenses to complete in place, ready for operation or use;
- (2) “shall” means the action of the party to which reference is being made is mandatory;
- (3) “as required” means as prescribed in the Contract Documents; and
- (4) “as necessary” means all action essential or needed to complete the work in accordance with the Contract Documents and applicable laws, ordinances, construction codes, and regulations.

1.2 EXECUTION, CORRELATION AND INTENT

- (a) The Building Construction Services Agreement shall be signed by duly authorized representatives of the Owner and Prime Contractor as provided in the Agreement.
- (b) Execution of the Building Construction Services Agreement by the Prime Contractor is a representation that the Prime Contractor has visited the site, has become familiar with local conditions, including but not limited to subsurface conditions, under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.
- (c) The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Prime Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Prime Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the intended results.
- (d) Organization of the Specifications into divisions, sections, and articles, and arrangement of Drawings shall not control the Prime Contractor in dividing the Work among Subcontractor(s) or in establishing the extent of Work to be performed by any trade.

- (e) Unless otherwise stated in the Contract Documents, words which have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.
- (f) The Drawings and Specifications are intended to agree with one another, and Work called for by Drawings and not mentioned in Specifications, or vice versa, shall be furnished as if set forth by both. Specifications shall govern materials, methods and quality of work. In the event of a conflict on the Drawings between scale and dimension, figured dimensions shall govern over scale dimensions and large scale drawings shall govern over small scale drawings. Conflict between two or more dimensions applying to a common point shall be referred to the Architect/Engineer/Engineer for final adjustment. If discrepancies or conflicts occur within or between the Drawings and Specifications regarding the Work, or within or between other Contract Documents, the Prime Contractor shall not perform such Work without having obtained a clarification from the Architect/Engineer and resolution by the Owner. The Owner's decision as to the appropriate resolution of a conflict or discrepancy shall be final. Should the Drawings or the Specifications disagree within themselves or with each other; the Base Bid will be based on the most expensive combination of quality and quantity of Work indicated.
- (g) Deviations from Contract Documents shall be made only after written approval is obtained from Architect/Engineer and Owner, as provided in Article 7.
- (h) The intention of the Contract Documents is to include all materials, labor, tools, equipment, utilities, appliances, accessories, services, transportation, and supervision required to completely perform the fabrication, erection and execution of the Work in its final position.
- (i) The most recently issued Drawing or Specification takes precedence over previous issues of the same Drawing or Specification. In the event of a conflict, the order of precedence of interpretation of the Contract Documents is as follows:
- (1) Amendments (see Paragraph 7.2 for order of precedence between Amendments);
 - (2) the Building Construction Services Agreement;
 - (3) addenda, with those addenda of later date having precedence over those of an earlier date;
 - (4) the Supplementary General Conditions and Special Provisions, if any;
 - (5) the General Conditions for Building Construction;
 - (6) the Specifications and Drawings.

1.3 OWNERSHIP AND USE OF ARCHITECT/ENGINEER'S DRAWINGS, SPECIFICATIONS AND OTHER DOCUMENTS

All Drawings, Specifications, and copies thereof furnished by the Architect/Engineer are and shall remain the property of the Owner and are, with the exception of the Contract set for each party, to be returned to the Owner upon request at the completion of the Work.

1.4 CAPITALIZATION

Terms capitalized in these General Conditions include those which are:

- (1) specifically defined in these General Conditions (except the terms defined in Subparagraph 1.1(j), which terms are of common grammatical usage and are not normally capitalized);
- (2) the titles of numbered articles and identified references to Paragraphs, Subparagraphs, and Clauses;
- (3) the titles of other documents published or used by the Owner as manuals or official policy statements; or
- (4) proper nouns or other words required under standard grammatical rules to be capitalized.

ARTICLE 2 - THE OWNER

2.1 DEFINITION OF OWNER

The Owner is the City of Denton, a Texas municipal corporation, and is identified as such in the Building Construction Services Agreement, and is referred to throughout the Contract Documents as if singular in number. The term "Owner" means the Owner or the Owner's authorized representatives.

2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

- (a) The Owner shall furnish the most recent survey describing the physical characteristics, legal limits, utility locations, and a permanent benchmark for the site of the Project. The Owner shall also furnish any environmental site assessments that may have been given to the Owner or conducted for the property upon which the Project is to be constructed. THIS INFORMATION IS FURNISHED TO THE PRIME CONTRACTOR ONLY IN ORDER TO MAKE DISCLOSURE OF THIS MATERIAL AND FOR NO OTHER PURPOSE. BY FURNISHING THIS MATERIAL, THE OWNER DOES NOT REPRESENT, WARRANT, OR GUARANTEE ITS ACCURACY EITHER IN WHOLE, IN PART, IMPLICITLY OR EXPLICITLY, OR IN ANY OTHER WAY, AND THE OWNER SHALL HAVE NO LIABILITY FOR THIS MATERIAL.
- (b) Except for permits and fees which are provided for in Subparagraph 3.7(a), the Owner shall secure and pay for necessary approvals, easements, assessments, and charges required for

construction, use, or occupancy of permanent structures or for permanent changes in existing facilities.

- (c) Information or services under the Owner's control shall be furnished by the Owner with reasonable promptness to avoid delay in the orderly progress of the Work. It is incumbent upon the Prime Contractor to identify, establish, and maintain a current schedule of latest dates for submittal and approval, as required in Paragraph 3.10, including when such information or services must be delivered. If Owner delivers the information or services to the Prime Contractor as scheduled and Prime Contractor is not prepared to accept or act on such information or services, then Prime Contractor shall reimburse Owner for all extra costs incurred of holding, storage, or retention, including redeliveries by the Owner to comply with the current schedule.
- (d) Unless otherwise provided in the Contract Documents, the Prime Contractor will be furnished electronic copies of the Drawings and Specifications for bid purposes and one hard copy approved by Building Inspections upon execution of the Contract. Prime Contractor may obtain additional copies by paying the cost of additional printing or reproduction.
- (e) The obligations described above are in addition to other duties and responsibilities of the Owner enumerated in the Contract Documents and especially those in respect to Article 6 (Construction by Owner or by Separate Contractors), Article 9 (Payments and Completion), and Article 11 (Insurance and Bonds).
- (f) The Owner shall forward all instructions to the Prime Contractor through the Architect/Engineer, except for the Owner's Notice to Proceed and the Owner's decision to carry out Work as described in Paragraph 2.4.
- (g) The Owner's employees, agents, and consultants may be present at the Project site during performance of the Work to assist the Architect/Engineer in the performance of the Architect/Engineer's duties and to verify the Prime Contractor's record of the number of workmen employed on the Work, their occupational classification, the time each is engaged in the Work, the equipment used in the performance of the Work, and for purpose of verification of Prime Contractor's Applications for Payment.

2.3 OWNER'S RIGHT TO STOP THE WORK

If the Prime Contractor fails to correct any portion of the Work which is not in accordance with the requirements of the Contract Documents as required by Paragraph 12.2 or refuses or fails to carry out all or any part of the Work in accordance with the Contract Documents, the Owner, by written order, may order the Prime Contractor to stop the Work, or any portion of the Work, until the cause for the order has been eliminated. The right of the Owner however, to stop the Work shall not create or imply a duty on the part of the Owner to exercise this right for the benefit of the Prime Contractor or any other person or entity. The rights of the Owner under this Paragraph 2.3 shall be in addition to, and not in restriction of, the Owner's rights under Paragraph 12.2.

2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

If the Prime Contractor fails or refuses to carry out the Work or perform any of the terms, covenants, or obligations of the Contract Documents, and fails or refuses to correct any failure

or refusal with diligence and promptness within fourteen (14) days after receipt of written notice from the Owner, the Owner may correct the Prime Contractor's failure or refusal or cause such failure or refusal to be corrected, without affecting, superseding, or waiving any other contractual, legal, or equitable remedies the Owner has, including but not limited to the Owner's termination rights under Article 13. In that case, an appropriate Change Order will be issued deducting the Owner's cost of correction, including Architect/Engineer's compensation for additional services and expenses made necessary by the failure or refusal of the Prime Contractor from payments then or thereafter due to the Prime Contractor. The cost of correction is subject to verification (but not approval) by the Architect/Engineer. If payments then or thereafter due the Prime Contractor are not sufficient to cover the cost of correction, the Prime Contractor shall pay the difference to the Owner.

2.5 NOTICE TO PROCEED

After final execution of the Contract and receipt and approval of the required performance and payment bonds and evidence of required insurance, the Owner will issue a written Notice to Proceed with the Work, including the designated Contract Time within which Substantial Completion of the Work must be achieved. If the Owner unreasonably delays issuance of a written Notice to Proceed through no fault of the Prime Contractor, the Prime Contractor shall be entitled only to an equitable adjustment of the Contract Time, if properly claimed pursuant to the requirements of Paragraph 4.3; but the Prime Contractor shall not be entitled to any increase to the Contract Sum whatsoever for this reason.

ARTICLE 3 - THE CONTRACTOR

3.1 DEFINITION OF CONTRACTOR

The Prime Contractor is the person or business entity identified as such in the Building Construction Services Agreement, and is referred to throughout the Contract Documents as if singular in number. The term "Prime Contractor" means the Prime Contractor or the Prime Contractor's authorized employees or representatives.

3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

- (a) The Prime Contractor shall carefully check, study, and compare the Contract Documents with each other and shall at once report to the Architect/Engineer in writing any inconsistency, ambiguity, error, omission, conflict, or discrepancy the Prime Contractor may discover. The Prime Contractor shall also verify all dimensions, field measurements, and field conditions before laying out the Work. The Prime Contractor will be held responsible for any subsequent error, omission, conflict, or discrepancy which might have been avoided by the above-described check, study, comparison, and reporting. In the event the Prime Contractor continues to work on an item where an inconsistency, ambiguity, error, omission, conflict, or discrepancy exists without obtaining such clarification or resolution or commences an item of the Work without giving written notice of an error, omission, conflict, or discrepancy that might have been avoided by the check, study, and

comparison required above, it shall be deemed that the Prime Contractor bid and intended to execute the more stringent, higher quality, or state of the art requirement, or accepted the condition "as is" in the Contract Documents, without any increase to the Contract Sum or Contract Time. The Prime Contractor shall also be responsible to correct any failure of component parts to coordinate or fit properly into final position as a result of Prime Contractor's failure to give notice of and obtain a clarification or resolution of any error, omission, conflict, or discrepancy, without any right to any increase to the Contract Sum or Contract Time.

- (b) The Prime Contractor shall perform the Work in accordance with the Contract Documents and submittals approved pursuant to Paragraph 3.12.

3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

- (a) The Prime Contractor shall supervise and direct the Work, using the Prime Contractor's best skill and attention. The Prime Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences, and procedures and for coordinating all portions of the Work, unless the Contract Documents set forth specific instructions concerning these matters.
- (b) The Prime Contractor shall be responsible to the Owner for the acts and omissions of the Prime Contractor's employees, Subcontractors, Sub-subcontractors, and their respective agents and employees, and any other persons performing portions of the Work under a subcontract with the Prime Contractor, or with any Subcontractor, and all other persons or entities for which the Prime Contractor is legally responsible. All labor shall be performed by mechanics that are trained and skilled in their respective trades. Standards of work required throughout shall be of a quality that will bring only first class results. Mechanics whose work is unsatisfactory, or who are considered careless, incompetent, unskilled, or otherwise objectionable shall be dismissed promptly from the Work and immediately replaced with competent, skilled personnel. Any part of the Work adversely affected by the acts or omissions of incompetent, unskilled, careless, or objectionable personnel shall be immediately corrected by the Prime Contractor.
- (c) The Prime Contractor shall not be relieved of its obligation to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect/Engineer in the Architect/Engineer's administration of the Contract, or by tests, inspections, or approvals required or performed by persons other than the Prime Contractor.
- (d) The Prime Contractor shall be responsible for inspection of portions of Work already performed under this Contract to determine that such portions are in proper condition to receive subsequent Work. The Prime Contractor's responsibility under this paragraph will not in any way eliminate the Architect/Engineer's responsibility to the Owner under the Architect/Engineer/Owner Agreement.
- (e) Any Prime Contractor, Subcontractor, Sub-subcontractor, or separate contractor who commences Work over, in, or under any surface prepared by the Owner or by any other

contractor, subcontractor, sub-subcontractor or any separate contractor, without the Prime Contractor having given written notice to the Architect/Engineer of the existence of any faulty surface or condition in the surface that prevents achieving the quality of workmanship specified by the Contract Documents and without having obtained the prior approval of the Architect/Engineer and the Owner to proceed is deemed to have accepted the surface or condition in the surface as satisfactory at the commencement of such Work. Any unsatisfactory Work subsequently resulting from such a faulty surface or condition in the surface that was not pre-approved by the Architect/Engineer or the Owner after notice as provided above may be rejected and replacement required, without any increase to the Contract Sum or Contract Time.

- (f) All grades, lines, levels, and benchmarks shall be established and maintained on an ongoing basis by the Prime Contractor. The Prime Contractor is solely responsible for any errors made in establishing or maintaining proper grades, lines, levels, or benchmarks. Contractor shall verify all grades, lines, levels, and dimensions as indicated on Drawings. He shall report any errors, omissions, conflicts, or inconsistencies to Architect/Engineer before commencing any Work affected by these conditions. Contractor shall establish and safeguard benchmarks in at least two widely separated places and, as Work progresses, establish benchmarks at each level and lay out partitions on rough floor in exact locations as guides to all trades. The Contractor shall, from the permanent benchmark provided by the Owner, establish and maintain adequate horizontal and vertical control.

3.4 LABOR AND MATERIALS

- (a) Except as is otherwise specifically provided in the Contract Documents as being the responsibility of the Owner, the Prime Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.
- (b) The Prime Contractor shall enforce strict discipline and good order among the Prime Contractor's employees and all other persons carrying out the Contract. The Prime Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.
- (c) The Prime Contractor shall give preference, when qualified labor is available to perform the Work to which the employment relates, to all labor hired for the Project in the following order:
 - (1) residents of the City of Denton, Texas;
 - (2) residents of the County of Denton, Texas;

3.5 WARRANTY

- (a) General Warranty. The Contractor warrants to the Owner that all Work shall be accomplished in a good and workmanlike manner and that all materials and equipment furnished under the Contract will be of good quality, new (unless otherwise specified), and free from faults or defects, and that the Work will otherwise conform to the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, will be considered defective or nonconforming. The Contractor's warranty excludes any remedy for damage or defect caused by abuse, modifications not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage. If required by the Architect/Engineer, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. The commencement date, duration, and other conditions related to the scope of this general warranty are established in Subparagraphs 9.9 (a) and 12.2(b) of these General Conditions. THE GENERAL WARRANTY PROVIDED IN THIS SUBPARAGRAPH IS IN ADDITION TO AND DOES NOT LIMIT OR DISCLAIM ANY OTHER WARRANTY OR REMEDY REQUIRED OR PROVIDED BY LAW OR THE CONTRACT DOCUMENTS AND SUCH WARRANTY SHALL REQUIRE THE CONTRACTOR TO REPLACE DEFECTIVE MATERIALS AND RE-EXECUTE DEFECTIVE WORK THAT IS DISCLOSED BY THE OWNER TO THE CONTRACTOR WITHIN A PERIOD OF TWO (2) YEARS AFTER SUBSTANTIAL COMPLETION OF THE ENTIRE WORK; OR, IF A LATENT DEFECT IS DISCOVERED WITHIN TWO YEARS OF SUBSTANTIAL COMPLETION OF THE ENTIRE WORK.
- (b) Special Warranties. The Contractor shall assign to the Owner in writing, as a condition precedent to final payment, the terms and conditions of all special warranties required under the Contract Documents.

3.6 TAXES

The Owner qualifies for exemption from state and local sales and use taxes, pursuant to the provisions of Section 151.309 of the Texas Tax Code, as amended. Therefore, the Owner shall not be liable for, or pay the Contractor's cost of, such sales and use taxes which would otherwise be payable in connection with the purchase of tangible personal property furnished and incorporated into the real property being improved under the Contract Documents or the purchase of materials, supplies and other tangible personal property, other than machinery or equipment and its accessories and repair and replacement parts, necessary and essential for performance of the Contract which is to be completely consumed at the job site. The Contractor shall issue an exemption certificate in lieu of the tax on such purchases.

3.7 PERMITS, FEES AND NOTICES

- (a) The Architect/Engineer will apply and arrange for the issuance of the City of Denton Building Permit. The Prime Contractor and Subcontractors will apply and arrange for the issuance of all other required permits, and will not be required to pay a fee for any City of Denton permits required for the Project. The Owner will pay all service extension charges, including tap fees, assessed by the Water Utilities Department.

- (b) The Prime Contractor shall comply with and give notices required by laws, ordinances, rules, regulations, and lawful orders of governmental entities or agencies applying to performance of the Work.
- (c) Except as provided in Subparagraph (d) below, it is not the Prime Contractor's responsibility to ascertain that the Contract Documents are in accordance with applicable laws, ordinances, construction codes, and rules and regulations. However, if the Prime Contractor observes that portions of the Contract Documents are at variance with applicable laws, ordinances, construction codes, rules or regulations, the Prime Contractor shall promptly notify the Architect/Engineer and the Owner in writing, and necessary changes shall be accomplished by appropriate Amendment.
- (d) If the Prime Contractor performs Work knowing it to be contrary to laws, ordinances, construction codes, or rules and regulations without notifying the Architect/Engineer and the Owner, the Prime Contractor shall assume full responsibility for the Work and shall bear the attributable costs of the correction of the Work and any other Work in place that may be adversely affected by the corrective work.

3.8 ALLOWANCES

- (a) The Prime Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for the amounts identified in the Contract and by persons or entities as the Owner may direct, but the Prime Contractor shall not be required to employ persons or entities against which the Prime Contractor makes reasonable objection.
- (b) Unless otherwise provided in the Contract Documents:
 - (1) materials and equipment under an allowance shall be selected promptly by the Owner to avoid delay in the Work;
 - (2) the amount of each allowance shall cover the cost to the Prime Contractor of materials and equipment delivered at the site less all exempted taxes and applicable trade discounts;
 - (3) the amount of each allowance includes the Prime Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance Work;
 - (4) whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect:
 - (i) the difference between actual costs and the allowances under Clause (b) (2); and
 - (ii) changes in Contractor's costs under Clause (b) (3);

- (5) the Owner retains the right to review and approve Subcontractors selected by the Prime Contractor to perform work activities covered by allowances.

3.9 SUPERINTENDENT

The Prime Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project Site during performance of the Work. The superintendent shall represent the Prime Contractor, and communications given to the superintendent shall be as binding as if given to the Prime Contractor. Important communications shall be confirmed in writing. Other communications shall be similarly confirmed on written request in each case. The Owner reserves the right to request that the Prime Contractor replace its superintendent at any time and the Prime Contractor will replace said superintendent at the Owner's direction.

3.10 PRIME CONTRACTOR'S CONSTRUCTION SCHEDULES

- (a) The Prime Contractor shall, immediately after award of the Contract and before submittal of the first Application for Payment, prepare and submit the construction schedule for the Architect/Engineer's and Owner's information, review, and approval in accordance with the following provisions:
- (1) Unless otherwise approved in writing by the Owner, the construction schedule shall not exceed the Contract Time limits currently in effect under the Contract Documents and shall provide for expeditious and practicable execution of the Work.
 - (2) The construction schedule shall include all shop drawing and submittal data requirements, indicating for each:
 - (i) the latest date to be submitted by the Prime Contractor; and
 - (ii) the latest date for approval by the Architect/Engineer.
 - (3) The construction schedule shall be in the form of a critical path management schedule, and shall indicate each critical task (the "predecessor") of all the major construction activities of the Work in a logical and sequential order (the "project network") which requires completion prior to commencement of the task next following (the "successor"). Each task shall be identified with:
 - (i) actual work time, exclusive of slack time, for accomplishment;
 - (ii) the latest start date;
 - (iii) the latest finish date;
 - (iv) the amount of float associated with each task;
 - (v) the amount of labor, material, and equipment associated with each task; and
 - (vi) the percentage of completion as of the date of the current schedule.

- (4) The construction schedule shall be revised and updated monthly to reflect the actual status of the Work and shall be submitted with each Application for Payment.
- (5) On or before the first day of each month, following the date of commencement of the Work as stated in the notice to proceed, the Prime Contractor shall prepare and submit to the Architect/Engineer and the Owner an up-to-date status report of the progress of the various construction phases of the Work in the form of an updated construction schedule. This status report shall consist of a time scale drawing indicating actual progress of the various phases of the Work and the percentage of completion of the entire Work. The original construction schedule shall be updated or changed to indicate any adjustments to the Contract Time granted by the Owner. The updated schedule must be submitted with the Prime Contractor's Application for Payment. No such application will be certified without a satisfactory update to the construction schedule.
- (6) The construction schedule will also be revised to show the effect of change orders and other events on Contract Time. No request for an increase in Contract Time will be considered unless it is accompanied by a schedule revision demonstrating the amount of time related to the cause of the request. If the Contractor's status schedules reflect that the Prime Contractor has fallen behind the pace required to complete the Work within the Contract Time, through no fault of the Owner, the Prime Contractor shall prepare a recovery schedule demonstrating how it intends to bring its progress back within the Contract Time. This recovery schedule shall be in a form acceptable to the Owner.
- (7) Costs incurred by the Prime Contractor in preparing and maintaining the required construction schedule, any updated schedule, and any recovery schedule required by the Owner will not be paid as an additional or extra cost and shall be included in the Contract Sum.
- (8) The Contract Sum is deemed to be based upon a construction schedule requiring the full Contract Time. NO CLAIM FOR ADDITIONAL COMPENSATION SHALL BE ALLOWED AS A RESULT OF THE PRIME CONTRACTOR BASING HIS BID ON AN EARLY COMPLETION SCHEDULE, OR AS A RESULT OF DELAYS AND COSTS ATTRIBUTABLE TO COMPLETION LATER THAN THE PLANNED EARLY COMPLETION DATE.
 - (b) The Prime Contractor shall also prepare and keep current, for the Architect/Engineer's approval, a schedule of submittals which is coordinated with the Prime Contractor's construction schedule and allows the Architect/Engineer reasonable time to review submittals.
 - (c) The Prime Contractor shall conform to the most recent schedules approved as to form by the Architect/Engineer and the Owner. Any subsequent revisions made by the Prime Contractor to schedules in effect shall conform to the provisions of Subparagraph 3.10(a)

- (d) If the Work falls behind the approved construction schedule, the Prime Contractor shall take such steps as may be necessary to improve his progress, and the Architect/Engineer and the Owner may require him to increase the number of shifts, overtime operations, days of work, or the amount of construction plant, and to submit for approval revised schedules in the form required above in order to demonstrate the manner in which the agreed rate of progress will be regained, all without additional cost to the Owner.

3.11 DOCUMENTS AND SAMPLES AT THE PROJECT SITE

The Contractor shall maintain at the Project site for the Owner one record copy of the Drawings, Specifications, addenda, and Amendments in good order and marked currently to record changes and selections made during construction, and in addition shall maintain at the Project site approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be available to the Architect/Engineer and shall be delivered to the Architect/Engineer for submittal to the Owner upon completion of the Work.

3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

- (a) Shop Drawings are drawings, diagrams, schedules, and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, materialmen, manufacturer(s), supplier(s), or distributor(s) to illustrate some portion of the Work.
- (b) Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.
- (c) Samples are physical examples which illustrate materials, equipment, or workmanship and establish standards by which the Work will be judged.
- (d) Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required the way the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents. Review by the Architect/Engineer is subject to the limitations of Paragraph 4.2.
- (e) The Prime Contractor shall review, approve and submit to the Architect/Engineer Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner, or of separate contractors. Submittals made by the Prime Contractor which are not required by the Contract Documents may be returned without action.
- (f) The Prime Contractor shall perform no portion of the Work requiring submittal and review of Shop Drawings, Product Data, Samples, or similar submittals until the respective submittal has been approved by the Architect/Engineer. Work requiring this submittal and review shall be in accordance with approved submittals and any identified exceptions noted by the Architect/Engineer.
- (g) By approving and submitting Shop Drawings, Product Data, Samples and similar submittals, the Prime Contractor represents that the Prime Contractor has determined and verified materials, field measurements, and related field construction criteria, or will do so, and has checked and coordinated the information contained within submittals with the

requirements of the Work and of the Contract Documents. The Prime Contractor's attention is directed to Paragraph 3.2 of these General Conditions and the requirements stated in that Paragraph.

- (h) The Prime Contractor shall not be relieved of responsibility for deviations, substitutions, changes, additions, deletions or omissions from requirements of the Contract Documents by the Architect/Engineer's approval of Shop Drawings, Product Data, Samples, or similar submittals unless the Prime Contractor has specifically informed the Architect/Engineer in writing of such substitutions, changes, additions, deletions, omissions, or deviations involved in the submittal at the time of submittal and the Architect/Engineer, subject to a formal Change Order signed by the Owner, Architect/Engineer and Prime Contractor, has given written approval to the specific substitutions, changes, additions, deletions, omissions, or deviations. The Prime Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals by the Architect/Engineer's approval thereof. Further, notwithstanding any approval of a submittal by the Architect/Engineer, the Prime Contractor shall be responsible for all associated Project costs, including costs of coordination's, modifications, or impacts, direct or indirect, resulting from any and all substitutions, changes, additions, deletions, omissions, or deviations, whether or not specifically identified by the Prime Contractor to the Architect/Engineer at the time of the above-mentioned submittals, including additional consulting fees, if any, in any and all accommodations associated with such substitutions, changes, additions, deletions, omissions, or deviations to the requirements of the Contract Documents.
- (i) The Prime Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar submittals, to additional revisions other than those requested by the Architect/Engineer on previous submittals. In the absence of such written notice, the Architect/Engineer's approval of a resubmission shall not apply to the additional revisions not requested.
- (j) Informational submittals upon which the Architect/Engineer is not expected to take responsive action may be so identified in the Contract Documents.
- (k) When professional certification of performance criteria of materials, systems, or equipment is required by the Contract Documents, the Architect/Engineer shall be entitled to rely upon the accuracy and completeness of such calculations and certifications.

3.13 USE OF THE PROJECT SITE

The Prime Contractor shall confine operations at the Project site to areas permitted by law, ordinances, permits, and the Contract Documents and shall not unreasonably encumber the Project site with materials or equipment.

3.14 CUTTING AND PATCHING

- (a) The Prime Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly.
- (b) The Prime Contractor shall not damage or endanger a portion of the Work or any fully or partially completed construction of the Owner or separate contractors by cutting, patching, or otherwise altering the construction, or by excavating. The Prime Contractor

shall not cut or otherwise alter the construction by the Owner or a separate contractor except with the written consent of the Owner and of the separate contractor; consent shall not be unreasonably withheld. The Prime Contractor shall not unreasonably withhold from the Owner or a separate contractor the Prime Contractor's consent to cutting or otherwise altering the Work.

- (c) A "Hot Work Permit" must be obtained from the City of Denton's Facilities Management Department, 869 S. Woodrow Lane, Denton, Texas (940 349-7200) for any temporary operation involving open flames or producing heat and/or sparks. This includes, but is not limited to: Brazing, Cutting, Grinding, Soldering, Torch Applied Roofing and Welding.

3.15 CLEANING UP

- (a) The Prime Contractor shall keep the Project site and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. Upon the completion of the Work the Prime Contractor shall remove from and about the Project site all waste materials, and rubbish, and all of the Prime Contractor's tools, construction equipment, machinery, and surplus materials.
- (b) If the Prime Contractor fails to clean up as provided in the Contract Documents, the Owner may, at Owner's option, clean up the Project site, and the Owner's cost of cleaning up shall be charged to the Contractor.

3.16 ACCESS TO WORK

The Prime Contractor shall provide the Owner and the Architect/Engineer access to the Work in preparation and progress wherever located during the course of construction.

3.17 TESTS AND INSPECTIONS

- (a) Tests, inspections, and approvals of portions of the Work required by the Contract Documents or by laws, ordinances, rules, regulations, or orders of governmental entities or agencies having jurisdiction over the Work shall be made at appropriate times. Unless otherwise provided, the Prime Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner or with the appropriate governmental entity or agency, and the Prime Contractor shall bear all related costs of tests, inspections, and approvals. The Prime Contractor shall give the Architect/Engineer timely notice of when and where tests and inspections are to be made so the Architect/Engineer may observe such procedures. The Owner shall bear costs of tests, inspections, or approvals which become requirements after bids or proposals are received.
- (b) If the Architect/Engineer, the Owner or other public authorities having jurisdiction over the Work determine that portions of the Work require additional testing, inspection or approval not included under Subparagraph 3.17(a), the Architect/Engineer will, upon written authorization from the Owner, instruct the Prime Contractor to make arrangements

for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Prime Contractor shall give timely notice to the Architect/Engineer of when and where tests and inspections are to be made so that the Architect/Engineer may observe such procedures. The Owner shall bear such costs except as provided in Subparagraph 3.17(c).

- (c) If procedures for testing, inspection, or approval under Subparagraphs 3.17(a) and 3.17(b) reveal deficiencies or nonconformities in the Work, the Prime Contractor shall bear all costs made necessary to correct the deficiencies or nonconformities, including those of repeated procedures and compensation for the Architect/Engineer's services and expenses, if any. The Prime Contractor shall bear the costs of any subsequent testing, inspection, or approval of the corrected Work.
- (d) Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Prime Contractor and promptly delivered to the Architect/Engineer.
- (e) If the Architect/Engineer is to observe tests, inspections or approvals required by the Contract Documents, the Architect/Engineer will do so promptly and, where practicable, at the normal place of testing or inspection.
- (f) Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

3.18 ROYALTIES AND PATENTS

The Contractor shall pay all royalties and license fees. CONTRACTOR SHALL COMPLETELY DEFEND, INDEMNIFY AND HOLD OWNER AND ARCHITECT/ENGINEER HARMLESS FROM ANY AND ALL LIABILITIES, SUITS OR CLAIMS FOR INFRINGEMENT OF PATENT RIGHTS, REGARDLESS OF WHETHER OR NOT THE OWNER OR THE ARCHITECT/ENGINEER SPECIFIED A PARTICULAR DESIGN, PROCESS OR PRODUCT IN THE CONTRACT DOCUMENTS THAT MAY BE THE SUBJECT OF A PATENT INFRINGEMENT OR OTHERWISE ACTIVELY INDUCED OR CONTRIBUTED TO THE PATENT INFRINGEMENT. In the event the Prime Contractor has reason to believe that a particular design, process or product specified infringes a patent, the Prime Contractor shall immediately notify the Owner and the Architect/Engineer of same.

3.19 INDEMNIFICATION

- (a) THE PRIME CONTRACTOR AGREES TO DEFEND, INDEMNIFY AND HOLD THE OWNER, ITS OFFICERS, AGENTS AND EMPLOYEES, AND THE ARCHITECT/ENGINEER, HARMLESS AGAINST ANY AND ALL CLAIMS, LIABILITIES, LAWSUITS, JUDGMENTS, FINES, PENALTIES, COSTS AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE OR OTHER HARM OR VIOLATIONS FOR WHICH RECOVERY OF DAMAGES, FINES, OR PENALTIES IS SOUGHT, SUFFERED BY ANY PERSON OR PERSONS, THAT MAY ARISE OUT OF OR BE OCCASIONED BY CONTRACTOR'S

BREACH OF ANY OF THE TERMS OR PROVISIONS OF THIS CONTRACT, VIOLATIONS OF LAW, OR BY ANY NEGLIGENT, GROSSLY NEGLIGENT, INTENTIONAL, OR STRICTLY LIABLE ACT OR OMISSION OF THE PRIME CONTRACTOR, ITS OFFICERS, AGENTS, EMPLOYEES, SUBCONTRACTORS, OR SUB-SUBCONTRACTORS AND THEIR RESPECTIVE OFFICERS, AGENTS, OR REPRESENTATIVES, OR ANY OTHER PERSONS OR ENTITIES FOR WHICH THE PRIME CONTRACTOR IS LEGALLY RESPONSIBLE IN THE PERFORMANCE OF THIS CONTRACT; EXCEPT THAT THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE SOLE NEGLIGENCE OR FAULT OF THE OWNER, ITS OFFICERS, AGENTS, EMPLOYEES OR SEPARATE CONTRACTORS, OR OF THE ARCHITECT/ENGINEER, AND IN THE EVENT OF JOINT AND CONCURRENT NEGLIGENCE OR FAULT OF THE CONTRACTOR, THE OWNER, AND THE ARCHITECT/ENGINEER, RESPONSIBILITY AND INDEMNITY, IF ANY, SHALL BE APPORTIONED IN ACCORDANCE WITH THE LAW OF THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE OWNER UNDER TEXAS LAW, AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW. THE PROVISIONS OF THIS PARAGRAPH ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND ARE NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER THIRD PERSON OR ENTITY.

- (b) In claims against any person or entity indemnified under this Paragraph 3.19 by an employee of the Prime Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Paragraph 3.19 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Prime Contractor or any Subcontractor, under workers compensation acts, disability benefit acts or other employee benefit acts.
- (c) Indemnification under this Paragraph 3.19 shall include, but is not limited to, liability which could result to or be created for the Owner, its officers, agents, or employees, or the Architect/Engineer pursuant to State or Federal laws or regulations relating to pollution of the environment and State or Federal laws or regulations relating to the occupational safety and health of workers. The Prime Contractor specifically agrees to comply with the above-mentioned laws and regulations in the performance of the Work by the Prime Contractor and that the obligations of the Owner, its officers, agents, and employees, and the Architect/Engineer under the above-mentioned laws and regulations are secondary to those of the Prime Contractor.

ARTICLE 4 - CONTRACT ADMINISTRATION

4.1 THE DESIGN PROFESSIONAL (ARCHITECT/ENGINEER)

- (a) The design professional is the person lawfully licensed to practice architecture or engineering or a firm or other business entity lawfully practicing architecture/engineering identified as such in the formal Building Construction Services Agreement and is referred

to throughout the Contract Documents as if singular in number. The term "Architect/Engineer" means the Architect/Engineer or the Architect/Engineer's authorized representative. The Owner may, at its option, designate a qualified Owner representative to serve as the Architect/Engineer on the Project instead of an outside firm or person. In such event, the references in these General Conditions that refer to the Architect/Engineer shall apply to the Owner-designated Architect/Engineer representative and the Owner-designated Architect/Engineer representative shall be accorded that same status by the Prime Contractor.

- (b) In the event the Architect/Engineer is an outside person or firm and the Architect/Engineer's employment is terminated, the Owner may, at its option, contract with a new outside Architect/Engineer to replace the former, or may designate a qualified Owner representative to serve as the Architect/Engineer. The replacement Architect/Engineer, whether an Owner representative, an independent Architect/Engineer or any other qualified person or entity, shall be regarded as the Architect/Engineer for all purposes under the Contract Documents and shall be accorded that same status by the Prime Contractor. Any dispute in connection with such appointment shall be reviewed and settled by the Owner, whose decision shall be final and binding.
- (c) Owner reserves the right to appoint a representative empowered to act for the Owner during the Construction Phase and to supersede the Architect/Engineer's Construction Phase responsibility. Similarly, from time to time the Owner may expand or reduce the Owner's delegation of powers to the Architect/Engineer, with the Owner notifying the Prime Contractor of any such changes. The Architect/Engineer shall not be construed as a third party beneficiary to the Contract and can in no way object to any expansion or reduction of powers as set forth in this Subparagraph (c). In no event, however, shall the Owner have control over charge of, or be responsible for, construction means, methods, techniques, sequences, or procedures, or for safety precautions or programs in connection with the Work since these are solely the Contractor's responsibility. The Owner will not be responsible for the Prime Contractor's failure to carry out the Work in accordance with the Contract Documents. The Owner will not have control over or charge of and will not be responsible for acts or omissions of Prime Contractor, Subcontractors, or their agents or employees, or of any other persons performing portions of the Work.

4.2 ARCHITECT/ENGINEER'S RESPONSIBILITIES DURING CONSTRUCTION

- (a) The Architect/Engineer will administer the Contract as described in the Contract Documents and in accordance with the terms of the Architect/Engineer's agreement with the Owner, where applicable, subject to the direction and approval of the Owner. If requested by the Prime Contractor, the provisions of the Owner/Architect/Engineer Agreement will be made available to the Prime Contractor.
- (b) The Architect/Engineer shall provide, during performance of the Work, adequate and competent periodic on-site construction observation, periodically visiting the Project site to the extent necessary to personally familiarize themselves with the progress and quality of the Work, and to determine if the Work is proceeding in accordance with the Contract Documents. The Architect/Engineer shall not, however, be required to make continuous

on-site inspections to check the Work. Field reports of each visit shall be prepared by the Architect/Engineer and submitted to the Owner. The Architect/Engineer shall employ all reasonable measures to safeguard the Owner against defects and nonconformities in the Work. The Architect/Engineer shall not be responsible for the construction means, methods, techniques, sequences of procedures, nor for the safety precautions and programs employed in connection with the Work. The Architect/Engineer will, however, immediately inform the Owner whenever defects or nonconformities in the Work are observed, or when any observed actions or omissions are undertaken by the Prime Contractor or any Subcontractor which are not in the best interests of the Owner or the Project.

- (c) The Architect/Engineer and the Owner will not have control over or charge of and will not be responsible for construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Prime Contractor's responsibility as provided in Paragraph 4.3. The Architect/Engineer and the Owner will not be responsible for the Prime Contractor's failure to carry out the Work in accordance with the Contract Documents. The Architect/Engineer and the Owner will not have control over or charge of and will not be responsible for acts or omissions of the Prime Contractor, Subcontractors, Sub-subcontractors, or their respective agents or employees, or of any other persons performing portions of the Work for which the Prime Contractor is responsible.
- (d) Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Prime Contractor shall endeavor to communicate through the Architect/Engineer. Communications by and with the Architect/Engineer's consultants shall be through the Architect/Engineer. Communications by and with Subcontractors and material suppliers shall be through the Prime Contractor. Communications by and with separate contractors will be through the Owner. The Prime Contractor shall provide written confirmation of communications made directly with the Owner and provide copies of such confirmation to the Architect/Engineer.
- (e) Based on the Architect/Engineer's observations and evaluations of the Prime Contractor's Applications for Payment, the Architect/Engineer will review and certify the amounts due the Prime Contractor and will issue Certificates for Payment in such amounts.
- (f) The Architect/Engineer and the Owner will each have authority to reject Work which does not conform to the Contract Documents. Whenever the Architect/Engineer considers it necessary or advisable for implementation of the intent of the Contract Documents, the Architect/Engineer will have authority to require additional inspection or testing of the Work in accordance with Subparagraphs 3.17(b) and 3.17(c), whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect/Engineer nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to any duty or responsibility of the Architect/Engineer to the Prime Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons performing portions of the Work.

- (g) The Architect/Engineer will review and approve or take other appropriate action upon the Prime Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect/Engineer's action will be taken with such reasonable promptness as to not delay the Work or the activities of the Owner, Contractor, or separate contractors. 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, all of which remain the responsibility of the Prime Contractor as required by the Contract Documents. The Architect/Engineer's review of the Prime Contractor's submittals shall not relieve the Prime Contractor of any obligations under Paragraphs 3.3, 3.5, and 3.12. The Architect/Engineer's review shall not constitute approval of safety precautions or, unless otherwise specifically stated in writing by the Architect/Engineer, of any construction means, methods, techniques, sequences, or procedures. The Architect/Engineer's approval of a specific item shall not indicate approval of an assembly of which the item is a component.
- (h) The Architect/Engineer will prepare Change Orders and may authorize minor changes in the Work as provided in Paragraph 7.3.
- (i) The Architect/Engineer will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion, will receive and forward to the Owner for the Owner's review and records written warranties and related documents required by the Contract and assembled by the Prime Contractor, and will issue a final Certificate for Payment upon compliance with the requirements of the Contract Documents.
- (j) If the Owner and Architect/Engineer agree, the Architect/Engineer will provide one or more Project representatives to assist in carrying out the Architect/Engineer's responsibilities at the site. The duties, responsibilities, and limitations of authority of such Project representatives shall be as set forth in an exhibit to be incorporated into the Contract Documents.
- (k) The Architect/Engineer will interpret and make recommendations to the Owner concerning performance under and requirements of the Contract Documents upon written request of either the Owner or Contractor. The Architect/Engineer's response to such requests will be made with reasonable promptness and within any time limits agreed upon. The Architect/Engineer shall secure the Owner's written approval before issuing instructions, interpretations, or judgments to the Prime Contractor which change the scope of the Work or which modify or change the terms and conditions of any of the Contract Documents.
- (l) Interpretations and decisions of the Architect/Engineer will be consistent with the intent of and reasonably inferable from the Contract Documents and will be in writing or in the form of Drawings. When making such interpretations and decisions, the Architect/Engineer will endeavor to secure faithful performance by the Prime Contractor.

- (m) The Architect/Engineer's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents; provided that the Architect/Engineer has the prior written approval of the Owner.

4.3 CLAIMS AND DISPUTES

- (a) **Definition; General Notice of Claim Procedure.** As used in these General Conditions, a "Claim" means a demand or assertion by one of the parties to the Contract seeking an adjustment of the terms of the Contract Documents, of the Contract Sum, of the Contract Time, or some other relief in respect to the terms of the Contract Documents. The term also includes all other disputes between the Owner and the Contractor arising out of or relating to the Project or the Contract Documents, including but not limited to claims that work was outside the scope of the Contract Documents. The responsibility to substantiate the Claim and the burden of demonstrating compliance with this provision shall rest with the party making the Claim. Except where otherwise provided in the Contract Documents, a Claim by the Prime Contractor, whether for additional compensation, additional time, or other relief, including but not limited to claims arising from concealed conditions, **WITHOUT EXCEPTION, MUST BE MADE BY WRITTEN NOTICE TO THE ARCHITECT/ENGINEER AND TO THE OWNER WITHIN FOURTEEN (14) DAYS IMMEDIATELY AFTER OCCURRENCE OF THE EVENT OR EVENTS GIVING RISE TO THE PARTICULAR CLAIM.** Every Claim of the Prime Contractor, whether for additional compensation, additional time, or other relief, including but not limited to claims arising from concealed conditions, shall be signed and sworn to by an authorized corporate officer (if not a corporation, then an official of the company authorized to bind the Prime Contractor by his signature) of the Prime Contractor, verifying the truth and accuracy of the Claim. **THE PRIME CONTRACTOR SHALL BE CONCLUSIVELY DEEMED TO HAVE WAIVED ANY CLAIM NOT MADE STRICTLY IN ACCORDANCE WITH THE PROCEDURES AND TIME LIMITS SET OUT IN THIS PARAGRAPH.**
- (b) **Referral to the Architect/Engineer.** Claims, disputes, and other matters in question between the Prime Contractor and the Owner relating to the progress or execution of the Work or the interpretation of the Contract Documents shall be referred to the Architect/Engineer for recommendation to the Owner, which recommendation the Architect/Engineer will furnish in writing within a reasonable time, provided proper and adequate substantiation has been received. Failure of the Prime Contractor to submit the Claim to the Architect/Engineer for rendering of a recommendation to the Owner shall constitute a waiver of the Claim.
- (c) **Continuing Contract Performance.** Pending final resolution of a claim the Prime Contractor shall proceed diligently with performance of the Work and the Owner shall continue to make payments in accordance with the Contract Documents.
- (d) **Claims for Concealed or Unknown Conditions.** No adjustment in the Contract Sum or Time associated with concealed or unknown conditions will normally be considered or allowed; provided, however, that the Contract Sum or Time may be adjusted by the Owner in such circumstances only if:

- (1) a concealed subsurface condition is encountered in the course of performance of the Work;
 - (2) a concealed or unknown condition in an existing structure is at variance with conditions indicated by the Contract Documents; or
 - (3) an unknown physical condition is encountered below the surface of the ground or in an existing structure which is of an unusual nature and materially different from those ordinarily encountered and generally recognized as inherent in the character of the Work; and
 - (4) a notice of claim with proper and adequate substantiation is presented pursuant to Subparagraph 4.3(a) of these General Conditions; and
 - (5) the Owner and the Architect/Engineer determine that:
 - (i) prior to submitting its bid for the Work, the Contractor used reasonable diligence to fully inspect the portion of the Project site where the condition was discovered; and
 - (ii) the work caused or required by the concealed or unknown condition at issue can be considered extra work to the extent that additional new Drawings must be prepared and issued and new construction beyond the scope of the Contract Documents is required.
- (e) Disclaimer of Warranties as to Reports, Drawings, and Specifications. PROJECT SITE INFORMATION AND REPORTS (INCLUDING BUT NOT LIMITED TO SOILS TESTING REPORTS, GEOTECHNICAL REPORTS, OR ENVIRONMENTAL SITE ASSESSMENTS) PROVIDED BY THE OWNER AND THE ARCHITECT/ENGINEER IN THE PROJECT MANUAL OR BY OTHER MEANS SHALL BE UTILIZED BY THE PRIME CONTRACTOR AT THE PRIME CONTRACTOR'S OWN RISK. THE OWNER AND THE ARCHITECT/ENGINEER DO NOT GUARANTEE OR WARRANT ANY INFORMATION SHOWN IN THE PROJECT SITE INFORMATION AND REPORTS.
- (f) Claims for Additional Cost. If the Prime Contractor wishes to make a claim for an increase in the Contract Sum, written notice as provided in this Paragraph 4.3 shall be given before proceeding to execute the Work. Prior notice is not required for claims relating to an emergency endangering life or property arising under Paragraph 10.3. In addition, the Prime Contractor's request for an increase in the Contract Sum for any reason (other than work performed under emergency conditions) shall be made far enough in advance of required work to allow the Owner and the Architect/Engineer a sufficient amount of time, without adversely affecting the construction schedule, to review the request, prepare and distribute such additional documents as may be necessary to obtain suitable estimates or proposals and to negotiate, execute and distribute a Change Order for the required work if the Prime Contractor believes that additional cost is involved for reasons including but not limited to:
- (1) a written interpretation from the Architect/Engineer;
 - (2) a written order for a minor change in the Work issued by the Architect/Engineer;
 - (3) failure of payment by the Owner;

- (4) termination of the Contract by the Owner;
- (5) the Owner's temporary suspension of all or any portion of the Work where the Prime Contractor was not at fault; or
- (6) other reasonable grounds.
- (g) Injury or Damage to Person or Property. If the Prime Contractor suffers injury or damages to person or property because of an act or omission of the Owner, or of any of the Owner's officers, employees or agents, written, sworn-to notice of any claim for damages or injury shall be given as provided in Subparagraph 4.3(a). The notice shall provide sufficient detail to enable the Architect/Engineer and the Owner to investigate the matter.
- (h) Subcontractor Pass-Through Claims. In the event that any Subcontractor of the Prime Contractor asserts a claim to the Prime Contractor, that the Prime Contractor seeks to pass through to the Owner under the Contract Documents, any entitlement of the Prime Contractor to submit and assert the claim against the Owner shall be subject to:
- (1) the requirements of Paragraph 4.3 of these General Conditions; and
- (2) the following additional three requirements listed below, all three of which additional requirements shall be conditions precedent to the entitlement of the Prime Contractor to seek and assert such claim against the Owner:
- (ii) The Prime Contractor shall either (A) have direct legal liability as a matter of contract, common law, or statutory law to the Subcontractor for the claim that the Subcontractor is asserting or (B) the Prime Contractor shall have entered into a written liquidating agreement with the Subcontractor, under which agreement the Prime Contractor has agreed to be legally responsible to the Subcontractor for pursuing the assertion of such claim against the Owner under the Contract and for paying to the Subcontractor any amount that may be recovered, less Prime Contractor's included markup (subject to the limits in the Contract Documents for any markup). The liability or responsibilities shall be identified in writing by the Prime Contractor to the Owner at the time such claim is submitted to Owner, and a copy of any liquidating agreement shall be included by the Prime Contractor in the claim submittal materials.
- (ii) The Prime Contractor shall have reviewed the claim of the Subcontractor prior to its submittal to Owner and shall have independently evaluated such claim in good faith to determine the extent to which the claim is believed in good faith to be valid. The Prime Contractor shall also certify, in writing and under oath to the Owner, at the time of the submittal of such claim, that the Prime Contractor has made a review, evaluation, and determination that the claim is made in good faith and is believed by the Contractor to be valid.
- (iii) The Subcontractor making the claim to the Prime Contractor shall certify in writing and under oath that it has compiled, reviewed and evaluated the merits of such claim

and that the claim is believed in good faith by the Subcontractor to be valid. A copy of the certification by the Subcontractor shall be included by Prime Contractor in the claim submittal materials made by Contractor to the Owner..

- (3) Any failure of the Prime Contractor to comply with any of the foregoing requirements and conditions precedent with regard to any such claim shall constitute a waiver of any entitlement to submit or pursue such claim against Owner.
- (4) Receipt and review of a claim by the Owner under this Subparagraph shall not be construed as a waiver of any defenses to the claim available to the Owner under the Contract Documents or by applicable law.

(i) Owner's Right to Order Acceleration and to Deny Claimed and Appropriate Time Extensions, in Whole or in Part. The Prime Contractor acknowledges and agrees that Substantial Completion of the Work by or before the Scheduled Completion Date is of substantial importance to Owner. The following provisions, therefore, will apply:

- (1) If the Prime Contractor falls behind the approved construction schedule for whatever reason, the Owner shall have the right, in the Owner's sole discretion, to order the Prime Contractor to develop a recovery schedule as described in Paragraph 3.10 or to accelerate its progress in such a manner as to achieve Substantial Completion on or before the Contract Time completion date or such other date as the Owner may reasonably direct and, upon receipt, the Prime Contractor shall take all action necessary to comply with the order. In such event, any possible right, if any, of the Prime Contractor to additional compensation for any acceleration shall be subject to the terms of this Subparagraph (i).
- (2) In the event that the Prime Contractor is otherwise entitled to an extension of Contract Time and has properly initiated a Claim for a time extension in accordance with Subparagraph 4.3(a) above, the Owner shall have the right, in the Owner's sole discretion, to deny all, or any part, of the Claim for extension of Contract Time by giving written notice to the Prime Contractor provided within fourteen (14) days after receipt of the Prime Contractor's Claim. If the Owner denies the Prime Contractor's claim for an extension of Contract Time under this Clause (i)(2), either in whole or in part, the Prime Contractor shall proceed to prosecute the Work in such a manner as to achieve Substantial Completion on or before the then existing Scheduled Completion Date.
- (3) If the Prime Contractor would have been entitled to a time extension for a reason specifically allowed under the Contract Documents, for an amount of time that would have justified approval by the Owner if not for the need and right to accelerate, the Prime Contractor may initiate a Claim for acceleration costs pursuant to Subparagraph 4.3(a). Any resulting Claim for acceleration costs properly initiated by the Prime Contractor under Subparagraph 4.3(a) above shall be limited to those reasonable and documented direct costs of labor, materials, equipment, and supervision solely and directly attributable to the actual acceleration activity necessary to bring the Work back within the then existing

approved construction schedule. These direct costs include the premium portion of overtime pay, additional crew, shift, or equipment costs if requested in advance by the Contractor and approved in writing by the Owner. A percentage markup for the prorated cost of premium on the existing performance and payment bonds and required insurance; provided however, not to exceed five (5%) per cent, will be allowed on the claimed acceleration costs. NO OTHER MARKUP FOR PROFIT, OVERHEAD (INCLUDING BUT NOT LIMITED TO HOME OFFICE OVERHEAD) OR ANY OTHER COSTS WILL BE ALLOWED ON ANY ACCELERATION CLAIM. The Owner shall not be liable for any costs related to an acceleration claim other than those described in this Clause (i)(3).

- (i) Waiver of Claims; Final Payment. The making of final payment shall constitute a waiver of claims by the Owner except those arising from:
- (1) claims, security interests, purported liens, or other attempted encumbrances arising out of the Contract and remaining unsettled;
 - (2) defective or nonconforming Work appearing after Substantial Completion;
 - (3) latent defects, as defined in Subparagraph 12.2(d), appearing after Final Completion; or
 - (4) the terms of general and special warranties required by the Contract Documents or allowed or implied by law.
- (k) THE CONTRACTOR SHALL NOT BE ENTITLED TO RECOVER ATTORNEY'S FEES AS A PART OF ANY CLAIM MADE UNDER THE CONTRACT DOCUMENTS OR IN ANY SUBSEQUENT LAWSUIT OR ALTERNATIVE DISPUTE RESOLUTION PROCEEDING.
- (l) No Waiver of Governmental Immunity. NOTHING IN THE CONTRACT DOCUMENTS SHALL BE CONSTRUED TO WAIVE THE OWNER'S GOVERNMENTAL IMMUNITY FROM LAWSUIT, WHICH IMMUNITY IS EXPRESSLY RETAINED TO THE EXTENT IT IS NOT CLEARLY AND UNAMBIGUOUSLY WAIVED BY APPLICABLE STATE LAW.

ARTICLE 5 - SUBCONTRACTORS

5.1 DEFINITIONS OF SUBCONTRACTOR

- (a) A Subcontractor is person or entity who has a direct Contract with the Prime Contractor to perform a portion of the Work at the Project site or to supply materials or equipment to the Prime Contractor by purchase or lease for use in performance of or incorporation into the Work. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the

Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.

- (b) A Sub-subcontractor is a person or entity who has a direct or indirect Contract with a Subcontractor to perform a portion of the Work at the Project site or to supply materials or equipment to the Subcontractor or another Sub-subcontractor by purchase or lease for use in performance of or incorporation into the Work. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

- (a) Immediately after the award of the Contract by the Owner, and before the Building Construction Services Agreement is signed by the Prime Contractor and the Owner, the Prime Contractor shall furnish to the Architect/Engineer in writing, for acceptance by the Owner and the Architect/Engineer, a list of the names, addresses, telephone numbers, M/WBE certification numbers (where applicable), and type of work of the Subcontractors (including those who are to furnish materials or equipment fabricated to a special design), proposed for the principal portions of the Work, including furnishings when made a part of the Contract. The Prime Contractor shall immediately notify the Owner in writing of any changes in the list as they occur. The Architect/Engineer will promptly reply to the Contractor in writing stating whether or not the Owner or the Architect/Engineer, after due investigation, has reasonable objection to any such proposed person or entity. Failure of the Owner or Architect/Engineer to reply promptly shall constitute notice of no reasonable objection.
- (b) The Prime Contractor shall not Contract with a proposed person or entity to whom the Owner or Architect/Engineer has made reasonable and timely objection.
- (c) Architect/Engineer's and Owner's approval of or objection to any Subcontractor or of a particular process or material will not relieve the Prime Contractor of his responsibility for performance of Work as called for under the Contract Documents, and shall not provide a basis for any claim for additional time or money on the part of the Prime Contractor. Approval shall not be construed to create any contractual relationship between the Subcontractor and either the Owner or Architect/Engineer. In no event shall the Contract Sum be increased as a result of the rejection of any Subcontractor.
- (d) The Prime Contractor shall not change a Subcontractor previously selected if the Owner or Architect/Engineer makes reasonable objection to such change.

5.3 SUBCONTRACTUAL RELATIONS

- (a) By appropriate agreement, written where legally required for validity, the Prime Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Prime Contractor by the terms of the Contract Documents (including but not limited to these General Conditions), and to assume toward the Prime

Contractor all the obligations and responsibilities which the Prime Contractor, by the Contract Documents, assumes toward the Owner and the Architect/Engineer. Each subcontract agreement shall preserve and protect the rights of the Owner and the Architect/Engineer under the Contract Documents (including but not limited to these General Conditions) with respect to the Work to be performed by the Subcontractor so that subcontracting will not prejudice the rights of the Owner and the Architect/Engineer. Where appropriate, the Prime Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Prime Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor is to be bound. Subcontractors shall similarly make copies of applicable portions of such Documents available to their respective proposed Sub-subcontractors.

- (b) The Prime Contractor is solely responsible for making payments properly to the Prime Contractor's Subcontractors on the Project. During performance of the Work, the Prime Contractor shall comply with the following additional rules regarding Subcontractor payments:
- (1) The Prime Contractor shall submit, beginning with the Second Application and Certificate for Payment, a Subcontractor Payment Report (the "Report") with each Application and Certificate for Payment. The Report shall show all payments made to date by the Prime Contractor (plus existing retainage) to each Subcontractor involved in the Project. The Report shall be made on a form approved and supplied by the Owner. As an alternative to the Report, the Prime Contractor may furnish Affidavits of Payment Received with the Application and Certificate for Payment, which affidavits shall be executed by each Subcontractor owed money and paid by Subcontractor during the previous progress payment period for work or materials furnished on the Project. RECEIPT BY THE OWNER OF THE REPORT OR AFFIDAVITS OF PAYMENT RECEIVED SHALL BE A CONDITION PRECEDENT TO PAYMENT ON ANY APPLICATION FOR PAYMENT.
 - (2) If, for any reason, the Prime Contractor is withholding payment to a Subcontractor due to a dispute or other problem with performance, the Prime Contractor shall note the amount withheld and further note that the payment is in dispute. The Owner may, in its sole discretion, require the Prime Contractor to document and verify the dispute or other problem in question.
 - (3) The Owner reserves the right in its sole discretion, to withhold payment to the Prime Contractor pursuant to Paragraph 9.5(a) of the General Conditions, should it appear from the Report, statements of payment received or other information furnished to the Owner that:
 - (i) the Report has not been properly completed;
 - (ii) the Prime Contractor has knowingly provided false information regarding payment of any Subcontractor; or

(iii) the Prime Contractor has otherwise failed to make payments properly to any Subcontractor.

(4) THE PRIME CONTRACTOR SHALL NOT HAVE ANY RIGHT TO MAKE A CLAIM FOR ADDITIONAL TIME OR ADDITIONAL COMPENSATION AS A RESULT OF THE OWNER'S OR ARCHITECT/ENGINEER'S ENFORCEMENT OF THIS SUBPARAGRAPH 5.3(b). NO PROVISION OF THIS SUBPARAGRAPH OR ANY OF THE CONTRACT DOCUMENTS SHALL BE CONSTRUED TO CREATE A CONTRACTUAL RELATIONSHIP, EXPRESS OR IMPLIED, BETWEEN ANY SUBCONTRACTOR AND EITHER THE OWNER OR THE ARCHITECT/ENGINEER AND SHALL NOT BE CONSTRUED TO MAKE ANY SUBCONTRACTOR OR ANY OTHER PERSON OR ENTITY, A THIRD-PARTY BENEFICIARY OF THE CONTRACT BETWEEN THE OWNER AND THE PRIME CONTRACTOR.

5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

In the event of a termination of this Contract by the Owner under Article 14, the Prime Contractor shall, if requested in writing by the Owner, within fifteen (15) days after the date notice of termination is sent, deliver and assign to Owner, or any person or entity acting on the Owner's behalf, any or all subcontracts made by Prime Contractor in the performance of the Work, and deliver to the Owner true and correct originals and copies of the subcontract documents. In the event assignment is not requested by the Owner, Prime Contractor shall terminate all subcontracts to the extent that Owner has not directed assignment of same and to the extent that they relate to the performance of Work terminated by the notice of termination.

ARTICLE 6 - CONSTRUCTION BY THE OWNER/ SEPARATE CONTRACTORS

6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

- (a) The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the Project site under Conditions of the Contract identical or substantially similar to these General Conditions, including those portions related to insurance and waiver of subrogation. If the Prime Contractor claims that delay or additional cost is involved because of such action by the Owner, the Prime Contractor shall make a claim as provided elsewhere in, and in accordance with the Contract Documents.
- (b) When separate Contracts are awarded for different portions of the Project or other construction or operations on the Project site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Building Construction Services Agreement with the Owner.

- (c) The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the Work of the Prime Contractor, who shall cooperate with them. The Prime Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules when directed to do so. The Prime Contractor shall, with the approval of the Owner, make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Prime Contractor, separate contractors, and the Owner until subsequently revised by mutual agreement or by written Change Order. If the Prime Contractor believes it is entitled to an adjustment of the Contract Sum under the circumstances, the Prime Contractor shall submit a written proposal for a Change Order pursuant to Article 7 of the General Conditions. In the event the Prime Contractor's Change Order proposal is denied by the Owner, the Prime Contractor must submit any Claim pursuant to Paragraph 4.3 of the General Conditions.
- (d) Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces, the Owner shall be deemed to be subject to the same obligations and to have the same rights which apply to the Prime Contractor under these General Conditions, including, without excluding others, those stated in Article 3, this Article 6, and Articles 10, 11 and 12.

6.2 MUTUAL RESPONSIBILITY

- (a) The Prime Contractor shall afford the Owner and separate contractors' reasonable opportunity for access to and storage of their materials and equipment and the performance of their activities and shall coordinate the Prime Contractor's construction and operations with the separate contractors as required by the Contract Documents.
- (b) If part of the Prime Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Prime Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Architect/Engineer apparent discrepancies or defects in the other construction that would render it unsuitable for proper execution and results. Failure of the Prime Contractor to so report shall constitute an acknowledgment that the Owner's or separate contractors completed or partially completed construction is fit and proper to receive the Prime Contractor's Work, except as to defects not then reasonably discoverable.
- (c) The Owner shall not be liable to the prime Contractor for damages suffered by the Prime Contractor due to the fault or negligence of a separate contractor or through failure of a separate contractor to carry out the directions of the Owner or the Architect/Engineer. Should any interference occur between the Prime Contractor and a separate contractor, the Architect/Engineer or the Owner may furnish the Prime Contractor with written instructions designating priority of effort or change in methods, whereupon the Prime Contractor shall immediately comply with such direction. In such event, the Prime Contractor shall be entitled to an extension of the Contract Time only for unavoidable delays verified by the Architect/Engineer; no increase in the Contract Sum, however, shall be due to the Prime Contractor.

- (d) The Prime Contractor shall promptly remedy damage wrongfully caused by the Prime Contractor to completed or partially completed construction or to property of the Owner or separate contractors as provided in Subparagraph 10.2(e).
- (e) Should the Prime Contractor cause damage to the work or property of any separate contractor on the Project, the Prime Contractor shall, upon due notice, settle with the separate contractor by agreement, if the separate contractor will so settle. If the separate contractor sues the Owner or submits a claim on account of any damage alleged to have been so sustained, the Owner shall notify the Prime Contractor who shall defend such proceedings, at the Prime Contractor's sole expense, and if any judgment or award against the Owner arises from the separate contractor's claim, the Prime Contractor shall fully pay or satisfy it and shall reimburse the Owner for any and all attorney's fees and costs which the Owner has incurred.
- (f) The Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described for the Prime Contractor in Paragraph 3.14.

6.3 OWNER'S RIGHT TO CLEAN UP

If a dispute arises among the Contractor, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the Project Site and surrounding area free from waste materials and rubbish as described in Paragraph 3.15, the Owner may clean up, but is not obligated to do so, and Owner shall allocate the cost among those parties responsible, as the Architect/Engineer recommends to be just.

ARTICLE 7 - AMENDMENTS

7.1 CHANGE ORDERS

- (a) A Change Order is a written order to the Contractor, signed by the Owner and the Architect/Engineer, issued after execution of the Contract, authorizing a change in the Work, an adjustment in the Contract Sum, or an adjustment to the Contract Time, consistent with other applicable provisions of this Contract. The Owner, without invalidating the Contract and without requiring notice of any kind to the sureties, may order changes to the scope of Work under the Contract by additions, deletions, or other revisions, the Contract Sum and Contract Time to be adjusted consistent with other applicable provisions of this Contract. All Change Orders shall be executed on a Change Order form approved by the Owner and the Owner's City Attorney.
- (b) In addition to the Owner and the Architect/Engineer, the Contractor shall sign all Change Orders to verify and confirm the terms and conditions established by Change Order; however, should the Contractor refuse to sign a Change Order, this shall not relieve him of his obligation to perform the change directed by the Owner and the Architect/Engineer to the best of his ability in accordance with the provisions of this Article 7. A Change Order signed by the Contractor indicates his agreement with all of the changes approved, including the adjustment in the Contract Sum or the Contract Time. EACH CHANGE ORDER SHALL BE SPECIFIC AND FINAL AS TO PRICES AND EXTENSIONS OF

TIME, WITH NO RESERVATIONS OR OTHER PROVISIONS ALLOWING FOR FUTURE ADDITIONAL MONEY OR TIME AS A RESULT OF THE PARTICULAR CHANGES IDENTIFIED AND FULLY COMPENSATED IN THE CHANGE ORDER. The execution of a Change Order by the Contractor shall constitute conclusive evidence of the Contractor's agreement to the ordered changes in the Work. The Contractor forever releases any claim against the Owner for additional time or compensation for matters relating to or arising out of or resulting from the Work included within or affected by the executed Change Order. This release applies to claims related to the cumulative impact of all Change Orders and to any claim related to the effect of a change on other Work.

- (c) No extra work (except under emergency conditions) or changes shall be made nor shall any substitutions, changes or additions to or omissions or deviations from the requirements of the Drawings and Specifications be made unless pursuant to a written Change Order signed by the Owner and the Architect/Engineer, it being expressly understood that the Owner shall not be liable for the cost of extra work or any substitution, change, addition, omission or deviation from the requirements of the Drawings or Specifications unless the same shall have been authorized in writing by the Owner and the Architect/Engineer in a written change order or other Amendment. The provisions of this Paragraph 7.1 shall control in the event of any inconsistency between such provisions and the other provisions of this Article 7. See Subparagraph 10.3(a) of the General Conditions for Change Orders under emergency conditions.
- (d) The method of determining the cost or credit to the Owner for any change in the Work shall be one of the following:
 - (1) mutual acceptance of a not-to-exceed lump-sum amount properly itemized and supported by sufficient substantiating data to permit evaluation; or
 - (2) unit prices stated in the Contract Documents or subsequently agreed upon; or
 - (3) cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
 - (4) the force account method provided in Subparagraph 7.1(e)
- (e) If the parties cannot agree to one of the methods of calculating cost provided in Clauses (d) (1), (d) (2), or (d) (3), or if the parties agree to a method but cannot agree on a final dollar figure; or if the Contractor for whatever reason refuses to sign the Change Order in question; the Contractor, provided he receives a written order signed by the Owner, shall promptly proceed with the Work involved. The cost of the Work involved shall then be calculated on the basis of the reasonable jobsite expenditures and savings of those performing the Work attributable to the changes, including a reasonable allowance for overhead and profit, such allowance in any case never to exceed fifteen (15%) per cent. In such case, the Contractor shall keep an itemized accounting of the Work involved, on a daily basis, in such form and with the appropriate supporting data as the Architect/Engineer and Owner may prescribe. Sworn copies of the itemized accounting shall be delivered to

the Architect/Engineer each day during the performance of force account work, with copies to the Owner.

FAILURE OF THE CONTRACTOR TO SUBMIT THE SWORN-TO ITEMIZED ACCOUNTING DAILY AS REQUIRED HEREIN SHALL CONSTITUTE A WAIVER BY THE CONTRACTOR OF ANY RIGHT TO DISPUTE THE OWNER'S DETERMINATION OF THE AMOUNT DUE THE CONTRACTOR FOR FORCE ACCOUNT WORK. Costs to be charged under this Subparagraph for force account work are limited to the following:

- (1) costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and worker's compensation insurance;
 - (2) costs of materials, supplies and equipment (but not to include off-site storage unless approved in writing by the Owner), whether incorporated or consumed;
 - (3) rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
 - (4) costs of premiums for all bonds and insurance related to the Work; and
 - (5) additional costs of supervision and field office personnel directly attributable to the changed Work. Pending final determination of cost to the Owner, payment of undisputed amounts on force account shall be included on the Architect/Engineer's Certificate of Payment as work is completed.
- (f) The amount of credit to be allowed to the Owner for any deletion of Work or any other change which results in a net decrease of the Contract Sum shall be the amount of actual net cost confirmed by the Architect/Engineer plus the stated percentage for overhead and profit. When both additions and deletions or credits covering related Work or substitutions are involved in any one change, the allowance for overhead and profit shall be figured on the basis of the net increase or decrease with respect to that change.

7.2 SUPPLEMENTAL AGREEMENTS

A written Supplemental Agreement can also be used to implement changes in the Work instead of a Change Order form, including but not limited to situations involving partial occupancy of the Work under Paragraph 9.8, a change made to the Drawings or the Specifications without an increase in the Contract Sum, or special circumstances where it is necessary or more appropriate for the Owner to use a Supplemental Agreement. Written Supplemental Agreements shall have a status equal to that of Change Orders for purposes of priority of Contract Documents interpretation, except that to the extent of a conflict, later Supplemental Agreements in time control over earlier Supplemental Agreements, and the latest Change Order or Supplemental Agreement in time controls over earlier dated Change Orders and Supplemental Agreements. The rules of Subparagraphs 7.1(b) through (f) shall also apply to the negotiation and execution of Supplemental Agreements.

7.3 MINOR CHANGES IN THE WORK

The Architect/Engineer, after notifying the Owner, shall be authorized to order minor changes in the Work not involving an adjustment in the Contract Sum or an extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Minor changes shall be effected by written order, and shall be binding on the Owner and the Contractor. The Contractor shall carry out such written orders promptly. These written orders shall not be deemed to change or impact the Contract Sum or the Contract Time. Contractor shall have no Claim for any minor change ordered to the Work under this Paragraph 7.3 unless the Contractor submits its change proposal, prior to complying with the minor change ordered and in no event later than ten (10) working days from the date the minor change was ordered, to the Owner for approval.

7.4 TIME REQUIRED TO PROCESS AMENDMENTS

- (a) All of the Contractor's responses to proposal requests shall be accompanied by a complete, itemized breakdown of costs. Responses to proposal requests shall be submitted sufficiently in advance of the required work to allow the Owner and the Architect/Engineer a minimum of thirty (30) calendar days after receipt by the Architect/Engineer to review the itemized breakdown and to prepare or distribute additional documents as may be necessary. All of the Prime Contractor's responses to proposal requests shall include a statement that the cost described in the response represents the complete, total and final cost and additional Contract Time associated with the extra work, change, addition to, omission, deviation, substitution, or other grounds for seeking extra compensation under the Contract Documents, without reservation or further recourse.
- (b) All Amendments require approval by either the City Council or, where authorized by the State law and City ordinance, by the City Manager pursuant to Administrative Action. The approval process requires a minimum of forty-five (45) calendar days after submission to the Owner in final form with all supporting data. Receipt of a submission by Owner does not constitute acceptance or approval of a proposal, nor does it constitute a warranty that the proposal will be authorized by City Council Resolution, Ordinance or Administrative Action. **THE TIME REQUIRED FOR THE APPROVAL PROCESS SHALL NOT BE CONSIDERED A DELAY AND NO EXTENSIONS TO THE CONTRACT TIME OR INCREASE IN THE CONTRACT SUM WILL BE CONSIDERED OR GRANTED AS A RESULT OF THIS PROCESS.** Pending the approval described above, the Contractor will proceed with the work under a pending Amendment only if directed in writing by the Owner.

ARTICLE 8 - CONTRACT TIME

8.1 DEFINITIONS

- (a) Unless otherwise provided, the Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

- (b) The date of commencement of the Work is the date established in the Notice to Proceed from the Owner. The date of commencement shall not be postponed by the failure of the Prime Contractor, or of persons or entities for whom the Prime Contractor is responsible to act promptly to commence the Work. If the Owner unreasonably delays the issuance of the notice to proceed, through no fault of the Prime Contractor, the Prime Contractor shall be entitled only to an equitable extension of the Contract Time; the Contract Sum shall remain unchanged.
- (c) The date of Substantial Completion is the date certified by the Architect/Engineer in accordance with Paragraph 9.7.
- (d) The term “day” as used in the Contract Documents shall mean a calendar day, beginning and ending at 12:00 midnight, unless otherwise specifically defined by special provision.

8.2 PROGRESS AND COMPLETION

- (a) **Time limits stated in the Contract Documents are of the essence of the Contract.** By executing the Building Construction Services Agreement, the Prime Contractor confirms that the Contract Time is a reasonable period for performing the Work.
- (b) The Prime Contractor shall not knowingly, except by agreement with or instruction of the Owner in writing, prematurely commence operations on the Project site or elsewhere prior to the effective date of insurance to be furnished by the Prime Contractor as required by Article 11. The date of commencement of the Work shall not be changed by the effective date of insurance required by Article 11.

8.3 DELAYS AND EXTENSIONS OF TIME

- (a) If the Prime Contractor is delayed at any time in the progress of the Work by an act or neglect of the Owner or Architect/Engineer, or of an employee of either, or of a separate contractor employed by the Owner, or by changes ordered in the Work, or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Prime Contractor’s control, or by delay authorized by the Owner pending a claim, or by other causes which the Architect/Engineer determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect/Engineer and Owner may determine.
- (b) Claims relating to Contract Time and time extensions shall be made in accordance with the applicable provisions of Paragraph 4.3.
- (c) **No Damages for Delay. NOTWITHSTANDING ANY OTHER PROVISIONS OF THE CONTRACT DOCUMENTS, INCLUDING THE GENERAL CONDITIONS, NO ADJUSTMENT SHALL BE MADE TO THE CONTRACT SUM AND THE PRIME CONTRACTOR SHALL NOT BE ENTITLED TO CLAIM OR RECEIVE ANY ADDITIONAL COMPENSATION AS A RESULT OF OR ARISING OUT OF ANY DELAY, HINDRANCE, DISRUPTION, FORCE MAJEURE, IMPACT, OR INTERFERENCE, INTENTIONAL OR UNINTENTIONAL, FORESEEN OR**

UNFORESEEN, WHICH INCREASES THE TIME TO COMPLETE THE WORK, INCLUDING BUT NOT LIMITED TO ANY DELAYS CAUSED IN WHOLE OR IN PART BY THE ACTS, OMISSIONS, FAILURES, NEGLIGENCE, OR FAULT OF THE OWNER, THE ARCHITECT/ENGINEER, OR THE OWNER'S REPRESENTATIVE, AN EXTENSION OF THE CONTRACT TIME UNDER SUBPARAGRAPH 8.3(a) BEING THE PRIME CONTRACTOR'S SOLE REMEDY.

- (d) The Owner shall have the right to occupy, without prejudice to the right of either party, any completed or largely completed portions of the structure or Work, notwithstanding the fact that the Contract Time for completing all or a portion of the Work may not have expired. Partial occupancy and use shall not be deemed as an acceptance of the Work taken or used.
- (e) The Prime Contractor shall promptly suspend the Work when either the Prime Contractor or the Owner is ordered to do so by a court order from a court having lawful jurisdiction, and the Prime Contractor will not be entitled to additional compensation by virtue of any delays resulting from the court order. The Prime Contractor will also not be liable to the Owner for a delay caused in fact by the Work being suspended by a court order.
- (f) The Architect/Engineer, with the consent of the Owner, shall have the authority to suspend the Work, in whole or in part, for such period or periods as the Architect/Engineer deems necessary due to unusual or severe weather conditions as are considered unfavorable for the suitable prosecution of the Work, or due to failure on the part of the Prime Contractor to correct conditions considered unsafe for workmen or the general public. If it should become necessary to stop the Work for an indefinite period, the Prime Contractor shall store all materials in such a manner that they will not obstruct or impede the public unnecessarily or become damaged in any way, and shall take every precaution to prevent damage or deterioration of the Work performed. In cases of suspension of the Work under this Subparagraph, the Prime Contractor shall also provide suitable drainage about the Work and erect temporary structures where necessary. The Prime Contractor shall not suspend the Work in whole or in part without written authority from the Architect/Engineer or the Owner, and shall resume the Work promptly when notified by the Architect/Engineer or the Owner to resume operations.
- (g) In the event of a delay that is the responsibility of the Prime Contractor or any of the Subcontractors, for which the Prime Contractor is not entitled to a time extension under the provisions of this Contract, the Owner may direct that the Work be accelerated by means of overtime, additional crews or additional shifts, or resequencing. This acceleration shall be at no cost to the Owner and will continue until the Contract Time is restored. In the event of a delay for which the Prime Contractor is entitled to a time extension, as determined by the Architect/Engineer, Owner may similarly direct acceleration and the Prime Contractor agrees to perform same on the basis that the Prime Contractor will be reimbursed only to the extent described in Subparagraph 4.3(i). THE PRIME CONTRACTOR EXPRESSLY WAIVES ANY OTHER COMPENSATION RESULTING FROM ACCELERATION, SUCH AS LOSS OF LABOR PRODUCTIVITY OR EFFICIENCY.

ARTICLE 9 - PAYMENTS AND COMPLETION

9.1 CONTRACT SUM

The Contract Sum is stated in the Building Construction Services Agreement and, including authorized adjustments, is the total amount of compensation payable by the Owner to the Prime Contractor for the performance of the Work under the Contract Documents.

9.2 SCHEDULE OF VALUES

Before the first Application for Payment, the Prime Contractor shall submit to the Architect/Engineer a schedule of values allocated to various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as the Architect/Engineer may require. This schedule, when approved by the Architect/Engineer and the Owner, shall be used as a basis for the Prime Contractor's Application for Payment. The schedule of values shall follow the trade division of the Specifications. Prime Contractor's Application for Payment shall be filed on the current version of AIA Form G702 (Application and Certificate for Payment), as approved by the Owner.

9.3 APPLICATIONS FOR PAYMENT

- (a) At least ten (10) days before the date established for each progress payment, the Prime Contractor shall submit to the Architect/Engineer an itemized Application for Payment for Work completed in accordance with the schedule of values. The Application shall be notarized, if required, and supported by data substantiating the Prime Contractor's right to payment as the Owner or Architect/Engineer may require, including but not limited to copies of requisitions from Subcontractors and material suppliers, and reflecting the applicable retainage as required in the Contract Documents. Prime Contractor's Application for Payment shall also provide other supporting documentation as the Owner or the other applicable provisions of the Contract Documents may require.
- (b) Applications for Payment may not include requests for payment of amounts the Prime Contractor does not intend to pay to a Subcontractor because of a good faith dispute, unless the Prime Contractor complies with Clause 5.3(b) (2) of these General Conditions and the Prime Contractor's Payment Bond Surety consents in writing to payment to the Prime Contractor of the funds deemed to be in dispute.
- (c) Unless otherwise provided in the Contract Documents, progress payments shall include payment for materials and equipment delivered and suitably stored at the Project site for subsequent incorporation into the Work within thirty (30) days after delivery to the Project site. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored away from the Project site at a location agreed upon in writing. Payment for costs incurred in storage of materials or equipment away from the Project site will NOT be made by Owner unless:
 - (1) the Owner has given prior approval of such off-site storage in writing;

- (2) the materials or equipment are stored in a bonded warehouse located in Denton County and identified with the Project for which they are stored, as evidenced by warehouse receipts and appropriate documents of title; and
 - (3) the materials or equipment stored off-site will be incorporated into the Work within thirty (30) days after delivery. STORAGE IN FACILITIES OF THE MANUFACTURER OR THE PRIME CONTRACTOR WILL NOT BE PERMITTED OR PAID FOR, UNLESS THE OWNER HAS EXPRESSLY GIVEN PRIOR APPROVAL OF SUCH STORAGE IN WRITING.
- (d) The Prime Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Prime Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall be free and clear of liens, claims, security interests or encumbrances in favor of the Prime Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials, and equipment relating to the Work.
- (e) All materials or equipment delivered to the Project site earlier than thirty (30) days prior to an approved schedule for delivery to the Project site shall be classified as an “early delivery.” All early delivery materials or equipment must have the express written permission of the Owner to be stored on the Project site. If any unauthorized early delivery occurs, Prime Contractor shall, at Prime Contractor’s expense or at the expense of the responsible Subcontractor or Supplier, cause such early delivery to be removed from the Project site and stored off-site until required at the Project site. All costs of labor, transportation and storage will be included as part of the expense. If the Prime Contractor fails or refuses to remove unauthorized early delivery materials, the Owner may cause such materials to be removed at the Prime Contractor's sole expense, and amounts may be withheld from the Prime Contractor's Application for Payment to reimburse the Owner for any costs incurred in removing unauthorized early delivery materials. OWNER WILL NOT BE RESPONSIBLE FOR THE PROTECTION OF OR RISK OF LOSS ON ANY EARLY DELIVERY MATERIALS OR EQUIPMENT, NOR WILL OWNER BE LIABLE FOR ANY PAYMENT FOR THE EARLY DELIVERY MATERIALS OR EQUIPMENT. Any materials or equipment classified as early delivery will not be approved for payment as stored materials prior to thirty (30) days before the incorporation of the materials or equipment into the Work, unless storage and payment at an earlier date is expressly approved in writing by the Owner.
- (f) If the Contract Sum is equal to or less than \$25,000, and if performance and payment bonds are not furnished by the Contractor, then no payment applied for will be payable under the Contract until the Work has been finally completed and accepted.

9.4 CERTIFICATES FOR PAYMENT

- (a) The Architect/Engineer will, within ten (10) days after receipt of the Prime Contractor’s Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Prime Contractor, for such amount as the Architect/Engineer determines is properly

due, or notify the Prime Contractor and Owner in writing of the Architect/Engineer's reasons for withholding certification in whole or in part as provided in:

- (a) City of Denton "General Conditions for Building Construction."
- (b) Subparagraph 9.5(a). The Certificate for Payment shall be issued on the current version of AIA Form G702 (Application and Certificate for Payment) as approved by the Owner.
- (c) The issuance of a Certificate for Payment will constitute a representation by the Architect/Engineer to the Owner, based on the Architect/Engineer's observations at the site and the data comprising the Application for Payment, that the Work has progressed to the point indicated and that, to the best of the Architect/Engineer's knowledge, information and belief, quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial and Final Completion, to results of subsequent tests and inspections, to minor deviations from the Contract Documents correctable prior to Final Completion and to specific qualifications expressed by the Architect/Engineer. The issuance of a Certificate for Payment will further constitute a representation that the Prime Contractor is entitled to payment in the amount certified, subject to the Owner's approval. The issuance of a Certificate for Payment is not a representation that the Architect/Engineer has:
 - (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work;
 - (2) reviewed construction means, methods, techniques, sequences or procedures;
 - (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Prime Contractor's right to payment; or
 - (4) made examination to ascertain how or for what purpose the Prime Contractor has used money previously paid on account of the Contract Sum.
- (d) Whenever the Application for Payment for Work done since the last previous Application for Payment exceeds one hundred dollars (\$100.00) in amount, Owner will pay a percentage of the Application, less applicable retainage, to the Prime Contractor within thirty (30) days following Owner's receipt and approval of the Certificate for Payment certified by the Architect/Engineer. The Application may include acceptable nonperishable materials delivered to the Work or stored as provided for in Paragraph 9.3(c) and the payment will be allowed on the net invoice value, less taxes and applicable retainage.
- (e) The City is required to withhold retainage for public works contracts in which the total contract price estimate at the time of execution is more than \$400,000; however, this requirement is applied by the City for all public works contracts in excess of \$50,000. The retainage will be withheld by the Owner from each progress payment until final completion of the Work by the Contractor, approval of final completion by the Architect/Engineer, and final acceptance of the Work by the Owner. Unless otherwise required by state law, the retainage percentage as specified in Exhibit A is based upon the original Contract Sum,

and will not be affected in the event the original Contract Sum is subsequently increased by Change Order.

- (f) No progress payments shall be made on contracts where performance and payment bonds are not required or furnished. In such instances, payment for the Work performed will be made upon final completion and acceptance by the Owner of all Work.

9.5 DECISIONS TO WITHHOLD CERTIFICATION

- (a) The Architect/Engineer or the Owner may decide not to certify payment and may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner's interest, if in the Architect/Engineer's or Owner's opinion the representations to the Owner required by Subparagraph 9.4(b) cannot be made. If the Architect/Engineer or the Owner is unable to certify payment in the amount of the Application, the Architect/Engineer or the Owner will notify the Prime Contractor as provided in Subparagraph 9.4(a). If the Prime Contractor and Architect/Engineer or the Owner cannot agree on a revised amount, the Architect/Engineer will promptly issue a Certificate for Payment for the amount for which the Architect/Engineer is able to make the required representations to the Owner. The Architect/Engineer or the Owner may also decide not to certify payment or, because of subsequently discovered evidence or subsequent observations, may nullify the whole or a part of a Certificate for Payment previously issued to such extent as may be necessary, in the Architect/Engineer's or Owner's opinion, to protect the Owner from loss because of:
- (1) defective or nonconforming Work not remedied;
 - (2) third-party claims filed or reasonable evidence indicating probable filing of such claims;
 - (3) failure of the Prime Contractor to make payments properly to Subcontractors or for labor, materials, or equipment;
 - (4) reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
 - (5) damage to the Owner or another contractor;
 - (6) reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or damages for the anticipated delay;
 - (7) persistent failure to carry out the Work in accordance with the Contract Documents; or
 - (8) mathematical or other errors that are discovered in the Application for Payment.
- (b) When all of the above reasons that existed for withholding certification are removed or remedied, then, at that time, certification will be made for amounts previously withheld.

- (c) The Owner may, at its option, offset any progress payment or final payment under the Contract Documents against any debt (including taxes) lawfully due to the Owner from the Prime Contractor, regardless of whether the amount due arises pursuant to the terms of the Contract Documents or otherwise, and regardless of whether or not the debt due to the Owner has been reduced to judgment by a court.

9.6 PROGRESS PAYMENTS

- (a) After the Architect/Engineer has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect/Engineer. The Owner shall not be liable for interest on any late or delayed progress payment or final payment caused by any claim or dispute, any discrepancy in quantities, any failure to provide supporting documentation or other information required with the Application for Payment or as a precondition to payment under the Contract Documents, or due to any payment the Owner or the Architect/Engineer has a right to withhold or not certify under the Contract Documents. Notwithstanding the foregoing, the Owner may refuse to make payment on any Certificate for Payment (including, without limitation, the final Certificate for Payment) for any default under the Contract Documents, including but not limited to those defaults set forth in Subparagraph 9.5(a), Clauses (1) through (7). The Owner shall not be deemed in default by reason of withholding payment while any Prime Contractor default remains uncured.
- (b) The Prime Contractor shall promptly pay each Subcontractor, upon receipt of payment from the Owner, out of the amount paid to the Prime Contractor on account of each Subcontractor's portion of the Work, the amount to which said Subcontractor is entitled, reflecting percentages actually retained from payments to the Prime Contractor on account of such Subcontractors portion of the Work. The Prime Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in similar manner.
- (c) The Architect/Engineer will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Prime Contractor and action taken thereon by the Architect/Engineer and the Owner on account of portions of the Work done by such Subcontractor.
- (d) Neither the Owner nor the Architect/Engineer shall have an obligation to pay or to see to the payment of money to a Subcontractor except as may otherwise be required by law. That obligation belongs to the Prime Contractor or, in the event of the Prime Contractor's failure to pay a Subcontractor, to the Surety on the Payment Bond as required under Paragraph 11.3.
- (e) Payment to material suppliers shall be treated in a manner similar to that provided in Subparagraphs 9.6(b), (c), and (d).

- (f) A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not performed in accordance with the Contract Documents.

9.7 SUBSTANTIAL COMPLETION

(a) The Date of Substantial Completion of the Work, or designated portion of the Work, is the date certified by the Architect/Engineer when construction is sufficiently completed in accordance with the City Of Denton General Conditions For Building Construction.

- (a) the Contract Documents such that the Owner may beneficially occupy and use the Work, or designated portions of the Work, for the purposes for which it is intended and only trivial and insignificant items remain which do not affect the Work as a whole.
- (b) When the Prime Contractor considers that the Work, or the portion of the Work which the Owner agrees to accept separately, is Substantially Complete, the Prime Contractor shall prepare and submit to the Architect/Engineer a comprehensive list of remaining items to be completed or corrected. The Prime Contractor shall proceed promptly to complete and correct items on the list (hereinafter called the "punch list"). Failure to include an item on the punch list does not alter the responsibility of the Prime Contractor to complete all Work in accordance with the Contract Documents. Upon receipt of the punch list, the Architect/Engineer will make an inspection to determine whether the Work, or designated portion of the Work, is Substantially Complete. If the Architect/Engineer's inspection discloses any item, whether or not included on the punch list, which is not in accordance with the requirements of the Contract Documents and which renders the Work inspected not Substantially Complete the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct the item upon notification by the Architect/Engineer. The Prime Contractor shall then submit a request for another inspection by the Architect/Engineer to determine Substantial Completion. When the Work or designated portion of the Work is Substantially Complete, the Architect/Engineer will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and the Prime Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Prime Contractor shall finish all items on the punch list accompanying the Certificate.
- (c) The Certificate of Substantial Completion shall be submitted to the Owner and the Prime Contractor for their written acceptance of responsibilities assigned to them in the Certificate.
- (d) Upon Substantial Completion of the Work or designated portion thereof and upon application by the Prime Contractor and certification by the Architect/Engineer, the Owner shall make payment, reflecting adjustment in retainage, if any, for the Work, or portion of the Work, as provided in the Contract Documents.

9.8 PARTIAL OCCUPANCY OR USE

- (a) The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate Supplemental Agreement with the Prime Contractor, provided such occupancy or use is consented to by the insurer as required under Subparagraph 11.2(e) and authorized by public authorities having jurisdiction over the Work. Such partial occupancy or use may commence whether or not the portion is Substantially Complete, provided the Owner and Prime Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Prime Contractor considers a portion Substantially Complete, the Prime Contractor shall prepare and submit a list to the Architect/Engineer as provided under Subparagraph 9.7(b). Consent of the Prime Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Prime Contractor or, if no agreement is reached, by decision of the Architect/Engineer.
- (b) Immediately prior to such partial occupancy or use, the Owner, Prime Contractor, and Architect/Engineer shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.
- (c) Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

9.9 FINAL COMPLETION AND FINAL PAYMENT

- (a) Upon receipt of written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect/Engineer, accompanied by the Owner's representative, will promptly make final inspection and, when the Architect/Engineer finds the Work acceptable under the Contract Documents and the Contract Documents fully performed, the Architect/Engineer will promptly issue a final Certificate for Payment stating that to the best of the Architect/Engineer's knowledge, information and belief, and on the basis of the Architect/Engineer's observations and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Prime Contractor and noted in said final Certificate is due and payable. The Architect/Engineer's final Certificate for Payment will constitute a further representation that conditions listed in Subparagraph 9.9(b) as a condition precedent to the Prime Contractor's being entitled to final payment have been fulfilled. Owner will normally make final payment within thirty (30) days after Owner's receipt and approval of the final Certificate for Payment. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work, unless otherwise provided by separate agreement between the Owner and the Prime Contractor.

- (b) Neither final payment nor any remaining retained percentage shall become due until the Prime Contractor submits to the Architect/Engineer:
- (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied;
 - (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be cancelled or allowed to expire until at least thirty (30) days prior written notice has been given to the Owner;
 - (3) a written statement that the Prime Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents;
 - (4) a consent of surety to final payment; and
 - (5) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner.
- (c) As a precondition to final payment by the Owner under this Contract, the Prime Contractor's affidavit under Clause (b)(1) shall state that the Prime Contractor has paid each of his subcontractors, laborers or materialmen in full for all labor and materials provided to Contractor for the Work performed under this Contract. In the event the Prime Contractor has not paid each of his subcontractors, laborers or materialmen in full, the Prime Contractor shall state in the affidavit the amount owed and the name of each subcontractor, laborer or materialmen to whom such payment is owed. IN ANY EVENT, THE PRIME CONTRACTOR SHALL BE REQUIRED TO EXECUTE THE OWNER'S STANDARD AFFIDAVIT OF FINAL PAYMENT AND RELEASE AS A PRECONDITION TO RECEIPT OF FINAL PAYMENT.
- (d) If, after Substantial Completion of the Work, final completion of the Work is materially delayed through no fault of the Prime Contractor or by issuance of Change Orders affecting final completion and the Architect/Engineer confirms the delay, the Owner shall, upon application by the Prime Contractor and certification by the Architect/Engineer, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect/Engineer prior to certification of payment. Payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.
- (e) **The acceptance by the Prime Contractor of the final payment shall operate as and shall be a complete release of the Owner from all claims or liabilities under the Contract, for anything done or furnished or relating to the Work or the Project, or**

for any act or neglect of the Owner relating to or connected with the Work or the Project.

ARTICLE 10 - SAFETY, SECURITY AND UTILITY PROVISIONS; ENVIRONMENTAL COMPLIANCE

10.1 SAFETY PRECAUTIONS AND PROGRAMS

The Prime Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract, and will comply with all applicable City, County, State and Federal health and safety regulations.

10.2 SAFETY OF PERSONS AND PROPERTY

- (a) The Prime Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to:
- (1) employees on the Work and other persons who may be affected thereby;
 - (2) the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Prime Contractor or the Prime Contractor's Subcontractors or Sub-subcontractors; and
 - (3) other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.
- (b) The Prime Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.
- (c) The Prime Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.
- (d) When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Prime Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.
- (e) **USE OF EXPLOSIVES - CLAIMS AND TOTAL INDEMNIFICATION.** The Owner shall have the right to pre-approve the use of any explosives on the Project; the Prime Contractor shall not assume in its bid that permission to use explosives will be granted. The Owner shall NOT be liable for any claim for additional time or compensation as a result of the Owner's denial of permission to use explosives. Where use of explosives is permitted by the Owner, the Prime Contractor EXPRESSLY AGREES TO BE SOLELY

RESPONSIBLE for the determination as to whether explosives shall actually be used, and for any result from the use, handling or storage of explosives, and shall INDEMNIFY, DEFEND AND HOLD COMPLETELY HARMLESS the Owner, its officers, agents and employees, and the Architect/Engineer against any and all claims, lawsuits, judgments, costs or expenses for personal injury (including death), property damage or other harm for which recovery of damages is sought, suffered by any person or persons, as the result of the use, handling or storage of the explosives by the Prime Contractor or any Subcontractor, REGARDLESS OF WHETHER SAID USE, HANDLING OR STORAGE WAS NEGLIGENT OR NOT, AND REGARDLESS OF WHETHER THE DAMAGE OR INJURY WAS CONTRIBUTED TO IN ANY WAY BY THE NEGLIGENCE OR FAULT OF THE OWNER, ITS OFFICERS, AGENTS, EMPLOYEES, OR REPRESENTATIVES, OR THE ARCHITECT/ENGINEER AND ITS OFFICERS, AGENTS, EMPLOYEES, OR REPRESENTATIVES. In the event of conflict with any other indemnity paragraph in this Contract, this paragraph controls. This indemnity paragraph is intended solely for the benefit of the parties to this Contract and is not intended to create or grant any rights, contractual or otherwise, to or for any other person or entity. The Prime Contractor shall furnish the Owner and the Architect/Engineer with evidence of insurance sufficient to cover possible damage or injury, which insurance shall either include the Owner and the Architect/Engineer as additional insureds or be sufficiently broad in coverage as to fully protect the Owner and the Architect/Engineer. All explosives shall be stored in a safe and secure manner, under the care of a competent watchman at all times, and all storage places shall be marked clearly and conspicuously: "DANGEROUS-EXPLOSIVES." The method of storing and handling explosives and highly flammable materials shall conform to Federal and State laws, City of Denton ordinances, and the City of Denton Fire Department regulations. The Prime Contractor shall notify any telecommunications and public utility company and any private property owners having structures in the proximity of the Project Site of the Prime Contractor's intention to use explosives, and such notice shall be given sufficiently in advance to enable the telecommunications and public utility companies and private property owners to take such steps as they may deem necessary to protect their property from injury. The notice shall not relieve the Prime Contractor of any responsibility for damage resulting from any blasting operations.

- (f) The Prime Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Clauses 10.2(a)(2) and 10.2(a)(3) caused in whole or in part by the Prime Contractor, a Subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Prime Contractor is responsible under Clauses 10.2(a)(2) and 10.2(a)(3), except damage or loss attributable to acts or omissions of the Owner or Architect/Engineer or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Prime Contractor or any of its Subcontractors. The foregoing obligations of the Prime Contractor are in addition to the Prime Contractor's obligations under Paragraph 3.19. To the extent that any such damage or loss may be covered by property insurance or other insurance required by the Contract Documents, the Owner and the Prime Contractor shall exercise their best efforts to make a claim and obtain recovery

from the insurers to provide for the cost, in whole or in part, of the repair work or to provide for reimbursement for such damage or loss.

- (g) The Prime Contractor shall designate a responsible member of the Prime Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Prime Contractor's superintendent unless otherwise designated by the Prime Contractor in writing to the Owner and Architect/Engineer.
- (h) The Prime Contractor shall not load or permit any part of the Work or the Project site to be loaded so as to endanger its safety.

10.3 EMERGENCIES

In an emergency affecting safety, health, or security of persons or property, the Prime Contractor shall act, at the Prime Contractor's discretion, to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the Prime Contractor on account of an emergency shall be determined as provided in Paragraph 4.3 and Article 7.

10.4 PUBLIC CONVENIENCE AND SAFETY

- (a) The Prime Contractor shall place materials stored about the Work and shall conduct the Work at all times in a manner that causes no greater obstruction to the public than is considered necessary by the Owner. Sidewalks or streets shall not be obstructed, except by special permission of the Owner. The materials excavated and the construction materials or plant used in the performance of the Work shall be placed in a manner that does not endanger the Work or prevent free access to all fire hydrants, water mains and appurtenances, water valves, gas valves, manholes for the telephone, telegraph signal or electric conduits, wastewater mains and appurtenances, and fire alarm or police call boxes in the vicinity.
- (b) The Owner reserves the right to remedy any neglect on the part of the Prime Contractor in regard to public convenience and safety which may come to the Owner's attention, after twenty-four (24) hours notice in writing to the Prime Contractor. In case of an emergency, the Owner shall have the right to immediately remedy any neglect without notice. In either case, the cost of any work done by the Owner to remedy the Prime Contractor's neglect shall be deducted from the Contract Sum. The Prime Contractor shall notify the City Traffic Control Department when any street is to be closed or obstructed. The notice shall, in the case of major thoroughfares or street upon which transit lines operate, be forty-eight (48) hours in advance. The Owner reserves the right to postpone or prohibit any closure or obstruction of any streets or thoroughfares to the extent necessary for the safety and benefit of the traveling public. The Prime Contractor shall, when directed by the Architect/Engineer or the Owner, keep any street or streets in condition for unobstructed use by City departments. When the Prime Contractor is required to construct temporary bridges or make other arrangements for crossing over ditches or around structures, the Prime Contractor's responsibility for accidents shall include the roadway approaches as well as the crossing structures.

10.5 BARRICADES, LIGHTS AND WATCHMEN

If the Work is carried on or adjacent to any street, alley or public place, the Prime Contractor shall, at the Prime Contractor's own cost and expense, furnish, erect and maintain sufficient barricades, fences, lights and danger signals, shall provide sufficient watchmen, and shall take such other precautionary measures as are necessary for the protection of persons or property and of the Work. All barricades shall be painted in a color that will be visible at night, shall indicate in bold letters thereon the Prime Contractor's name and shall be illuminated by lights from sunset to sunrise. The term "lights," as used in this Paragraph, shall mean flares, flashers, or other illuminated devices. A sufficient number of barricades with adequate markings and directional devices shall also be erected to keep vehicles from being driven on or into any Work under construction. The Prime Contractor will be held responsible for all damage to the Work due to failure of barricades, signs, lights and watchmen to protect the Work. Whenever evidence is found of such damage, the Architect/Engineer may order the damaged portion immediately removed and replaced by the Prime Contractor at Prime Contractor's cost and expense. The Prime Contractor's responsibility for maintenance of barricades, signs, and lights, and for providing watchmen, shall not cease until the Project has been finally accepted by the Owner.

10.6 PUBLIC UTILITIES AND OTHER PROPERTIES TO BE CHANGED

In case it is necessary to change or move the property of the Owner or of any telecommunications or public utility, such property shall not be removed or interfered with until ordered to do so by the Architect/Engineer. The right is reserved to the owner of any public or private utilities to enter upon the Project site for the purpose of making such changes or repairs of their property that may become necessary during the performance of the Work. The Owner reserves the right of entry upon the Project site for any purpose, including repairing or relaying sewer and water lines and appurtenances, repairing structures, and for making other repairs, changes, or extensions to any of the Owner's property. The Owner's actions shall conform to the Prime Contractor's current and approved schedule for the performance of the Work, provided that proper notification of schedule requirements has been given to the Owner by the Prime Contractor.

10.7 TEMPORARY STORM SEWER AND DRAIN CONNECTIONS

When existing storm sewers or drains have to be taken up or removed, the Prime Contractor shall at his own expense provide and maintain temporary outlets and connections for all public and private storm sewers and drains. The Prime Contractor shall also take care of all storm sewage and drainage which will be received from these storm drains and sewers; for this purpose, the Prime Contractor shall provide and maintain, at the Prime Contractor's own expense, adequate pumping facilities and temporary outlets or diversions. The Prime Contractor shall, at the Prime Contractor's own expense, construct such troughs, pipes, or other structures necessary and shall be prepared at all times to dispose of storm drainage and sewage received from these temporary connections until such time as the permanent connections are built and in service. The existing storm sewers and connections shall be kept in service and maintained under the Contract, except where specified or ordered to be

abandoned by the Architect/Engineer. All storm water and sewage shall be disposed of in a satisfactory manner so that no nuisance is created and that the Work under construction will be adequately protected.

10.8 ARRANGEMENT AND CHARGE FOR WATER FURNISHED BY THE OWNER; ELECTRICITY FOR THE PROJECT

- (a) When the Prime Contractor desires to use the Owner's water in connection with the Work, the Prime Contractor shall make complete and satisfactory arrangements with the Denton Water Utilities Department and shall be responsible for the cost of the water the Prime Contractor uses. Where meters are used, the charge will be at the regular established rate; where no meters are used, the charge will be as prescribed by City ordinance, or where no ordinance applies, payment shall be based on estimates made by the Denton Water Utilities Department.
- (b) The Prime Contractor shall make complete and satisfactory arrangements for electricity and metered electrical connections with the Owner or with Denton Municipal Electric in the event that separately metered electrical connections are required for the Project. The Prime Contractor shall pay for all electricity used in the performance of the Work through separate metered electrical connections obtained by the Prime Contractor through the City of Denton.

10.9 USE OF FIRE HYDRANTS

The Prime Contractor, Subcontractors, and any other person working on the Project shall not open, turn off, interfere with, attach any pipe or hose to, or connect anything with any fire hydrant, stop valve, or stop cock, or tap any water main belonging to the Owner, unless duly authorized to do so by the Denton Water Utilities Department in accordance with the Denton City Code.

10.10 ENVIRONMENTAL COMPLIANCE

- (a) The Prime Contractor and its Subcontractors are deemed to have made themselves familiar with and at all times shall comply with all applicable federal, state or local laws, rules, regulations, ordinances, and rules of common law now in effect (including any amendments now in effect), relating to the environment, Hazardous Substances or exposure to Hazardous Substances, including but not limited to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C.A. §§ 9601, et seq.; the Hazardous Materials Transportation Act, 49 U.S.C.A. §§ 1801, et seq.; the Resource Conservation and Recovery Act of 1976, 42 U.S.C.A. §§ 6901, et seq.; the Federal Water Pollution Control Act, 33 U.S.C.A. §§ 1201, et seq.; the Toxic Substances Control Act, 15 U.S.C.A. §§ 2601, et seq.; the Clean Air Act, 42 U.S.C.A. §§ 7401, et seq.; the Safe Drinking Water Act, 42 U.S.C.A. §§ 3808, et seq., and any current judicial or administrative interpretation of these laws, rules, regulations, ordinances, or rules of common law, including but not limited to any judicial or administrative order, consent decree, or judgment affecting the Project.

- (b) In the event the Prime Contractor encounters on the site materials reasonably believed to be a Hazardous Substance that have not been rendered harmless, and removal of such materials is not a part of the scope of Work required under the Contract Documents, the Prime Contractor shall immediately stop Work in the affected area and report in writing the facts of such encounter to the Architect/Engineer and the Owner. Work in the affected area shall not thereafter be resumed except by written order of the Owner unless and until the material is determined not to be a Hazardous Substance or the Hazardous Substance is remediated. The Owner may choose to remediate the Hazardous Substance with a separate contractor or through a Change Order with the Prime Contractor. If the Owner determines that the Hazardous Substance exists in the affected area due to the fault or negligence of the Prime Contractor or any of its Subcontractors, the Prime Contractor shall be responsible for remediating the condition at the sole expense of the Prime Contractor in accordance with the Prime Contractor's APPROVED Spill Remediation Plan. An extension of the Contract Time for any delay in the progress schedule caused as a result of the discovery and remediation of a Hazardous Substance may be granted by the Owner only if all remaining Work on the Project must be suspended and the delay cannot be made up elsewhere in the progress schedule. Any request for an extension of the Contract Time related to the discovery and remediation of a Hazardous Substance is subject to the provisions of Paragraph 4.3 and Article 8.
- (c) The Prime Contractor shall be responsible for identification, abatement, cleanup, control, removal, remediation, and disposal of any Hazardous Substance brought into or upon the site by the Prime Contractor or any Subcontractor or Supplier. The Prime Contractor shall obtain any and all permits necessary for the legal and proper handling, transportation, and disposal of the Hazardous Substance and shall, prior to undertaking any abatement, cleanup, control, removal, remediation, and disposal, notify the Owner and the Architect/Engineer so that they may observe the activities; provided, however, that it shall be the Prime Contractor's sole responsibility to comply with all applicable laws, rules, regulations, or ordinances governing the activities.
- (d) Spill Prevention Plan. At least seventy-two (72) hours prior to commencing performance of any of the Work at the Project site, the Prime Contractor shall submit to the Owner for review and approval a Spill Prevention and Response Plan (SPRP) meeting the requirements of federal and state law, rules, and regulations. The SPRP shall be specially designed for the Prime Contractor's planned work methods and procedures. The SPRP shall be designed to complement all applicable safety standards, fire prevention regulations, and pollution prevention policies and procedures. The SPRP shall include estimates of the quantity and rate of flow should equipment fail, and detail containment or diversionary structures to prevent spills from leaving the site or migrating into adjacent properties or navigable waters. The SPRP shall include methods of recovery of spilled materials and all applicable twenty-four (24) hour emergency phone numbers, including without limitation that of the Owner's Project Manager or other designated representative. The Prime Contractor shall not commence any field work prior to approval of such plan by the Owner. The following additional rules shall apply with respect to spills caused by the Prime Contractor or a Subcontractor:

- (1) The Prime Contractor shall immediately report any spill or release at the Project site, whether or not it is associated with this Contract, to the Owner's Project Manager or other designated representative. Thereafter, within two (2) working days after the occurrence of such event, the Prime Contractor shall submit a written report describing such event in a degree of detail reasonably acceptable to the Owner.
 - (2) The Prime Contractor shall immediately respond in accordance with the SPRP in the event of a spill.
 - (3) The Prime Contractor shall dispose of spilled materials in accordance with EPA and Texas Commission on Environmental Quality (TCEQ) regulations and any other applicable federal, state, or local laws, rules, or regulations. In connection with such disposals, the Prime Contractor shall use only those transporters and disposal facilities that are approved in advance in writing by the Owner. A copy of all transport manifests for the spilled materials shall be obtained and retained in the Prime Contractor's records for reference purposes, to be provided upon request of the Architect/Engineer, the Owner, or any governmental regulatory agency with jurisdiction over the matter. ALL COSTS OF COLLECTION, CONTAINMENT, AND DISPOSAL OF SPILLED MATERIALS SHALL BE THE SOLE RESPONSIBILITY OF THE PRIME CONTRACTOR.
 - (4) For purposes of this Subparagraph (e), the term "spill" includes any kind of environmental discharge or release.
- (e) Clean Air Management Plan. The Prime Contractor shall comply with the Clean Air Management Plan submitted to and approved by the Owner during the contractor selection process. The Owner reserves the right, at the Prime Contractor's sole expense, to require the removal or retrofitting of any equipment used in the course of construction that does not comply with the Plan submitted to and approved by the Owner.
 - (f) The Prime Contractor shall deposit surplus or waste excavation or other materials removed as part of the Work at a legal disposal site in accordance with all applicable state, federal, and local laws, rules, regulations, and ordinances. The Prime Contractor shall submit to the Owner for review and approval all planned disposal sites or proposed uses for the surplus or waste excavation or other materials prior to removal of any excavation or other material from the Project site. A copy of all transport manifests for surplus or waste excavation or other materials shall be obtained and retained in the Prime Contractor's records for reference purposes, to be provided upon request to the Architect/Engineer, the Owner, or any governmental regulatory agency with jurisdiction over the matter.
 - (g) The Prime Contractor is responsible for obtaining all TXPDES Storm Water Permits from TCEQ for construction of the Project under regulations contained in 40 CFR Part 122, as amended, pursuant to the Clean Water Act, 33 U.S.C.A. §§1251 et seq. These

regulations require the filing of a notice of intent to obtain and abide by the general storm water permit for construction activities promulgated by EPA, including but not limited to cleaning, grading, and excavation that disturb the applicable amount of total land area. In addition, the Prime Contractor shall comply with all regulations of the Owner relating to storm water and storm water runoff management at the Project site pursuant to Chapter 19, Article IX, Denton City Code, as amended.

- (h) The Prime Contractor shall not install any materials in the performance of the Work that contain asbestos or asbestos-related material such as hydrated mineral silicate, including chrysolite, amosite, crocidolite, tremolite, anthophyllite or actinolite, whether friable or non-friable.
- (i) The Owner reserves the right in its sole option to exercise the following remedies (without waiving the right to pursue the imposition of any civil or criminal fines or penalties that may be imposed under state, federal, or local laws or ordinances), at no additional cost to the Owner and without an extension of the Contract Time, in the event the Prime Contractor fails or refuses after seven (7) days advance written notice from the Owner to comply with the provisions of this Paragraph 10.10, the terms of the SPRP, the terms of the Clean Air Management Plan, any storm water permit or other environmental permit issued in connection with the Work, or any applicable environmental law, rule, regulation, or ordinance:
 - (1) suspend all or any portion of the Work until the noncompliance is corrected, or until a detailed plan to achieve compliance within a reasonably prompt period of time is prepared by the Prime Contractor and approved by the Owner;
 - (2) if the Prime Contractor fails to properly address the noncompliance within the time stipulated by the Owner, perform the necessary remediation or correction work and backcharge the Prime Contractor for the cost of the remediation or correction; or
 - (3) terminate the Contract for cause as provided in Article 13.

ARTICLE 11 INSURANCE AND BONDS

11.1 PRIME CONTRACTOR'S INSURANCE

Prime Contractors shall refer to the requirements listed within the solicitation document and resulting contract for all City of Denton insurance requirements. Should a conflict arise between the solicitation document and the resulting contract, the requirements set forth in the actual contract shall prevail.

11.2 PROPERTY INSURANCE

Prime Contractors shall refer to the requirements listed within the solicitation document and resulting contract for all City of Denton insurance requirements. Should a conflict arise between the solicitation document and the resulting contract, the requirements set forth in the

actual contract shall prevail.

11.3 'UMBRELLA' LIABILITY INSURANCE

Prime Contractors shall refer to the requirements listed within the solicitation document and resulting contract for all City of Denton insurance requirements. Should a conflict arise between the solicitation document and the resulting contract, the requirements set forth in the actual contract shall prevail.

11.4 POLICY ENDORSEMENTS AND SPECIAL CONDITIONS

Prime Contractors shall refer to the requirements listed within the solicitation document and resulting contract for all City of Denton insurance requirements. Should a conflict arise between the solicitation document and the resulting contract, the requirements set forth in the actual contract shall prevail.

11.5 PERFORMANCE AND PAYMENT BONDS

- (a) Subject to the provisions of Subparagraph 11.5(b), the Prime Contractor shall, with the execution and delivery of the Construction Services Agreement, furnish and file with the Owner in the amounts required in this Paragraph, the surety bonds described in Clauses (a)(1) and (a)(2) below, which surety bonds shall be in accordance with the Charter of the City of Denton and the provisions of Chapter 2253, Texas Government Code, as amended; each bond shall be signed by the Prime Contractor, as Principal, and by an established bonding company, as surety, meeting the requirements of Subparagraph 11.5(c) and approved by the Owner. The surety bonds shall be accompanied by an appropriate Power-of-Attorney clearly establishing the extent and limitations of the authority of each signer to so sign:
- (1) Performance Bond. A good and sufficient bond in the amount of \$1,000,000, guaranteeing the full and faithful execution of the Work and performance of the Contract in accordance with Plans, Specifications and all other Contract Documents, including any Amendments thereof, for the protection of the Owner. This bond shall also provide for the repair and maintenance of all defects due to faulty materials and workmanship that appear within a period of two (2) years from the date of final completion and acceptance of the improvements by the Owner or lesser or longer periods as may be otherwise designated in the Contract Documents.
 - (2) Payment Bond. A good and sufficient bond in the amount of \$1,000,000, guaranteeing the full and prompt payment of all claimants supplying labor or materials in the prosecution of the Work provided for in the Contract Documents and any Amendments thereto, and for the use and protection of each claimant.
- (b) No surety will be accepted by the Owner who is now in default or delinquent on any bonds or who is a party to any litigation against the Owner. All bonds shall be made and executed on the Owner's standard forms, shall be approved by the Owner, and shall be executed by not less than one corporate surety that is authorized and admitted to do business in the State

of Texas, is licensed by the State of Texas to issue surety bonds, is listed in the most current United States Department of the Treasury List of Acceptable Sureties, and is otherwise acceptable to the Owner. Each bond shall be executed by the Prime Contractor and the surety, and shall specify that legal venue for enforcement of each bond shall lie exclusively in Denton County, Texas. Each surety shall designate an agent resident in Denton County, Texas to whom any requisite statutory notices may be delivered and on whom service of process may be had in matters arising out of the suretyship.

- (c) Contractor will be required to furnish original performance and payment bonds for \$1,000,000 before work is to commence. The Contractor shall assume all costs in increasing the bond limits if change orders are formally approved. Bonds shall be in accordance with the V.T.C.A Government Code Section 2253.021, as amended, from a surety licensed to do business in the State of Texas. The City, at its option, may waive the payment and performance bond requirements for projects of less than \$50,000. The contractor shall obtain an independent payment and performance bonds for 100% of the project value for any single project in excess of \$400,000.

Bond forms are attached and shall be returned upon notice of contract award by the City. Bonds should be forwarded to the City of Denton within fourteen (14) calendar days from contract award. This contract is not fully executed until payment and performance bonds are received and accepted by the City. Upon approval, a purchase order will be issued.

- (d) The failure of the Contractor to deliver the required statutory bonds and evidence of insurance within fourteen (14) calendar days after the Contract is awarded shall constitute a material breach of the Prime Contractor's bid proposal and the Owner may rescind the Contract award and collect or retain the proceeds of the bid security. By reason of the uncertainty of the market prices or materials and labor, and it being impracticable and difficult to determine accurately the amount of damages occurring to the Owner by reason of the Prime Contractor's failure to execute and furnish the statutory bonds within fourteen (14) calendar days, the filing of a bid proposal with the accompanying bid security will be considered as an acceptance of this Subparagraph 11.5(e). In the event the Owner should re-advertise for bids, the defaulting Prime Contractor shall not be eligible to bid, and the lowest responsible bid obtained in the re-advertisement shall be the bid referred to in this Paragraph.

ARTICLE 12 DEFECTIVE AND NONCONFORMING WORK

12.1 UNCOVERING OF WORK

- (a) If a portion of the Work is covered contrary to the Architect/Engineer's request or to requirements specifically expressed in the Contract Documents, the Work must, if required in writing by the Architect/Engineer, be uncovered for the Architect/Engineer's observation and be replaced at the Prime Contractor's expense without change in the Contract Time.

- (b) If a portion of the Work has been covered which the Architect/Engineer has not specifically requested to observe prior to it being covered, the Architect/Engineer may request to see such Work and it shall be uncovered by the Prime Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be charged to the Owner. If any Work is not in accordance with the Contract Documents, the Prime Contractor shall pay the costs of uncovering, repair, replacement unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

12.2 CORRECTION OF WORK

- (a) The Prime Contractor shall promptly correct Work rejected by the Architect/Engineer as failing to conform to the requirements of the Contract Documents, whether observed before or after Substantial Completion and whether or not fabricated, installed or completed. The Prime Contractor shall bear costs of correcting such rejected Work, including additional testing and inspections and compensation for the Architect/Engineer's services and expenses made necessary thereby.
- (b) If any of the Work is found to be defective or nonconforming with the requirements of the Contract Documents, the Prime Contractor shall correct it promptly after receipt of written notice from the Architect/Engineer or the Owner to do so unless the Owner has previously given the Prime Contractor a written acceptance or waiver of the defect or nonconformity. The Prime Contractor's obligation to correct defective or nonconforming Work remains in effect for:
- (1) one year after the date of Substantial Completion of the Work or designated portion of the Work;
 - (2) one year after the date for commencement of warranties established by agreement in connection with partial occupancy under Subparagraph 9.8(a); or
 - (3) the stipulated duration of any applicable special warranty required by the Contract Documents.
- (c) The one-year period described in Clauses (b)(1) and (b)(2) shall be extended with respect to portions of the Work performed, repaired, or corrected after Substantial Completion by the period of time between Substantial Completion and the actual completion of the Work.
- (d) The obligations of the Prime Contractor under this Paragraph 12.2 shall survive final acceptance of the Work and termination of this Contract. The Owner shall give notice to the Prime Contractor promptly after discovery of a defective or nonconforming condition in the Work. The one-year period stated in Clauses (b)(1) and (b)(2) does not limit the ability of the Owner to require the Prime Contractor to correct latent defects or nonconformities in the Work, which defects or nonconformities could not have been discovered through reasonable diligence by the Owner or the Architect/Engineer at the time the Work was performed or at the time of inspection for certification of Substantial

Completion or Final Completion. The one year period also does not relieve the Prime Contractor from liability for any defects or deficiencies in the Work that may be discovered after the expiration of the one year correction period.

- (e) The Prime Contractor shall remove from the Project site portions of the Work which are not in accordance with the requirements of the Contract Documents and are neither corrected by the Prime Contractor nor accepted by the Owner.
- (f) If the Prime Contractor fails to correct defective or nonconforming Work within a reasonable time after notice from the Owner or the Architect/Engineer, the Owner may correct it in accordance with Paragraph 2.4. If the Prime Contractor does not proceed with correction of defective or nonconforming Work within a reasonable time fixed by written notice from the Architect/Engineer, the Owner may remove or replace the defective or nonconforming Work and store the salvageable materials or equipment at the Prime Contractor's expense. If the Prime Contractor does not pay costs of removal and storage within ten days after written notice, the Owner may, upon ten (10) additional days written notice, sell the materials and equipment at auction or at private sale and shall account for the proceeds after deducting costs and damages that should have been borne by the Prime Contractor, including compensation for the Architect/Engineer's services and expenses made necessary as a result of the sale. If the proceeds of sale do not cover costs which the Prime Contractor should have borne, the Contract Sum shall be reduced by the deficiency. If payments due to the Prime Contractor then or thereafter are not sufficient to cover the deficiency, the Prime Contractor shall pay the difference to the Owner.
- (g) The Prime Contractor shall bear the cost of correcting destroyed or damaged construction of the Owner or separate contractors, whether the construction is completed or partially completed, that is caused by the Prime Contractor's correction or removal of Work which is not in accordance with the requirements of the Contract Documents.
- (h) Nothing contained in this Paragraph 12.2 shall be construed to establish a period of limitation with respect to other obligations which the Prime Contractor might have under the Contract Documents. Establishment of the one-year time period as described in Subparagraph 12.2(b) relates only to the specific obligation of the Prime Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Prime Contractor's liability with respect to the Prime Contractor's obligations other than specifically to correct the Work.
- (i) Any Work repaired or replaced pursuant to this Article 12 shall be subject to the provisions of Article 12 to the same extent as Work originally performed or installed.

12.3 ACCEPTANCE OF NONCONFORMING WORK

The Owner may, in the Owner's sole discretion, accept Work which is not in accordance with

the requirements of the Contract Documents instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. The adjustment will be accomplished whether or not final payment has been made.

ARTICLE 13 - COMPLETION OF THE CONTRACT; TERMINATION; TEMPORARY SUSPENSION

13.1 FINAL COMPLETION OF CONTRACT

The Contract will be considered completed, except as provided in any warranty or maintenance stipulations, bond, or by law, when all the Work has been finally completed, the final inspection is made by the Architect/Engineer, and final acceptance and final payment is made by the Owner.

13.2 WARRANTY FULFILLMENT

Prior to the expiration of the specified warranty period provided for in the Contract Documents, the Architect/Engineer will make a detailed inspection of the Work and will advise the Prime Contractor and the Prime Contractor's Surety of the items that require correction. The Architect/Engineer will make a subsequent inspection and if the corrections have been properly performed, the Architect/Engineer will issue a letter of release on the maintenance stipulations to the Prime Contractor and the Surety. If for any reason the Prime Contractor has not made the required corrections before the expiration of the warranty period, the warranty provisions as provided for in the Contract Documents shall remain in effect until the corrections have been properly performed and a letter of release issued.

13.3 TERMINATION BY THE OWNER FOR CAUSE

- (a) Notwithstanding any other provision of these General Conditions, the Work or any portion of the Work may be terminated immediately by the Owner for any good cause after giving seven (7) days advance written notice and opportunity to cure to the Prime Contractor, including but not limited to the following causes:
- (1) Failure or refusal of the Prime Contractor to start the Work within ten (10) days after the date of written notice by the Owner to commence the Work.
 - (2) A reasonable belief that the progress of the Work being made by the Prime Contractor is insufficient to complete the Work within the specified time.
 - (3) Failure or refusal of the Prime Contractor to provide sufficient and proper equipment or construction forces to properly execute the Work in a timely manner.
 - (4) A reasonable belief that the Prime Contractor has abandoned the Work.
 - (5) A reasonable belief that the Contractor has become insolvent, bankrupt, or otherwise financially unable to carry on the Work.

- (6) Failure or refusal on the part of the Contractor to observe any requirements of the Contract Documents or to comply with any written orders given by the Architect/Engineer or the Owner as provided for in the Contract Documents.
 - (7) Failure or refusal of the Prime Contractor to promptly make good any defects in materials or workmanship, or any defects of any nature, the correction of which has been directed in writing by the Architect/Engineer.
 - (8) A reasonable belief by the Owner that collusion exists or has occurred for the purpose of illegally procuring the Contract or a Subcontractor, or that a fraud is being perpetrated on the Owner in connection with the construction of Work under the Contract.
 - (9) Repeated and flagrant violation of safe working procedures.
 - (10) The filing by the Prime Contractor of litigation against the Owner prior to completion of the Work.
- (b) When the Work or any portion of the Work is terminated for any of the causes itemized above or for any other cause except termination for convenience pursuant to Subparagraph 13.3(e), the Prime Contractor shall, as of the date specified by the Owner, discontinue the Work or portion of the Work as the Owner shall designate, whereupon the surety shall, within fifteen (15) days after the written notice of termination for cause has been served upon the Prime Contractor and the surety or its authorized agents, assume the obligations of the Prime Contractor for the Work or that portion of the Work which the Owner has ordered the Prime Contractor to discontinue and may:
- (1) perform the Work with forces employed by the surety;
 - (2) with the written consent of the Owner, tender a replacement contractor to take over and perform the Work, in which event the surety shall be responsible for and pay the amount of any costs required to be incurred for the completion of the Work that are in excess of the amount of funds remaining under the Contract as of the time of the termination; or
 - (3) with the written consent of the Owner, tender and pay to the Owner in settlement the amount of money necessary to finish the balance of uncompleted Work under the Contract, correct existing defective or nonconforming Work, and compensate the Owner for any other loss sustained as a result of Prime Contractor's default.

In the event of termination for cause involving Clause (b)(1) or (b)(2), the Surety shall assume the Prime Contractor's place in all respects, and the amount of funds remaining unpaid under the Contract shall be paid by the Owner for all Work performed by the surety or the replacement contractor in accordance with the terms of the Contract Documents, subject to any rights of the Owner to deduct any costs, damages, or actual damages that the Owner may have incurred, including but not

limited to additional fees and expenses of the Architect/Engineer and attorneys fees, as a result of such termination.

- (c) The balance of the Contract Sum remaining at the time of the Prime Contractor's default and of the termination shall become due and payable to the surety as the Work progresses, subject to all of the terms, covenants, and conditions of the Contract Documents. If the surety does not, within the time specified in Subparagraph 13.3(b), exercise its obligation to assume the obligations of the Contract, or that portion of the Contract which the Owner has ordered the Prime Contractor to discontinue, then the Owner shall have the power to complete the Work by contract or otherwise, as it may deem necessary. The Prime Contractor agrees that the Owner shall have the right to take possession of or use any or all of the materials, plant, tools, equipment, supplies, and property of every kind provided by the Prime Contractor for the purpose of the Work, and to procure other tools, equipment, labor, and materials for the completion of the Work, and to charge to the account of the Prime Contractor the expenses of completion and labor, materials, tools, equipment, and incidental expenses. The expenses incurred by the Owner to complete the Work shall be deducted by the Owner out of the balance of the Contract Sum remaining unpaid to or unearned by the Contractor. The Prime Contractor and the surety shall be liable to the Owner for any costs incurred in excess of the balance of the Contract Sum for the completion and correction of the Work, and for any other costs, damages, expenses (including but not limited to additional fees of the Architect/Engineer and attorney's fees), and damages incurred as a result of the termination.
- (d) The Owner shall not be required to obtain the lowest bid for the Work of completing the Contract as described in Subparagraph 13.3(c), but the expenses to be deducted from the Contract Sum shall be the actual cost of such Work. In case the Owner's expense is less than the sum which would have been payable under the Contract, if the same had been completed by the Prime Contractor, then the Owner may pay to the Prime Contractor (or the Surety, in the event of a complete termination for cause) the difference in the cost, provided that the Prime Contractor (or the Surety) shall not be entitled to any claim for damages or for loss of anticipated profits. In case such expenses for completion shall exceed the amount which would have been payable under the Contract if the same had been completed by the Prime Contractor, then the Prime Contractor and his Sureties shall pay the amount of the excess to the Owner on notice from the Owner for excess due. When only a particular part of the Work is being carried on by the Owner by contract or otherwise under the provisions of this Subparagraph, the Prime Contractor shall continue the remainder of the Work in conformity with the terms of the Contract, and in such manner as not to hinder or interfere with the performance of workmen employed and provided by the Owner.
- (e) The unconditional right to terminate this Contract for the convenience of the Owner (including but not limited to non-appropriation of funding) is expressly retained by the Owner. In the event of termination for convenience, the Owner shall deliver at least ten (10) days advance written notice of termination for convenience to the Prime Contractor. Upon the Prime Contractor's receipt of such written notice, the Prime Contractor shall cease the performance of the Work and shall take reasonable and appropriate action to

secure and protect the Work in place. The Prime Contractor shall then be reimbursed by the Owner in accordance with the terms and provisions of the Contract Documents, not to exceed actual labor costs incurred, materials stored at the Project site or away from the Project site as approved by the Owner but not yet paid for, plus actual, reasonable, and documented termination charges, if any, paid by the Prime Contractor in connection with the Work in place which is completed and in conformance with the Contract Documents to the date of termination for convenience. No amount shall ever be due to the Prime Contractor for lost or anticipated profits.

13.4 TEMPORARY SUSPENSION OF THE WORK

- (a) The Work or any portion of the Work may be temporarily suspended by the Owner immediately upon written notice to the Prime Contractor for any reason, including but not limited to:
- (1) the causes described in Clauses 13.1(a)(1) through (a)(10) above;
 - (2) where other provisions in the Contract Documents require or permit temporary suspension of the Work;
 - (3) situations where the Work is threatened by, contributes to, or causes an immediate threat to public health, safety, or security; or
 - (4) other unforeseen conditions or circumstances.
- (b) The Prime Contractor shall immediately resume the temporarily suspended Work when ordered in writing by the Owner to do so. The Owner shall not under any circumstances be liable for any claim of the Prime Contractor arising from a temporary suspension due to a cause described in Clause (a)(1) above; provided, however, that in the case of a temporary suspension for any of the reasons described under Clauses (a)(2) through (a)(4), where the Prime Contractor is not a contributing cause of the suspension under one of those Clauses or where the provision of the Contract Documents in question specifically provides that the suspension is at no cost to the Owner, the Owner will make an equitable adjustment for the following items, provided that a claim is properly made by the Prime Contractor under Subparagraph 4.3 of these General Conditions:
- (1) an equitable extension of the Contract Time, not to exceed the actual delay caused by the temporary suspension as determined by the Architect/Engineer and the Owner;
 - (2) an equitable adjustment to the Contract Sum for the actual, necessary, and reasonable costs of properly protecting any Work that is finished or partially finished during the period of the temporary suspension (no profit and overhead shall be allowed on top of these costs); and
 - (3) if it becomes necessary to move equipment from the Project site and then return it to the Project site when the Work is ordered to be resumed, an equitable adjustment to the Contract Sum for the actual, necessary, and reasonable cost of these moves;

provided, however, that no adjustment shall be due if the equipment is moved to another Project site of the Owner.

ARTICLE 14 MISCELLANEOUS PROVISIONS

14.1 GOVERNING LAW; COMPLIANCE WITH LAWS AND REGULATIONS

- (a) This Contract shall be in all things governed by the laws of the State of Texas without regard to conflict of laws principles.
- (b) The Contractor shall, during the performance of the Work, comply with all applicable City codes and ordinances, as amended, and all applicable State and Federal laws, rules and regulations, as amended.

14.2 SUCCESSORS AND ASSIGNS

The Owner and the Prime Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to the promises, covenants, terms, conditions, and obligations contained in the Contract Documents. The Prime Contractor shall not assign, transfer, or convey its interest or rights in the Contract, in part or as a whole, without written consent of the Owner. If the Prime Contractor attempts to make an assignment, transfer, or conveyance without the Owner's written consent, the Contractor shall nevertheless remain legally responsible for all obligations under the Contract Documents. The Owner shall not assign any portion of the Contract Sum due or to become due under this Contract without the written consent of the Prime Contractor, except where assignment is compelled or allowed by court order, the terms of the Contract Documents, or other operation of law.

14.3 WRITTEN NOTICE

Except as otherwise provided in Article 16, any notice, payment, statement, or demand required or permitted to be given under this Contract by either party to the other may be effected by personal delivery in writing or by mail, postage prepaid to the Project Manager or Superintendent of either party, or to an officer, partner, or other designated representative of either party. Mailed notices shall be addressed to the parties at an address designated by each party, but each party may change its address by written notice in accordance with this section. Mailed notices shall be deemed communicated as of three (3) days after mailing.

14.4 RIGHTS AND REMEDIES; NO WAIVER OF RIGHTS BY OWNER

- (a) The duties and obligations imposed on the Prime Contractor by the Contract Documents and the rights and remedies available to the Owner under the Contract Documents shall be in addition to, and not a limitation of, any duties, obligations, rights, and remedies otherwise imposed or made available by law.
- (b) No action or failure to act by the Owner shall constitute a waiver of a right afforded the Owner under the Contract Documents, nor shall any action or failure to act by the Owner

constitute approval of or acquiescence in a breach of the Contract by Prime Contractor, except as may be specifically agreed in writing by Change Order or Supplemental Agreement.

14.5 INTEREST

The Owner shall not be liable for interest on any progress or final payment to be made under the Contract Documents, except as may be provided by the applicable provisions of the Prompt Payment Act, Chapter 2251, Texas Government Code, as amended, subject to Paragraph 9.6(a) of these General Conditions.

14.6 OFFICERS OR EMPLOYEES OF THE OWNER NOT TO HAVE FINANCIAL INTEREST IN ANY CONTRACT OF THE OWNER

No officer or employee of the Owner shall have a financial interest, direct or indirect, in any Contract with the Owner, or be financially interested, directly or indirectly, in the sale to the Owner of any land, materials, supplies or services, except on behalf of the Owner as an officer or employee as defined in the City's Ethic Ordinance 18-757 and in the City Charter chapter 2 article XI(Ethics). Any violation of this article shall constitute malfeasance in office, and any officer or employee of Owner guilty thereof shall thereby forfeit his office or position. Any violation of this section, with the knowledge, express or implied, of the person, persons, partnership, company, firm, association or corporation contracting with the Owner shall render the Contract involved voidable by the Owner's City Manager or City Council.

14.7 VENUE

This Contract is deemed to be performed in Denton County, Texas, and if legal action is necessary to enforce this Contract, exclusive venue shall lie in Denton County, Texas.

14.8 INDEPENDENT CONTRACTOR

In performing the Work under this Contract, the relationship between the Owner and the Prime Contractor is that of an independent contractor. The Prime Contractor shall exercise independent judgment in performing the Work and is solely responsible for setting working hours, scheduling or prioritizing the Work flow and determining the means and methods of performing the Work, subject only to the requirements of the Contract Documents. No term or provision of this Contract shall be construed as making the Prime Contractor an agent, servant, or employee of the Owner, or making the Prime Contractor or any of the Prime Contractor's employees, agents, or servants eligible for the fringe benefits, such as retirement, insurance and worker's compensation, which the Owner provides to its employees.

14.9 NONDISCRIMINATION

As a condition of this Contract, the Prime Contractor covenants that he will take all necessary actions to insure that, in connection with any work under this Contract, the Prime Contractor and its Subcontractors will not discriminate in the treatment or employment of any individual or groups of individuals on the grounds of race, color, religion, national origin, age, sex, sexual orientation, or handicap unrelated to job performance, either directly, indirectly or

through contractual or other arrangements. The Prime Contractor shall also comply with all applicable requirements of the Americans with Disabilities Act, 42 U.S.C.A. §§12101-12213, as amended. In this regard, the Prime Contractor shall keep, retain and safeguard all records relating to his Contract or Work performed thereunder for a minimum period of three (3) years from final Contract completion, with full access allowed to authorized representatives of the Owner, upon request, for purposes of evaluating compliance with this and other provisions of the Contract.

14.10 GIFTS TO PUBLIC SERVANTS

- (a) The Owner may terminate this Contract immediately if the Prime Contractor has offered, conferred, or agreed to confer any benefit on a City of Denton employee or official that the City of Denton employee or official is prohibited by law from accepting.
- (b) For purposes of this Article, "benefit" means anything reasonably regarded as pecuniary gain or pecuniary advantage, including benefit to any other person in whose welfare the beneficiary has a direct or substantial interest, but does not include a contribution or expenditure made and reported in accordance with law.
- (c) Notwithstanding any other legal remedies, the Owner may require the Prime Contractor to remove any employee of the Prime Contractor from the Project who has violated the restrictions of this Article or any similar State or Federal law, and obtain reimbursement for any expenditures made to the Prime Contractor as a result of the improper offer, agreement to confer, or conferring of a benefit to a City of Denton employee or official.

ARTICLE 15 RIGHT TO AUDIT CONTRACTOR'S RECORDS

By execution of the Building Construction Services Agreement, the Prime Contractor grants the Owner the right to audit, at the Owner's election, all of the Prime Contractor's records and billings relating to the performance of the Work under the Contract Documents. The Prime Contractor agrees to retain its Project records for a minimum of five (5) years following completion of the Work. The Owner agrees that it will exercise the right to audit only at reasonable hours. City may review any and all of the services performed by Prime Contractor under this Contract. Any payment, settlement, satisfaction, or release made or provided during the course of performance of this Contract shall be subject to City's rights as may be disclosed by an audit under this section.

ARTICLE 16 NOTICE OF CONTRACT CLAIM

This Contract is subject to the provisions of the Denton City Code, as amended, relating to requirements for filing a notice of a breach of contract claim against City. Prime Contractor shall comply with the requirements of this ordinance as a precondition of any litigation relating to this Contract, in addition to all other requirements in this Contract related to claims and notice of claims.

EXHIBIT D
PAYMENT AND PERFORMANCE BOND REQUIREMENTS

Contractor will be required to furnish original performance and payment bonds for \$1,000,000 before work is to commence. The Contractor shall assume all costs in increasing the bond limits if change orders are formally approved. Bonds shall be in accordance with the V.T.C.A Government Code Section 2253.021, as amended, from a surety licensed to do business in the State of Texas. The contractor shall obtain an independent payment and performance bonds for 100% of the project value for any single project in excess of \$400,000. The City, at its option, may waive the payment and performance bond requirements for projects of less than \$50,000.

Bond forms shall be returned upon notice of contract award by the City. Bonds should be forwarded to the City of Denton within fourteen (14) calendar days from contract award. This contract is not fully executed until payment and performance bonds are received and accepted by the City. Upon approval, a purchase order will be issued.

EXHIBIT E
INSURANCE REQUIREMENTS AND
WORKERS' COMPENSATION REQUIREMENTS

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

STANDARD PROVISIONS:

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

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

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

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

- **Cancellation:** *City requires 30 day written notice should any of the policies described on the certificate be cancelled or materially changed before the expiration date.*
- Should any of the required insurance be provided under a claims made form, Contractor shall maintain such coverage continuously throughout the term of this contract and, without lapse, for a period of three years beyond the contract expiration, such that occurrences arising during the contract term which give rise to claims made after expiration of the contract shall be covered.
- Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit providing for claims investigation or legal defense costs to be included in the general annual aggregate limit, the Contractor shall either double the occurrence limits or obtain Owners and Contractors Protective Liability Insurance.
- Should any required insurance lapse during the contract term, requests for payments originating after such lapse shall not be processed until the City receives satisfactory evidence of reinstated coverage as required by this contract, effective as of the lapse date. If insurance is not reinstated, City may, at its sole option, terminate this agreement effective on the date of the lapse.

SPECIFIC ADDITIONAL INSURANCE REQUIREMENTS:

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

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.

Automobile Liability Insurance:

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

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

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

Workers' Compensation Insurance

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

Owner's and Contractor's Protective Liability Insurance

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

Fire Damage Legal Liability Insurance

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

Professional Liability Insurance

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

Builders' Risk Insurance

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

Environmental Liability Insurance

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

Riggers Insurance

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

Commercial Crime

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

Additional Insurance

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

ATTACHMENT 1**[X] 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. a certificate of coverage, prior to the other person beginning work on the project; and
 - b. a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
 5. retain all required certificates of coverage on file for the duration of the project and for one year thereafter;
 6. notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the person knew or should have known, of any change that

materially affects the provision of coverage of any person providing services on the project; and

7. Contractually require each person with whom it contracts, to perform as required by paragraphs (1) - (7), with the certificates of coverage to be provided to the person for whom they are providing services.
- J. By signing this contract or providing or causing to be provided a certificate of coverage, the contractor is representing to the governmental entity that all employees of the contractor who will provide services on the project will be covered by workers' compensation coverage for the duration of the project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.
- K. The contractor's failure to comply with any of these provisions is a breach of contract by the contractor which entitles the governmental entity to declare the contract void if the contractor does not remedy the breach within ten days after receipt of notice of breach from the governmental entity.

Exhibit F
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/whatsnew/elf_info_form1295.htm
2. Register utilizing the tutorial provided by the State
3. Print a copy of the completed Form 1295
4. Enter the Certificate Number on page 2 of this contract.
5. Complete and sign the Form 1295
6. Email the form to purchasing@cityofdenton.com with the contract number in the subject line.
(EX: Contract 1234 – Form 1295)

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

Exhibit G

Line #	Description	QTY	UOM	Unit
	Will cement supplied for under this contract be manufactured using a dry or wet kiln? Indicate Dry or Wet			Wet
	What is the number of business days to mobilize to jobsite after notice to proceed?			3
1	PRODUCT PROPOSAL PRICING(PRICING SHALL INCLUDE ALL COSTS TO DELIVER GOODS AS SPECIFIED F.O.B DESTINATION):			
2	SECTION 1: CURB GUTTER			
2.1	DOWEL-ON INTEGRAL	500	LF	\$13.55
2.2	CONCRETE CURB GUTTER (0 TO 250 LF) (USE CURRENT COD DETAILS)	3000	LF	\$34.00
2.3	CONCRETE CURB GUTTER (251 TO 1000 LF) (USE CURRENT COD DETAILS)	3000	LF	\$28.50
2.4	CONCRETE CURB GUTTER (1001 TO 5000 LF) (USE CURRENT COD DETAILS)	3000	LF	\$25.00
2.5	CONCRETE CURB GUTTER (> 5001 LF) (USE CURRENT COD DETAILS)	2000	LF	\$22.50
2.6	30" SURMOUNTABLE CURB (1 to 250 LF) (USE CURRENT COD DETAILS)	500	LF	\$27.50
2.7	30" SURMOUNTABLE CURB (251-1000 LF)	1000	LF	\$22.50
3	SECTION 2: SIDEWALK BARRIER FREE RAMPS			
3.1	6" CONCRETE SIDEWALK WITH FIBER (0 TO 50 SY)	750	SY	\$81.00
3.2	6" CONCRETE SIDEWALK WITH FIBER (51 TO 100 SY)	750	SY	\$78.75
3.3	6" CONCRETE SIDEWALK WITH FIBER (101 TO 500 SY)	750	SY	\$76.50
3.4	6" CONCRETE SIDEWALK WITH FIBER (501 TO 1000 SY)	750	SY	\$74.25
3.5	6" CONCRETE SIDEWALK WITH STEEL (0 TO 50 SY)	750	SY	\$85.50
3.6	6" CONCRETE SIDEWALK WITH STEEL (51 TO 100 SY)	750	SY	\$83.25
3.7	6" CONCRETE SIDEWALK WITH STEEL (101 TO 500 SY)	750	SY	\$81.00
3.8	6" CONCRETE SIDEWALK WITH STEEL (501 TO 1000 SY)	750	SY	\$78.75
3.9	5" CONCRETE SIDEWALK WITH FIBER (0 TO 50 SY)	750	SY	\$76.50
3.10	5" CONCRETE SIDEWALK WITH FIBER (50 TO 100 SY)	750	SY	\$74.25
3.11	5" CONCRETE SIDEWALK WITH FIBER (101 TO 500 SY)	750	SY	\$72.00
3.12	5" CONCRETE SIDEWALK WITH FIBER (501 TO 1000 SY)	750	SY	\$69.75
3.13	5" CONCRETE SIDEWALK (WITH STEEL) (0 TO 50 SY)	250	SY	\$85.50
3.14	5" CONCRETE SIDEWALK (WITH STEEL) (51 TO 100 SY)	750	SY	\$83.25
3.15	5" CONCRETE SIDEWALK (WITH STEEL) (101 TO 500 SY)	750	SY	\$81.00
3.16	5" CONCRETE SIDEWALK (WITH STEEL) 500 TO 1000 SY)	750	SY	\$78.75
3.17	4" CONCRETE SIDEWALK/FIBERS (500 TO 1000 SY)	750	SY	-
[3.17 ALT]	4" concrete sidewalk/fibers (0-50SY)			\$67.50
3.18	4" CONCRETE SIDEWALK/FIBERS (51 TO 100 SY)	1000	SY	\$63.00
3.19	4" CONCRETE SIDEWALK/FIBERS (101 TO 500 SY)	4000	SY	\$54.00
3.20	4" CONCRETE SIDEWALK/FIBERS (501 TO 1000 SY)	2000	SY	\$49.50
3.21	4' TYPE I BARRIER FREE RAMP (ALL WITH ADA BRICK INSERTS)	20	EA	\$1,500.00
3.22	5' TYPE I BARRIER FREE RAMP (ALL WITH ADA BRICK INSERTS)	20	EA	\$1,550.00
3.23	8' TYPE I BARRIER FREE RAMP (ALL WITH ADA BRICK INSERTS)	10	EA	\$1,750.00
3.24	10' TYPE I BARRIER FREE RAMP (ALL WITH ADA BRICK INSERTS)	10	EA	\$1,950.00
3.25	4' TYPE II BARRIER FREE RAMP (ALL WITH ADA BRICK INSERTS)	20	EA	\$2,800.00
3.26	5' TYPE II BARRIER FREE RAMP (ALL WITH ADA BRICK INSERTS)	20	EA	\$2,900.00
3.27	6' TYPE I BARRIER FREE RAMP (ALL WITH ADA BRICK INSERTS)	10	EA	\$1,600.00
3.28	6' TYPE II BARRIER FREE RAMP (ALL WITH ADA BRICK INSERTS)	10	EA	\$2,900.00
3.29	8' TYPE II BARRIER FREE RAMP (ALL WITH ADA BRICK INSERTS)	10	EA	\$2,900.00
3.30	10' TYPE II BARRIER FREE RAMP (ALL WITH ADA BRICK INSERTS)	10	EA	\$3,000.00
3.31	4' TYPE III BARRIER FREE RAMP (ALL WITH ADA BRICK INSERTS)	10	EA	\$2,500.00
3.32	5' TYPE III BARRIER FREE RAMP (ALL WITH ADA BRICK INSERTS)	10	EA	\$2,600.00
3.33	8' TYPE III BARRIER FREE RAMP (ALL WITH ADA BRICK INSERTS)	6	EA	\$2,800.00
3.34	10' TYPE III BARRIER FREE RAMP (ALL WITH ADA BRICK INSERTS)	6	EA	\$2,900.00
3.35	CONCRETE STEPS	10	SF	\$55.00
3.36	INSTALL SIDEWALK SAFETY RAILING	500	LF	\$55.00

4	SECTION 3: CONCRETE REMOVAL INSTALLATION		
4.1	SAW CUT (EXISTING CONCRETE)	10000 LF	\$4.75
4.2	REMOVE CONCRETE CURB & GUTTER	3000 LF	\$12.95
4.3	REMOVE 4" CONCRETE PAVEMENT/SIDEWALK	10000 SY	\$41.50
4.4	REMOVE 6" CONCRETE PAVEMENT/DRIVEWAY APPROACHES	10000 SY	\$47.25
4.5	REMOVE 8" CONCRETE PAVEMENT	10000 SY	\$48.50
4.6	REMOVE 10" CONCRETE PAVEMENT	5000 SY	\$48.50
4.7	REMOVE 12" CONCRETE PAVEMENT	1000 SY	\$48.50
4.8	6" CONCRETE PAVEMENT (0 TO 50 SY)\(USE CURRENT COD DETAILS)	1000 SY	\$83.25
4.9	6" CONCRETE PAVEMENT (51 TO 100 SY)\(USE CURRENT COD DETAILS)	2000 SY	\$81.00
4.10	6" CONCRETE PAVEMENT (101 TO 500 SY)\(USE CURRENT COD DETAILS)	3500 SY	\$78.75
4.11	6" CONCRETE PAVEMENT (500 TO 1000 SY)\(USE CURRENT COD DETAILS)	3500 SY	\$76.50
4.12	8" CONCRETE PAVEMENT (0 TO 50 SY)\(USE CURRENT COD DETAILS)	3000 SY	\$87.75
4.13	8" CONCRETE PAVEMENT (51 TO 100 SY)\(USE CURRENT COD DETAILS)	3500 SY	\$85.50
4.14	8" CONCRETE PAVEMENT (101 TO 500 SY)\(USE CURRENT COD DETAILS)	3500 SY	\$83.25
4.15	10" CONCRETE PAVEMENT (RADIUS, ETC.) (0 TO 50 SY)\(USE CURRENT COD DETAILS)	2000 SY	\$89.00
4.16	10" CONCRETE PAVEMENT (51 TO 100 SY)\(USE CURRENT COD DETAILS)	2000 SY	\$86.50
4.17	10" CONCRETE PAVEMENT (101 TO 500 SY)\(USE CURRENT COD DETAILS)	1000 SY	\$84.50
4.18	12" CONCRETE PAVEMENT (0 TO 50 SY)\(USE CURRENT COD DETAILS)	500 SY	\$94.50
4.19	12" CONCRETE PAVEMENT (51 TO 100 SY)\(USE CURRENT COD DETAILS)	500 SY	\$94.50
4.20	12" CONCRETE PAVEMENT (RADIUS, ETC.) WITH 1/2" STEEL ON 18" CENTERS (101 TO 500 SY)	1000 SY	\$90.00
4.21	HIGH EARLY STRENGTH CONCRETE (6 SACK) CONCRETE PAVEMENT\ (USE CURRENT COD DETAILS)	600 CY	\$161.00
4.22	CONCRETE RIP-RAP AND DRAINAGE FLUMES 6"	600 SY	\$87.75
4.23	CONCRETE FLUMES 6" - 7' WIDE W/6" CURBS	500 LF	\$95.00
4.24	CONCRETE FLUMES 6" - 11' WIDE W/6" CURBS	500 LF	\$125.00
4.25	STRUCTURAL CONCRETE - (CLASS A) 5-SACK	250 CY	\$645.00
4.26	STRUCTURAL CONCRETE - (CLASS C) 5 1/2 SACK	250 CY	\$660.00
4.27	STRUCTURAL CONCRETE - (CLASS S) 6-SACK	250 CY	\$675.00
4.28	CONCRETE FOR LIGHT STANDARD BASES	250 CY	\$650.00
4.29	CONCRETE FOUNDATION FOR TRAFFIC CONTROLLER BOX	50 EA	\$740.00
4.30	WATER SERVICE ADJUSTMENTS	100 EA	\$500.00
4.31	RING & COVER (INLETS 24" LOCKING 124C)	200 EA	\$330.00
4.32	RING & COVER (INLETS 30" LOCKING 124C)	100 EA	\$345.00
4.33	UNCLASSIFIED EXCAVATION	1500 CY	\$29.75
4.34	SUPPLY AND INSTALL TYPE I FLEX BASE	1500 CY	\$148.00
4.35	COMPACTED FILL/EMBANKMENT	1500 CY	\$45.00
4.36	MISC. SPRINKLER SYSTEM ADJUSTMENTS	100 LS	\$500.00
4.37	ST. AUGUSTINE SOD	1000 SY	\$12.25
4.38	BERMUDA SOD	2500 SY	\$10.25
5	SECTION 4: ASPHALT PATCHING		
5.1	SAW CUT (EXISTING ASPHALT)	2500 LF	\$3.75
5.2	0" TO 2" ASPHALT PAVE (TYPE D PATCH MATERIAL)	1000 SY	\$30.00
5.3	2" TO 4" ASPHALT PAVE (TYPE D PATCH MATERIAL)	1000 SY	\$45.00
5.4	4" TO 6" ASPHALT PAVE (TYPE B PATCH MATERIAL)	1000 SY	\$54.00
5.5	6" TO 8" ASPHALT PAVE (TYPE B PATCH MATERIAL)	1000 SY	\$63.00
5.6	CONCRETE MEDIANS PATTERNED	500 SY	\$132.75
5.7	4" CONCRETE FLATWORK (COLORED/TEXTURED) (0 TO 100 SY)	1000 SY	\$120.00
5.8	4" CONCRETE FLATWORK (COLORED/TEXTURED) (101 TO 500 SY)	559 SY	\$118.00
5.9	4" CONCRETE FLATWORK (COLORED/TEXTURED) (> 501 SY)	1000 SY	\$98.00
5.10	1 1/2 SACK CONCRETE BACKFILL	750 CY	\$130.00
5.11	5 SACK CONCRETE	500 CY	\$148.00

6	SECTION 5: DRAINAGE STRUCTURE REPAIR INSTALLATION	10	EA	\$3,900.00
6.1	"Y" INLET (INCLUDES APRON, RING & COVER)	10	EA	\$2,600.00
6.2	4' INLET -REBUILT INLET (REMOVE & REPLACE TOP)	10	EA	\$2,700.00
6.3	6' INLET -REBUILT INLET (REMOVE & REPLACE TOP)	10	EA	\$2,900.00
6.4	8' INLET -REBUILT INLET (REMOVE & REPLACE TOP)	10	EA	\$3,200.00
6.5	10' INLET -REBUILT INLET (REMOVE & REPLACE TOP)	500	CY	\$130.00
6.6	5 SACK CONCRETE (500 PSI) FLOWABLE FILL(PROVIDE AND INSTALLED)	500	CY	\$145.00
6.7	5 SACK CONCRETE GROUT (NO ROCK)	500	CY	\$330.00
6.8	5 SACK CONCRETE GOURT IN PLACE OVER RIP RAP	100	EA	\$965.00
6.9	ADJUST MANHOLE & INLETS	8	LS	\$3,000.00
6.10	TYPE A HEADWALLS (15" to 36" PER PIPE)	8	LS	\$6,500.00
6.11	TYPE A HEADWALLS (39" TO 72" PER PIPE)	8	LS	\$2,000.00
6.12	TYPE B HEADWALLS (15" TO 36" PER PIPE)	8	LS	\$4,500.00
6.13	TYPE B HEADWALLS (39" TO 72" PER PIPE)	6	LS	\$1,500.00
6.14	6: 1 SETs HEADWALLS for 15" PIPE	6	LS	\$1,600.00
6.15	6: 1 SETs HEADWALLS for 18" PIPE	6	LS	\$1,900.00
6.16	6: 1 SETs HEADWALLS for 24" PIPE	6	LS	\$2,200.00
6.17	6: 1 SETs HEADWALLS for 30" PIPE	6	LS	\$2,500.00
6.18	6: 1 SETs HEADWALLS for 36" PIPE	6	LS	\$1,400.00
6.19	4: 1 SETs HEADWALLS for 15" PIPE	6	LS	\$1,500.00
6.20	4: 1 SETs HEADWALLS for 18" PIPE	6	LS	\$1,800.00
6.21	4: 1 SETs HEADWALLS for 24" PIPE	6	LS	\$2,100.00
6.22	4: 1 SETs HEADWALLS for 30" PIPE	6	LS	\$2,400.00
6.23	4: 1 SETs HEADWALLS for 36" PIPE	10	EA	\$2,895.00
6.24	4' ID MANHOLE (0 TO 6" DEPTH)	10	VF	\$321.67
6.25	EXTRA DEPTH	1	EA	\$4,125.00
6.26	5' X 5" JUNCTION BOX (0' TO 6' DEPTH)	50	VF	\$20.00
6.27	EXTRA DEPTH	5	EA	\$4,000.00
6.28	4' X 4' JUNCTION BOX (0' TO 6' DEPTH)	50	VF	\$150.00
6.29	EXTRA DEPTH	5	EA	\$4,250.00
6.30	6' X 6' JUNCTION BOX (0' TO 6' DEPTH)	50	VF	\$200.00
6.31	EXTRA DEPTH	2	EA	\$4,000.00
6.32	5' INLET (0' TO 6' DEPTH)	50	VF	\$100.00
6.33	EXTRA DEPTH	10	EA	\$4,250.00
6.34	8' INLET (0' TO 6' DEPTH)	50	VF	\$125.00
6.35	EXTRA DEPTH	10	EA	\$5,000.00
6.36	10' INLET (0' TO 6' DEPTH)	50	VF	\$150.00
6.37	EXTRA DEPTH	10	EA	\$5,250.00
6.38	12' INLET (0' TO 6' DEPTH)	50	VF	\$175.00
6.39	EXTRA DEPTH	6	EA	\$6,000.00
6.40	15' INLET (0' TO 6' DEPTH)	75	VF	\$200.00
6.41	EXTRA DEPTH	6	EA	\$7,500.00
6.42	20' INLET (0' TO 6' DEPTH)	50	VF	\$300.00
6.43	EXTRA DEPTH	10	EA	\$4,950.00
6.44	10' RECESSED INLET	10	EA	\$5,250.00
6.45	12' RECESSED INLET			

Exhibit H

CONFLICT OF INTEREST QUESTIONNAIRE**FORM CIQ****CONFLICT OF INTEREST QUESTIONNAIRE -****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.
Floyd Smith Concrete, Inc.

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

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

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

Name of Officer

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


A. Is the local government officer named in this section receiving or likely to receive taxable income, other than investment income, from the vendor?
 Yes No

B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer named in this section AND the taxable income is not received from the local governmental entity?
 Yes No

C. Is the filer of this questionnaire employed by a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership of one percent or more?
 Yes No

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

4 I have no Conflict of Interest to disclose.

5 
Signature of vendor doing business with the governmental entity

9/1/2021
Date

Certificate Of Completion

Envelope Id: F87F38751E4048859D729CEE9566C1C2
Subject: Please DocuSign: City Council Contract 7777 Concrete Repair and Installation
Source Envelope:
Document Pages: 87
Certificate Pages: 6
AutoNav: Enabled
Envelope Stamping: Enabled
Time Zone: (UTC-06:00) Central Time (US & Canada)

Status: Completed

Envelope Originator:
Cori Power
901B Texas Street
Denton, TX 76209
cori.power@cityofdenton.com
IP Address: 198.49.140.104

Record Tracking

Status: Original
9/28/2021 11:13:11 AM

Holder: Cori Power
cori.power@cityofdenton.com

Location: DocuSign

Signer Events

Cori Power
cori.power@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: 198.49.140.104

Timestamp

Sent: 9/28/2021 5:23:39 PM
Viewed: 9/28/2021 5:23:46 PM
Signed: 9/28/2021 5:25:14 PM

Lori Hewell
lori.hewell@cityofdenton.com
Purchasing Manager
City of Denton
Security Level: Email, Account Authentication (None)



Signature Adoption: Pre-selected Style
Using IP Address: 198.49.140.104

Sent: 9/28/2021 5:25:18 PM
Viewed: 9/29/2021 8:01:11 AM
Signed: 9/29/2021 8:03:26 AM

Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Marcella Lunn
marcella.lunn@cityofdenton.com
Catherine Clifton, Interim City Attorney
City of Denton
Security Level: Email, Account Authentication (None)



Signature Adoption: Pre-selected Style
Using IP Address: 198.49.140.104

Sent: 9/29/2021 8:03:30 AM
Viewed: 9/29/2021 2:52:31 PM
Signed: 9/29/2021 3:02:12 PM

Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Aiko Smith
fscinc1@verizon.net
President, CEO
Security Level: Email, Account Authentication (None)



Signature Adoption: Pre-selected Style
Using IP Address: 47.37.67.10

Sent: 9/29/2021 3:02:17 PM
Resent: 9/30/2021 11:58:22 AM
Viewed: 9/30/2021 8:44:47 AM
Signed: 9/30/2021 1:20:56 PM

Electronic Record and Signature Disclosure:
Accepted: 10/6/2017 3:33:32 PM
ID: d28a4556-806e-4a3f-9b71-60cb4a752d09

Signer Events

ethan cox
ethan.cox@cityofdenton.com
General Manager of Public Works
Security Level: Email, Account Authentication (None)

Signature

DocuSigned by:
Ethan Cox
A83AA619E7314D7...

Signature Adoption: Pre-selected Style
Using IP Address: 47.190.47.120

Timestamp

Sent: 9/30/2021 1:21:01 PM
Viewed: 9/30/2021 2:37:28 PM
Signed: 9/30/2021 2:37:39 PM

Electronic Record and Signature Disclosure:

Accepted: 8/7/2018 4:24:18 PM
ID: feebacc3-151e-47bb-af6d-be8889ffcb35

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

Completed

Using IP Address: 198.49.140.104

Sent: 9/30/2021 2:37:44 PM
Viewed: 10/20/2021 8:04:07 AM
Signed: 10/20/2021 8:04:51 AM

Electronic Record and Signature Disclosure:

Not Offered via DocuSign

Sara Hensley
sara.hensley@cityofdenton.com
Interim City Manager
City of Denton
Security Level: Email, Account Authentication (None)

DocuSigned by:
Sara Hensley
5238DB296270423...

Signature Adoption: Pre-selected Style
Using IP Address: 47.184.119.76
Signed using mobile

Sent: 10/20/2021 8:04:56 AM
Viewed: 10/20/2021 8:19:00 AM
Signed: 10/20/2021 8:19:04 AM

Electronic Record and Signature Disclosure:

Not Offered via DocuSign

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

DocuSigned by:
Rosa Rios
1CSCA80C5E175493...

Signature Adoption: Pre-selected Style
Using IP Address: 198.49.140.10

Sent: 10/20/2021 8:19:09 AM
Viewed: 10/20/2021 10:01:56 AM
Signed: 10/20/2021 10:02:17 AM

Electronic Record and Signature Disclosure:

Accepted: 10/20/2021 10:01:56 AM
ID: ac67ff72-2b13-4e1a-b5f2-6b7820c739b3

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)
Electronic Record and Signature Disclosure:
Not Offered via DocuSign

COPIED

Sent: 9/28/2021 5:25:19 PM

Carbon Copy Events

Gretna Jones
gretna.jones@cityofdenton.com
Legal Secretary
City of Denton

Security Level: Email, Account Authentication
(None)

Electronic Record and Signature Disclosure:
Not Offered via DocuSign

City Secretary Office
citysecretary@cityofdenton.com
Security Level: Email, Account Authentication
(None)

Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Robbin Webber
Robbin.Webber@cityofdenton.com
Security Level: Email, Account Authentication
(None)

Electronic Record and Signature Disclosure:
Accepted: 10/18/2021 12:53:58 PM
ID: f66a31b0-38cd-4d1a-a7ee-1f3f0ec76944

Status

COPIED

COPIED

COPIED

Timestamp

Sent: 9/30/2021 2:37:44 PM
Viewed: 9/30/2021 2:56:14 PM

Sent: 10/20/2021 10:02:23 AM

Sent: 10/20/2021 10:02:24 AM
Viewed: 10/20/2021 10:27:59 AM

Witness Events

Signature

Timestamp

Notary Events

Signature

Timestamp

Envelope Summary Events

Status

Timestamps

Envelope Sent
Certified Delivered
Signing Complete
Completed

Hashed/Encrypted
Security Checked
Security Checked
Security Checked

9/28/2021 5:23:39 PM
10/20/2021 10:01:56 AM
10/20/2021 10:02:17 AM
10/20/2021 10:02:24 AM

Payment Events

Status

Timestamps

Electronic Record and Signature Disclosure

ELECTRONIC RECORD AND SIGNATURE DISCLOSURE

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

Getting paper copies

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

Withdrawing your consent

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

Consequences of changing your mind

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

All notices and disclosures will be sent to you electronically

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

How to contact City of Denton:

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

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

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

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

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

To request paper copies from City of Denton

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

To withdraw your consent with City of Denton

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

- i. decline to sign a document from within your DocuSign account, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may;
- ii. send us an e-mail to purchasing@cityofdenton.com and in the body of such request you must state your e-mail, full name, 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"> •Allow per session cookies •Users accessing the internet behind a Proxy Server must enable HTTP 1.1 settings via proxy connection

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

Acknowledging your access and consent to receive materials electronically

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

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

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



CITY OF CORINTH
Staff Report

Meeting Date:	12/16/2021	Title:	ILA City of Denton Library
Ends:	<input type="checkbox"/> Resident Engagement <input checked="" type="checkbox"/> Proactive Government <input type="checkbox"/> Organizational Development <input type="checkbox"/> Health & Safety <input type="checkbox"/> Regional Cooperation <input type="checkbox"/> Attracting Quality Development		
Governance Focus:	<i>Focus:</i> <input checked="" type="checkbox"/> Owner <input type="checkbox"/> Customer <input type="checkbox"/> Stakeholder		
	<i>Decision:</i> <input type="checkbox"/> Governance Policy <input checked="" type="checkbox"/> Ministerial Function		
Owner Support:	<input type="checkbox"/> Planning & Zoning Commission <input type="checkbox"/> Economic Development Corporation <input type="checkbox"/> Parks & Recreation Board <input type="checkbox"/> TIRZ Board #2 <input type="checkbox"/> Finance Audit Committee <input type="checkbox"/> TIRZ Board #3 <input type="checkbox"/> Keep Corinth Beautiful <input type="checkbox"/> Ethics Commission N/A		

Item/Caption

Consider and act on an Interlocal Cooperative Agreement for Library Services between the City of Corinth, Texas and City of Denton, Texas.

Item Summary/Background/Prior Action

The City of Corinth and the Denton Public Library have partnered to provide library services to the residents of Corinth since 2013 through a mutual understanding. The City of Denton has requested to formalize the partnership for library services. This partnership provides residents access to three Denton libraries: North Branch Library, South Branch Library and Emily Fowler Library.

Annual Library Cards can be obtained at any of the three Denton libraries. Citizens of Corinth pay \$25 for an annual library card that normally costs out of city residents \$50. The remaining \$25 is paid by the City of Corinth. The library card is for family use with one full-size card and two key fobs for use between family members. Residency will be established based on the home address of applicants based on information provided by the citizen with a photo I.D. or a current utility bill. The address will be verified from the tax roll database through the online Denton County Appraisal District (CAD).

This Interlocal will be in effect in perpetuity unless modified and/or terminated upon mutual consent of all parties.

Financial Impact

The annual operating budget includes \$10,000 for the purchase of library cards from the City of Denton and City of Lake Dallas.

Staff Recommendation/Motion

Staff recommends approval of the Interlocal Agreement with the City of Denton for Library services.

**INTERLOCAL COOPERATIVE AGREEMENT FOR LIBRARY SERVICES
BETWEEN THE CITY OF CORINTH, TEXAS AND CITY OF DENTON, TEXAS**

STATE OF TEXAS

COUNTY OF DENTON

THIS INTERLOCAL COOPERATIVE AGREEMENT FOR LIBRARY SERVICES (the “Agreement”) is made on the _____ day of _____, [2021], between the City of Denton, a Texas home-rule municipality (“Denton”), and the City of Corinth, Texas, a Texas home-rule municipality (“Corinth”); jointly referred to herein as “parties” and each separately as a “party.”

WHEREAS, each party is authorized by Chapter 791 of the Texas Government Code (the “Interlocal Cooperation Act”), to enter into joint contracts and agreements for the performance of governmental functions and services including administrative functions normally associated with the operation of government such as purchasing necessary materials and supplies;

WHEREAS, Denton operations include the provision of public library services for its residents and for non-residents on a reciprocal or contractual basis with other municipalities;

WHEREAS, Corinth, though lawfully authorized to do so, does not presently operate a public library

WHEREAS, Corinth has requested, and Denton has agreed, to provide library services for residents of Corinth under the terms of this Agreement; and

WHEREAS, the parties, in performing governmental functions or in paying for the performance of governmental functions hereunder, shall make that performance or those payments from current revenues legally available to that party;

NOW, THEREFORE, the parties hereto, in consideration of the mutual covenants and conditions contained herein and pursuant to the authority permitted under the Interlocal Cooperation Act, promise and agree as follows:

**I.
Duration of Agreement**

A. This Agreement shall be in full force and effect from the date it is duly executed by all parties until terminated by either party to this Agreement. Any party may modify and/or terminate this Agreement in accordance with the following terms and conditions:

- The terms and conditions of this Agreement may be modified upon the mutual consent of all parties. Mutual consent will be demonstrated by approval of the governing body of each party hereto. No modification to this Agreement shall be

effective and binding unless and until it is reduced to writing and signed by duly authorized representatives of all parties.

- This Agreement may be terminated at any time by either party, with or without cause, upon thirty days' written notice to the other party. If notice of termination is provided by Corinth, upon the receipt of the notice of termination, Denton shall immediately begin charging the then current full non-resident fees for non-resident Denton Library Cards and non-resident Denton Library Card renewals to Corinth residents unless the notice directs otherwise, in which case such cards shall be issued until the date of termination. If notice of termination is provided by Denton, upon the date of termination, Denton shall continue to issue non-resident Denton Library Cards and non-resident Denton Library Card renewals to Corinth residents; however, Denton shall charge the then current full non-resident fees for Corinth residents unless Corinth notifies Denton otherwise. Notwithstanding termination of this Agreement pursuant to this Section, Denton shall continue to provide library services to each Corinth resident who was issued a Denton Library Cards prior to the date of termination until said resident's card has expired.
- If Corinth fails to timely pay Denton for Denton Library Cards issued to Corinth residents pursuant to this Agreement, Denton may suspend library services to the Corinth residents who were issued library cards for which payment was not received until payment is received by Denton. Suspension of library services pursuant to this Section shall not result in an extension of the renewal date of the library card issued for which payment had not been received.
- Unless otherwise specified, written notice shall be deemed to have been duly served if delivered in person, sent (i) as an attachment to an email, (ii) by fax with a successful send confirmation, or (iii) by certified mail to the address as listed herein:

City of Denton:

Jennifer Bekker
Director of Libraries, City of Denton
Emily Fowler Central Library
502 Oakland St.
Denton, TX 76201
jennifer.bekker@cityofdenton.com

Kimberly Wells
Emily Fowler Central Library Manager, City of Denton
Emily Fowler Central Library
502 Oakland St.
Denton, TX 76201
kimberly.wells@cityofdenton.com

City of Corinth:

Bob Hart
City Manager, City of Corinth
Corinth City Hall
3300 Corinth Parkway
Corinth, TX 76208
Bob.Hart@cityofcorinth.com

Lee Ann Bunselmeyer
Director of Finance, Communication & Strategic Services, City of Corinth
Corinth City Hall
3300 Corinth Parkway
Corinth, TX 76208
LeeAnn.Bunselmeyer@cityofcorinth.com

**II.
Relationship of Parties**

- A. It is agreed that the parties, in receiving products and/or services specified in this Agreement, shall each act as an independent party and shall have control of its needs. Neither party is an agent, employee or joint enterprise of the other, and each party is responsible for its own actions, forbearance, negligence and deeds, and for those of its agents or employees, in conjunction with the utilization of this Agreement in accordance with Texas law.
- B. Each party shall ensure that all applicable laws and ordinances have been satisfied with respect to any action taken by such party pursuant to this Agreement.

**III.
Terms of Library Services; Denton and Corinth Responsibilities**

- A. Denton agrees to provide public library services in the same manner as Denton provides to its residents to Corinth residents who obtain a new non-resident Denton Library Card or non-resident Denton Library Card renewal under the terms of this Agreement.
- B. Denton shall from time to time establish by resolution or ordinance the fees for new non-resident Denton Library Cards and non-resident Denton Library Card renewals. Said fees, as applicable to cards issued to residents of Corinth, shall be subject to change by the City Council for Denton, provided that Denton shall give Corinth written notice of Denton’s intent to increase fees on or before August 1 of each year during the term of this Agreement.
- C. On or before September 1 of each of Corinth’s fiscal years occurring during the term of this Agreement, Corinth shall provide Denton written notice of the dollar amount appropriated by

Corinth in Corinth's budget for the following applicable fiscal year for the provision by Denton of library services under this Agreement.

- D. Denton agrees to issue non-resident Denton Library Cards and non-resident Denton Library Card renewals to Corinth residents upon showing by said Corinth residents of proper proof of residency in Corinth, Texas, at half the cost of the then current non-resident account registration or renewal fees. Valid proof of residency in Corinth shall include a driver's license, government-issued identification card or license, or utility bill, or other documentation bearing a residential address located within Corinth, Texas. Corinth will be responsible for the other half of the cost of the then current non-resident account registration or renewal fees. Without requiring an amendment to this Agreement, Corinth may from time to time approve or reject additional types of proof of residency by providing written notice to Denton.
- E. Denton shall provide Corinth written notice when the number of non-resident Denton Library Cards and non-resident Denton Library Card renewals issued to Corinth residents by Denton multiplied by the fee established by Denton reaches the dollar amount appropriated by Corinth for the applicable fiscal year. Failure to provide notice under this Section shall not constitute a default of this Agreement by Denton, nor shall said failure preclude Denton from receiving payment from Corinth for any and all non-resident Denton Library Cards and non-resident Denton Library Card renewals issued beyond the dollar amount appropriated by Corinth for the applicable Term.
- F. Residency of a person issued a non-resident Denton Library Cards and non-resident Denton Library Card renewals shall be determined as of the date of issuance of the card. Denton, its officers, employees, and contractors shall not be required to investigate the validity of any proof of residency presented with respect to issuance of a non-resident Denton Library Cards or non-resident Denton Library Card renewal, and shall be entitled to payment for all cards issued based on the proof of residency described in Section 3.4, above, even if it is later determined that such proof was falsified or that the person to whom the card was issued was not, at the time of issuance, as resident of Corinth.
- G. Corinth shall pay Denton for the library services provided to each Corinth resident by Denton under the terms of herein. Unless otherwise agreed by the parties, Denton shall submit invoices to Corinth on a monthly basis indicating the applicable amount due for that billing period and the number of non-resident Denton Library Cards and non-resident Denton Library Card issued to Corinth residents by Denton during that applicable billing period. Corinth shall pay said invoiced amounts within thirty (30) days after receipt, unless otherwise provided herein.
- H. All payments herein shall be made from current revenues available to Corinth. Denton acknowledges that this Agreement is subject to annual appropriation by Corinth, and Corinth agrees to use good faith efforts to secure through appropriations the funding agreed to for the services to be provided by Denton.
- I. Denton shall keep a record of the number of all non-resident Denton Library Cards and non-resident Denton Library Card renewals issued to Corinth residents by Denton under the terms

of this Agreement, including the resident's full name, full residential address, and date of issuance. Corinth shall have the right to audit such records kept by Denton. Denton has determined that disclosure of records to Corinth herein is reasonably necessary for the operation of the Denton Public Library and that said records are not confidential under other state or federal law. Corinth hereby agrees to hold records obtained from Denton confidential, unless disclosure is required by law.

**IV.
Liability and Immunity Provisions**

- A. It is understood and agreed between the parties that each party hereto shall be responsible for its own and its employees' acts of negligence in connection with this Agreement. Neither party shall be responsible for any negligent act or omission of the other party or its employees in connection with this Agreement. It is specifically agreed that, as between the parties, each party to this Agreement shall be individually and respectively responsible for responding to, dealing with, insuring against, defending, and otherwise handling and managing liability and potential liability of itself and its employees pursuant to this Agreement.

- B. Notwithstanding the foregoing, each party hereto reserves and expressly does not waive any immunity or defense available at law or in equity, including governmental immunity, for any claim or cause of action whatsoever that may arise or result from the services provided and/or any circumstances arising under this Agreement. These provisions are solely for the benefit of the parties hereto and are not for the benefit of any person or entity not a party hereto; this Agreement shall not be interpreted nor construed to give any claim or cause of action to any third party. Neither party shall be held legally liable for any claim or cause of action arising pursuant to or out of the services provided under this Agreement, except as specifically provided by law. Where injury or property damages results from the joint or concurrent negligence of both parties, liability, if any, shall be shared by each party based on comparative responsibility in accordance with the applicable laws of the State of Texas, subject to all defenses available to them, including governmental immunity.

- C. This Agreement is expressly made subject to the parties' governmental immunity under the Texas Civil Practice and Remedies Code and all applicable federal, state, and local laws, rules, regulations, ordinances, and policies. Nothing in this Agreement shall be deemed to waive, modify, or amend any legal defense available at law or in equity to either party or to create any legal rights or claim on behalf of any third party. Neither party waive, modify, or alter, to any extent whatsoever, the availability of the defense of governmental immunity under the laws of the State of Texas.

**V.
Miscellaneous**

- A. Each party has the full power and authority to enter into and perform this Agreement and the person signing this Agreement on behalf of each party has been properly authorized and

empowered to enter into this Agreement. The persons executing this Agreement hereby represent that they have authorization to sign on behalf of their respective party.

- B. In the event any one or more of the provisions contained in this Agreement shall be held, for any reason, to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect the other provisions and the Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in this Agreement.
- C. This Agreement shall be binding upon the parties hereto, their successors, heirs, personal representatives, and assigns. Neither party will assign or transfer an interest in this Agreement without the prior written consent of the other party.
- D. By entering into this Agreement, the parties do not create any obligations, express or implied, other than those set forth herein, and this Agreement shall not create any rights in, or claims by, third parties who are not signatories to this Agreement.
- E. This Agreement shall be interpreted in accordance with the laws of the State of Texas and venue of any cause of action concerning this Agreement shall be in a court of competent jurisdiction sitting in Denton County, Texas.
- F. This Agreement, together with any referenced exhibits and attachments, constitutes the entire agreement between the parties hereto, and any prior agreement, assertion, statement, understanding, or other commitment occurring during the term of this Agreement, or subsequent thereto, has no legal force or effect whatsoever, unless properly executed in writing in accordance with Section I.A, and if appropriate, recorded as an amendment of this Agreement.
- G. Failure of any party, at any time, to enforce a provision of this Agreement, shall in no way constitute a waiver of that provision nor in any way affect the validity of this Agreement or the right of either party thereafter to enforce each provision hereof. No term of this Agreement shall be deemed waived or any breach excused unless the waiver shall be in writing and signed by the party claimed to have waived. Furthermore, any consent to or waiver of a breach will not constitute consent to or waiver or excuse of any other different or subsequent breach.
- H. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.
- I. Each party agrees that this Agreement and any other documents to be delivered in connection herewith may be electronically signed, and that any electronic signatures appearing on this Agreement or such other documents are the same as handwritten signatures for the purposes of validity, enforceability, and admissibility.

J. It is expressly understood and agreed by the parties that if the performance of any provision of this Agreement is delayed by reason of war, civil commotion, act of God, governmental restrictions, regulations or interferences, fire or other casualty, court injunction, or any circumstances which are reasonably beyond the control of the party obligated or permitted under the terms of this Agreement to do or perform the same, regardless of whether any such circumstance is similar to any of those enumerated herein, the party so obligated or permitted shall be excused from doing or performing the same during such period of delay, so that the period of time applicable to such requirement shall be extended for a period of time equal to the period of time such party was delayed.

[Signature Page to Follow]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their authorized officers thereon the day and the year first above written.

[_____]

CITY OF DENTON, TEXAS

[_____]

SARA HENSLEY
INTERIM CITY MANAGER

ATTEST:
[_____]

ATTEST:
ROSA RIOS, CITY SECRETARY

BY: _____

BY: _____

APPROVED AS TO LEGAL FORM:
[_____]

APPROVED AS TO LEGAL FORM:
MACK REINWAND, CITY ATTORNEY

BY: _____

BY: _____



CITY OF CORINTH
Staff Report

Meeting Date:	12/16/2021	Title:	Solid Waste Rate
Ends:	<input type="checkbox"/> Resident Engagement <input type="checkbox"/> Proactive Government <input type="checkbox"/> Organizational Development <input checked="" type="checkbox"/> Health & Safety <input type="checkbox"/> Regional Cooperation <input type="checkbox"/> Attracting Quality Development		
Governance Focus:	<i>Focus:</i> <input checked="" type="checkbox"/> Owner <input type="checkbox"/> Customer <input type="checkbox"/> Stakeholder		
	<i>Decision:</i> <input checked="" type="checkbox"/> Governance Policy <input type="checkbox"/> Ministerial Function		
Owner Support:	<input type="checkbox"/> Planning & Zoning Commission <input type="checkbox"/> Economic Development Corporation <input type="checkbox"/> Parks & Recreation Board <input type="checkbox"/> TIRZ Board #2 <input type="checkbox"/> Finance Audit Committee <input type="checkbox"/> TIRZ Board #3 <input type="checkbox"/> Keep Corinth Beautiful <input type="checkbox"/> Ethics Commission N/A		

Item/Caption

Consider and act on an Ordinance amending Section 52.07, Garbage Collection Fees, of the Corinth Code of Ordinances relating to charges for certain refuse and recycling services; providing that this ordinance shall be cumulative of all ordinances of the City of Corinth; providing a savings clause; and providing an effective date.

Item Summary/Background/Prior Action

On October 3, 2019 the City Council approved a five year contract with an option for three one-year renewals with Community Waste Disposal for solid waste collections. The contract included provisions that on January 1, 2021 or on January 1 of any year thereafter, Community Waste Disposal could request an annual market adjustment.

The rate request shall be based upon the Annual Rate Adjustment Model set forth in Section H of the approved contract. Any proposed rate adjustment must be submitted and approved by the City Council.

On November 17, 2021, Community Waste Disposal submitted a request for a 9.3% market adjustment effective January 1, 2022. The table below reflects a sample of the adjustment for Corinth's customer base, which equates to a \$1.14 increase for residential and \$1.01 for Senior Residential. A comprehensive list of solid waste collection rates is included in the ordinance attached.

Rate Description	Base Rate	Franchise Fee	Total Rate
Residential Rate - Current	\$11.34	\$.85	\$12.19
Residential Rate - Proposed	\$12.40	\$.93	\$13.33
Senior Residential Rate - Current	\$10.17	\$.76	\$10.93
Senior Residential Rate - Proposed	\$11.12	\$.82	\$11.94

Staff Recommendation/Motion

Staff recommends approval of the ordinance.

**CITY OF CORINTH, TEXAS
ORDINANCE NO. 21-12-16-30**

AN ORDINANCE OF THE CITY OF CORINTH AMENDING SECTION 52.07 OF THE CORINTH CODE OF ORDINANCES RELATING TO CHARGES FOR CERTAIN REFUSE AND RECYCLING SERVICES; PROVIDING THAT THIS ORDINANCE SHALL BE CUMULATIVE OF ALL ORDINANCES; PROVIDING A SAVINGS CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Corinth is a home rule city acting under its charter adopted by the electorate pursuant to Article XI, Section 5 of the Texas Constitution and Chapter 9 of the Local Government Code; and

WHEREAS, the City Council of the City of Corinth deems it necessary to amend Section 52.07 of the Corinth Code of Ordinances to amend the rates for collection and disposition of certain garbage and refuse within the City;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CORINTH, TEXAS:

SECTION 1.

That subsection (A) of Section 52.07 of the Code of Ordinances of the City of Corinth, Texas is hereby amended to read as follows:

52.07 GARBAGE COLLECTION FEES.

(A) Fees for the collection of garbage and recycling from a residential unit are as follows:

Collection	Fee
Weekly pickup/recycling/on demand household hazardous waste pickup.	\$13.33
Weekly pickup/recycling (Senior Citizens - 65 years)	\$11.94

SECTION 2.

That subsection (D)(3) and (D)(5) of Section 52.07 of the Code of Ordinances of the City of Corinth, Texas is hereby amended to read as follows:

“§ 52.07 GARBAGE COLLECTION FEES.

D(3) Front load container rates:

A fee of \$6.93 per pickup will be charged for gates, locks and casters:

Size/Pickup	1xWeek	2xWeek	3xWeek	4xWeek	5xWeek	6xWeek	Extra
2 Cu Yd	71.41	137.77	188.42	228.08	286.77	379.71	51.11
3 Cu Yd	80.79	155.49	210.65	253.87	330.98	421.32	53.11
4 Cu Yd	116.57	227.20	315.46	408.17	496.83	592.80	55.13
6 Cu Yd	149.12	246.28	348.25	459.35	546.77	677.46	59.17
8 Cu Yd	170.61	313.32	437.36	571.92	709.52	846.79	61.75

D(5). Compactors:

6 Cubic Yard Per Haul (Including Disposal)	95.13
8 Cubic Yard Per Haul (Including Disposal)	118.69
30 Cubic Yard Per Haul (Including Disposal)	500.41
30 Cubic Yard Per Weekend Haul (Including Disposal)	543.12
35 Cubic Yard Per Haul (Including Disposal)	500.41
35 Cubic Yard Per Weekend Haul (Including Disposal)	543.12
42 Cubic Yard Per Haul (Including Disposal)	500.41
42 Cubic Yard Per Weekend Haul (Including Disposal)	543.12

* These rates include disposal fees for a haul of four tons. There is an additional fee of \$60.97 per ton for loads exceeding four tons. Loads that exceed 54,000 lbs. will be charged an additional \$152.43 for each ton in excess of 54,000 lbs.”

**SECTION 3.
 CUMULATIVE CLAUSE**

This ordinance shall be cumulative of all provisions of ordinances of the City of Corinth, Texas, relating to garbage except where the provisions of this ordinance are in direct conflict with the provisions of such ordinances, in which event the conflicting provisions of such ordinances are hereby repealed.

**SECTION 4.
 SAVINGS CLAUSE**

It is hereby declared to be the intention of the City Council that the phrases, clauses, sentences, paragraphs and sections of this ordinance are severable, and if any phrase, clause, sentence, paragraph or section of this ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clause s , sentences, paragraphs and sections of this ordinance, since the same would have been enacted by the City Council without the inclusion in this ordinance of any such unconstitutional phrase, clause, sentence paragraph or section.

**SECTION 5.
EFFECTIVE DATE**

This ordinance shall become effective January 1, 2022

PASSED AND APPROVED ON THIS 16th DAY OF DECEMBER 2021.

Bill Heidemann, Mayor

ATTEST:

Lana Wylie, City Secretary

APPROVED AS TO FORM:

Patricia A. Adams, City Attorney



CITY OF CORINTH
Staff Report

Meeting Date:	12/16/2021	Title: Ordinance Budget Amendment CWD
Ends:	<input type="checkbox"/> Resident Engagement <input type="checkbox"/> Proactive Government <input type="checkbox"/> Organizational Development <input checked="" type="checkbox"/> Health & Safety <input type="checkbox"/> Regional Cooperation <input type="checkbox"/> Attracting Quality Development	
Governance Focus:	<i>Focus:</i> <input checked="" type="checkbox"/> Owner <input type="checkbox"/> Customer <input type="checkbox"/> Stakeholder	
	<i>Decision:</i> <input type="checkbox"/> Governance Policy <input checked="" type="checkbox"/> Ministerial Function	
Owner Support:	<input type="checkbox"/> Planning & Zoning Commission <input type="checkbox"/> Economic Development Corporation <input type="checkbox"/> Parks & Recreation Board <input type="checkbox"/> TIRZ Board #2 <input type="checkbox"/> Finance Audit Committee <input type="checkbox"/> TIRZ Board #3 <input type="checkbox"/> Keep Corinth Beautiful <input type="checkbox"/> Ethics Commission N/A	

Item/Caption

Consider and act on an Ordinance of the City of Corinth approving an amendment to the fiscal year 2021-2022 budget and annual program of services to provide expenditures of funds to pay for garbage services; and providing an effective date.

Item Summary/Background/Prior Action

The current FY 2021-20222 City of Corinth Annual Program of Services adopted on September 16, 2021, does not include sufficient funding for the proposed January increase in garbage service fees proposed by Community Waste Disposal (CWD).

The amendment for council consideration increases both the revenues and expenditures for garbage services. The total revenues and expenditures added to the Utility Fund is \$92,700.

Staff Recommendation/Motion

Staff recommends approval of the ordinance approving the budget amendment for the Utility Fund.

**CITY OF CORINTH, TEXAS
ORDINANCE NO. 21-12-16-31**

AN ORDINANCE OF THE CITY OF CORINTH, TEXAS APPROVING AN AMENDMENT TO ORDINANCE NO. 21-09-16-24 REGARDING THE FISCAL YEAR 2021-2022 CITY OF CORINTH BUDGET AND ANNUAL PROGRAM OF SERVICES TO PROVIDE FOR EXPENDITURES OF FUNDS TO PAY FOR GARBAGE SERVICES; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Corinth is a home-rule municipality acting under its charter adopted by the electorate pursuant to Article XI, Section 5 of the Texas Constitution and Chapter 9 of the local Government Code; and

WHEREAS, the City Council adopted a budget and appropriated resources for the budget year beginning October 1, 2021, and ending September 30, 2022, by Ordinance No. 21-09-16-24; and

WHEREAS, the current adopted budget for fiscal year 2021-2022 does not have adequate funding to pay \$92,700 for Solid Waste services; and

WHEREAS, the City Council deems it appropriate and necessary to amend the budget to reflect expenditures to pay an additional \$92,700 for Solid Waste services;

WHEREAS, the Council finds that this budget amendment is consistent with § 9.05 of the City Charter and the proposed change in the budget is for a municipal purpose;

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF CORINTH HEREBY ORDAINS:

SECTION I

The findings set forth in the above preamble to this Ordinance are true and correct.

SECTION II

Ordinance No. 21-09-16-24 the budget for the fiscal year beginning October 1, 2021, and ending September 30, 2022, shall be amended as follows:

An appropriation of funds in the amount of \$92,700 to the Utility Fund, Garbage division and the increase of garbage collection revenues in the amount of \$92,700 is hereby approved.

The City of Corinth Budget and Annual Program of Services is hereby amended to increase both the Garbage Revenues and Garbage Expenditures by \$92,700 in the Utility Fund for Garbage services. Further, the City Council affirms its approval of the expenditure of funds for the aforementioned purposes.

SECTION IV

The City Secretary is hereby directed to attach a copy of this Ordinance to Ordinance No. 21-09-16-24.

SECTION V

Pursuant to Section 102.009(d) of the Texas Local Government Code, the municipal budget officer is directed to file a true copy of this amendment with the Denton County Clerk. If the Mayor objects to this ordinance, it shall be adopted by a majority of the entire City Council.

SECTION VI

This Ordinance shall be in full force and effect after its passage, and it is so ordained.

PASSED AND APPROVED ON THIS THE 16TH DAY OF DECEMBER 2021.

SEAL

Bill Heidemann, Mayor

ATTEST:

Lana Wylie, City Secretary

APPROVED AS TO FORM AND LEGALITY:

Patricia Adams, City Attorney



CITY OF CORINTH
Staff Report

Meeting Date:	12/16/2021	Title: Appointment Planning & Zoning Commission – Chair/Vice Chair
Ends:	<input checked="" type="checkbox"/> Resident Engagement <input checked="" type="checkbox"/> Proactive Government <input checked="" type="checkbox"/> Organizational Development <input type="checkbox"/> Health & Safety <input type="checkbox"/> Regional Cooperation <input checked="" type="checkbox"/> Attracting Quality Development	
Governance Focus:	<i>Focus:</i> <input checked="" type="checkbox"/> Owner <input type="checkbox"/> Customer <input type="checkbox"/> Stakeholder	
	<i>Decision:</i> <input type="checkbox"/> Governance Policy <input checked="" type="checkbox"/> Ministerial Function	
Owner Support:	<input checked="" type="checkbox"/> Planning & Zoning Commission <input type="checkbox"/> Economic Development Corporation <input type="checkbox"/> Parks & Recreation Board <input type="checkbox"/> TIRZ Board #2 <input type="checkbox"/> Finance Audit Committee <input type="checkbox"/> TIRZ Board #3 <input type="checkbox"/> Keep Corinth Beautiful <input type="checkbox"/> Ethics Commission Click to enter recommendation/decision of supporting group.	

Item/Caption

Consider and act upon the recommendation of the Planning & Zoning Commission to appoint Wade May as Chair and Cody Gober as Vice Chair for 2021-2022 term.

Item Summary/Background/Prior Action

At their November 15, 2021, meeting, the Planning & Zoning Commission voted unanimously to recommend Commissioner Wade May as Chair and Commissioner Cody Gober as Vice Chair for the 2021-2022 term.

Staff Recommendation/Motion

N/A



CITY OF CORINTH
Staff Report

Meeting Date:	12/16/2021	Title: Appointment Boards and Commissions
Ends:	<input checked="" type="checkbox"/> Resident Engagement <input checked="" type="checkbox"/> Proactive Government <input type="checkbox"/> Organizational Development <input type="checkbox"/> Health & Safety <input type="checkbox"/> Regional Cooperation <input type="checkbox"/> Attracting Quality Development	
Governance Focus:	<i>Focus:</i> <input checked="" type="checkbox"/> Owner <input type="checkbox"/> Customer <input type="checkbox"/> Stakeholder	
	<i>Decision:</i> <input checked="" type="checkbox"/> Governance Policy <input type="checkbox"/> Ministerial Function	
Owner Support:	<input type="checkbox"/> Planning & Zoning Commission <input type="checkbox"/> Economic Development Corporation <input type="checkbox"/> Parks & Recreation Board <input type="checkbox"/> TIRZ Board #2 <input type="checkbox"/> Finance Audit Committee <input type="checkbox"/> TIRZ Board #3 <input checked="" type="checkbox"/> Keep Corinth Beautiful <input type="checkbox"/> Ethics Commission Click to enter recommendation/decision of supporting group.	

Item/Caption

Consider and act on nominations, appointments, and removal of board members for the Keep Corinth Beautiful Board.

Item Summary/Background/Prior Action

Boards play an important role in assisting the City Council with fulfilling its obligations to the residents of Corinth. Participation on a board or commission provides residents an opportunity to understand the governmental process and perform a vital role in the communication process between the residents of Corinth and elected officials.

On October 4th, 2021, the City Council appointed Tara Lancaster to serve on the Keep Corinth Beautiful Board. Tara Lancaster never took her Oath of Office and later declined placement on the board.

On November 16, 2021, Julie Hill submitted an application to serve on the KCB Board and agreed to be interviewed by the City Council during the December 16, 2021 City Council meeting.

Staff Recommendation/Motion

Staff recommends that Tara Lancaster be removed from the KCB Board and recommends appointing Julie Hill to Keep Corinth Beautiful Board Place 9.



CITY OF CORINTH
Staff Report

Meeting Date:	12/2/2021	Title:	Contract Amendment No. 2 Jones Carter- Streets
Ends:	<input type="checkbox"/> Resident Engagement <input checked="" type="checkbox"/> Proactive Government <input type="checkbox"/> Organizational Development <input type="checkbox"/> Health & Safety <input type="checkbox"/> Regional Cooperation <input type="checkbox"/> Attracting Quality Development		
Governance Focus:	<i>Focus:</i> <input checked="" type="checkbox"/> Owner <input type="checkbox"/> Customer <input type="checkbox"/> Stakeholder		
	<i>Decision:</i> <input type="checkbox"/> Governance Policy <input checked="" type="checkbox"/> Ministerial Function		
Owner Support:	<input type="checkbox"/> Planning & Zoning Commission <input type="checkbox"/> Economic Development Corporation <input type="checkbox"/> Parks & Recreation Board <input type="checkbox"/> TIRZ Board #2 <input type="checkbox"/> Finance Audit Committee <input type="checkbox"/> TIRZ Board #3 <input type="checkbox"/> Keep Corinth Beautiful <input type="checkbox"/> Ethics Commission N/A		

Item/Caption

Consider and act on Contract Amendment No. 2 with Jones|Carter to add the engineering of N. Corinth Street from Walton Drive to N. Corinth Street in the amount of \$49,650.00 for a total contract price of \$971,340 for design of the streets and park civil infrastructure and authorize the City Manager to ratify any necessary documents

Item Summary/Background/Prior Action

During initial project scoping for the Streets and Infrastructure surrounding the Commons at Agora, staff intended the engineering design to terminate at the intersection of Walton Drive and that the supplemental connection to N. Corinth Street be handled under another contract under consideration with LAN, Inc for NCTC Way design and the railroad crossing closure at Walton Drive & N. Corinth Street.

After diving into the project and while scoping NCTC Way with LAN it was determined that the best course of action would be for Jones|Carter to perform the engineering design of N. Corinth Street realignment all the way to N. Corinth Street. This supplement will cause Jones|Carter to be responsible for the survey and engineering services associated with extension of North Corinth Street. This fee supplement amends the current contract executed on April 15, 2021.

As Engineering Staff was processing this contract amendment, it was thought to be under the threshold for City Manager, but once the Purchase Order amendment was being processed by Finance Staff, it was determined that certain thresholds were already exceeded and that this amendment must be authorized by Council.

The contract was previously amended by City Council on 7/1/2021 to add the Civil design of the Commons at Agora Park to Jones|Carter scope.

Financial Impact

Increase Contract amount by \$49,650.00 as provided for in CIP funds

Applicable Owner/Stakeholder Policy

N/A

Staff Recommendation/Motion

Staff recommends approval of Contract Amendment No. 2 with Jones|Carter to add the engineering site design of the Commons at Agora in the amount of \$49,650.00 and authorize the City Manager to ratify any necessary documents



November 9, 2021

Mr. George S. Marshall, PE, CFM
City of Corinth
3300 Corinth Parkway
Corinth, Texas 76208

Re: Professional Engineering and Surveying Services – Fee Supplement No. 2
Street and Utility Improvements - Transit Oriented Development - N. Corinth Street Extension
City of Corinth

Dear Mr. Marshall:

We appreciate the opportunity to present this fee supplement for the survey and engineering services associated with extension of North Corinth Street for the referenced project in the City of Corinth, Texas. This fee supplement amends our current contract, which was executed on April 15, 2021 with an approved value of \$528,450.00. The total amended and approved contract amount prior to this supplement request is \$921,690.00. This fee supplement is requested in the amount of \$49,650.00, bringing the total contract amount to \$971,340.00.

Project Understanding

The City would like Jones|Carter (J|C) to expand their scope of services to provide survey, design, and plan preparation for the construction of North Corinth Street from the planned roundabout to a tie-in point on the existing North Corinth Street approximately 400 linear feet north of the roundabout. The construction plans will be incorporated into the plan set for the TOD streets as contemplated by the April 15, 2021 original contract.

Proposed paving improvements will match the paving section planned for TOD paving and will include 27' B-B standard street widths, back-of-curb sidewalks along the proposed street extension. Proposed utility improvements will include water, sewer, and drainage systems, as well as street lighting design. Streets sign posts will be coordinated to match the branded and selected light posts.

We also understand that boundary surveys are not needed for the project as the City has acquired (or plans to acquire) the impacted properties. Any required right-of-way descriptions or exhibits will be completed under a separate Supplement.

Based on our understanding of the City’s needs and the project area characteristics, we prepared the following supplemental scope of services and fee proposal for your consideration.

Scope of Supplemental Services

The following Tasks are amended or added to the contract as follows:

A. Project Management and Stakeholder Coordination (Amend Basic Services Item 1)

This task includes additional management and coordination of the project.

Mr. George S. Marshall
Page 2
November 9, 2021

B. Schematic Phase (Amend Basic Services Item 2)

The street extension, drainage improvements, waterline and sanitary sewer main improvements will be shown in the schematic design.

C. Design Phase (Amend Basic Services Item 3)

The street extension is estimated to take one roadway plan and profile sheet, one drainage plan and profile sheet, one double-plan waterline sheet, one sanitary sewer plan and profile sheet, and added design and effort with other supporting sheets in the plan set.

D. Bid Phase (Amend Basic Services Item 4)

This task includes additional coordination during this phase of the project.

E. Construction Contract Administration (Amend Basic Services Item 5)

This task includes additional coordination during this phase of the project.

F. Design Survey and Boundary Verification (Amend Special Services Item 1)

JC will complete a topographic survey for design purposes for extension of North Corinth Street. Survey will include existing drainage infrastructure north of the proposed street extension for the purpose of evaluating off-site drainage impacts resulting from the street extension.

G. Electrical Engineering Design Services (Amend Special Services Item 4)

This task includes additional lighting along both sides of the street extension.

H. Geotechnical Investigation and Report (Amend Special Services Item 5)

The services include one additional bore for the roadway extension. The bores and collected data will be part of the overall project geotechnical report.

I. Off-Site Drainage Evaluation (Add to Special Service Item 10)

The existing storm sewer under North Corinth St. north of Walton Dr. will be analyzed to be accepted into the TOD Storm Trunkline. The analysis will examine the result of redirecting the flows from the existing system into the proposed trunkline and will calculate the proposed HGLs at existing manholes and nodes. The sizing of the proposed trunkline will be adjusted in an attempt to keep HGLs in the existing storm system within current City of Corinth design requirements or prevent HGL increases from the existing condition if existing HGLs do not meet current City criteria.

J. Reimbursable Expenses (Amend Special Services Item 9)

Reimbursable expenses are increased for the possibility of needing a TDLR review for the sidewalks along the street extension.

Proposed Supplemental Fees

Engineer shall be compensated for the expanded scope described herein as outlined below. Additional Services or Hourly Services shall be performed based on the current hourly rate schedule.



Mr. George S. Marshall
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Basic Services

1.	Project Management and Stakeholder Coordination	\$	2,000.00	(hourly NTE)
2.	Schematic Phase	\$	5,000.00	(lump sum)
3.	Design Phase	\$	20,000.00	(lump sum)
4.	Bid Phase	\$	500.00	(hourly NTE)
5.	Construction Contract Administration	\$	500.00	(hourly NTE)
	Subtotal:	\$	28,000.00	

Special Services

1.	Design Survey and Boundary Verification	\$	7,000.00	(lump sum)
2.	Property Easement Research and Platting	\$	--	
3.	Easement Preparation (\$1000 ea)	\$	--	
4.	Electrical Engineering Design Services	\$	3,000.00	(lump sum)
5.	Geotechnical Investigation and Report	\$	2,500.00	(lump sum)
6.	Cultural Resources	\$	--	
7.	Sewer Modeling	\$	--	
8.	Special Survey/Design Services	\$	--	
9.	Reimbursable Expenses	\$	1,500.00	(estimated)
10.	Off-Site Drainage Evaluation	\$	7,650.00	(lump sum)
	Subtotal:	\$	21,650.00	

TOTAL SUPPLEMENTAL #2 FEE: \$ 49,650.00

Should additional scope beyond that which is proposed herein be required, additional Engineering/Surveying Fee Supplement will be negotiated.

We thank you for the opportunity to submit this proposal. An executed copy of this proposal will serve as our notice to proceed. Please return one copy to our office.

Sincerely,
Jones and Carter, Inc.

Mark J. Holliday, PE
Vice President

_____, PE
Attest, David Leslie, PE

DAL
K:\0D118\0D118-0007-00 TOD Street and Utility Improvements\Project Management\Job Setup\Corinth TOD streets proposal - Fee Supplement 2 - 20211109.docx



Mr. George S. Marshall
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November 9, 2021

APPROVED BY:

Bob Hart

Signature

Bob Hart, City Manager

Name and Title (Printed)

11.12.2021

Date



CITY OF CORINTH
Staff Report

Meeting Date:	12/16/2021	Title:	Budget Amendment – Land Purchase
Ends:	<input type="checkbox"/> Resident Engagement <input checked="" type="checkbox"/> Proactive Government <input type="checkbox"/> Organizational Development <input type="checkbox"/> Health & Safety <input type="checkbox"/> Regional Cooperation <input checked="" type="checkbox"/> Attracting Quality Development		
Governance Focus:	<i>Focus:</i> <input checked="" type="checkbox"/> Owner <input type="checkbox"/> Customer <input type="checkbox"/> Stakeholder		
	<i>Decision:</i> <input type="checkbox"/> Governance Policy <input checked="" type="checkbox"/> Ministerial Function		
Owner Support:	<input type="checkbox"/> Planning & Zoning Commission <input type="checkbox"/> Economic Development Corporation <input type="checkbox"/> Parks & Recreation Board <input type="checkbox"/> TIRZ Board #2 <input type="checkbox"/> Finance Audit Committee <input type="checkbox"/> TIRZ Board #3 <input type="checkbox"/> Keep Corinth Beautiful <input type="checkbox"/> Ethics Commission N/A		

Item/Caption

Consider and act on an Ordinance of the City of Corinth approving an amendment to the fiscal year 2021-2022 budget and annual program of services to appropriate and transfer monies from the General Fund to the Economic Development Foundation (“CEDF”) in order to provide for the funding of the purchase of land by the CEDF and related closing costs; and providing an effective date.

Item Summary/Background/Prior Action

The Annual Program of Services was adopted on September 16, 2021, by the City Council. At the time of adoption of the budget, the city was in the process of acquiring property within the Transit Oriented District but did not complete the process by the end of the fiscal year. Staff has negotiated the acquisition of the property and anticipates closing on the property within the next thirty days.

The budget amendment for council consideration consists of two parts.

1. Transfer \$670,676 from the General Fund Balance to the Economic Development Foundation.
2. Authorize the expenditure of \$670,676 in the Economic Development Foundation to acquire .669 acre tract of land in the J.P. Walton Survey.

Applicable Owner/Stakeholder Policy

Section 9.05 Supplemental Appropriations of the City Charter allows that “if during the fiscal year the City Manager certifies that there are revenues available in excess of those estimated in the budget or funds otherwise available in unencumbered reserves, the Council by ordinance may make supplemental appropriations for the year up to the amount of these available funds.”

Staff Recommendation/Motion

Staff recommends approval of the Ordinance amending the fiscal year 2021-22 Annual Program of services for the General and the Economic Development Foundation Funds.