



# EVERMAN CITY COUNCIL REGULAR MEETING

Tuesday, March 21, 2023 at 6:30 PM  
213 North Race Street Everman, TX 76140

## AGENDA

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**1. MEETING CALLED TO ORDER**

**2. INVOCATION**

**3. PLEDGE OF ALLEGIANCE**

**4. CONSENT AGENDA**

**A.** Minutes

February 7, 2023 Regular Council Meeting Minutes

February 21, 2023 Regular Council Meeting Minutes

**B.** Financials

February 2023

**5. PRESENTATIONS**

**A.** Citizen Commendations - Mayor Ray Richardson

**B.** Swearing In Ceremony - Everman Police Department

**C.** Swearing In Ceremony - Everman Fire Department

**6. CITIZEN'S COMMENTS**

**7. DISCUSSION ITEMS**

**A.** Potential relocation for all public meetings

**B.** 2023 Water & Sanitary Sewer Rates

**C.** Street Repairs - Potential Acquisition of a Hot Mix Trailer and Machine Roller

**D.** Trinity Metro "Zip-Zone" Ride Share Services

**E.** Garage Sale Permits & Signs

**F.** Waste Connections Notice of Price Adjustment - 2023

**G.** March 13th Johnson Parking shooting incident including discussion related to the safety and security of parks

## 8. CONSIDERATION AND POSSIBLE ACTION

- A.** ORDINANCE #795 - AN ORDINANCE OF THE CITY OF EVERMAN, TEXAS, CANCELLING THE GENERAL ELECTION TO BE HELD ON THE 6TH DAY OF MAY, 2023, FOR THE PURPOSE OF ELECTING CITY COUNCIL MEMBERS FOR PLACES 1, 3 AND 5 ON THE CITY COUNCIL OF THE CITY OF EVERMAN, TEXAS; DECLARING THAT EACH UNOPPOSED CANDIDATE TO BE ELECTED TO OFFICE; REQUIRING POSTING OF THIS ORDINANCE ON ELECTION DAY AT EACH POLLING PLACE; PROVIDING A REPEALING CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING FOR AN EFFECTIVE DATE.
  
- B.** ORDINANCE #796 - AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF EVERMAN, TEXAS, AMENDING THE CODE OF ORDINANCES OF THE CITY OF EVERMAN, TEXAS BY AMENDING SECTION 9.4 "DEFINITIONS AND REGULATIONS" OF ARTICLE 9 "SIGN REGULATIONS" OF APPENDIX B "ZONING ORDINANCE"; PROVIDING A SEVERABILITY CLAUSE, PROVIDING A REPEALING CLAUSE; AND PROVIDING FOR AN EFFECTIVE DATE.
  
- C.** RESOLUTION #2023-03-01 - A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EVERMAN, TEXAS, AWARDED A CONTRACT TO WHIRLIX DESIGNS, INC. FOR THE CLYDE PITTMAN PARK INCLUSIVE PLAYGROUND IN AN AMOUNT NOT TO EXCEED \$114,851.00; AUTHORIZING THE CITY MANAGER TO EXECUTE SAID CONTRACT; AND PROVIDING AN EFFECTIVE DATE.

## 9. EXECUTIVE SESSION

- A.** Section 551.071 - Seek Advice from City Attorney related to properties located adjacent to the Everman city boundaries
  
- B.** Section 551.074 - Personnel Matters: Animal Control Officer

## 10. CITY MANAGERS REPORT

- A.** Staff Report - Air Conditioners at City Hall
  
- B.** Everman Police Department Acquisition of All-Terrain Vehicles (ATVs) and Bicycles

## 11. MAYOR'S REPORT

## 12. ADJOURN

I hereby certify that this agenda was posted on the City of Everman bulletin board at or before 5:00 p.m. on Friday March 17, 2022.

/s/ Mindi Parks  
City Secretary

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*Pursuant to Texas Government Code Sec. 551.127, on a regular, non-emergency basis, members may attend and participate in the meeting remotely by video conference. Should that occur, a quorum of the members, including the presiding officer, will be physically present at the location noted above on this Agenda.*

*Pursuant to Section 551.071, Chapter 551 of the Texas Government Code, Council reserves the right to convene into Executive Session(s) from time to time as deemed necessary during this meeting, to receive advice from its attorney on any posted agenda item, as permitted by Law. Additionally, Council may convene into Executive Session to discuss the following:*

- A. Section 551.071 - Pending or Contemplated Litigation or to Seek Advice of the City Attorney.
- B. Section 551.072 - Purchase, Sale, Exchange, Lease, or Value of Real Property.
- C. Section 551.073 - Deliberation Regarding Prospective Gift.
- D. Section 551.074 - Personnel Matters.
- E. Section 551.087- Deliberation Regarding Economic Development Negotiations.
- F. Section 551.089 - Deliberations Regarding Security Devices or Security Audits.

*Citizens wishing to submit written comments should e-mail the City Secretary at [mparks@evermantx.net](mailto:mparks@evermantx.net). Comments that are received at least one-hour prior to the start of the meeting will be provided to all council members.*

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*City Hall is wheelchair accessible. Parking spaces for disabled citizens are available. Requests for sign interpretative services must be made 48 hours prior to the meeting. To make arrangements, call 817.293.0525 or TDD 1.800.RELAY TX, 1.800.735.2989.*



# EVERMAN CITY COUNCIL REGULAR MEETING

Tuesday, February 21, 2023 at 6:30 PM  
212 North Race Street Everman, TX 76140

## MINUTES

**1. MEETING CALLED TO ORDER**

Mayor Richardson called meeting to order at 6:31pm.

**2. INVOCATION**

**3. PLEDGE OF ALLEGIANCE**

**4. CONSENT AGENDA**

A. Minutes

January 17, 2023

Motion made by Place 4; Mayor Pro-Tem Mackey, Seconded by Place 5 Sellers.  
Voting Yea: Place 1 Sanders, Place 2 Renfro, Place 3 Allen, Place 4; Mayor Pro-Tem Mackey, Place 5 Sellers, Place 6 Davila, Mayor Richardson

Motion Carried

B. Financials

January 2023

Motion made by Place 4; Mayor Pro-Tem Mackey, Seconded by Place 5 Sellers.  
Voting Yea: Place 1 Sanders, Place 2 Renfro, Place 3 Allen, Place 4; Mayor Pro-Tem Mackey, Place 5 Sellers, Place 6 Davila, Mayor Richardson

Motion Carried

**5. PRESENTATIONS**

**6. CITIZEN'S COMMENTS**

There were none.

A. PUBLIC HEARING TO HEAR CITIZEN COMMENTS ON THE PROPOSED CITY OF EVERMAN BUDGET AMENDMENTS

Mayor Richardson opened up Public Hearing at 6:32pm and there were no citizens comments concerning the Public Hearing and Mayor Richardson closed the Public Hearing at 6:33pm.

**7. DISCUSSION ITEMS**

**8. CONSIDERATION AND POSSIBLE ACTION**

A. Approve updated job description for the position of Emergency Communications Specialist

Motion made by Place 5 Sellers, Seconded by Place 1 Sanders.  
Voting Yea: Place 1 Sanders, Place 2 Renfro, Place 3 Allen, Place 4; Mayor Pro-Tem Mackey, Place 5 Sellers, Place 6 Davila, Mayor Richardson

Motion Carried

- B. Approve updated job description for the position of Communications Supervisor

Motion made by Place 4; Mayor Pro-Tem Mackey, Seconded by Place 1 Sanders.  
Voting Yea: Place 1 Sanders, Place 2 Renfro, Place 3 Allen, Place 4; Mayor Pro-Tem Mackey, Place 5 Sellers, Place 6 Davila, Mayor Richardson

Motion Carried

- C. Approve Allocation of \$90,000 in ARPA funds for the electrical overhaul of the Columbine Well Site

Motion made by Place 5 Sellers, Seconded by Place 1 Sanders.  
Voting Yea: Place 1 Sanders, Place 2 Renfro, Place 3 Allen, Place 4; Mayor Pro-Tem Mackey, Place 5 Sellers, Place 6 Davila, Mayor Richardson

Motion Carried

- D. Resolution #2023-02-03 - A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EVERMAN, TEXAS, APPROVING AN INTERLOCAL COOPERATION AGREEMENT FOR EMERGENCY DISPATCH SERVICES WITH TARRANT COUNTY EMERGENCY SERVICES DISTRICT NO. ONE; AND PROVIDING AN EFFECTIVE DATE.

Motion made by Place 4; Mayor Pro-Tem Mackey, Seconded by Place 5 Sellers.  
Voting Yea: Place 1 Sanders, Place 2 Renfro, Place 3 Allen, Place 4; Mayor Pro-Tem Mackey, Place 5 Sellers, Place 6 Davila, Mayor Richardson

Motion Carried

- E. Resolution 2023-02-04 - A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EVERMAN, TEXAS, APPROVING A FIRST AMENDED AND RESTATED INTERLOCAL COOPERATION AGREEMENT FOR WICHITA STREET WIDENING PROJECT WITH THE CITY OF FOREST HILL, TEXAS; AUTHORIZING THE CITY MANAGER TO EXECUTE SAID AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.

Motion made by Place 6 Davila, Seconded by Place 1 Sanders.  
Voting Yea: Place 1 Sanders, Place 2 Renfro, Place 3 Allen, Place 4; Mayor Pro-Tem Mackey, Place 5 Sellers, Place 6 Davila, Mayor Richardson

Motion Carried

- F. Ordinance #793 - AN ORDINANCE OF THE CITY OF EVERMAN, TEXAS AUTHORIZING AND CALLING FOR THE MAY 6, 2023 GENERAL MUNICIPAL ELECTION FOR THE PURPOSE OF ELECTING PERSONS TO THE OFFICES OF COUNCILMEMBER PLACES 1, 3, AND 5; AUTHORIZING A JOINT ELECTION WITH OTHER TARRANT COUNTY POLITICAL SUBDIVISIONS; AUTHORIZING A CONTRACT FOR ELECTION SERVICES WITH TARRANT COUNTY; PROVIDING A RUNOFF DATE; PROVIDING AN EFFECTIVE DATE.

Motion made by Place 4; Mayor Pro-Tem Mackey, Seconded by Place 5 Sellers.  
Voting Yea: Place 1 Sanders, Place 2 Renfro, Place 3 Allen, Place 4; Mayor Pro-Tem Mackey, Place 5 Sellers, Place 6 Davila, Mayor Richardson

Motion Carried

- G. Ordinance #794 - AN ORDINANCE OF THE CITY OF EVERMAN, TEXAS, AMENDING ORDINANCE 774, TOTAL APPROPRIATIONS BUDGET FOR FISCAL YEAR ENDING SEPTEMBER 30, 2022; PROVIDING A REPEALER CLAUSE; A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

Motion made by Place 5 Sellers, Seconded by Place 1 Sanders.  
 Voting Yea: Place 1 Sanders, Place 2 Renfro, Place 3 Allen, Place 4; Mayor Pro-Tem Mackey, Place 5 Sellers, Place 6 Davila, Mayor Richardson

Motion Carried

**9. EXECUTIVE SESSION**

- A. Section 551.071 - Seek Legal Advice related to City Council Communications involving complaints with individual citizens.

Mayor opened into Executive Session at 7:02pm and closed the Executive Session at 7:15pm.

No Action Taken.

**10. CITY MANAGERS REPORT**

Craig wanted to remind council that the City Wide Clean up and the Bulk Trash on March 4th, and the flyers are built and will be going out on Social Media tomorrow and it is already on the sign across the street as well. CTY will also go out. This Event will be from 8am to Noon. Craig stated that our staff will be there until one just in case we have any late comers to address that issue. The dumpsters will also be there an hour after the event time to make sure we are getting everyone in. Also, the Regional Flood Study was on the agenda for today at the Tarrant County Commissioner's court. It was approved and Teague Neal and Perkins was awarded the Project. So, in the next few days we should here from them to get this Flood Study kicked off. This week there is also a Corporal Exam being held at the Police Department for a position we have not filled and we have two that are competing for this Corporal position and we will know by Friday who that will be and they will come before Council to introduce themselves and to be sworn in.

**11. MAYOR'S REPORT**

Mayor had nothing to report.

**12. ADJOURN**

Mayor Richardson adjourned the meeting at 7:21pm.

I hereby certify that this agenda was posted on the City of Everman bulletin board at or before 5:00 p.m. on Friday February 17, 2023.

/s/ Mindi Parks  
City Secretary

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# EVERMAN CITY COUNCIL REGULAR MEETING

Tuesday, February 07, 2023 at 6:30 PM  
212 North Race Street Everman, TX 76140

## MINUTES

**1. MEETING CALLED TO ORDER**

Mayor called the meeting to order at 6:32pm.

**2. INVOCATION**

**3. PLEDGE OF ALLEGIANCE**

**4. CONSENT AGENDA**

**5. PRESENTATIONS**

A. Swearing In Ceremony - Senior Citizen Advisory Board

City Secretary Mindi Parks Sworn in Johnnie Allen and Bobbie Montgomery to the Senior Citizens Advisory Board.

B. Presentation of the Everman Police Department 2022 - Racial Profiling Report

Craig stated that this is the big report that is included in their agenda. Craig stated that we are annually required to submit a Racial Profiling Report accompanied with an analysis of the Racial Profiling Data. About four years ago the City of Everman entered into a contract with a consulting firm, Del Carmen and Consultant to perform that analysis and help us stay compliant. The report that he mentioned at the beginning is the Racial Profile Report and this states that we are in compliant with the state laws. All of the Audits are in that report also. The data is only three pages and the analysis is the rest and the state laws and so forth. Craig stated he would be happy to answer any questions but this has been already submitted to the Texas Commission of Law Enforcement. Council had no questions or comments.

**6. CITIZEN'S COMMENTS**

We had no citizens comments.

**7. DISCUSSION ITEMS**

No discussion items.

**8. CONSIDERATION AND POSSIBLE ACTION**

A. RESOLUTION 2023-02-01 - A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EVERMAN, TEXAS, APPROVING THE ASSIGNMENT BY TARRANT COUNTY FIRE ALARM CENTER OF SIX EMERGENCY DISPATCH SERVICE CONTRACTS BETWEEN THE CENTER AND, RESPECTIVELY, THE TOWN OF EDGECLIFF VILLAGE, THE CITY OF RENO, THE CITY OF AZLE, THE CITY OF WHITE SETTLEMENT, AND THE BRIAR-RENO FIRE DEPARTMENT TO THE CITY OF EVERMAN; AND PROVIDING AN EFFECTIVE DATE.



Motion made by Place 4; Mayor Pro-Tem Mackey amending 6 to 5 in the heading, Seconded by Place 6 Davila.

Voting Yea: Place 2 Renfro, Place 3 Allen, Place 4; Mayor Pro-Tem Mackey, Place 5 Sellers, Place 6 Davila, Mayor Richardson

Motion Carried

- B. RESOLUTION 2023-02-02 - A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EVERMAN, TEXAS, APPROVING AN INTERLOCAL COOPERATION AGREEMENT FOR WICHITA STREET WIDENING PROJECT WITH THE CITY OF FOREST HILL, TEXAS; AUTHORIZING THE CITY MANAGER TO EXECUTE SAID AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.

Motion made by Place 5 Sellers, Seconded by Place 6 Davila.

Voting Yea: Place 2 Renfro, Place 3 Allen, Place 4; Mayor Pro-Tem Mackey, Place 5 Sellers, Place 6 Davila, Mayor Richardson

Motion carried.

- C. Approve updated job description for the position of Emergency Communications Specialist

Did not have these. Did not vote.

- D. Approve updated job description for the position of Communications Supervisor

Did not have these. Did not vote.

**9. EXECUTIVE SESSION**

Did not convene into Executive Session.

**10. CITY MANAGERS REPORT**

Craig is working from home right now. Bids are happening on the CDBG Project on South Race and Playground.

**11. MAYOR’S REPORT**

Mayor stated he has heard nothing on the Flood Study yet. He will reach out tomorrow. He will let them know next meeting.

**12. ADJOURN**

Mayor adjourned the meeting at 6:48pm.

I hereby certify that this agenda was posted on the City of Everman bulletin board at or before 5:00 p.m. on Friday February 3, 2023.

/s/ Mindi Parks  
City Secretary

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**CITY OF EVERMAN**  
212 North Race Street Everman, TX 76140  
**STAFF REPORT**

**AGENDA TITLE:** Potential relocation for all public meetings

**MEETING DATE:** 03/21/2023

**PREPARED BY:** C. W. Spencer

**RECOMMENDED ACTION:**

Consensus Approval - No formal Action Needed

**BACKGROUND INFORMATION:**

The current Public Works Facility Office space is continuing to deteriorate. Employees have expressed concern for the current working environment in the office, citing foul odors, leaks, air conditioning, etc. Repairs to this building would cost an exceptional amount of money in order to make it suitable. Additionally, with the recent increase in staff across the city, we are experiencing a need for additional office space.

The City Manager would like to propose a permanent change of venue for all public meetings, including City Council Meetings. If agreed, all meetings will be held within the Everman Civic Center. Equipment and staff are available to handle this change. Doing so would allow for the current City Council chambers to be converted into a shared office space, with a seating area and cubicle-style office spaces. This office space would be utilized by code enforcement, permits, departmental assistants, etc. This would allow us to utilize the current permit office as a Public Works office. Furthermore, the Civic Center venue for public meetings will grant more space for attendees as well as a more appropriate executive session location when needed.

**FISCAL IMPACT:**

Minimal - expected to be completed within approved budget.

FWTA Interlocal Agreement No. 094  
 City Contract No. \_\_\_\_\_

**INTERLOCAL AGREEMENT  
 FOR  
 MOBILITY ON-DEMAND SERVICE  
 BETWEEN  
 THE FORT WORTH TRANSPORTATION AUTHORITY  
 AND  
 THE CITY OF EVERMAN, TEXAS**

This Interlocal Agreement ("**Agreement**") is made between the City of Everman ("**City**"), a home-rule municipal corporation of the State of Texas, and the Fort Worth Transportation Authority dba ("**Trinity Metro**"), a regional transportation authority under Chapter 452, Texas Transportation Code. The City and Trinity Metro are collectively referred to as the "**Parties**" and individually as a "**Party**"; and

**Recitals**

**WHEREAS**, the Interlocal Cooperation Act contained in Chapter 791 of the Texas Government Code (the "**Act**") provides legal authority for the Parties to enter into this Agreement; and

**WHEREAS**, this Agreement is to provide a government function or service that each Party is authorized to perform individually, and it serves the common interest of the both Parties; and

**WHEREAS**, Trinity Metro provides, in addition to other transportation services (a) scheduled bus services within its service area in Tarrant County Texas, and (b) commuter rail service known as Trinity Metro TEXRail ("TEXRail") between downtown Fort Worth, Texas, and Terminal B at Dallas-Fort Worth International Airport; and

**WHEREAS**, in 2015, Trinity Metro's master planning process identified first-mile/last-mile connections to transit as a key issue to be addressed to support core services, serve the needs of employers and the workforce, increase ridership by improving access to convenient service, and take advantage of emerging technologies and shared services through developing an on-demand rideshare pilot program to test the viability of filling these gaps in services; and

**WHEREAS**, under an agreement titled "Contract for On-Demand Shared Ride Services" dated May 23, 2019 (the "VIA Contract") Trinity Metro has contracted with River North Transit LLC ("VIA") for VIA to provide an application-based, first-last mile service connecting customers to and from Trinity Metro bus stops, bus park and ride facilities, and TEXRail ("Ride Services") in specified portions of Trinity Metro's service area (such portions being referred to as the "VIA Service Zone"); and

**WHEREAS**, The Federal Transit Administration has awarded Trinity Metro with Congestion Mitigation and Air Quality Improvement Program (CMAQ) funding for a pilot program to implement and operate new fixed and flexible stop route transit services for citizens of the City. Additional services requested by the City, above and beyond the services stated in this Agreement, shall be at the sole expense of the City.

**WHEREAS**, under Trinity Metro's standard fare structure, customers using Mobility On-Demand Service as a single trip ride are charged three dollars (\$3.00) per trip. Customers who require additional single ride travel other than Mobility On-Demand Services, using other Trinity Metro platforms (i.e., bus, train, etc.) will be required to pay additional fares as defined by that mode of transportation. Customers also have the choice to purchase a local ticket/day pass. Purchase of any multi-ride local ticket option includes rides within any ZIPZONE, transfer between TEXRail, Trinity Metro bus routes, and TRE (West Zone Only).

### **AGREEMENT**

**NOW, THEREFORE**, for good and valuable consideration, including the mutual covenants made by Trinity Metro and the City in this Agreement, the receipt and sufficiency of which each Party hereby acknowledges, Trinity Metro and the City hereby agree as follows:

1. Term of Agreement. This Agreement shall begin upon the last day executed by all authorized Parties "Effective Date" and shall continue for twenty-four (24) months, unless terminated sooner under the terms of the Agreement or grant funds have been exhausted.
2. Ride Share Services (Mobility On-Demand). Trinity Metro shall provide Ride Share Services as shown in Exhibit A to serve the Mobility On-Demand Service Area in accordance with the schedule and the number of vehicles set forth in Exhibit B attached to and hereby made a part of the Agreement. Service terms, included but not limited to service area, number of vehicles, service times and fare structure, maybe amended during the term of the Agreement upon approval by both parties.

The Ride Share Service will use a smartphone application and a fleet of rideshare vehicles to provide service that has no fixed route or no fixed schedule but will have a number of on-demand stops. Passengers book trips using an app or for customers who do not have a smartphone, by calling a provided phone number. Passengers may travel anywhere within the geo-fence area. Each trip's route will change or "flex" depending on the passenger load and desired origin and destination points.

This service is a hybrid between regular fixed routes and demand-response service. The service provides an infinite number of on-demand stops that may be established near shopping, community centers, medical facilities, etc., and where collector streets from the residential neighborhoods join the arterials. Additional stop amenities, such as seating or shelter could be provided by the City, at the City's expense. Modern technology allows real-time vehicle tracking and fairly accurate arrival time prediction so that wait times are minimized. Most passengers will walk less than a quarter mile and none will walk more than three-quarters of a mile to meet their ride.

The City will be served by two vehicles providing direct transport within the designated geo-fence area which include the City, City of Crowley, City of Fort Worth southern sector, Gateway Station, Texas Health Hughley Hospital, and to designated connection points in Fort Worth within the designated service area. The connection points will allow transfers to existing Trinity Metro bus routes connected at the Tarrant County College South (TCC South) location, Routes along Sycamore School Road/McCart Avenue, and Sycamore School Road/Everman Road.

3. Cost of Ride Share Services. Per the Congestion Mitigation and Air Quality Improvement Program (CMAQ) Grant, all funds must be expensed prior to any other payment methods. Any funds over the allocated CMAQ grant amount will be paid by the agreed Parties.

Payment responsibility for Ride Share Services is outlined in Exhibit B. Any change in service terms as outlined in section two (2) of the Agreement may result in a change in the total cost of Ride Share Services.

4. Marketing of Ride Share Services. Trinity Metro will bear expenses for, and will incorporate the marketing of the Ride Services into its overall marketing plan. The City agrees to assist Trinity Metro's marketing efforts by facilitating meetings by Trinity Metro with other employers in the Mobility On-Demand Service Area regarding the Ride Share Services. At its own expense, the City may also market such services, either individually and/or in conjunction with other employers in the outlined Mobility On-Demand Service Area, but the City must obtain written approval from Trinity Metro regarding marketing materials and efforts.

5. Early Termination. The Agreement may be terminated by (a) written agreement of both Parties; or (b) by either Party giving ninety (90) days' prior written notice to the other Party. If this Agreement is terminated before Trinity Metro has invoiced the City for additional expenses it incurred under this Agreement prior to receipt of the City's notice to terminate, Trinity Metro's right to issue, and the City's obligation to pay, any such invoice(s), shall survive the expiration or termination of this Agreement.

6. Notices.

a. Each Party's address for Notices (hereinafter defined) is as follows:

If to City:

City of Everman

212 North Race Street

Everman, Texas 76140

Attention: C. W. Spencer

Email: cspencer@evermantx.net

If to Trinity Metro:

Trinity Metro

801 Cherry Street, Ste 850

Fort Worth, Texas 76102

Attention: Wayne Gensler

Email: wayne.gensler@ridetm.org

- b. A Notice, other than an emailed notice, is deemed received as follows:
- i. If delivered in person, or sent by registered or certified mail, or nationally recognized overnight courier, upon delivery at the applicable address, as indicated on a signed receipt. If the recipient refuses to accept the Notice, or if the Notice cannot be delivered because of a change in address for which no Notice was given, then upon the rejection, refusal or inability to deliver, as indicated in the records of the mail, messenger, or courier service that attempted to deliver the Notice.
  - ii. An emailed notice is deemed received when the recipient, by an email sent to the email address of the sender stated in this section or by a notice delivered by another method in accordance with this section, acknowledges having received that email; a “read receipt” does not constitute acknowledgement under this subsection.

7. Miscellaneous.

- a. Recitals. The recitals set out near the beginning of the Agreement are true and correct and are a part of the Agreement.
- b. No Joint Enterprise. Under no circumstances will the Agreement be construed as one of agency, partnership, joint venture, or employment between the Parties. Without limiting the foregoing, the purposes for which Trinity Metro and the City have entered into the Agreement are separate and distinct, and there are no pecuniary interests, common purposes, and/or equal rights of control among the Parties.
- c. Successors and Assigns. The Agreement binds and benefits the Parties and their respective successors and assigns.
- d. Sole Benefit; No Third-Party Beneficiaries. The Agreement is entered into for the sole benefit of Trinity Metro and the City and their respective successors and assigns. The Agreement does not confer and is not intended to confer any rights, remedies, or benefits upon any other person or entity, including, without limitation, any user of the Ride Services.
- e. Authorization. Each Party represents to the other that it is fully authorized to enter into the Agreement and to perform its obligations hereunder.
- f. Controlling Law; Venue. The laws of the State of Texas (without giving effect to its conflicts of laws principles), govern all transactions and other matters arising out of or relating to the Agreement, including, without limitation, its validity, interpretation, construction, performance, and enforcement. Each Party agrees that for any legal action, proceeding, or claim arising under or relating to the Agreement venue is proper in courts of the State of Texas sitting in Tarrant County, Texas, and each party waives the right to sue or be sued elsewhere; such waiver includes, without limitation, a claim that a court in Tarrant County is an inconvenient forum. Each party submits to the exclusive jurisdiction of any court of the State of Texas sitting in Tarrant County, Texas.

g. Final Agreement; Amendments Must Be in Writing; No Waiver. The Agreement constitutes the final, complete, and exclusive expression of the Parties' agreement concerning the matters that are the subject hereof. The Agreement may not be supplemented, modified, or qualified by reference to any previous negotiations or course of dealing. The Parties may amend the Agreement only by a written instrument executed by both Parties. Any purported oral amendment of the Agreement is ineffective. Neither (i) a Party's failure or delay in exercising a right or remedy or requiring satisfaction of a condition under the Agreement, nor (ii) any course of dealing between the parties, operates or shall operate as a waiver or estoppel of a right, remedy, or condition under the Agreement.

h. Limitations. The Parties acknowledge and agree that the Agreement does not create any personal obligation or liability for any owner, partner, officer, director, or employee of Trinity Metro or The City.

i. Interpretation. No provision of this Agreement shall be construed against or interpreted to the disadvantage of any Party by reason of such Party having or being deemed to have drafted such provision.

j. Counterparts. The Parties may execute the Agreement in multiple counterparts, each of which constitutes an original, and all of which, collectively, constitute a single agreement.

k. Captions. Headings of articles, sections, and subsections of the Agreement are for convenience only and do not affect the construction or interpretation of the Agreement.

l. Indemnity. The Agreement is not intended to extend the liability of the parties beyond that provided by law. Neither the City nor Trinity Metro waive any immunity or defense that would otherwise be available to it against claims by third parties.

m. Representations. By execution of the Agreement, each party represents to the other that:

- i. In performing its duties and obligations hereunder, it will be carrying out one or more governmental functions or services which it is authorized to perform;
- ii. The undersigned officer or agent of the party has been properly authorized by that party's governing body to execute the Agreement and that any necessary resolutions extending such authority have been duly passed and are now in effect;
- iii. All payments required or permitted to be made by a party will be made from current revenues available to the paying party; and
- iv. All payments provided to be made hereunder by one party to the other shall be such amounts as to fairly compensate the other party for the services or functions performed hereunder.



Section 7, Item D.

IN WITNESS WHERE OF the Parties have executed this Agreement on the 8th day of June, 2021:

CITY OF EVERMAN, TEXAS

FORT WORTH TRANSPORTATION AUTHORITY:

By:   
Mayor

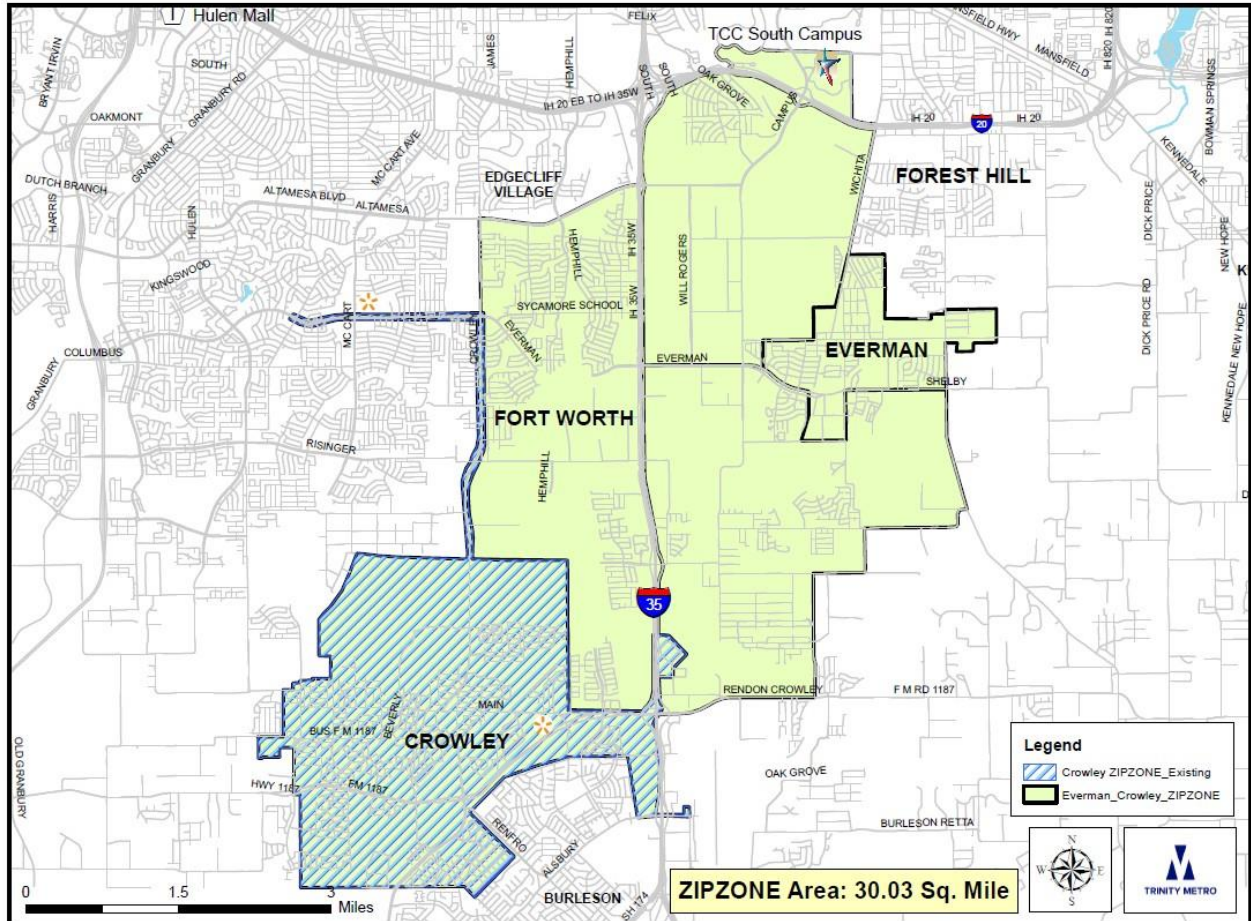
DocuSigned by:  
  
7E727C88F4A54DA...  
By: \_\_\_\_\_  
Bob Baulsir  
President & CEO

ATTEST:  
APPROVED AS TO FORM:

By: \_\_\_\_\_  
City Attorney  
City of Everman, Texas

**Exhibit A**

**South Tarrant ZIPZONE**



**Exhibit B*****Mobility On-Demand Service Area Hours and Vehicles:***

Two (2) ride share vehicles/vans, one (1) van to be ADA compliant

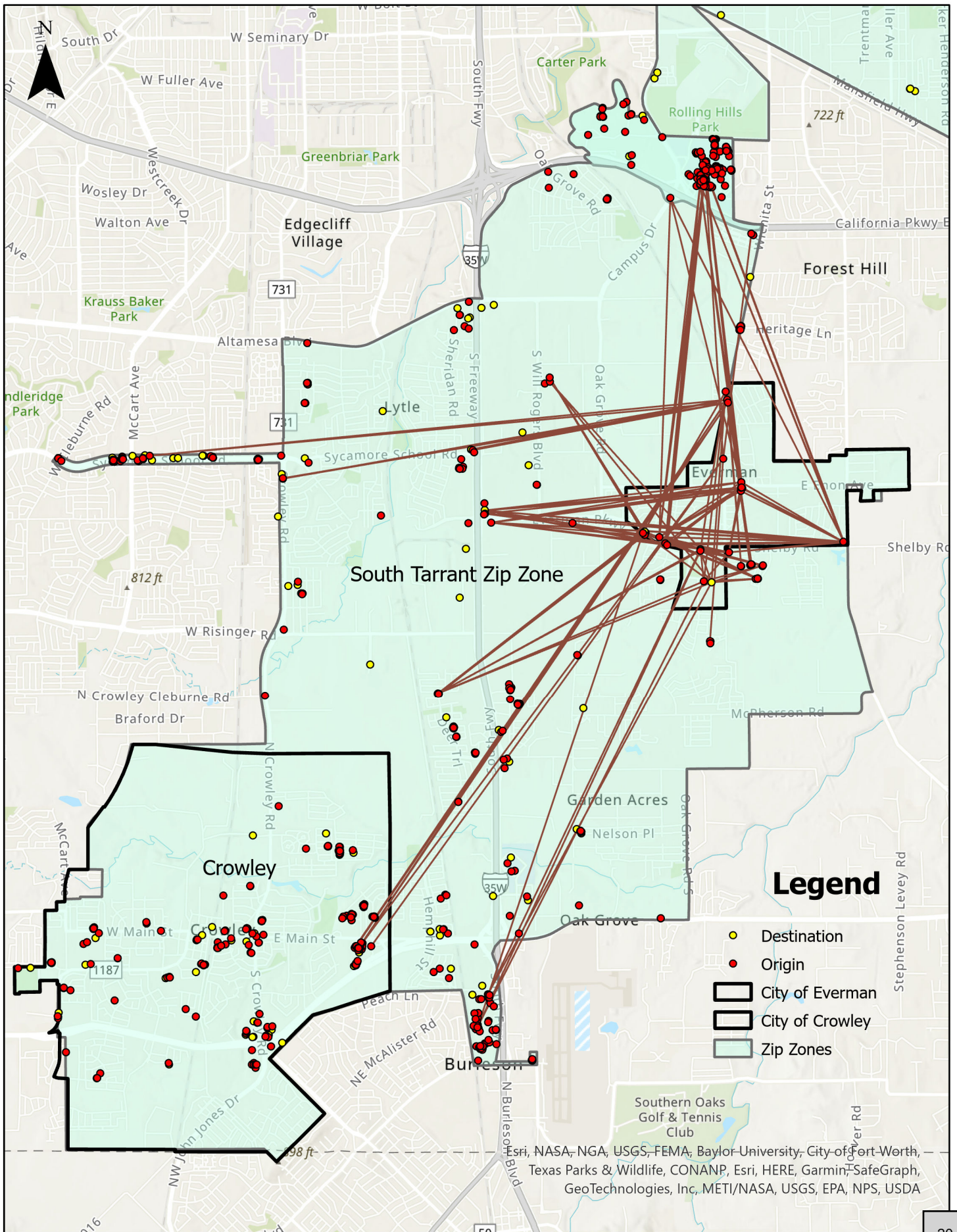
Total hours of service hours per vehicle twelve (12), 7:00 AM to 07:00 PM,  
Monday-Friday, excluding National Holidays.

***Mobility On-Demand Service Area Ride Share Service Estimated Funding Chart:***

	Year One	Year Two
CMAQ Grant	\$166,666	\$166,667
Trinity Metro	\$0	\$0
City of Everman	\$0	\$0

# City of Everman Zip Zone Riders 2023

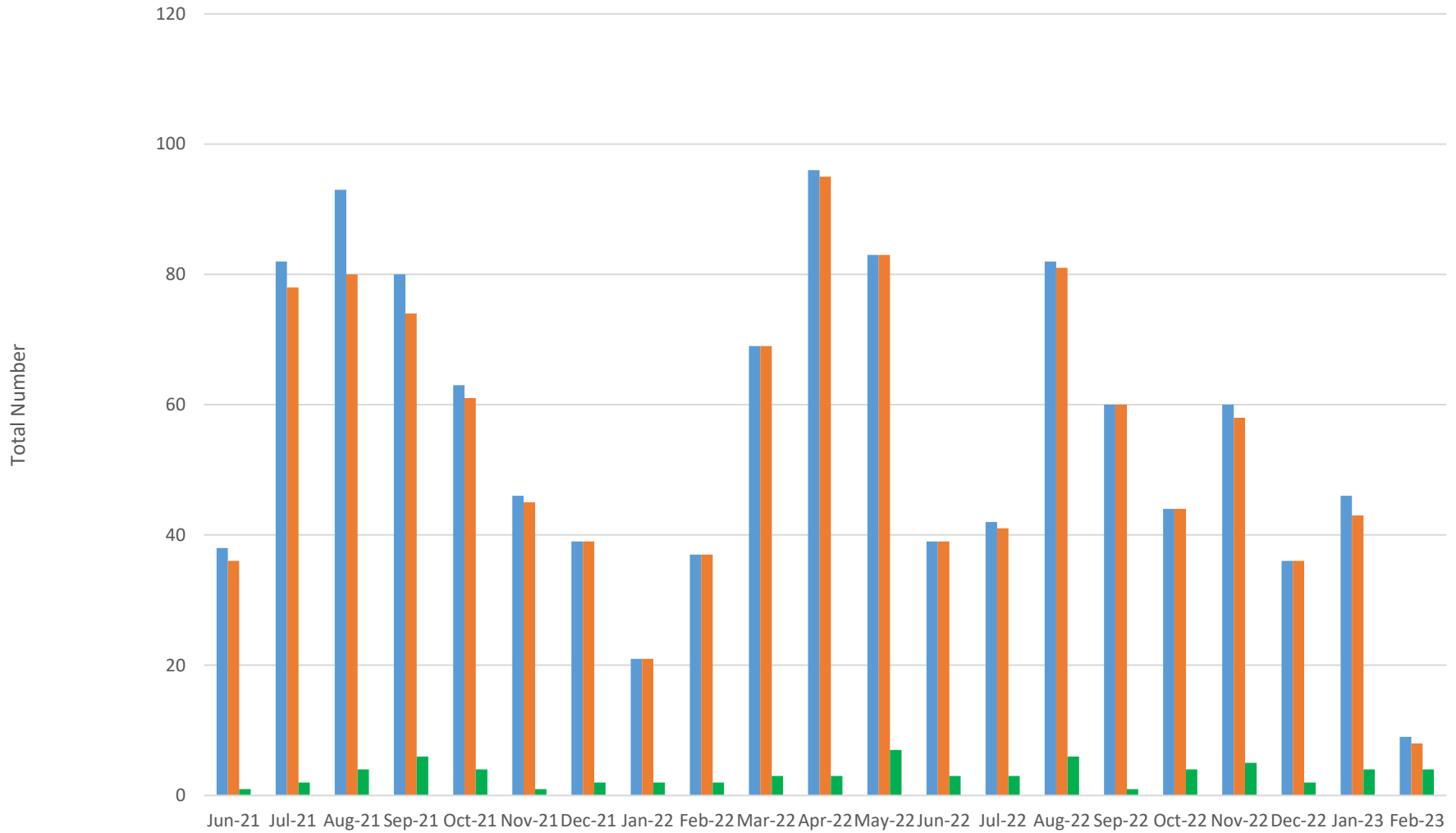
Section 7, Item D.



Esri, NASA, NGA, USGS, FEMA, Baylor-University, City-of-Fort-Worth, Texas Parks & Wildlife, CONANP, Esri, HERE, Garmin, SafeGraph, GeoTechnologies, Inc., METI/NASA, USGS, EPA, NPS, USDA

Month	FROM EVERMAN			TO EVERMAN			COMBINED TO/FROM		
	Total Passengers	Number of Trips	Unique Riders	Total Passengers	Number of Trips	Unique Riders	Total Passengers	Total Number of Trips	Unique Riders
Jun-21	20	19	1	18	17	1	38	36	1
Jul-21	44	42	2	38	36	2	82	78	2
Aug-21	46	38	4	47	42	3	93	80	4
Sep-21	41	38	4	39	36	5	80	74	6
Oct-21	33	31	4	30	30	4	63	61	4
Nov-21	25	24	1	21	21	1	46	45	1
Dec-21	20	20	1	19	19	2	39	39	2
Jan-22	11	11	2	10	10	2	21	21	2
Feb-22	22	22	2	15	15	1	37	37	2
Mar-22	40	40	3	29	29	1	69	69	3
Apr-22	52	51	3	44	44	2	96	95	3
May-22	38	38	5	45	45	6	83	83	7
Jun-22	20	20	2	19	19	3	39	39	3
Jul-22	19	19	2	23	22	2	42	41	3
Aug-22	43	42	5	39	39	6	82	81	6
Sep-22	32	32	2	28	28	1	60	60	1
Oct-22	22	22	1	22	22	4	44	44	4
Nov-22	33	31	3	27	27	3	60	58	5
Dec-22	20	20	2	16	16	2	36	36	2
Jan-23	24	23	4	22	20	4	46	43	4
Feb-23	5	4	4	4	4	3	9	8	4

City of Everman Total Passengers and Trips



	Jun-21	Jul-21	Aug-21	Sep-21	Oct-21	Nov-21	Dec-21	Jan-22	Feb-22	Mar-22	Apr-22	May-22	Jun-22	Jul-22	Aug-22	Sep-22	Oct-22	Nov-22	Dec-22	Jan-23	Feb-23
Total Passengers	38	82	93	80	63	46	39	21	37	69	96	83	39	42	82	60	44	60	36	46	9
Total Number of Trips	36	78	80	74	61	45	39	21	37	69	95	83	39	41	81	60	44	58	36	43	8
Unique Riders	1	2	4	6	4	1	2	2	2	3	3	7	3	3	6	1	4	5	2	4	4

# On-Demand Service

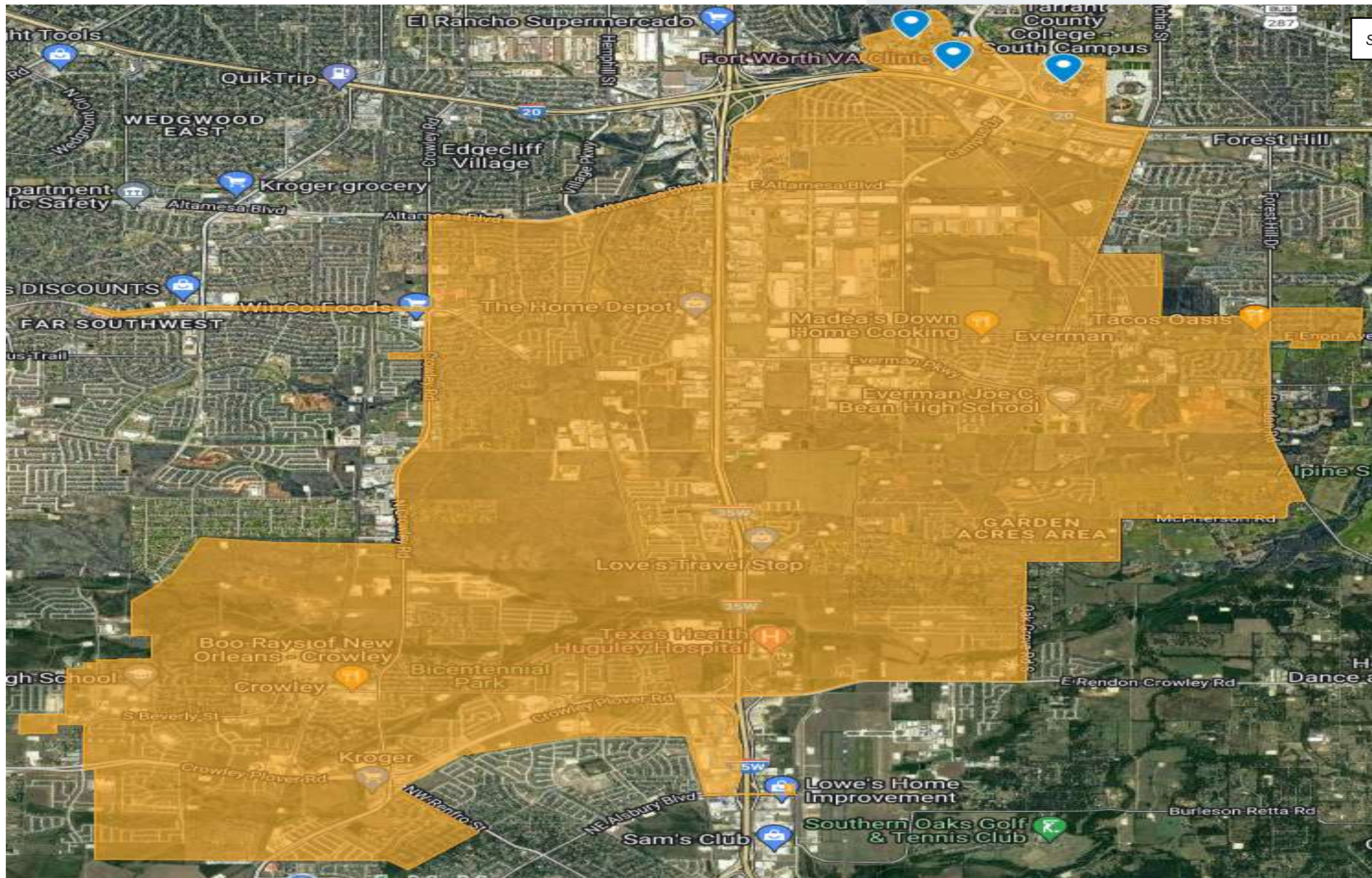
Rodney Woods, Emerging Mobility Manager



# South Tarrant







## Performance at a Glance

**1,700+**

**Completed rides** in South Tarrant  
since June 2021

**200+**

**Rides by first-time users** in the  
South Tarrant Zone since June 2021

**4.9**

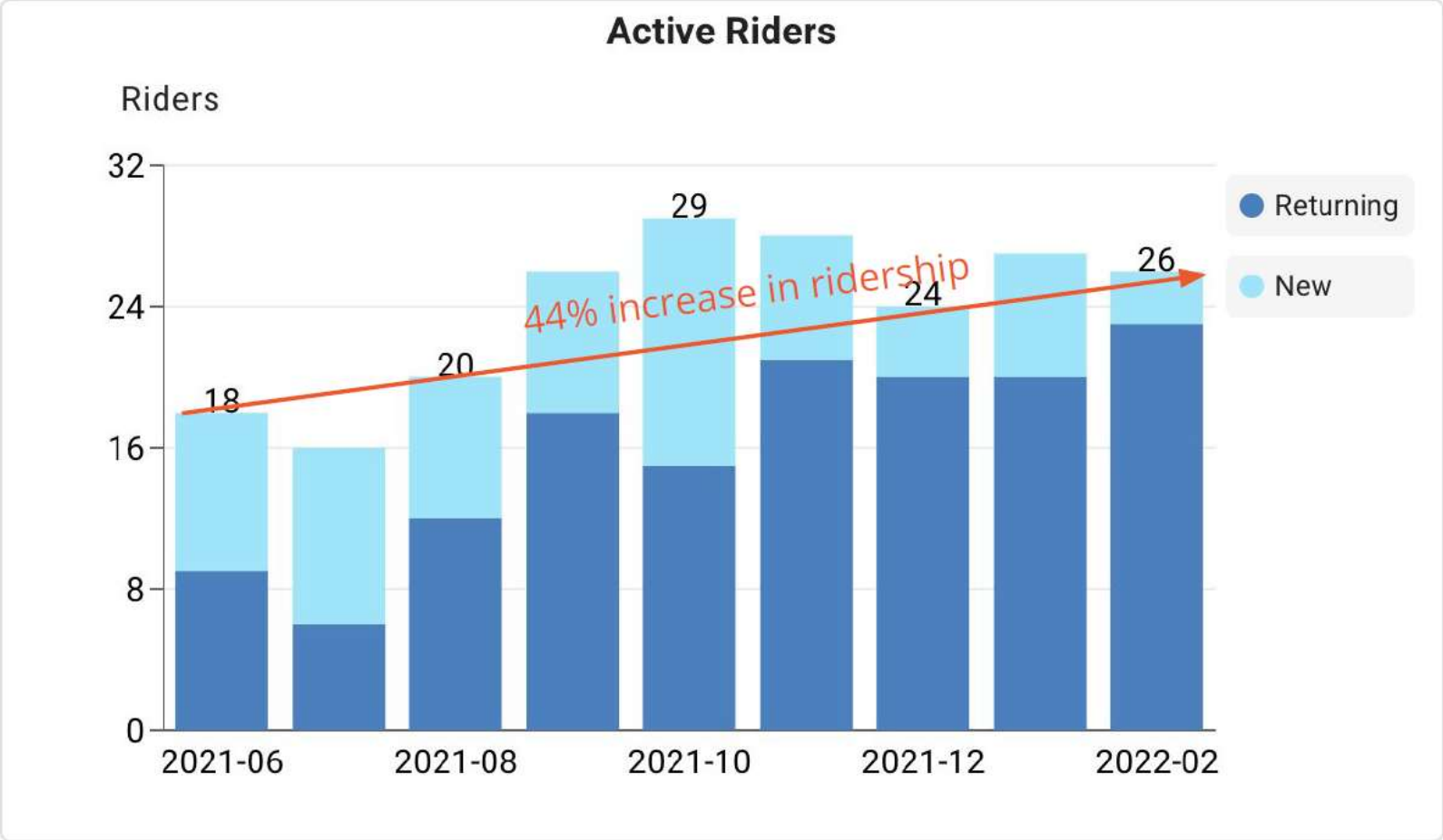
**Average ride rating** (out of 5) -- consistent  
with other ZIPZONES

**10.4 min**

**Average ETA** in South Tarrant  
Zone since June 2021

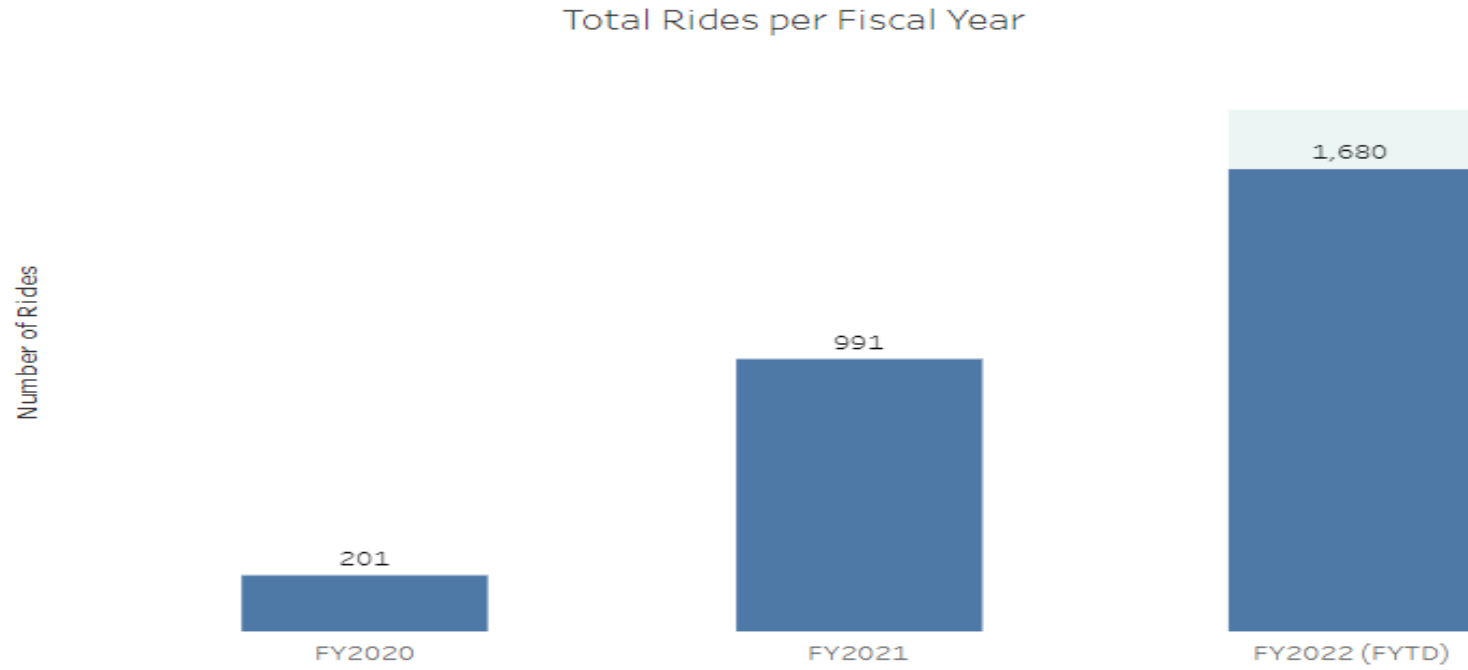


# South Tarrant returning riders has grown steadily since the expansion in June 2021 continuing to capture new riders



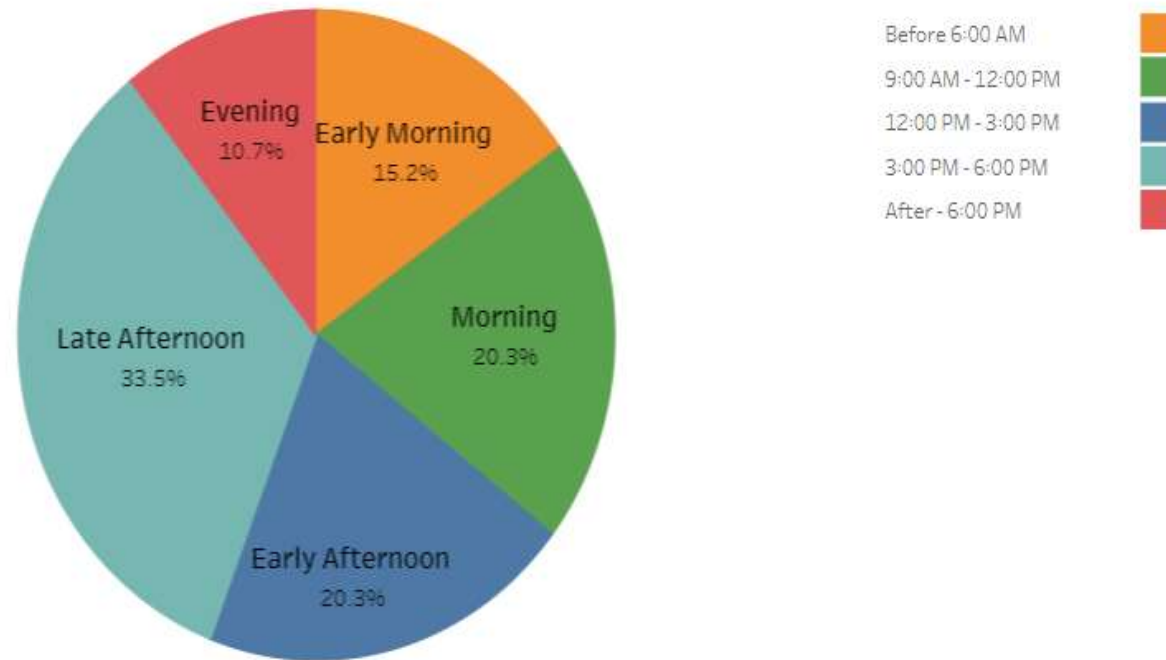
# South Tarrant Via ZipZone Ridership

## Since Start of Service



# South Tarrant Via ZipZone Ridership Since Start of Service

Rides by Time of Day

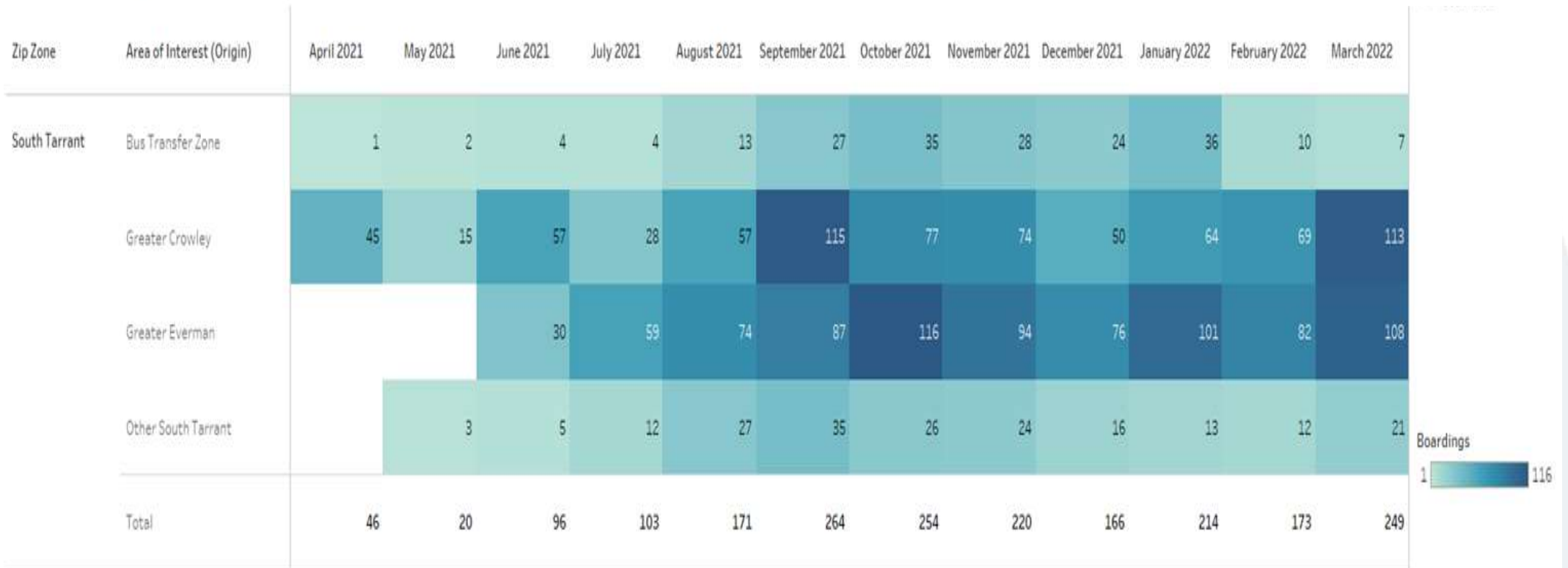


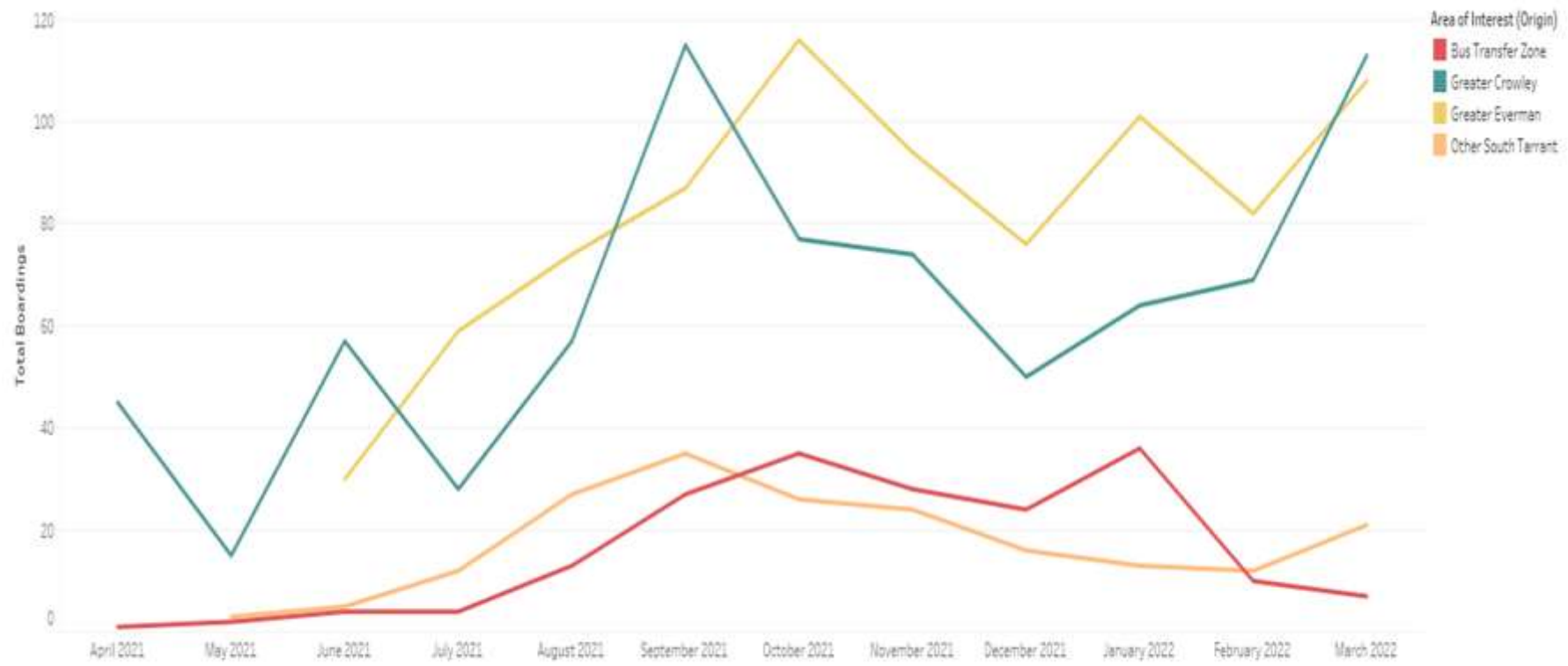
South Tarrant - June 2021 through March 2022

Area of Interest (Origin)	Area of Interest (Destination)			
	Bus Transfer Zone	Greater Crowley	Greater Everman	Other South Tarrant
Bus Transfer Zone	9	39	127	13
Greater Crowley	39	285	276	104
Greater Everman	150	252	348	77
Other South Tarrant	9	65	82	35

## South Tarrant - Last 12 Months

### Boardings by Area of Interest







*Our riders have given the ZipZone service a **4.9/5.0**  
**in-app ride rating***

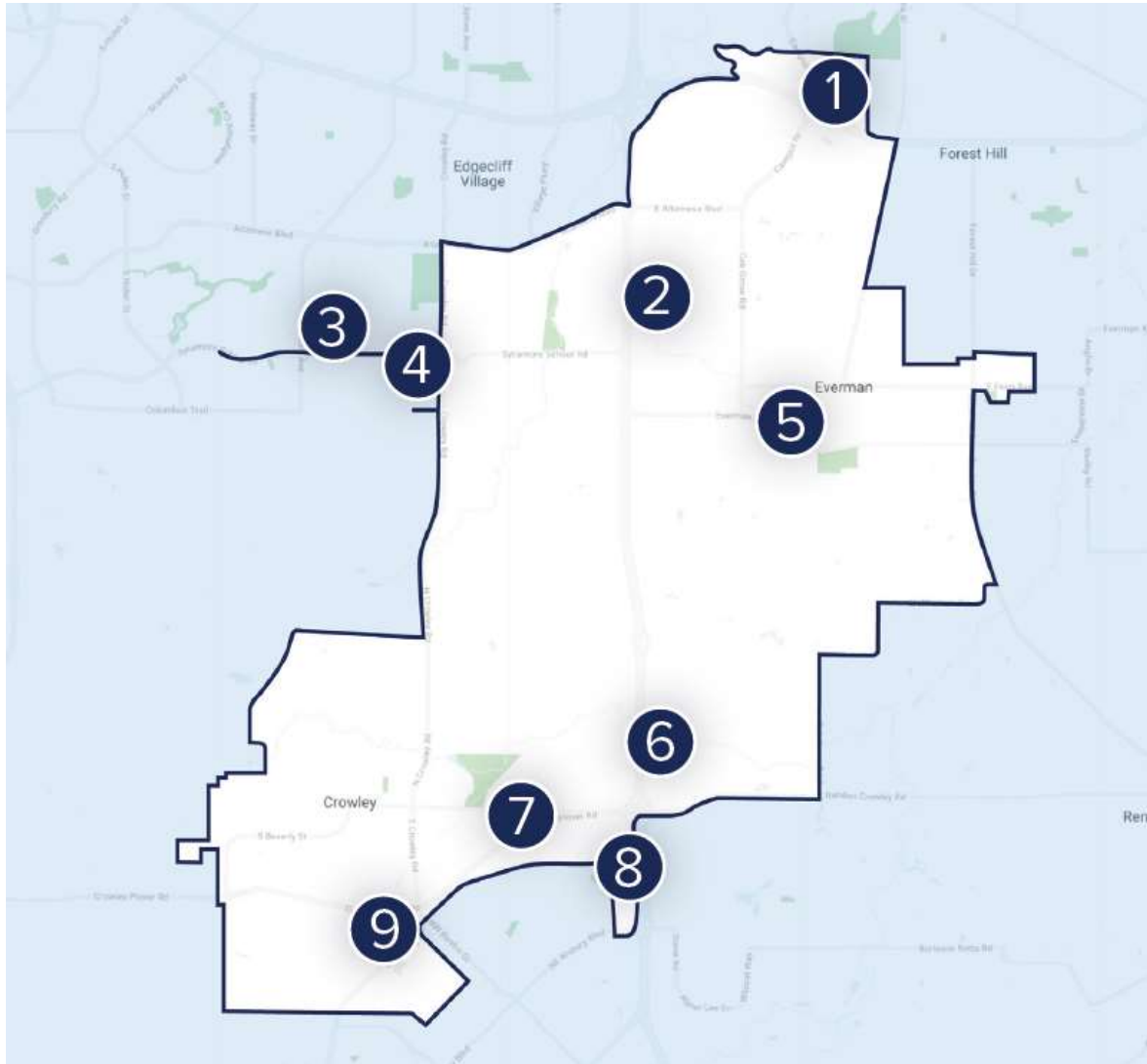
**"I kinda depend on you all (to get to work, to run errands). Pretty much can't beat the price. Good dependable transportation at a great price."**

**"Fast and efficient"**

**"It's a relief on my pocket"**

**"I need it!"**





## Popular destinations:

- ① Tarrant County College - South Campus
- ② Miller Coors LLC
- ③ Walmart - McCart Ave & Sycamore School Rd
- ④ WinCo Foods
- ⑤ Everman Supermarket
- ⑥ Texas Health Huguley Hospital Fort Worth South
- ⑦ Walmart - Crowley
- ⑧ Gateway Station Shopping Mall
- ⑨ Kroger

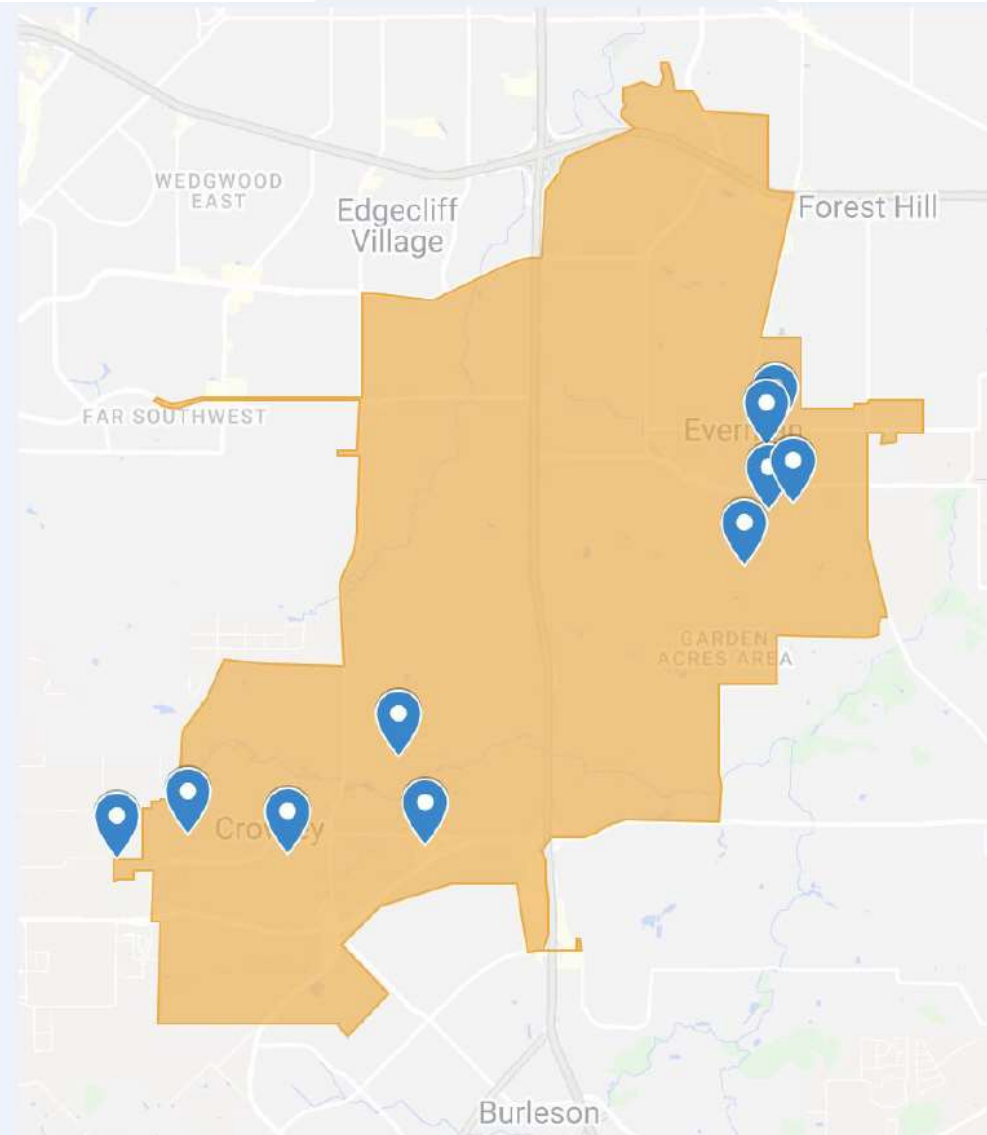
## Top locations remain consistent in Crowley and Everman

### Crowley

- Walmart Supercenter
- Dionne Bagsby All Sports Complex
- 392 South Magnolia St @ Peach Street
- Crowley High School
- 652 Shotwell St (residence @ Shotwell/Cheryl)

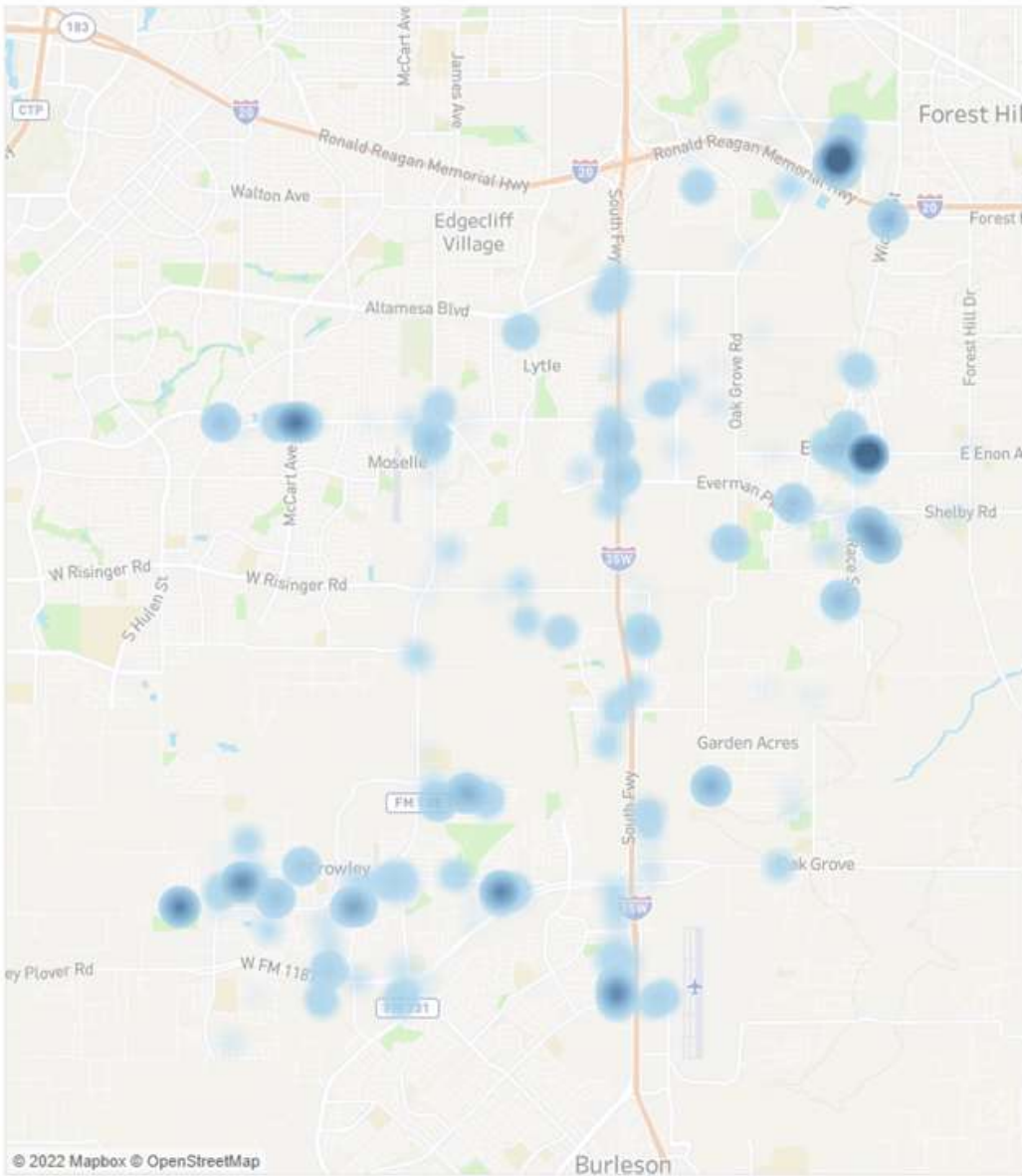
### Everman

- 117 South Parker St (near Hommel Elementary School)
- 368 Johnson Ave (near Bishop Elementary School)
- Russet Trail (by Stallion Point Apartments)
- Stallion Ridge Apartments
- 1532 Four seasons Lane (right outside city limits)



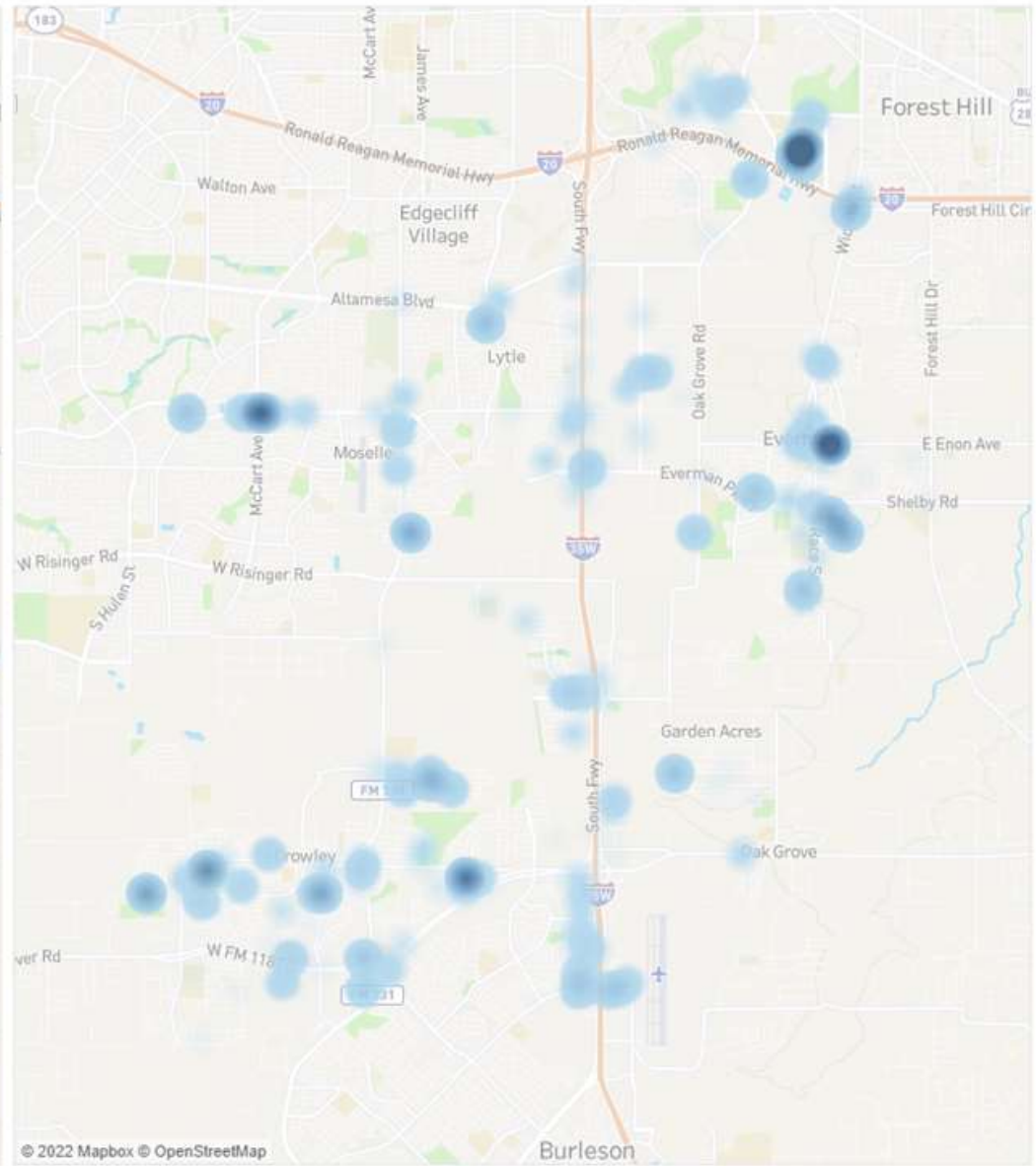
# South Tarrant

Boardings June 2021 - March 2022



# South Tarrant

Alightings June 2021 - March 2022



Section 7, Item D.





**CITY OF EVERMAN**  
212 North Race Street Everman, TX 76140  
**STAFF REPORT**

**AGENDA TITLE:** Waste Connection - Notice of Price Adjustment 2023

**MEETING DATE:** 03/21/2023

**PREPARED BY:** C. W. Spencer

**RECOMMENDED ACTION:**

No Action Required

**BACKGROUND INFORMATION:**

On March 10<sup>th</sup>, the City of Everman received a Notice of Price Adjustment based on Consumer Price Index (CPI) from Waste Connection, Inc. Waste Connections serves as the City of Everman's contract waste provider. The letter was to inform us of two separate increases that were to take effect in June of 2023.

The first requested increase was for 6% in accordance with Section 12.A of the most recent contract amendment with Waste Connections. This request is normal and expected annually.

The second request was for an additional 6.07%, citing inflation, operating, and disposal costs. This total requested increase was 12.07%. The second request is not permissible or covered under the current contract amendment with waste connections. The City Attorney's Office was consulted on this matter and asked to review this increase. Based upon the City Attorney's advice, I have sent Waste Connections a Rejection letter advising them that we will not be accepting the additional 6.07% increase.

Waste Connections has been advised that if they would like for the City of Everman to consider additional increases, that would need to be addressed through contract re-negotiations or amendments with the Mayor & Council.

For City Council's knowledge and consideration, below are the current trash rates for residents:

Refuse: \$10.60/month

Recycling: \$4.00/month

6% Increase:

Refuse: \$11.24/month (increase of \$0.64)

Recycling: \$4.00/month

Residential Impact of \$7.68/year

12.07% Increase:

Refuse: \$11.88/month (increase of \$1.28)

Recycling: \$4.00/month

Residential Impact of \$15.36/year

**FISCAL IMPACT:**

Waste fees are currently built as pass-through fees. Therefore all fiscal impact is directly to the citizens/consumers. There will be no negative or positive budgetary impacts with this change.



WASTE CONNECTIONS  
OF TEXAS

January 30, 2020

Honorable Mayor and Members of Council  
City of Everman  
212 Race Street  
Everman, Texas 76140

Re: Contract Renewal Request:

Dear Honorable Mayor and Members of Council:

Waste Connections would like to take this opportunity to express our appreciation for your business. Waste Connections has been committed to giving the best service for your residents and commercial customers. As you know our current contract ends March 31, 2020. Please accept this letter as our request that this Contract be approved for renewal.

If you have any questions or need additional information, please feel free to contact me if you have any questions per this request.

Sincerely,

Norm Bulaich  
Municipal Manager  
Waste Connections, Inc  
817-999-2584



**FOURTH AMENDMENT TO CONTRACT**

This Fourth Amendment to the Contract (the "Fourth Amendment") is entered into this 1st day of January, 2020, by and between Waste Connections Lone Star, Inc. (the "Service Provider") and the City of Everman, Texas (the "City"). The City and Contractor may be collectively referred to herein as the "Parties" and individually as a "Party", unless specifically identified otherwise. All capitalized terms not otherwise defined herein shall have the meanings set forth in the Agreement.

**RECITALS:**

**WHEREAS**, the City and IESI TX Corporation ("IESI") entered into that Franchise Agreement for the Collection, Hauling and Disposal of Municipal Solid Waste and Construction and Demolition Waste dated April 1, 2005 (the "Contract") to provide collection, hauling, and disposal services garbage and recycle collection throughout the City (as such terms are defined in the Agreement); and

**WHEREAS**, the City and IESI entered into that certain Amendment and Renewal Agreement dated November 10, 2009 (the "First Amendment");

**WHEREAS**, on June 20, 2012, IESI changed its name to Progressive Waste Solutions of TX, Inc.;

**WHEREAS**, on November 11, 2014, the Parties entered into a Second Amendment and Renewal Agreement (the "Second Amendment");

**WHEREAS**, the Parties then entered into that certain Third Amendment to Franchise Agreement dated 2015 (the "Third Amendment") (the Contract, First Amendment, Second Amendment and Third Amendment are hereinafter collectively referred to as the "Agreement");

**WHEREAS**, Progressive Waste Solutions of TX, Inc., did thereafter change its name to Waste Connections Lone Star, Inc.;

**WHEREAS**, the City and the Service Provider mutually desire to extend and amend the Contract as further described herein.

**AGREEMENT:**

**NOW, THEREFORE**, and in consideration of these premises and such other lawful consideration, the receipt and sufficiency of which each of the parties hereto acknowledge, the parties agree as follows:

1. **Term.** Upon execution of this Fourth Amendment, Section 3 of the Agreement is hereby modified by renewing the Agreement for an additional five (5) year term beginning on April 1, 2020 and terminating March 31, 2025:
2. **Rates.** Beginning April 1, 2020, all prior or previous rate sheets shall be deleted and replaced with the Rate Sheet attached hereto to this Fourth Amendment.
3. **CPI-U Rate Adjustment.** Upon execution of this Fourth Amendment, Section 12 of the Agreement shall be deleted in its entirety and replaced with the following:

“Beginning on April 1, 2021, and thereafter annually on each April 1, the Service Provider shall have the right, in its sole discretion and upon giving sixty (60) days prior notice to the City, to increase or decrease the rates set forth in Section 11 hereto (the “Initial Rates”) in accordance with the CPI-U. As used herein, “CPI-U” shall mean the revised Consumer Price Index rate for All Urban Consumers, Garbage and Trash Collection Services, CUSR0000SEHG02) for the nearest available metropolitan area, based on the latest available figures from the Department of Labor’s Bureau of Labor Statistics (the “Bureau”). The CPI-U used will be the index entitled “CPI-U ‘Dallas-Fort Worth, Texas area’” published by the Bureau during the month ninety (90) days preceding the adjustment under this Section 12.A. The amount of the increase or decrease under this Section 12.A. shall be equal to the percentage that the CPI-U has increased or decreased over the previous twelve (12) month period. Notwithstanding the foregoing, in no event shall the rate increases or decreases pursuant to this Section 12.A. be less than one percent (1%) or more than six percent (6%) for any given year.”

4. **Reaffirmation.** The parties hereby reaffirm their agreement with all the terms and provisions of the Agreement as amended by this Fourth Amendment.

5. **Entire Agreement.** The Agreement and this Fourth Amendment represents the entire agreement among the parties with respect to the matters that are the subject hereof

6. **Counterparts; Facsimile Signatures.** This Fourth Amendment may be executed in counterparts, each of which shall be deemed an original, but all of which shall collectively constitute one and the same instrument representing this Fourth Amendment between the parties hereto, and it shall not be necessary for the proof of this Fourth Amendment that any party produce or account for more than one such counterpart. Facsimile signatures shall be given the same force and effect as original signatures and shall be treated for all purposes and intents as original signatures.

IN WITNESS WHEREOF, the undersigned have executed this Fourth Amendment as of the date first written above.

CITY OF EVERMAN, TEXAS

WASTE CONNECTIONS LONE STAR, INC.

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_



**WASTE CONNECTIONS LONE STAR, INC.**  
 4001 Old Denton Rd, Haltom City, Texas 76117  
 Contact: Marty Grant; District Manager  
 Phone: (817) 222-2221

**EXHIBIT A**  
**City of Everman, TX**  
**RATE SHEET**

Effective: April 1st, 2020 BILLING

**RESIDENTIAL CURBSIDE COLLECTION: \$10.97** per month, per residential unit  
 Additional Cart: n/a per month, per residential unit per each additional Cart  
**RESIDENTIAL RECYCLING CURBSIDE COLLECTION: \$4.00** per month, per Single-Family Residential Unit  
 Additional Recycling Container: n/a per month, per residential unit per each additional Recycling Container  
 Senior Citizen Rate: \$9.96 per month, per residential unit

**COMMERCIAL RATE SCHEDULE**

CONTAINER SIZE	Lifts Per Week						
	1	2	3	4	5	6	Extra-Lift
95 gallon Cart		24.87					28.20
2 Cubic Yd	62.39	101.39	115.68	175.46	204.08	245.66	37.92
3 Cubic Yd	71.50	119.56	155.96	201.46	245.80	324.92	53.07
4 Cubic Yd	88.41	149.53	202.75	269.04	303.86	378.20	60.66
6 Cubic Yd	107.89	202.75	263.85	300.24	386.01	466.60	68.24
8 Cubic Yd	133.89	243.05	336.61	392.52	466.59	595.24	71.28

**FRONT LOAD COMPACTOR RATES**

6 Cubic Yd							
8 Cubic Yd							

**FRONT LOAD RECYCLE RATES**

6 Cubic Yd	89.56	152.78	215.98				31.61
8 Cubic Yd	94.83	163.31	226.52				31.59

**other commercial front load fees**

Containers w/Casters	\$7.35	*Delivery and/or Removal Fee	\$57.95
Containers w/locks	\$7.35	Exchange Fee	\$79.02

\*Delivery or Removal fees are not charged during the initial start-up or termination of the agreement

**Temporary Front Load Rates**

per lift DELIVERY DAILY RE DISPOSAL

6 Cubic Yd	131.69	57.94	1.09	n/a			
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**ROLL OFF RATE SCHEDULE**

CONTAINER SIZE	HAUL	DELIVERY	DAILY RENT	DISPOSAL
20 Cubic Yd	303.99	82.90	5.25	n/a
30 Cubic Yd	352.43	82.90	5.25	n/a
40 Cubic Yd	421.52	82.90	5.25	n/a

**ROLL OFF COMPACTOR RATE SCHEDULE**

**Franchise and Billing Fees:**

Residential: 10.0%  
 Commercial: 10.0%

- \* All rates are inclusive of all franchise and billing fees
- \* Rates do not include any Sales Tax
- \* Rates do not include any Fuel Surcharges

**THIRD AMENDMENT TO FRANCHISE AGREEMENT**

This Third Amendment and Renewal Agreement (the "Amendment") is dated the \_\_\_\_ day of \_\_\_\_\_, 2015 and is by and between the City of Everman, Texas (the "City") and Progressive Waste Solutions of TX, Inc., a Texas corporation (the "Service Provider" or "PWS") (collectively "the Parties" or "Party").

**RECITALS:**

WHEREAS, the City and IESI TX Corporation entered into a Franchise Agreement for the collection, hauling and disposal of Municipal Solid Waste and Construction and Demolition Waste dated April 1, 2005 (the "Contract");

WHEREAS, the City and IESI TX Corporation entered into an Amendment and Renewal Agreement dated November 10, 2009 (the "1<sup>st</sup> Amendment") (the Contract and the 1<sup>st</sup> Amendment are hereinafter collectively referred to as the "Agreement");

WHEREAS, on June 20, 2012, IESI TX Corporation changed its name to Progressive Waste Solutions of TX, Inc.;

WHEREAS, on November 11, 2014 the Parties entered into a Second Amendment and Renewal Agreement.

WHEREAS, the Agreement will expire on March 31, 2020;

WHEREAS, the Parties desire to amend the Agreement as more fully described herein;

**AGREEMENT:**

NOW, THEREFORE, in consideration of the covenants, mutual promises, and agreements set forth herein and in the Agreement, Customer and Service Provider hereby agree as follows:

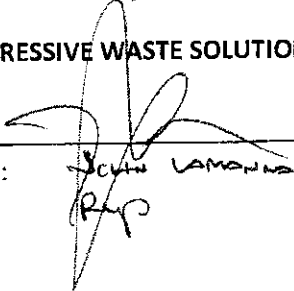

- I. **Defined Terms.** Section 1 of the Agreement is hereby modified by adding the definition of Recycle Waste to mean any used or non-hazardous waste materials suitable for reuse and recycling. Recycle Waste does not include Hazardous Waste or Municipal Solid Waste.
- II. **Operations.** Section 4 is amended to include Recycle Waste for Residential Units in 65 gallon Carts Curbside.
- III. **Rates and Fees.** The rate sheet attached to the Second Amendment and Renewal Contract is amended to include a Recycle Waste fee at \$4.00 per Residential Unit. The Parties are permitted to mutually agree upon reasonable increases during the Term of this Agreement.
- IV. **Reaffirmation.** The Parties hereto restate and reaffirm their agreement with all of the terms and provisions of the Agreement, as amended hereby.


V. **Counterparts; Facsimile Signatures.** This Second Amendment may be executed in any number of counterparts, each of which shall be deemed an original, but all of which collectively shall constitute one and the same instrument representing this Third Amendment between the Parties hereto, and it shall not be necessary for the proof of this Third Amendment that any Party produce or account for more than one such counterpart. Facsimile signatures shall be given the same force and effect as original signatures and shall be treated for all purposes and intents as original signatures.

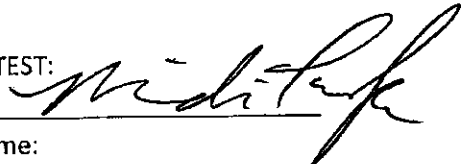
**IN WITNESS WHEREOF**, the undersigned have executed this Third Amendment as of the date first written above.

**PROGRESSIVE WASTE SOLUTIONS OF TX, INC.**

**CITY OF EVERMAN, TEXAS**

BY:   
Name: John Lamanna  
Title: 

BY:   
Name:  
Title:

ATTEST:   
BY:  
Name:  
Title: City Secretary

**SECOND AMENDMENT AND RENEWAL AGREEMENT**

This Second Amendment and Renewal Agreement (the "Amendment") is dated the 11<sup>th</sup> day of November, 2014 and is by and between the City of Everman, Texas (the "City") and Progressive Waste Solutions of TX, Inc., a Texas corporation (the "Service Provider").

**RECITALS:**

WHEREAS, the City and IESI TX Corporation entered into a Franchise Agreement for the collection, hauling and disposal of Municipal Solid Waste and Construction and Demolition Waste dated April 1, 2005 (the "Contract");

WHEREAS, the City and IESI TX Corporation entered into an Amendment and Renewal Agreement dated November 10, 2009 (the "1<sup>st</sup> Amendment") (the Contract and the 1<sup>st</sup> Amendment are hereinafter collectively referred to as the "Agreement");

WHEREAS, on June 20, 2012, IESI TX Corporation changed its name to Progressive Waste Solutions of TX, Inc.;

WHEREAS, the Agreement will expire on March 31, 2015;

WHEREAS, the parties desire to amend, renew, and extend the Agreement as more fully described herein;

**AGREEMENT:**

NOW, THEREFORE, in consideration of the covenants, mutual promises, and agreements set forth herein and in the Agreement, Customer and Service Provider hereby agree as follows:

I. Term. Section 3 of the Agreement is hereby modified by renewing the Agreement for an additional five (5) year term beginning on April 1, 2015 and terminating on March 31, 2020.

II. Rates and Fees. The rate sheet attached to the 1<sup>st</sup> Amendment as Attachment 1 is hereby deleted in its entirety and replaced with the rate sheet attached hereto as Exhibit A. The new rates on Exhibit A shall become effective on November 1, 2014.

III. Franchise Grant. Section 2 of the Agreement is hereby amended by adding the following sentence to the end of it: "To alleviate any confusion, the Service Provider shall have the exclusive right to provide the collection of recyclable materials within the City. In the event that the City desires the collection of recyclable materials from Commercial, Residential or Industrial Units, the Service Provider and City shall mutually agree upon pricing and equipment for the collection of such recyclable materials."

III. Reaffirmation. The parties hereto hereby restate and reaffirm their agreement with all of the terms and provisions of the Agreement, as amended hereby.

IV. Counterparts; Facsimile Signatures. This Second Amendment may be executed in any number of counterparts, each of which shall be deemed an original, but all of which collectively shall constitute one and the same instrument representing this Second Amendment between the parties hereto, and it shall not be necessary for the proof of this Second Amendment that any party produce or account for more than one such counterpart. Facsimile signatures shall be given the same force and effect as original signatures and shall be treated for all purposes and intents as original signatures.

IN WITNESS WHEREOF, the undersigned have executed this Amendment as of the date first written above.

PROGRESSIVE WASTE SOLUTIONS OF TX, INC.

CITY OF EVERMAN, TEXAS

By: [Signature]  
Name: John Gustafson  
Title: Vice President

By: [Signature]  
Name: RAY RICHARDSON  
Title: Mayor

ATTEST:  
By: [Signature]  
Name: Mirdi Parks  
Title: City Secretary

**AMENDMENT AND RENEWAL AGREEMENT**

This Amendment and Renewal Agreement (the "Amendment") is dated the 10<sup>th</sup> day of November, 2009 and is by and between the City of Everman, Texas (the "City") and IESI TX Corporation, a Texas corporation (the "Service Provider").

**RECITALS:**

WHEREAS, the City and Service Provider entered into a Franchise Agreement for the collection, hauling and disposal of Municipal Solid Waste and Construction and Demolition Waste dated April 1, 2005 (the "Agreement");

WHEREAS, the Agreement will expire on March 31, 2010;

WHEREAS, the parties desire to amend, renew, and extend the Agreement as more fully described herein;

**AGREEMENT:**

NOW, THEREFORE, in consideration of the covenants, mutual promises, and agreements set forth herein and in the Agreement, Customer and IESI hereby agree as follows:

I. Term. Section 3 of the Agreement is hereby modified by renewing the Agreement for an additional five (5) year term beginning on April 1, 2010 and terminating on March 31, 2015.

II. Rates and Fees. The rate sheet attached to the Agreement is hereby deleted in its entirety and replaced with the rate sheet attached hereto as Attachment 1. The new rates on Attachment 1 shall become effective on April 1, 2010.

III. Reaffirmation. The parties hereto hereby restate and reaffirm their agreement with all of the terms and provisions of the Agreement, as amended hereby.

IV. Counterparts; Facsimile Signatures. This Amendment may be executed in any number of counterparts, each of which shall be deemed an original, but all of which collectively shall constitute one and the same instrument representing this Amendment between the parties hereto, and it shall not be necessary for the proof of this Amendment that any party produce or account for more than one such counterpart. Facsimile signatures shall be given the same force and effect as original signatures and shall be treated for all purposes and intents as original signatures.



IN WITNESS WHEREOF, the undersigned have executed this Amendment as of the date first written above.

IESI TX CORPORATION

By: [Signature]  
Name: John [Signature]  
Title: VICE PRESIDENT

CITY OF Everman, Texas

By: Jim Stephenson  
Name: Jim Stephenson  
Title: Mayor

ATTEST:

By: TATIANA WOLF  
Name: Tatiana Wolf  
Title: City Secretary



**WASTE CONNECTIONS INC.**  
*Connect with the Future®*

March 10, 2023  
City of Everman  
Attn: Honorable Mayor and Members of Council  
212 B Race St  
Fort Worth, TX 76140

**RE: Price Adjustment based on Consumer Price Index (CPI) Solid Waste Contract Section 12.A**

Series Id CUSROOOOSEHGO2

Dear Honorable Mayor and Members of Council,

Waste Connections would like to sincerely thank you for the great opportunity we have had to serve the citizens and community of Everman.

Each year we evaluate cost per our contract with the city based on the Consumer Price Index (CPI) Solid Waste Contract Section 12.A. Based on the available data, the CPI increase is 7.0%. Based on our contract, we are requesting 6% for 2023's increase.

Inflation and operating costs have gone up considerably such as employee wages, maintenance on equipment, and disposal costs. In addition to our 6% CPI we are also requesting a 6.07% increase to cover the increase related to our disposal costs.

Per the contract, we are required to give the City 60 days' notice and so this will take effect for the June billing cycle. The billing will show a 12.07% increase on the June invoice.

Should you have any questions or concerns regarding this adjustment or anything else, please feel free to contact Abel Moreno at 817-222-2221 or by email at [Abel.Moreno@wasteconnections.com](mailto:Abel.Moreno@wasteconnections.com).

Best Regards,

Darcie Bird  
District Controller  
Waste Connections of TX

CC: Abel Moreno



**WASTE CONNECTIONS LONE STAR, INC**

4001 Old Denton Rd, Haltom City, Texas 76117  
 Contact: Abel Moreno; District Manager  
 Phone: (817) 222-2221

**City of Everman, TX  
 RATE SHEET**

Effective: June 2023 BILLING

RESIDENTIAL CURBSIDE COLLECTION: \$12.78 per month, per residential unit

Additional Cart: n/a per month, per residential unit per each additional Cart

RESIDENTIAL RECYCLING CURBSIDE COLLECTION: \$4.65 per month, per Single-Family Residential Unit

Additional Recycling Container: n/a per month, per residential unit per each additional Recycling Container

Senior Citizen Rate: \$11.61 per month, per residential unit

Out of Town Rate: \$24.97 per month, per residential unit

**COMMERCIAL RATE SCHEDULE**

CONTAINER SIZE	Lifts Per Week						Extra-Lifts
	1	2	3	4	5	6	
95 gallon Cart		29.08					32.98
2 Cubic Yd	72.96	118.57	135.27	205.18	238.66	287.28	44.34
3 Cubic Yd	83.61	139.81	182.38	235.59	287.45	379.97	62.06
4 Cubic Yd	103.38	174.86	237.10	314.63	355.35	442.29	70.94
6 Cubic Yd	126.16	237.10	308.56	351.11	451.42	545.66	79.80
8 Cubic Yd	156.57	284.24	393.65	459.03	545.65	696.10	83.35

**FRONT LOAD COMPACTOR RATES**

6 Cubic Yd							
8 Cubic Yd							

Residential goes thru the City

**FRONT LOAD RECYCLE RATES**

6 Cubic Yd	104.73	178.66	252.58				31.61
8 Cubic Yd	110.90	190.98	264.90				31.59

We Bill all Commercial & Roll Off- Co Id 004 Srv Area is EVM

**other commercial front load fees**

Containers w/Casters	\$8.59	*Delivery and/or Removal Fee	\$57.95
Containers w/locks	\$8.59	Excavng Fee	\$79.02

\*Delivery or Removal fees are not charged during the initial start-up or termination of the agreement

**Temporary Front Load Rates**

per lift DELIVERY DAILY RENT DISPOSAL

6 Cubic Yd	154.00	67.76	1.26	n/a			
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**ROLL OFF RATE SCHEDULE**

CONTAINER SIZE	HAUL	DELIVERY	DAILY RENT	DISPOSAL
20 Cubic Yd	335.43	91.47	5.79	n/a
30 Cubic Yd	388.89	91.47	5.79	n/a
40 Cubic Yd	465.12	91.47	5.79	n/a

**ROLL OFF COMPACTOR RATE SCHEDULE**

CONTAINER SIZE	HAUL	DELIVERY	DAILY RENT	DISPOSAL
20 Cubic Yd				
28 Cubic Yd				
30 Cubic Yd				
35 Cubic Yd				
40 Cubic Yd				
42 Cubic Yd				

**Franchise and Billing Fees:**

Residential: 10.0%  
 Commercial: 10.0%

\* All rates are inclusive of all franchise and billing fees

\* Rates do not include any Sales Tax

\* Rates do not include any Fuel Surcharges

Residential	
Monthly Tonnage	215.42
Prior Rate/Ton - Minnis	\$ 35.88
Total Disposal Cost	\$ 7,729.18
Monthly Tonnage	215.4
Current Rate/Ton - Minnis	\$ 43.70
Total Disposal Cost	\$ 9,413.74
Variance	\$ 1,684.56
Monthly Revenue	\$ 28,175.00
LF Cost Adjustment	5.98%
Disposal Pass-Through PI Dollars	\$ 1,684.56

Tons 290.43  
 Pre Cost \$ 10,420.80  
 Post Cost \$ 12,692.00  
 Variance \$ 2,271.20  
 Revenue \$ 37,434.00  
**PI 6.07%** Letter increase for Disposal Pass Through

Commercial	
Monthly Tonnage	75.02
Prior Rate/Ton - Minnis	\$ 35.88
Total Disposal Cost	\$ 2,691.62
Monthly Tonnage	75.0
Current Rate/Ton - Minnis	\$ 43.70
Total Disposal Cost	\$ 3,278.25
Variance	\$ 586.63
Monthly Revenue	\$ 9,259.00
LF Cost Adjustment	6.34%
Disposal Pass-through PI Dollars	\$ 586.63

### CPI for All Urban Consumers (CPI-U) 12-Month Percent Change

Series Id: CUSR0000SEHG02

Seasonally Adjusted

Series Title: Garbage and trash collection in U.S. city average, all

Area: U.S. city average

Item: Garbage and trash collection

Base Period: DECEMBER 1983=100

Years: 2022 to 2023

	Year	Jan
	<b>2022</b>	4.0
	<b>2023</b>	7.0

### CPI for All Urban Consumers (CPI-U) Original Data Value

Series Id: CUSR0000SEHG02  
 Seasonally Adjusted  
 Series Title: Garbage and trash collection in U.S. city average, all  
 Area: U.S. city average  
 Item: Garbage and trash collection  
 Base Period: DECEMBER 1983=100  
 Years: 2022 to 2023

	Year	Jan
2022		533.078
2023		570.412

**ORDINANCE NO. 558**

**FRANCHISE AGREEMENT**

**FOR THE COLLECTION, HAULING AND DISPOSAL OF**

**MUNICIPAL SOLID WASTE AND CONSTRUCTION AND DEMOLITION WASTE**

**IN THE CITY OF EVERMAN, TEXAS**

**APRIL 1, 2005**

ORDINANCE NO. 558

FRANCHISE AGREEMENT  
FOR THE COLLECTION, HAULING AND DISPOSAL OF  
MUNICIPAL SOLID WASTE AND CONSTRUCTION AND DEMOLITION WASTE  
IN THE CITY OF EVERMAN, TEXAS

STATE OF TEXAS

COUNTY OF TARRANT

THIS FRANCHISE AGREEMENT (this "Agreement") is made and entered into as of April 1, 2005, by and between IESI TX Corporation, a Texas Corporation (the "Service Provider"), and the City of Everman, Texas (the "City").

WHEREAS, the City, subject to the terms and conditions set forth herein and the ordinances and regulations of the City, desires to grant to the Service Provider a franchise, license and privilege to collect, haul and dispose of Municipal Solid Waste and Construction and Demolition Waste (as such terms are defined herein) within the City's corporate limits.

NOW, THEREFORE, in consideration of the premises and the mutual promises, covenants and agreements set forth herein, the Service Provider and the City hereby agree as follows:

**SECTION 1. DEFINED TERMS.**

The following terms, as used herein, will be defined as follows:

**Bulky Item** - Any item measuring in excess of either forty-eight (48) inches in length or fifty (50) pounds in weight, including, but not limited to, refrigerators, stoves, washing machines, water tanks, chairs, couches and tree trimmings.

**Bundles** - Items not measuring in excess of either forty-eight (48) inches in length or fifty (50) pounds in weight and which are securely fastened together, including, but not limited to, brush, newspapers and tree trimmings.

**Business Day** - Any day that is not a Saturday, a Sunday or holiday.

**Commercial Unit** - Any non-manufacturing commercial facility that generates and accumulates Municipal Solid Waste during, or as a result of, its business, including, but not limited to, restaurants, stores and warehouses.

**Construction and Demolition Waste** - Solid Waste resulting from construction or demolition activities or that is directly or indirectly the by-product of such activities, including, but not limited to, cartons, concrete, excelsior, gypsum board, metal, paper, plastic, rubber and wood products. Construction and Demolition Waste does not include Hazardous Waste or Municipal Solid Waste.



**Container** - Any receptacle, including, but not limited to, dumpsters and Roll-Offs provided to the City by the Service Provider and utilized by a Commercial, Industrial or Residential Unit for collecting Municipal Solid Waste or Construction and Demolition Waste. Containers are designed to hold between thirty (30) gallons and thirty (30) cubic yards of Municipal Solid Waste or Construction and Demolition Waste.

**Hazardous Waste** - Solid Waste identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency (EPA) under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, or so classified by any federal or State of Texas statute, rule, order or regulation.

**Handicapped Residential Unit** - Any residential dwelling that is inhabited by persons, all of whom are physically handicapped to the extent that they are unable to place Municipal Solid Waste at the curbside, and that generates and accumulates Municipal Solid Waste. The identities of the members of a Handicapped Residential Unit shall be certified by the City Manager and agreed to by the Service Provider.

- Holidays** - The following days:
- (1) New Year's Day (January 1st)
  - (2) Memorial Day
  - (3) Independence Day (July 4th)
  - (4) Labor Day
  - (5) Thanksgiving Day
  - (6) Christmas Day (December 25th).

**Industrial Unit** - Any manufacturing, mining or agricultural facility that generates and accumulates Municipal Solid Waste during, or as a result of, its operations.

**Landfill** - Any facility or area of land receiving Municipal Solid Waste or Construction and Demolition Waste and operating under the regulation and authority of the Texas Department on Environmental Quality ("**TDEQ**") within the State of Texas, or the appropriate governing agency for landfills located outside the State of Texas.

**Multi-Family Residential Unit** - Any residential dwelling that is designed for, and inhabited by, multiple family units and that generates and accumulates Municipal Solid Waste.

**Municipal Solid Waste** - Solid Waste resulting from or incidental to municipal, community, commercial, institutional or recreational activities, or manufacturing, mining, or agricultural operations. Municipal Solid Waste does not include Construction and Demolition Waste or Hazardous Waste.

**Residential Unit** - Any residential dwelling that is either a Single-Family Residential Unit or a Multi-Family Residential Unit.

**Roll-Off** - A Container with twenty (20) cubic yards to thirty (30) cubic yards of capacity.

**Single-Family Residential Unit** - Any residential dwelling that is designed for, and inhabited by, a single person or family unit and that generates and accumulates Municipal Solid Waste.

**Solid Waste** - As defined by the EPA under 40 C.F.R. § 261.2(a)(1), or by the State of Texas under the Solid Waste Disposal Act § 361.003(38), regardless of whether such waste is mixed with or constitutes recyclable materials.

**White Good** - Any item measuring in excess of either three (3) cubic feet in size or fifty (50) pounds in weight and that is manufactured primarily from metal, including, but not limited to, a bath tub, heater, hot water heater, refrigerator, sink or washer and dryer.

**SECTION 2. FRANCHISE GRANT.**

The City hereby grants to the Service Provider, in accordance with the City's ordinances and regulations governing the collection, hauling and disposal of Municipal Solid Waste and Construction and Demolition Waste, a franchise, license and privilege to collect, haul and dispose of Municipal Solid Waste and Construction and Demolition Waste over, upon, along and across the present and future streets, alleys, bridges and public properties within the territorial jurisdiction of the City. The City agrees that it will not, throughout the term of this Agreement, issue a permit for the collection, removal, transportation or disposal of refuse within the City pursuant to Section 9-10 of the Everman Code to any person or entity other than the Service Provider unless the City reasonably determines that such action is necessary to ensure the welfare of its residents.

**SECTION 3. TERM.**

The term of this Agreement shall be for a period of five (5) years, commencing on April 1, 2005 and concluding on March 31, 2010.

**SECTION 4. OPERATIONS.**

A. **Scope of Operations.** It is expressly understood and agreed that the Service Provider will collect, haul and dispose of all Municipal Solid Waste and Construction and Demolition Waste (i) generated and accumulated by Commercial, Industrial and Residential Units, and (ii) placed within Containers by those Commercial, Industrial and Residential Units receiving the services of the Service Provider (or otherwise generated and accumulated in the manner herein provided by those Commercial Units, Industrial Units and Residential Units), all within the City's corporate limits, including any territories annexed by the City during the term of this Agreement (the "Services").

B. **Nature of Operations.** The City hereby grants to the Service Provider, in accordance with the City's ordinances and regulations governing the collection, hauling and disposal of Municipal Solid Waste and Construction and Demolition Waste, the title to all Municipal Solid Waste and

Construction and Demolition Waste collected, hauled and disposed of by the Service Provider over, upon, along and across the present and future streets, alleys, bridges and public properties within the territorial jurisdiction of the City. All title to and liability for materials excluded from this Agreement shall remain with the generator of such materials.

**SECTION 5. SERVICE PROVIDERS DUTIES AND OBLIGATIONS.**

It shall be the duty and obligation of Service Provider to perform the following services:

A. Provisions of Equipment and Facilities. Service Provider agrees to furnish trucks, equipment, machinery, tools, personnel, labor, disposal, and any and all other items necessary and sufficient to fulfill its obligations under this contract, at its own expense, to adequately, efficiently and properly collect and transport Municipal Solid Waste and Construction and Demolition Waste, Bulky Items and Bundles and other refuse from residential and commercial properties within the corporate limits of the City in a systematic, clean, healthful and sanitary manner.

B. Disposal of Refuse. Service Provider will dispose of in a legal manner all Municipal Solid Waste and Construction and Demolition Waste, Bulky Items and Bundles and other refuse collected. All vehicles used by Service Provider for the collection of Municipal Solid Waste and Construction and Demolition Waste, Bulky Items and Bundles and other refuse shall be protected at all times while in transit to prevent leakage or the blowing or scattering of refuse onto the public streets of City or property adjacent thereto. Further, such vehicles shall be clearly marked with Service Provider's telephone number and name in letters and numbers not less than four (4) inches in height.

C. Sanitation and Health. All collection equipment shall be washed and deodorized as necessary, but a minimum of once per week. Service Provider shall establish and enforce in its operations and among its employees such regulations in regard to cleanliness and disposal of refuse as will tend to prevent the inception and spread of infectious or contagious disease and to effectively prevent the creation of a nuisance on any property, either public or private.

D. Routes and Schedules. Service Provider agrees to establish daily routes and special schedules for the collection of Municipal Solid Waste and Construction and Demolition Waste, Bulky Items and Bundles and other refuse as necessary to fulfill the requirements of this contract. Further, Service Provider will utilize written route books for use in the collection of refuse from all customers. A copy of each route book currently in use by Service Provider will be provided to City upon request and updated monthly so that City shall at all times have full knowledge of the designated route to be followed by Service Provider. City shall have the right to require alteration of service to any premises where unsightly or unsanitary conditions have resulted from inadequate commercial containers or an insufficient number of collections.

E. Labor Force and Equipment. Service Provider shall employ only superintendents, supervisors, and workers who are careful, competent and fully qualified to perform the duties or tasks assigned to them and shall secure the summary dismissal of any person or persons

employed by the Service Provider in or about or on the work who shall misconduct themselves in the performance of their duties or who shall neglect or refuse to comply with or carry out the directions of Service Provider.

F. All workers shall have sufficient skill, ability, and experience to properly perform the work assigned to them and operate any equipment necessary to properly carry out the performance of their assigned duties.

G. Service Provider shall furnish and maintain all equipment as is considered to be necessary for performance of work other than that used for daily residential pick up in an acceptable manner and at a satisfactory rate of progress. Service Provider shall agree to furnish and maintain equipment for daily residential pick up. All equipment, tools, machinery used for handling materials and executing any part of the work shall be maintained in a satisfactory, safe, and efficient working condition. Service Provider's equipment shall be of a size and weight as to not adversely effect or create unnecessary damage to existing city streets and roadways.

H. Such equipment shall also be kept in a neat and sanitary condition. Service Provider shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the work and services performed hereunder. Service Provider shall provide reasonable protection to prevent property loss or damage to both real and personal property and/or personal injury to persons, including but not limited to employees performing such work and all other persons who may be affected thereby.

**SECTION 6. SINGLE-FAMILY RESIDENTIAL UNIT COLLECTIONS.**

A. Single-Family Residential Units. The Service Provider will collect Municipal Solid Waste from Single-Family Residential Units twice per week on Tuesdays and Fridays; provided, that (i) such Municipal Solid Waste is placed at the curb in plastic bags and/or cans and (ii) such waste is placed within five (5) feet of the curbside or right of way adjacent to the Single-Family Residential Unit no later than 7:00 a.m. on the scheduled collection day.

B. Handicapped Residential Units. Notwithstanding anything to the contrary contained herein, the Service Provider agrees to assist Handicapped Residential Units with house-side collection of their bags and/or containers; provided, that the Service Provider receives prior written notice from the Handicapped Residential Unit of such special need.

**SECTION 7. COMMERCIAL, INDUSTRIAL AND MULTI-FAMILY RESIDENTIAL UNIT COLLECTIONS.**

The Service Provider will collect Municipal Solid Waste from Commercial, Industrial and Multi-Family Residential Units up to six times per week, as provided for in Attachment I. hereto. The Service Provider shall only be responsible for collecting, hauling and disposing of Municipal Solid Waste or Construction and Demolition Waste placed inside the Containers provided by the Service Provider. However, the Service Provider shall be obligated to offer and provide sufficient service to Commercial, Industrial and Multi-Family Residential Units, and to increase

or decrease, as necessary, the frequency of collection and the size or number of Containers so that Commercial, Industrial or Multi-Family Units' Municipal Solid Waste and Construction and Demolition Waste will be regularly contained. The Service Provider shall be compensated for these additional Services as provided for in Attachment 1 hereto.

**SECTION 8. SPECIAL COLLECTIONS AND SERVICES.**

A. City Landfill Use. The City is permitted to dispose 24 dump truck loads per year of Construction and Demolition Waste at the Fort Worth C & D Landfill at no cost to the City.

B. Residential Landfill Use. In addition, the Service Provider will allow each Residential Unit to deliver 4 loads of Construction and Demolition Waste per year to the IESI Fort Worth C&D Landfill at no charge to the resident. Each load shall not exceed (2) two cubic yards.

**SECTION 9. BULKY ITEMS AND BUNDLES.**

A. Pre-Arranged Collections. The Service Provider will collect Bulky Items and Bundles from Single-Family Residential Units at the time designated in the regular pick-up schedule, as designated by the Service Provider; provided, that (i) the Bulky Items or Bundles (A) are placed at the curbside no later than 7:00 a.m. on the scheduled collection day, (B) are reasonably contained, and (C) do not exceed two (2) cubic yards in total volume or have any individual item exceeding fifty (50) pounds in weight. The Service Provider shall only be responsible for collecting, hauling and disposing Bulky Items and Bundles from those Single-Family Residential Units that have complied with this Section 9.A.

B. Negotiated Collections. It is understood and agreed that the service provided under Section 9.A. does not include the collection of Bulky Items and Bundles comprised of Construction and Demolition Waste or any materials resulting from remodeling, general property clean-up or clearing of property for the preparation of construction. However, the Service Provider may negotiate an agreement on an individual basis with the owner or occupant of a Single-Family Residential Unit regarding the collection of such items by utilizing the Service Provider's Roll-Off Services.

**SECTION 10. TITLE TO EQUIPMENT.**

Notwithstanding anything to the contrary contained herein, it is expressly understood and agreed that all equipment, including, but not limited to, Containers, provided by the Service Provider in connection with the Services, shall at all times remain the property of the Service Provider.

**SECTION 11. RATES AND FEES.**

Subject to adjustment, as provided in Section 12 hereto, the rates and fees to be charged and received by the Service Provider are provided in Attachment 1:

**SECTION 12. RATE ADJUSTMENT.**

A. CPI-U Adjustment. After the expiration of the first twelve (12) months of this Agreement, the Service Provider shall have the right, in its sole discretion and upon giving sixty (60) days prior notice to the City, to increase or decrease the rates set forth in Section 11 hereto (the "Initial Rates") in accordance with the CPI-U. As used herein, "CPI-U" shall mean the revised Consumer Price Index rate for all urban consumers (all items included) for the nearest available metropolitan area, based on the latest available figures from the Department of Labor's Bureau of Labor Statistics (the "Bureau"). The CPI-U used will be the index entitled "CPI-U 'Dallas-Fort Worth, Texas area'" published by the Bureau during the month ninety (90) days preceding the adjustment under this Section 12.A. The amount of the increase or decrease under this Section 12.A. shall be equal to the percentage that the CPI-U has increased or decreased over the previous twelve (12) month period.

B. Operating Cost Adjustment. In addition to the rate adjustments provided for in Section 12.A., at any time during the term of this Agreement, the Service Provider may petition the City for additional rate and price adjustments at reasonable times on the basis of material or unusual changes in its cost of operations due to, or directly resulting from, increased fuel costs, ad valorem taxes, or revised federal, state or local laws, ordinances or regulations. Rates may be adjusted only to recover increased costs incurred by the Service Provider not offset by increased revenues. At the time of any such petition, the Service Provider shall provide the City with documents and records in reasonable form and sufficient detail to reasonably establish the necessity of any requested rate adjustment. The City Council shall have the right, in its sole discretion, to determine the validity of any request for a change in rates. No request for an increase in the rates may be submitted for a period of eighteen (18) months from the date this Agreement is executed.

C. Landfill Cost Adjustment. The parties acknowledge that the Municipal Solid Waste and Construction and Demolition Waste covered by this Agreement will be disposed of by the Service Provider at a Landfill(s) chosen by the Service Provider in its sole discretion (the "Initial Landfill(s)"). In the event that the Service Provider is unable to use the Initial Landfill(s) due to reasons out of its control, the Service Provider (i) shall have the right to dispose of the Municipal Solid Waste and Construction and Demolition Waste covered by this Agreement at another Landfill of its choosing, and (ii) shall have the right, upon giving sixty (60) days prior notice to the City, to increase the Initial Rates by an amount equal to the sum of (x) the amount, if any, that the disposal fees charged to the Service Provider at such other Landfill exceed those previously charged to the Service Provider at the Initial Landfill(s), and (y) the amount, if any, that the transportation costs incurred by the Service Provider in connection with transporting the Municipal Solid Waste and Construction and Demolition Waste to such other Landfill exceed those that would have been incurred by the Service Provider if such Municipal Solid Waste and Construction and Demolition Waste was transported to the Initial Landfill(s), provided however, if the increase in the Initial Rate in accordance with this paragraph 12.C. is unacceptable to the City, the City shall have the right to terminate this Agreement within sixty (60) days after receiving notice of the increase.

D. Governmental Fees. The parties acknowledge that the rates herein include all applicable fees, taxes or similar assessments incurred under federal, state and local laws, rules and ordinances (excluding taxes imposed on income) (the "Fees"). The parties acknowledge and understand that the Fees may vary from time to time, and, in the event any of such Fees are increased or additional Fees are imposed subsequent to the effective date of this Agreement, the parties agree that the rates herein shall be immediately increased by the amount of any such increase in Fees or additional Fees.

**SECTION 13. EXCLUSIONS.**

Notwithstanding anything to the contrary contained herein, this Agreement shall not cover the collection, hauling or disposal of any Hazardous Waste, animal or human waste, auto parts, used tires, concrete, dirt, gravel, rock or sand from any Container provided by the Service Provider located at any Commercial, Industrial or Residential Unit; provided, however, that the Service Provider and the owner or occupant of a Commercial, Industrial or Residential Unit may negotiate an agreement on an individual basis regarding the collection, hauling or disposal of auto parts, used tires, concrete, dirt, gravel, rock or sand by utilizing the Service Provider's Roll-Off Services.

**SECTION 14. ENFORCEMENT.**

During the term of this Agreement and any extension thereof, the City agrees to adopt and maintain ordinances that will enable the Service Provider to provide the Services set forth herein. If the Service Provider experiences recurring problems of damage or destruction to or theft of the Containers provided by the Service Provider pursuant to this Agreement, the Service Provider may, prior to replacing or repairing such Containers, require security deposits from the Commercial, Industrial or Residential Units utilizing such Containers. The City also hereby grants to the Service Provider the right of ingress and egress from and upon the property of Commercial, Industrial and Residential Units for the purposes of rendering the Services contemplated hereby.

**SECTION 15. PROCESSING, BILLING AND FEES.**

A. Residential Monthly Statement. On a monthly basis, the City agrees to bill and collect the rates and fees charged under Section 11 hereto from all Residential Units possessing active water meters within the City's territorial jurisdiction, as well as from all Residential Units requiring the collection, hauling and disposal of Municipal Solid Waste within the City's territorial jurisdiction (the "Residential Monthly Statement"). Thereafter, the City will remit to the Service Provider an amount equal to (x) the amount set forth in such Residential Monthly Statement, less (z) a franchise fee equal to ten percent (10%) of the amount set forth in the Residential Monthly Statement. Such remittance shall be made by the City on or before the 15th day of each month (for the immediately preceding month's service) commencing on April 15, 2005. Nothing herein shall prohibit the City from collecting sums in addition to those sums called for herein. The Service Provider shall not be held responsible for the collection of any "bad debt" billed by City to the Residential Units.

B. Commercial Monthly Statement. On a monthly basis, the Service Provider agrees to bill and collect the rates and fees charged under Section 11 hereto from all Commercial and Industrial Units requiring the collection, hauling and disposal of Municipal Solid Waste or Construction and Demolition Waste within the City's territorial jurisdiction (the "Commercial Monthly Statement"). Thereafter, the Service Provider will remit to the City an amount equal to (z) a franchise fee equal to ten percent (10%) of the amount set forth in the Commercial Monthly Statement. Such remittance shall be made by the Service Provider on or before the 15th day of each month (for the immediately preceding month's service) commencing on April 15, 2005. The City shall not be held responsible for the collection of "bad debt" relating to any amounts billed by the Service Provider to Commercial and Industrial Units.

**SECTION 16. SPILLAGE.**

It is understood and agreed that the Service Provider shall not be required to clean up, collect or dispose of any loose or spilled Municipal Solid Waste or Construction and Demolition Waste not caused by the Service Provider's rendering of the Services, or be required to collect and dispose of any excess Municipal Solid Waste or Construction and Demolition Waste placed outside of the Containers or bags by any Commercial, Industrial or Residential Unit. The Service Provider shall report the location of such conditions to the City so that the City can issue proper notice to the owner or occupant of the Commercial, Industrial or Residential Unit instructing the owner or occupant to properly contain such Municipal Solid Waste or Construction and Demolition Waste. Should excess Municipal Solid Waste or Construction and Demolition Waste continue to be placed outside of the Containers or bags, the City shall require the Commercial, Industrial or Residential Unit to increase the frequency of collection of such Municipal Solid Waste or Construction and Demolition Waste, or require the Commercial, Industrial or Residential Unit to utilize a Container with sufficient capacity so that the excess Municipal Solid Waste or Construction and Demolition Waste will be regularly contained. The Service Provider shall be compensated for these additional Services as provided for in Attachment 1 hereto, and shall be entitled to receive an extra collection charge for each additional Container requiring an extra collection.

**SECTION 17. NON-COLLECTION NOTICE AND FOLLOW-UP.**

A. Notice from the Service Provider. It is specifically understood and agreed that where the owner or occupant of a Commercial, Industrial or Residential Unit fails to timely place a Container or bag as directed in Sections 6 and 7 hereto, or is otherwise in violation of the City's ordinances and regulations, the Service Provider's reasonable rules adopted hereunder or the provisions of this Agreement relating to the nature, volume or weight of Municipal Solid Waste or Construction and Demolition Waste to be removed, the Service Provider may refrain from collecting all or a portion of such Municipal Solid Waste or Construction and Demolition Waste and will notify the City within eight (8) hours thereafter of the reason for such non-collection. The Service Provider will also provide written notice to the Commercial, Industrial or



Residential Unit of the reason for such non-collection, unless such non-collection is the result of the Commercial, Industrial or Residential Unit's failure to timely place the Containers, bags, Bulky Items or Bundles out for collection. Such written notice shall be attached to the Container or bag or the uncollected Municipal Solid Waste or Construction and Demolition Waste, shall indicate the nature of the violation and shall indicate the correction required in order that such Municipal Solid Waste or Construction and Demolition Waste may be collected.

B. Notice from a Commercial, Industrial or Residential Unit. When the City is notified by an owner or occupant of a Commercial, Industrial or Residential Unit that Municipal Solid Waste or Construction and Demolition Waste has not been removed from such Commercial, Industrial or Residential Unit and where no notice of non-collection or a change in collection schedule has been received by the City from the Service Provider, or the Service Provider has failed to collect Municipal Solid Waste or Construction and Demolition Waste from the Commercial, Industrial or Residential Unit without cause, as supported by notice as described herein, then the Service Provider will use all reasonable efforts to collect such Municipal Solid Waste or Construction and Demolition Waste on the day a collection order is issued by the City; provided, however, that if the Service Provider fails to make such collection on the same day that a collection order is issued by the City, the Service Provider shall make such collection no later than 12:00 p.m. on the following Business Day, and there shall be no charge to the Service Provider for any such original non-collection or late collection so long as the Service Provider makes such collection within such time.

C. Penalties for Noncollection. Failure to resolve a valid service complaint as determined by the Service Provider or the City Manager in the time prescribed shall subject the Service Provider to the penalties provided in this Section and it is agreed that the City may deduct from payments due or to become due to the Service Provider, the following amounts as liquidated damages:

1. Failure to clean up material amounts of spilled refuse – each incident: \$35.00.
2. Failure to neglect to collect refuse from any premises at those times as provided by the Agreement within 24 hours of the delivery of notice of such failure to the Service Provider: \$50.00.
3. Failure or neglect to correct chronic problem in any category above (chronic shall mean three or more similar incidents at the same premises within a three month period) – each instance: \$150.00.

**SECTION 18. HOURS OF SERVICE.**

For all the Services provided hereunder, the Service Provider's hours of service shall be between 7:00 a.m. to 7:00 p.m., Monday through Friday. The Service Provider will not be required to provide service on weekends or Holidays except during natural disasters or emergencies, and may, at its sole discretion, observe Holidays during the term of this Agreement.

**SECTION 19. CUSTOMER SERVICE.**

A. Office Hours. Service Provider's local office shall be open so that customers can make complaints, requests for information, requests for service, etc. during the hours of 8:00 a.m. through 5:00 p.m., Monday through Friday, excluding legal holidays. Service Provider agrees to secure an annual listing in the Fort Worth Telephone Directory under the name by which it conducts business in the community.

B. Office Personnel. Service Provider's local office shall have a responsible person in charge during collection hours on collection days and shall be equipped with sufficient attendants to receive telephone calls. Attendant(s) shall respond to calls in a courteous manner within the following twenty-four (24) hour period.

C. Managing Agent. Throughout the term of the Agreement, Service Provider shall establish and maintain an authorized Managing Agent and shall designate in writing to the City Manager the name, telephone number, and address of such agent to whom all notices may be served by the City of complaints received from citizens of the City.

D. Service Complaints. All service complaints shall initially be directed to Service Provider and shall be resolved within twenty-four (24) hours. Service Provider shall supply the City with copies of all complaints on a form approved by the City indicating the disposition of each complaint. The form shall indicate the day and hour on which the complaint was received and resolved. When a complaint is received on the day preceding a holiday or a weekend, it shall be serviced on the next working day.

E. Notification of Complaints. The City shall notify Service Provider of each complaint reported to the City in order for the Service Provider to take whatever reasonable steps are necessary to remedy the cause of the complaint. Service Provider shall notify the City of its disposition within twenty-four (24) hours after receipt of the complaint.

F. Explanation of disposition of Complaints. Service Provider shall provide the City with a full explanation of the disposition of any complaint involving a customer's claim of damage to private property as the result of actions of Service Provider's employees, agents, and subcontractors in connection with the performance of this Agreement.

G. Notification of Procedures. Service Provider shall notify all customers about procedures, rules and regulations, and days of collection on an annual basis and whenever there is a change in service, days of collection, procedures, etc. Notice is to be in the form of printed matter distributed by Service Provider to all premises served by Service Provider at least thirty (30) days prior to any change in the procedures, rules and regulations, days of collection, service, etc. Such notice must be approved by the City prior to distribution.

H. Noncollection. It is understood and agreed by and between the City and Service Provider that if any customer maintains improper or inadequate containers for the nature, volume, or weight of refuse to be removed from the premises, or if any customer improperly places debris or

Bulky Items for collection, Service Provider may refrain from collecting all or a portion of such refuse and shall notify the City and the customer of the reason for such non-collection. When the City is notified by a customer that refuse has not been removed from his or her premises on the scheduled collection day and where no notice of non-collection nor a change in collection schedule has been received from Service Provider, the City may investigate.

I. Dangerous Animals. Employees of Service Provider shall not be required to expose themselves to the danger of vicious animals in order to accomplish refuse collection in any case where the owner or tenants have animals at large, but Service Provider shall immediately notify the City, in writing, of such condition and of Service Provider's inability to make collection.

J. Hazardous Weather. Service Provider may cancel a portion or all of a scheduled service day due to hazardous weather conditions, and shall notify the City, in writing, of such cancellation.

**SECTION 20. SERVICE PROVIDERS RELATION TO CITY.**

A. Service Provider as Independent Contractor. It is expressly agreed and understood that Service Provider is in all respects an independent contractor as to the work, duties, and rights granted herein, notwithstanding the fact that Service Provider is bound to follow the direction of designated City officials, and that neither Service Provider nor any person performing any of the work covered under this contract is in any respect an agent, servant, officer, or employer of the City. This contract specifies the work to be done by Service Provider, but the method to be employed to accomplish this work shall be the exclusive responsibility of Service Provider, and under Service Provider's exclusive contract and right of control. The doctrine of *respondeat superior* shall not apply between the City and Service Provider, or any of Service Provider's agents, servants, employees, or subcontractor's and nothing herein shall be construed as creating a partnership or joint enterprise between the City and Service Provider.

B. Subletting and Assignment. This contract, or any portion thereof, shall not be sublet or assigned except with the prior written consent of the City Council of the City, which consent shall not be unreasonably withheld, conditioned or delayed.

No such consent will be construed as making the City a party to such subcontract or assignment, or as subjecting the City to liability of any kind to any subcontractor or assignee unless otherwise agreed to by the City. No subcontractor shall, under any circumstances, relieve Service Provider of its liability and obligation under this contract; and despite any such subletting, the City shall deal through Service Provider unless otherwise agreed by the City. Subcontractor will be dealt with as workers and representatives of Service Provider, and such shall be subject to the same requirements as to character and competence as are other employees of Service Provider.

C. Inspection of Performance. The City Manager may inspect Service Provider's operations, equipment, and performance at any reasonable time, and Service Provider shall furnish the City Manager with every reasonable opportunity to inspect Service Provider's operations or

equipment or for otherwise ascertaining whether or not the work is being performed in accordance with the requirements of this contract.

D. Insurance Coverage. The insurance coverage specified in Section 23 constitutes the minimum requirements and said requirements shall in no way lessen or limit the liability or responsibility of Service Provider under the terms of this contract. Service Provider shall procure and maintain, at its own cost and expense, any additional kinds and amount of insurance, that, in its own judgement, may be necessary for proper protection in the prosecution of its work under this Agreement.

**SECTION 21. DUE CARE.**

The Service Provider shall exercise due care and caution in providing the Services so that the City's public and private property, including streets and parking areas, will be protected and preserved.

**SECTION 22. PERSONNEL AND PERFORMANCE STANDARDS.**

The Service Provider shall not deny employment to any person on the basis of race, creed or religion, and will ensure that all federal and state laws pertaining to salaries, wages and operating requirements are met or exceeded. The Service Provider, its agents, servants and employees shall perform the Services in a courteous, competent and professional manner. During the term of this Agreement and any extension thereof, the Service Provider shall be responsible for the actions of its agents, servants and employees while such agents, servants and employees are acting within the scope of their employment or agency.

**SECTION 23. INSURANCE COVERAGE.**

Pursuant to this Agreement, the Service Provider shall carry the following types of insurance in an amount equal to or exceeding the limits specified below:

A. Insurance. Service Provider shall not commence work under this contract until Service Provider has obtained all the insurance required under this contract and certificates evidencing such coverage are received by the City, Service Provider shall be responsible for delivering to the City Service Provider's certificate of insurance for approval. Service Provider shall include the coverage of all subcontractors in any insurance policy it carries. The City also shall be named as an additional insured on each policy described in subsections 2 through 4 below. All insurance policies shall contain a provision that states that coverage under the policies will not be canceled until at least thirty (30) days prior written notice has been given to the City. The failure by the Service Provider to keep in full force and effect any insurance required by this contract shall be deemed a breach of this contract.

1. Workers Compensation Insurance- Service Provider shall maintain, during the life of this contract, Worker's Compensation Insurance in the statutory amounts on all employees to be engaged in work under this contract, and for all subcontractors. In case any classes of

employees engaged in hazardous work under this contract are not protected under the Worker's Compensation Statute, the Service Provider shall provide adequate employer's general liability insurance for the protection of such employees not so protected.

2. Comprehensive General Liability Insurance – Service Provider shall procure and shall maintain during the life of this contract Public Liability and Property Damage Insurance in an amount not less than \$5,000,000 covering each occurrence on account of bodily injury, including death, and in an amount not less than \$1,000,000 covering each occurrence on account of property damage.

3. Automobile Insurance- Bodily Injury and Property Damage- Service Provider shall procure and maintain during the life of this contract, Comprehensive Automobile Liability Insurance in an amount not less than \$500,000 for injuries including accidental death to any one person and, subject to the same limit for each person, an amount not less than \$1,000,000 on account of one accident, and automobile property damage insurance in an amount not less than \$500,000.

4. Additional Coverage- Any insurance coverage that is required by statute, which is not expressly stated herein, shall be maintained in accordance with statutory requirements.

5. Excess Umbrella Liability Insurance- \$5,000,000 per occurrence. Notwithstanding the above, the Service Provider may satisfy any of the above policy limits with excess coverage.

6. Scope of Insurance- The insurance required under the above paragraphs shall provide adequate protection for Service Provider and its subcontractors, respectively, against damage claims which may arise from operations under this contract, whether such operations be by the insured or by anyone directly or indirectly employed by the insured. All insurance requirements made upon Service Provider shall apply to a subcontractor's work operations.

7. Insurance and Bonding Companies- The insurance and bonding companies with whom Service Provider's insurance and performance bonds are written shall be authorized to do business in the State of Texas and shall be represented by a duly qualified agent or agents upon whom service of process may be had, and must have authority and power to act on behalf of the insurance and/or bonding company to negotiate and settle with the City, or any other claimant, any claims that the City or other claimant, or any property owner who has been damaged, may have against Service Provider or its insurance or bonding company. The name of the agent or agents shall be set forth on all such bonds and certificates of insurance. Service Provider shall keep the required insurance in full force and effect at all times during the term of this contract, and any renewals thereof. Service Provider shall furnish to the City a certificate of insurance, evidencing that Service Provider has obtained the required insurance coverage. All policies shall provide that they may not be changed or canceled by the insurer in less than five (5) days after the City has received written notice of such change or cancellation.

**SECTION 24. INDEMNITY.**

**A. SERVICE PROVIDER ASSUMES ALL LIABILITY AND RESPONSIBILITY FOR AND HEREBY COVENANTS AND AGREES TO FULLY INDEMNIFY, HOLD HARMLESS, AND DEFEND CITY, ITS OFFICERS, AGENTS, SERVANTS, AND EMPLOYEES FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, SUITS, JUDGEMENTS, ASSESSMENTS, COSTS, AND EXPENSES (INCLUDING WITHOUT LIMITATION, REASONABLE FEES AND EXPENSES OF ATTORNEYS, EXPERT WITNESSES AND OTHER CONSULTANTS) FOR PROPERTY DAMAGE OR LOSS AND/OR PERSONAL INJURY, INCLUDING DEATH, TO ANY AND ALL PERSONS OF WHATSOEVER KIND OR CHARACTER ARISING OUT OF OR IN CONNECTION WITH THE PERFORMANCE, ATTEMPTED PERFORMANCE OR NON-PERFORMANCE OF THE WORK AND SERVICES DESCRIBED HEREUNDER OR IN ANY WAY RESULTING FROM OR ARISING OUT OF THE COLLECTION, TRANSPORTATION, AND DISPOSAL OF SOLID WASTE OR REFUSE UNDER THIS CONTRACT, INCLUDING THE WORK, SERVICES, OPERATIONS, AND LEGAL DUTIES OF SERVICE PROVIDER, ITS OFFICERS, AGENTS SERVANTS, EMPLOYEES, SUBCONTRACTORS, LICENSEES, OR INVITEES, IF ANY. IN THE EVENT OF JOINT AND CONCURRENT RESPONSIBILITY OF SERVICE PROVIDER AND CITY, RESPONSIBILITY AND INDEMNITY, IF ANY, SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE TEXAS LAW, WITHOUT WAIVING ANY DEFENSE 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 PERSON.**

**B. SERVICE PROVIDER SHALL LIKEWISE ASSUME ALL RESPONSIBILITY AND LIABILITY FOR AND SHALL INDEMNIFY AND HOLD HARMLESS THE CITY FOR ANY AND ALL INJURY OR DAMAGE TO CITY PROPERTY ARISING OUT OF OR IN CONNECTION WITH ANY AND ALL NEGLIGENT OR WILLFUL ACTS OR OMISSIONS OF SERVICE PROVIDER, ITS OFFICERS, AGENTS, SERVANTS, EMPLOYEES, SUBCONTRACTORS, LICENSEES, OR INVITEES, INCLUDING WITHOUT LIMITATION, REASONABLE FEES AND EXPENSES OF ATTORNEYS, EXPERT WITNESSES AND OTHER CONSULTANTS, EXPENDED BY THE CITY IN ANY SUIT OR CLAIM AGAINST THE SERVICE PROVIDER.**

**SECTION 25. MISCELLANEOUS.**

**A. Compliance with laws. Service Provider hereby agrees to comply with all applicable federal, state, and local laws including the Fair Labor Standards Act and rules, regulations orders and decrees of the Texas Department of Health, the Texas Commission on Environmental Quality (formerly the Texas Natural Resources Conservation Commission), and the United States Environmental Protection Agency. Service Provider shall indemnify and hold harmless the City, its officers, representatives, agents, and employees against any claim or liability arising from or based on the violation of any such laws, regulations, ordinances, order or**

**decree, whether such violation was by Service Provider, its agents or employees, or any subcontractor.** Service Provider shall not be required to collect or dispose of any oil, sludge, fecal material or any radioactive, pathological, toxic, acidic or volatile material, or other hazardous waste or improper waste from any commercial or residential customer. Should Service Provider elect to dispose of such materials, Service Provider shall take such steps and precautions as are required by the applicable laws governing disposal of such material.

Service Provider shall at all times observe all City ordinances controlling or limiting those engaged performing work under this contract; provided, however, that nothing contained in any ordinance not in derogation of this Agreement now in effect or hereafter adopted pertaining to the collection of Municipal Solid Waste and Construction and Demolition Waste, Bulky Items and Bundles or other trash shall in any way be construed to affect, change or modify or otherwise alter the duties, responsibilities and operation of Service Provider in the performance of the terms of this Agreement. It is the intention hereof that Service Provider be required to perform the terms of this Agreement regardless of the affect of interpretation of any municipal ordinance not in derogation of this Agreement which in any way relates to brush, debris, garbage, hazardous waste, bulky items, refuse, bundled or boxed bundled items or trash.

B. Multiple Originals. This Agreement may be executed in multiple originals, each of which shall be deemed for all purposes to be an original, and all of which are identical.

C. Paragraph Headings. The paragraph headings contained herein are for the convenience in reference and are not intended to define or limit the scope of any provision of this Agreement.

D. Successors and Assigns. All of the terms, covenants, and agreements contained herein shall be binding upon and shall inure to the benefit of successors and assigns of the respective parties hereto.

E. Notices. Notices by either party to the other party shall be sufficient if sent by certified mail, postage paid, return receipt required, addressed to the other party at the addresses designated below each party's signature hereunder.

F. Venue. Should any action, whether real or asserted, at law or in equity, arise out of the terms and conditions of this Agreement, venue for said action shall be in Tarrant County, Texas.

G. Governmental Powers and Immunity. It is understood and agreed that by execution of this Agreement, City does not waive or surrender any of its governmental powers, or sovereign immunity.

H. Taxes. Subject to Section 12(d) above, Service Provider shall pay all federal, state, and local taxes including sales tax, social security, worker's compensation, unemployment insurance, and any and all other required taxes which may be chargeable against labor, material, equipment, real estate, and any other items necessary to and in performance of this contract.

I. Licenses, Permits, and Fees. Subject to Section 12(d) above, Service Provider agrees to obtain and pay for all licenses, permits, certificates, inspections and all other fees required by law or otherwise necessary to perform the services prescribed hereunder. Service Provider shall also pay, at Service Provider's own expense, all disposal fees associated with the collection, removal and disposal of refuse; provided, however, that nothing herein shall impede Service Provider's rights to adjust the rates hereunder as may be specifically set forth in this Agreement.

J. Performance Bond. Service Provider agrees that upon the execution of this Contract and before beginning work, it shall make, execute, and deliver to the City a good and sufficient surety bond, to secure the faithful performance of the terms and conditions herein. Such bond shall be in the amount of One Hundred Thousand Dollars (\$100,000), and signed by an authorized officer of the Service Provider, together with the signature of the corporate secretary and the corporate seal, if any. The surety shall be a surety company duly authorized to do business in the State of Texas, and approved by the City, which approval shall not be unreasonably withheld, conditioned or delayed.

K. Savings Provision. In the event that any term or provision of this Agreement shall be determined by a court of competent jurisdiction to be invalid or unenforceable, this Agreement shall, to the extent reasonably possible, remain in force as to the balance of its terms and provisions as if such invalid term or provision were not a part hereof.

L. Audit. Either Service Provider or the City may request an audit of all account records by the City's or, as applicable, Service Provider's outside, independent audit firm then engaged by the City or, as applicable, the Service Provider at the time of the request. Such audit shall be at the expense of the party requesting same. Further, supporting documentation of billings will be provided to the City or Service Provider upon request by the other party.

M. Force Majeure. The performance of this Agreement may be suspended and the obligations hereunder excused in the event and during the period that such performance is prevented by a cause or causes beyond the reasonable control of such party. The performance of this Agreement will be suspended and the obligations hereunder excused only until the condition preventing performance is remedied. Such conditions shall include, but not be limited to, acts of God, acts of war, accident, explosion, fire, flood, riot, sabotage, unusually severe weather, lack of adequate fuel, or judicial or governmental laws or regulations.

N. Attorneys Fees. The prevailing party in any suit, action or proceeding arising out of or involving the enforcement, interpretation or application of this Agreement shall be entitled to recover all reasonable attorneys' fees incurred in connection with such action, suit or proceeding.

## SECTION 26. TERMINATION.

A. Any failure by the Service Provider or its successors and assigns to observe the terms and conditions of this Agreement shall, if continuing or persisting without remedy for more than thirty (30) days after the receipt of due written notice from the City (and signed by the City Manager), constitute grounds for forfeiture and immediate termination of all the Service Provider's rights that would have otherwise accrued



after the date of such termination under this Agreement, and all such rights shall become null and void.

- B. Any failure by the City to pay any amounts owed to Service Provider under this Agreement shall, if continuing or persisting without remedy for more than thirty (30) days after the receipt of due written notice from Service Provider, constitute grounds for forfeiture and immediate termination of all the City's rights that would have otherwise accrued after the date of such termination under this Agreement, and all such rights shall become null and void.

**SECTION 27. ACCEPTANCE.**

PASSED AND APPROVED BY THE CITY OF EVERMAN, TEXAS COUNCIL MEETING AT A TIME AND PLACE IN COMPLETE CONFORMITY WITH THE OPEN MEETING LAWS OF THE STATE OF TEXAS AND ALL OTHER APPLICABLE LAWS THIS 8th DAY OF MARCH, 2005.

IESI TX CORPORATION  
2301 Eagle Parkway, Suite 200  
Fort Worth, Texas 76177

By: Jeff Beckham  
Jeff Beckham  
Vice President

CITY OF EVERMAN  
212 North Race Street  
Everman, Texas 76140

By: Jim Stephenson  
Name: Jim Stephenson  
Title: Mayor

ATTEST:

By: Judy Thompson  
Name: Judy Thompson  
Title: City Secretary



**WASTE CONNECTIONS LONE STAR, INC.**

4001 Old Denton Rd, Haltom City, Texas 76117  
 Contact: Marty Grant, District Manager  
 Phone: (817) 222-2221

**EXHIBIT A**  
**City of Everman, TX**  
**RATE SHEET**

Effective: April 1st, 2020 BILLING

RESIDENTIAL CURBSIDE COLLECTION: \$18.97 per month, per residential unit  
 Additional Cart: n/a per month, per residential unit per each additional Cart  
 RESIDENTIAL RECYCLING CURBSIDE COLLECTION: \$4.00 per month, per Single-Family Residential Unit  
 Additional Recycling Container: n/a per month, per residential unit per each additional Recycling Container  
 Senior Citizen Rate: \$9.98 per month, per residential unit

**COMMERCIAL RATE SCHEDULE**

CONTAINER SIZE	Lifts Per Week						Extra-Lifts
	1	2	3	4	5	6	
95 gallon Cart		24.87					28.20
2 Cubic Yd	62.39	101.39	115.65	175.48	204.08	245.68	37.92
3 Cubic Yd	71.60	119.56	165.96	201.46	245.80	324.92	53.07
4 Cubic Yd	86.41	149.63	202.75	269.04	303.88	378.20	60.68
6 Cubic Yd	107.89	202.75	283.85	300.24	395.01	465.60	68.24
8 Cubic Yd	133.89	243.05	338.61	392.52	466.59	595.24	71.28

**FRONT LOAD COMPACTOR RATES**

6 Cubic Yd							
8 Cubic Yd							

Residential goes thru the City

**FRONT LOAD RECYCLE RATES**

6 Cubic Yd	89.68	162.78	215.98				31.81
8 Cubic Yd	94.83	163.31	226.52				31.69

We Bill all Commercial & Roll Off- Co Id 004 Srv Area is EVM

**other commercial front load fees**

Containers w/Casters	\$7.35	*Delivery and/or Removal Fee	\$57.95
Containers w/locks	\$7.35	Exchange Fee	\$79.02

\*Delivery or Removal fees are not charged during the initial start-up or termination of the agreement  
 Temporary Front Load Rates

CONTAINER SIZE	per lift			DISPOSAL
	DELIVERY	DAILY RENT	DISPOSAL	
6 Cubic Yd	131.69	57.94	1.09	n/a

**ROLL OFF RATE SCHEDULE**

CONTAINER SIZE	HAUL	DELIVERY	DAILY RENT	DISPOSAL
20 Cubic Yd	303.99	82.90	5.25	n/a
30 Cubic Yd	392.43	82.90	5.25	n/a
40 Cubic Yd	421.52	82.90	5.25	n/a

**ROLL OFF COMPACTOR RATE SCHEDULE**

CONTAINER SIZE	HAUL	DELIVERY	DAILY RENT	DISPOSAL
20 Cubic Yd				
24 Cubic Yd				
30 Cubic Yd				
36 Cubic Yd				
40 Cubic Yd				
42 Cubic Yd				

**Franchise and Billing Fees:**

Residential: 10.0%  
 Commercial: 10.0%

- \* All rates are inclusive of all franchise and billing fees
- \* Rates do not include any Sales Tax
- \* Rates do not include any Fuel Surcharges



# CITY OF EVERMAN

## Office of the City Manager

212 N. Race St.  
Everman, TX 76140

March 17, 2023

Darcie Bird  
District Controller; Waste Connections of TX  
4001 Old Denton Road  
Fort Worth, TX 76117

RE: Partial Rejection of Price Adjustment

Greetings,

The City of Everman received the attached notice of price adjustment that is stated to become effective in June. The notice indicates two separate increases. The first increase is in accordance with subsection 12.A of the most recently approved contract amendment which requests a 6.0% CPI-U increase. This requested increase is clearly within the agreed-upon contract, and the City of Everman is not opposed.

The second increase is a request for an additional 6.07%, citing inflation, operating, and disposal costs. Although we understand the circumstances regarding this request, the City of Everman respectfully rejects this additional increase. Upon execution of the Fourth Amendment to the contract, Section 12 of the agreement was deleted in its entirety and replaced with a section regarding CPI-U Rate Adjustment. Therefore, any additional increases that Waste Connections would like for the City of Everman to consider would need to be considered by the Mayor and Council through contract re-negotiations and amendments.

Should you have any questions or concerns regarding this letter, please do not hesitate to contact this office.

Very Respectfully,

A handwritten signature in black ink, appearing to read "C. W. Spencer".

C. W. Spencer  
City Manager – City of Everman  
[cspencer@evermantx.net](mailto:cspencer@evermantx.net)  
(817) 293-0525; ext. 316

**ORDINANCE NO. 795**

**AN ORDINANCE OF THE CITY OF EVERMAN, TEXAS, CANCELLING THE GENERAL ELECTION TO BE HELD ON THE 6<sup>TH</sup> DAY OF MAY, 2023, FOR THE PURPOSE OF ELECTING CITY COUNCIL MEMBERS FOR PLACES 1, 3 AND 5 ON THE CITY COUNCIL OF THE CITY OF EVERMAN, TEXAS; DECLARING THAT EACH UNOPPOSED CANDIDATE TO BE ELECTED TO OFFICE; REQUIRING POSTING OF THIS ORDINANCE ON ELECTION DAY AT EACH POLLING PLACE; PROVIDING A REPEALING CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, on the February 21, 2023, by passage of Ordinance 793, the City of Everman General Election was ordered by the Everman City Council to be held on May 6, 2023, for the purpose of electing City Council Members for Places 1, 3 and 5 on the City Council; and

**WHEREAS**, the filing deadlines for filing an application for place on the ballot and for declaration of write-in candidacy have passed; and

**WHEREAS**, the City Secretary has certified in writing that no person has made a declaration of write-in candidacy and that each candidate on the ballot for office is unopposed for this election; and

**WHEREAS**, in these circumstances, Section 2.053 of the Texas Election Code authorizes the City Council to declare each unopposed candidate elected to office and to cancel the general election;

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EVERMAN, TEXAS that:**

**SECTION 1.** The following candidates, who are unopposed for the May 6, 2023 General Election, are hereby declared elected to office and shall be issued Certificates of Election following the time the election would have been canvassed:

- |               |                        |
|---------------|------------------------|
| Linda Sanders | Council Member Place 1 |
| Johnnie Allen | Council Member Place 3 |
| Judy Sellers  | Council Member Place 5 |

**SECTION 2.** The May 6, 2023 General Election for the purpose of electing the City Council Members for Places 1, 3 and 5 is hereby cancelled.

**SECTION 3.** The City Secretary is hereby directed to cause a copy of this ordinance to be posted on Election Day at the polling location(s) designated by Ordinance 793, the Everman Civic Center, 213 North Race Street, Everman, Texas 76140.

**SECTION 4.** The recitals contained in the preamble hereof are hereby found to be true and correct, and such recitals are hereby made a part of this Ordinance for all purposes and are adopted as a part of the judgment and findings of the City Council.

**SECTION 5.** All ordinances or parts of ordinances in force when this Ordinance becomes effective which are inconsistent or in conflict with the terms and provisions contained in this Ordinance are hereby repealed only to the extent of such conflict.

**SECTION 6.** Should any part, sentence or phrase of this Ordinance be determined to be unlawful, void or unenforceable, the validity of the remaining portions of this Ordinance shall not be adversely affected. No portion of this Ordinance shall fail or become inoperative by reason of the invalidity of any other part. All provisions of this Ordinance are declared to be severable.

**SECTION 7.** This Ordinance is effective immediately upon its passage and approval.

**DULY PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF EVERMAN, TEXAS ON THIS THE \_\_\_\_\_ DAY OF MARCH 2023.**

**APPROVED:**

\_\_\_\_\_  
Ray Richardson, Mayor

**APPROVED AS TO FORM:**

\_\_\_\_\_  
John D. Oliver, Asst. City Attorney  
(030723vwtTM133942)

**ATTEST:**

\_\_\_\_\_  
Mindi Parks, City Secretary

**AN ORDINANCE OF THE CITY OF EVERMAN, TEXAS  
ORDINANCE NO. 796**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF EVERMAN, TEXAS, AMENDING THE CODE OF ORDINANCES OF THE CITY OF EVERMAN, TEXAS BY AMENDING SECTION 9.4 “DEFINITIONS AND REGULATIONS” OF ARTICLE 9 “SIGN REGULATIONS” OF APPENDIX B “ZONING ORDINANCE”; PROVIDING A SEVERABILITY CLAUSE, PROVIDING A REPEALING CLAUSE; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the City Staff has determined that there is a need for an addition to the City’s Sign Regulations to allow monument type signs indicating entryways to residential “subdivision” developments; and

**WHEREAS**, the City Council has determined that the amendment set forth in this ordinance meets that need and is in the best interest of the citizens of the City as it promotes health, safety and the general welfare;

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EVERMAN, TEXAS, THAT:**

**SECTION 1.** The Code of Ordinances of the City of Everman, Texas is hereby amended by amending Section 9.4 “Definitions and Regulations” of Article 9 “Sign Regulations” of Appendix B “Zoning Ordinance” to read in its entirety as follows:

“Section 9.4 Definitions and regulations

...

SS. *Subdivision Sign* means a permanent sign that identifies the name of the residential subdivision at the entry of the subdivision which is either (a) a sign supported from the grade to the bottom of the sign having or appearing to have a solid and opaque base or (b) a sign mounted to a screening wall and extending no more than sixteen (16) inches from the façade of the wall to which it is attached and not to exceed ten (10%) percent of the surface of the wall or three hundred (300) square feet, whichever is less. Subdivision signs are permissible subject to the following conditions:

1. *Permit.* A sign permit shall be issued for a subdivision sign after city council approval of a final plat;
2. *Manner.*

- a) If a subdivision sign includes electricity or lighting, all electrical wiring must conform to current electrical codes and should be shaded wherever necessary to avoid casting bright light onto any public street, park, or residential area.
- b) Sign supports should be masonry, non-decaying wood, or structural steel tubing.

3. *Location.*

- a) Subdivision signs are permitted only in conjunction with a residential use in a residential zoning district, which may include a planned development district with a residential base zoning.
- b) Subdivision signs shall be located within the platted boundaries of the subdivision.
- c) No sign shall be located in any vision triangle formed by the center lines of any two (2) intersecting streets. At any intersection where at least one of the intersecting streets is an arterial street (as defined in the City's Thoroughfare Plan) the sides of the triangle formed by the center lines of the intersecting streets shall be one hundred-twenty (120) feet in length as measure outward from the point of intersection of such center lines along such center lines. At all other intersections, each of such sides shall be eighty (80) feet in length.
- d) No more than one (1) subdivision sign per street front shall be permitted.
- e) A subdivision sign may not be located within one hundred twenty-five (125) linear feet of another freestanding sign.
- f) A subdivision sign mounted to a screening wall shall not extend above the highest point of the screening wall to which it is attached.

4. *Size.*

- a) The maximum area of a subdivision sign which is not mounted to a screening wall shall be no more than one hundred, twenty-five (125) square feet and no more than two (2) sign faces shall be permitted, with such sign faces to be parallel.
- b) Subdivision signs not attached to a screening wall shall not exceed six feet and six inches (6'6") in height above existing

grade, except where otherwise allowed by this section. Berming incorporated within the placement of the sign shall be included in any height measurement.

- 5. *Landscaping.* Subdivision signs shall e placed in a landscaped area of not less than the area of one (1) face of such sign.

...

*[The text of the remaining subsections of section 9.4 shall remain unchanged and shall be renumbered and/or re-lettered accordingly to accommodate the insertion of this new subsection SS]*

**SECTION 2.** Should any word, sentence, paragraph, subdivision, clause, phrase or section of this ordinance, be adjudged or held to be void or unconstitutional, the same shall not affect the validity of the remaining portions of said ordinance which shall remain in full force and effect.

**SECTION 3.** All ordinances of the City of Everman, Texas, in conflict with the provisions of this ordinance be, and the same are hereby, repealed; provided, however, that all other provisions of said ordinances not in conflict with the provisions of this ordinance shall remain in full force and effect.

**SECTION 4.** This ordinance shall take effect immediately from and after its passage, as the law and charter in such cases provide.

**DULY ORDAINED, PASSED AND ADOPTED** by the City Council of the City of Everman, Texas, on the \_\_\_\_\_ day of March 2023.

**CITY OF EVERMAN, TEXAS**

**ATTEST:**

**APPROVED:**

\_\_\_\_\_  
Mindi Parks, City Secretary

\_\_\_\_\_  
Ray Richardson, Mayor

**APPROVED AS TO FORM:**

\_\_\_\_\_  
John D. Oliver, Assistant City Attorney  
(031323vwtTM134002)





February 28, 2023

City of Everman  
212 N. Race St.  
Everman, TX 76140

**RE: Request to Award Construction Contract**

City Staff and Council,

This letter is to certify that TNP, Inc. has acknowledged Whirlix Design Inc. as the low-bidder for the Clyde Pittman Park Inclusive Playground construction project in the City of Everman. Attached for your review is the bid tabulation report.

TNP finds no reason why Whirlix Design Inc. is not capable of performing the necessary work to complete this project.

In making this request, we acknowledge that we cannot send out the notice of Intent to Award without your written approval.

Please contact us for any additional information.

Sincerely,  
**tnp**

Paris Sanchez, RLA  
5237 N. Riverside Drive, Suite 100  
Fort Worth, TX 76137  
817.665.7066

\_\_\_\_\_  
Acknowledged

\_\_\_\_\_  
Date

**I. STANDARD FORM OF AGREEMENT**



blueprints as prepared by the OWNER'S engineer; all of which are made a part hereof and collectively evidence and constitute the entire contract (hereinafter "the Contract").

The CONTRACTOR agrees to commence work within ten (10) days from the date agreed to and specified in the "Notice-to-Proceed," and to substantially complete the work within one hundred and fifty (150) calendar days after the date specified in the "Notice-to-Proceed" with construction, subject to such extensions of time as are provided in the General and Special Conditions.

The OWNER agrees to pay the CONTRACTOR the amount shown in the PROPOSAL, which forms a part of this Contract, with such payments subject to the General and Special Conditions of the Contract. Commissioners Court Communication attached hereto states the funding amount available from all sources.

The CONTRACTOR acknowledges and agrees that it has fully, accurately, and completely disclosed all interested parties in the attached Form 1295 and has acknowledged the completeness of this disclosure by filing the Form 1295, attached as Exhibit A, with the Texas Ethics Commission as required by law.

This Contract shall not be interpreted to inure to the benefit of a third party not a party to this Contract. This Contract may not be interpreted to waive any statutory or common law defense, immunity, including governmental immunity, or any limitation of liability, responsibility, or damage of any party to this Contract, party's agent, or party's employee, otherwise provided by law.

This contract shall be interpreted under the laws of the State of Texas. The venue for any lawsuit arising out of this Agreement will be the Fort Worth Division of the Northern District of Texas.

Both OWNER and CONTRACTOR agree to abide by all state and federal laws, statutes, and regulations applicable to the completion of the project described.

SIGNED AND EXECUTED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**TARRANT COUNTY, TEXAS**

**CONTRACTOR NAME HERE**

\_\_\_\_\_  
**B. Glen Whitley,**  
**County Judge**

\_\_\_\_\_  
**Name of Contractor Representative,**  
**Title**

APPROVED AS TO FORM:

CERTIFICATION OF  
AVAILABLE FUNDS: \$\_\_\_\_\_

\_\_\_\_\_  
Criminal District Attorney's Office\*

\_\_\_\_\_  
Tarrant County Auditor

\*By law, the District Attorney's Office may only approve contracts for its clients. We reviewed this document from our client's legal perspective. Other parties may not rely on this approval. Instead, those parties should seek contract review from independent counsel.



**SPECIFICATIONS**  
**AND**  
**CONTRACT DOCUMENTS**  
**Clyde Pittman Park Inclusive Playground**  
**For The**  
**CITY OF EVERMAN, TEXAS**



**JANUARY 2023**

**Prepared by:**  
**Teague Nall and Perkins, Inc.**  
**5237 N. Riverside Drive, Suite 100**  
**Fort Worth, Texas 76137**  
[www.tnpinc.com](http://www.tnpinc.com)  
**TBPELS-Engineering No F-230**  
**Surveying No 10011600, 10194381, 10011601**  
**GBPE No PEF007431: TBAE No BR 2673**

**EVR 22335**

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**I. PROJECT INFORMATION**

**A. Project Identification**

- 1. **Project Name:** Clyde Pittman Park Inclusive Playground
- 2. **Project Location:** 333-451 N Race St, Everman, TX 76140
- 3. **Owner:** Tarrant County
  - a) Department: Tarrant County Community Development & Housing
  - b) Program Manager: Brad Hearne
  - c) Address: 2501 Parkview Drive, Suite 420, Fort Worth, TX 76102
  - d) Phone: 817-850-7961
  - e) Email: [blhearne@tarrantcounty.com](mailto:blhearne@tarrantcounty.com)
- 4. **City Project Manager:** Craig Spencer

**B. Project Description**

- 1. **Summary Project Description:** Proposed Inclusive Playground
- 2. **Contract Scope:** Grading, Site Preparation, Concrete flatwork, and Playground

**C. Project Consultants**

- 1. **ENGINEER:** TNP, Inc.
  - a) 5237 N Riverside Dr #100, Fort Worth, TX 76137
  - b) Phone: (817) 336-5773
  - c) Email: [nnelson@tnpinc.com](mailto:nnelson@tnpinc.com)

**D. Procurement Timetable**

- a) **1. Construction Documents Available on [www.civcast.com](http://www.civcast.com):**  
January 18, 2023
- b) **2. Advertisement in Commercial Recorder:**  
Wed., January 18, 2023  
Wed., January 25, 2023
- c) **3. Pre-Bid Meeting (non-mandatory):**  
Fri., January 27, 2023 at 10:00am (In-Person, Tarrant County Office or Virtual)

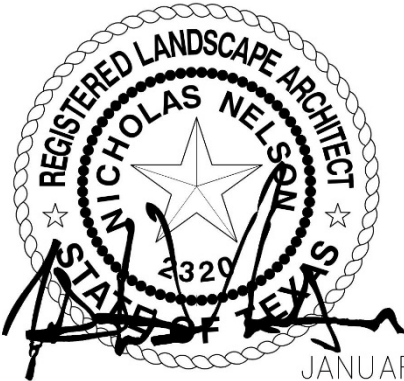
**Microsoft Teams Meeting Information**

[https://teams.microsoft.com/l/meetup-join/19%3ameeting\\_NzM2YmY3YzMtNWExNS00NjM2LWFkYWYtYTZmMzA3ZWYxYzY4%40thread.v2/0?context=%7b%22Tid%22%3a%228f8e3fdc-a7d4-436e-99f4-d20a6bf2f876%22%2c%22Oid%22%3a%22a05d4b6b-631a-4f49-a9f4-62161aef7e89%22%7d](https://teams.microsoft.com/l/meetup-join/19%3ameeting_NzM2YmY3YzMtNWExNS00NjM2LWFkYWYtYTZmMzA3ZWYxYzY4%40thread.v2/0?context=%7b%22Tid%22%3a%228f8e3fdc-a7d4-436e-99f4-d20a6bf2f876%22%2c%22Oid%22%3a%22a05d4b6b-631a-4f49-a9f4-62161aef7e89%22%7d)

Meeting ID: 272 787 319 602  
Passcode: WzTTSE  
**Or call in (audio only)**  
[+1 682-386-1268,297720755#](tel:+16823861268297720755)  
Phone Conference ID: 297 720 755#

- d) **4. Bid Opening:**  
Fri., February 3, 2023 at 11:00am (In-Person, Tarrant County Office)

**II. SEALS PAGE**



JANUARY 18, 2023

**III. NOTICE TO BIDDERS**

**A. Receipt and Opening of Bids**

The County of Tarrant (herein called the "OWNER"), invites bids on the form attached hereto, all blanks of which must be appropriately filled in. Bids will be received by the OWNER at the office of Tarrant County Community Development Division until Wednesday December 7, at 10:30am and then at said office publicly opened and read aloud. The envelopes containing the bids must be sealed, addressed to Tarrant County Community Development Division at 2501 Parkview Dr, Ste 420, Fort Worth, Texas 76102 and designated as (Clyde Pittman Park Inclusive Playground) (333-451 N Race St, Everman, TX 76140).

The OWNER may consider informal any bid not prepared and submitted in accordance with the provisions hereof and may waive any informalities or reject any and all bids. Any bid may be withdrawn prior to the above scheduled time for the opening of bids or authorized postponement thereof. Any bid received after the time and date specified shall not be considered. No bidder may withdraw a bid within 60 days after bid opening.

**B. Preparation of Bid**

Each bid must be submitted in a sealed envelope bearing on the outside the name of the bidder, their address and the name of the project for which the bid is submitted. If forwarded by mail, the sealed envelope containing the bid must be enclosed in another envelope addressed as specified in the bid form.

**C. Method of Bidding**

The OWNER invites the following bid(s):

As indicated in PROPOSAL.

**D. Qualification of Bidder**

The OWNER will make such investigations as they deem necessary to determine the ability of the bidder to perform the work, and the bidder shall furnish to the OWNER all such information and data for this purpose as the OWNER may request. The OWNER reserves the right to reject any bid if the evidence submitted by, or investigation of, such bidder fails to satisfy the OWNER that such bidder is properly qualified to carry out the obligations of the contract and therefore to complete the work contemplated herein. Conditional bids will not be accepted.

**E. Bid Security**

Each bid must be accompanied by a certified check of the bidder, or a bid bond, duly executed by the bidder as principal and having as surety thereon a surety company approved by the OWNER, in the amount of 5% of the bid. Such checks or bid bonds will be returned to all except the three lowest bidders within thirty days after the

opening of bids and the remaining checks or bid bonds will be returned promptly after the OWNER and the accepted bidder have executed the contract or, if no award has been made within sixty days after the date of the opening of bids, upon demand of the bidder at any time thereafter, so long as they have not been notified of the acceptance of their bid.

**F. Liquidated Damages for Failure to Enter into Contract**

The successful bidder, upon their failure or refusal to execute and deliver the contract and bonds required within 10 days after they have received notice of the acceptance of their bid, shall forfeit to the OWNER, as liquidated damages for such failure or refusal, the security deposited with their bond.

**G. Time of Completion and Liquidated Damages**

Bidder must agree to commence work on or before a date to be specified in a written "Notice to Proceed" by the OWNER and to fully complete the project within the specified time as stated in the proposal.

**H. Conditions of Work**

Each bidder must inform themselves fully of the conditions relating to the construction of the project and the employment of labor thereon. Failure to do so will not relieve a successful bidder of their obligation to furnish all material and labor necessary to carry out the provisions of their contract. Insofar as possible, the CONTRACTOR, in carrying out their work, must employ such methods or means as will not cause any interruption of or interference with the work of any other contractor.

**I. Addenda and Interpretations**

No interpretation of the meaning of plans, specifications, or other pre bid documents will be made to any bidder orally.

Every request for such interpretation shall be in writing, addressed to the Tarrant County Community Development Division, 2501 Parkview Drive, Suite 420, Fort Worth, Texas, 76102, and to be given consideration, must be received at least five days prior to the date fixed for the opening of bids. Any and all such interpretations and any supplemental instructions will be in the form of written addenda to the specifications which, if issued, will be mailed by certified mail with return receipt requested to all prospective bidders at the addresses furnished, not later than opening of bids. Failure of any bidder to receive any such addendum or interpretation shall not relieve the bidder from any obligation under their bid as submitted. All addenda so shall become part of the contract documents.

**J. Security for Faithful Performance**

In the event the Contract amount exceeds \$25,000, simultaneously with their delivery of the executed contract, the CONTRACTOR shall furnish a surety bond or bonds as security

for faithful performance of this contract and for the payment of all persons performing labor on the project under this contract and furnishing materials in connection with this contract, as specified in the General Conditions included herein. The surety on such bond or bonds shall be a duly authorized surety company satisfactory to the OWNER.

**K. Power of Attorney**

Attorneys-in-fact who sign bid bonds or contract bonds must file with each bond a certified and current copy of their power of attorney.

**L. Notice of Special Conditions**

Attention is particularly called to those parts of the contract documents and specifications which deal with the following:

- 1. Inspection and testing of materials
- 2. Insurance requirements
- 3. Wage rates
- 4. Stated allowances

**M. Laws and Regulations**

The bidder's attention is directed to the fact that all applicable State laws, municipal ordinances and the rules and regulations of all authorities having jurisdiction over construction of the project shall apply to the contract throughout, and they will be deemed to be included in the contract the same as though herein written out in full.

**N. Method of Award – Lowest Qualified Bidder**

If at the time this contract is to be awarded, a lowest non-deductive base bid submitted by a responsible bidder does not exceed the amount of funds estimated by the OWNER as available to finance the contract, the contract will be awarded on the submitted Base Bids. If bids exceed this amount, the OWNER may reject all bids. No conditional bids will be accepted.

**O. Obligation of Bidder**

At the time of the opening of bids each bidder will be presumed to have inspected the site and to have read and to be thoroughly familiar with the plans and contract documents (including all addenda). The failure or omission of any bidder to examine any form, instrument, or documents shall in no way relieve the bidder from any obligation in respect to their bid.

**P. Work Order Changes**

It is understood that the quantities of work to be done at unit prices are approximate only and are intended principally to serve as a guide in evaluating bids. Any change order will be approved by the Commissioners' Court of Tarrant County prior to work being started on said change.



**Q. Maintenance Bond**

Maintenance Bonds to cover defective workmanship or materials are required for all projects in the amounts and time periods as discussed in XI Special Conditions, Sub-section L, Paragraph 1.

**IV. CONTRACTOR/SUBCONTRACTOR INFORMATION**

**A. CONTRACTOR INFORMATION**

Project #

City

Project Name

Address

City, TX Zip

Name of Firm: \_\_\_\_\_

Type of Firm:

Corporation \_\_\_\_\_ Sole Proprietorship \_\_\_\_\_ Other \_\_\_\_\_

Woman-Owned \_\_\_\_\_ Minority-Owned \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Phone Number: \_\_\_\_\_

Names of Principals:

President: \_\_\_\_\_

Vice President: \_\_\_\_\_

Secretary: \_\_\_\_\_

Treasurer: \_\_\_\_\_

I.R.S. Number & SAM.gov UEId \_\_\_\_\_

**B. CONTRACTOR CERTIFICATION OF ELIGIBILITY**

I CERTIFY THAT \_\_\_\_\_  
(Name of Company)

IS ELIGIBLE FOR AWARD OF A FEDERALLY-ASSISTED OR INSURED  
CONTRACT.

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

FOR: \_\_\_\_\_  
(Name of Company)

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Telephone Number: \_\_\_\_\_

Date: \_\_\_\_\_

**C. VERIFICATION**

(To be completed by Tarrant County)

The above company's name does not appear on the LISTS OF PARTIES EXCLUDED  
FROM FEDERAL PROCUREMENT OR NON-PROCUREMENT PROGRAMS AS OF  
THE FOLLOWING DATE:

Signature: \_\_\_\_\_

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

Date: \_\_\_\_\_

**D. SUBCONTRACTOR INFORMATION**

Project #

City

Project Name

Address

City, TX Zip

Name of Firm: \_\_\_\_\_

Type of Firm:

Corporation \_\_\_\_\_ Sole Proprietorship \_\_\_\_\_ Other \_\_\_\_\_

Woman-Owned \_\_\_\_\_ Minority-Owned \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

Phone Number: \_\_\_\_\_

Names of Principals:

President: \_\_\_\_\_

Vice President: \_\_\_\_\_

Secretary: \_\_\_\_\_

Treasurer: \_\_\_\_\_

I.R.S. Number & SAM.gov UEId \_\_\_\_\_

Approximate dollar value of sub-contract \$\_\_\_\_\_.

Note: A separate form must be completed for each subcontractor.

**E. SUBCONTRACTOR CERTIFICATION OF ELIGIBILITY**

I CERTIFY THAT \_\_\_\_\_  
(Name of Company)

IS ELIGIBLE FOR AWARD OF A FEDERALLY-ASSISTED OR INSURED  
CONTRACT.

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

FOR: \_\_\_\_\_  
(Name of Company)

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Telephone Number: \_\_\_\_\_

Date: \_\_\_\_\_

**F. VERIFICATION**

(To be completed by Tarrant County)

The above company's name does not appear on the LISTS OF PARTIES EXCLUDED  
FROM FEDERAL PROCUREMENT OR NON-PROCUREMENT PROGRAMS AS OF  
THE FOLLOWING DATE:

Signature: \_\_\_\_\_

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

Date: \_\_\_\_\_

V. **PROPOSAL**

TO: Tarrant County Community Development  
2501 Parkview Dr, Ste 420  
Fort Worth, Texas 76102

FOR: Clyde Pittman Park Inclusive Playground  
333-451 N Race St. City of Everman, TX  
Project # B-20-UW-48-0001-24-25

The undersigned, as bidder, declares that the only person or parties interested in this proposal as principals are those named herein, that this proposal is made without collusion with any other person, firm, or corporation; that they have carefully examined the form of contract, Notice to Bidders, specifications, and the plans therein referred to, and have carefully examined the locations, conditions, and classes of materials of the proposed work; and agrees that they will provide all the necessary labor, machinery, tools, apparatus, and other items incidental to construction, and will do all the work and furnish all the material called for in the contract and specifications in the manner prescribed therein and according to the requirements of the ENGINEER as therein set forth.

It is understood that the following quantities of work to be done at unit prices are approximate only and are intended principally to serve as a guide in evaluating bids.

It is further agreed that the quantities of work to be done at unit prices and material to be furnished may be increased or diminished as may be considered necessary, in the opinion of the ENGINEER, to complete the work fully as planned and contemplated, and that all quantities of work, whether increased or decreased are to be performed at the unit prices set for the below except as provided for in the specifications.

It is further agreed that lump sum prices may be increased to cover additional work ordered by the ENGINEER, but not shown on the plans or required by the Specifications, in accordance with the provisions of the General Conditions. Similarly, they may be decreased to cover deletion of work so ordered.

It is understood and agreed that the work awarded under all Bid scenarios is to be completed in full within **150 calendar days** after the date stated in the work order on which work is to be commenced.

Accompanying this proposal is a certified Bidder's Bond or Cashier's Check payable to the Owner in the amount of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_).

The bid security accompanying this proposal shall be returned to the bidder, unless in case of the acceptance of the proposal the bidder shall fail to execute a contract and file a performance bond, maintenance bond, and a payment bond within ten (10) days after its acceptance, in which case the bid security shall become the property of the OWNER, and shall be considered as payment for



damages due to delay and other inconveniences suffered by the OWNER on account of such failure of the bidder. It is understood that the OWNER reserves the right to reject any and all bids.

### **ADDITIONAL INSTRUCTIONS TO BIDDERS**

1. All bids will be opened and awarded based on the applicable provisions of the Texas Local Government Code, as well as any and all other applicable laws.
2. CONTRACTOR shall submit the original and one copy of the bid proposal to the Owner prior to bid opening. A copy of all opened bids will be made available for inspection by anyone desiring to see them.
3. Owner is entitled to reject any and all bids.
4. CONTRACTOR shall not total items in bid. The totaling of the items will be done by the ENGINEER after the bids have been opened. The informal copy required under item 2, above, may be totalized as a convenience for other bidders but the total shall not be read at the bid opening.
5. Unit and lump sum prices must be shown in words and figures for each item listed in the proposal. In the event of a discrepancy:
  - a. Words control over figures.
  - b. Computational and/or mathematical errors will be corrected by the ENGINEER, and the corrected amount will control over the erroneous amount in determining the bid price.
6. A bid that has been opened may not be changed for the purpose of correcting an error in the bid price.
7. Compensation ultimately paid on a unit price contract will be based on the actual quantities purchased.

**BASE BID PART 'A' – CONSTRUCTION OF  
CLYDE PITTMAN PARK INCLUSIVE PLAYGROUND**  
**333-451 N Race St.**  
**City of Everman, TX**

<u>PAY ITEM</u>	<u>APPROX. QUANTITY</u>	<u>DESCRIPTION OF ITEMS WITH BID PRICES WRITTEN IN WORDS</u>	<u>UNIT PRICE</u>	<u>TOTAL AMOUNT BID</u>
1	1	General Site Preparation for the sum of _____ _____ Dollars _____ Cents per lump sum	\$ _____	\$ _____
2	1	Furnish and Install Landscape Structures Omni Spin Playground Equipment (Or Approved Equal), for the sum of _____ _____ Dollars _____ Cents per each	\$ _____	\$ _____
3	1	Furnish and Install Landscape Structures Roller Table Playground Equipment (Or Approved Equal), for the sum of _____ _____ Dollars _____ Cents per each	\$ _____	\$ _____
4	1	Furnish and Install Landscape Structures Cozy Dome w/ Pod Stepper Playground Equipment (Or Approved Equal), for the sum of _____ _____ Dollars _____ Cents per each	\$ _____	\$ _____

PAY ITEM	APPROX. QUANTITY	DESCRIPTION OF ITEMS WITH BID PRICES WRITTEN IN WORDS	UNIT PRICE	TOTAL AMOUNT BID
5	1	Furnish and Install Landscape Structures Wesaw Playground Equipment (Or Approved Equal), for the sum of  _____ _____ Dollars _____ Cents  per each	\$ _____	\$ _____
6	1	Furnish and Install Landscape Structures Rhapsody Vibra Chimes-Pentatonic Scale Playground Equipment (Or Approved Equal), for the sum of  _____ _____ Dollars _____ Cents  per each	\$ _____	\$ _____
7	1	Furnish and Install Landscape Structures Kettle Drum Playground Equipment (Or Approved Equal), for the sum of  _____ _____ Dollars _____ Cents  per each	\$ _____	\$ _____
8	1	Furnish and Install Tongue Drum Playground Equipment (Or Approved Equal), for the sum of  _____ _____ Dollars _____ Cents  per each	\$ _____	\$ _____

PAY ITEM	APPROX. QUANTITY	DESCRIPTION OF ITEMS WITH BID PRICES WRITTEN IN WORDS	UNIT PRICE	TOTAL AMOUNT BID
9	1	Furnish and Install Landscape Structures Double Bobble Rider Playground Equipment (Or Approved Equal), for the sum of _____ _____ Dollars _____ Cents per each	\$ _____	\$ _____
10	1	Furnish and Install Landscape Structures Single Post Swings w/ Toddler Extension Playground Equipment (Or Approved Equal), for the sum of _____ _____ Dollars _____ Cents per each	\$ _____	\$ _____
11	270	Furnish and Install Landscape Structures Tuff Timber Border w/ ADA Ramp (Or Approved Equal), for the sum of _____ _____ Dollars _____ Cents per linear foot	\$ _____	\$ _____
12	168	Furnish and Install Fibar 100 EWF System (Or Approved Equal), for the sum of _____ _____ Dollars _____ Cents per cubic yard	\$ _____	\$ _____

**END BASE BID PART 'A'**

NOTE: Contractor shall not include the total base bid on the original proposal (see Additional Instructions to Bidders on Page 2 of this Proposal).

NOTE: The apparent low bidder will be announced approximately two (2) working days after the bid opening.

For purposes of complying with the Texas Tax Code, the CONTRACTOR agrees that the charges for any material incorporated into the project in excess of the estimated quantity provided for herein will be no less than the invoice price for such material to the Contractor.

In the event of the award of a contract to the undersigned, the undersigned will furnish a performance bond, a payment bond, and a two-year maintenance bond for the full amount of the contract, to secure proper compliance with the terms and provisions of the contract, to insure and guarantee the work until final completion and acceptance, and to guarantee payment of all lawful claims for labor performed and materials furnished in the fulfillment of the contract.

The work proposed to be done shall be accepted when fully completed and finished in accordance with the plans and specifications to the satisfaction of the ENGINEER.

The undersigned certifies that the bid prices contained in this proposal have been carefully checked and are submitted as correct and final.

NOTE: Unit and lump sum prices must be shown in words and figures for each item listed in this proposal, and in the event of discrepancy, the words shall control. Should bid prices or any item be omitted, the right is reserved to apply the lowest prices submitted by any other bidders for the omitted items in payment for work done under this proposal.

All forms included in the Proposal section must be signed by the CONTRACTOR to be considered as a valid bid. NOTE: Non-collusion Affidavit and Certification of Compliance must be signed when this bid is submitted.

Receipt is hereby acknowledged of the following addenda to the contract documents:

Addendum No. 1 \_\_\_\_\_, Received \_\_\_\_\_

Addendum No. 2 \_\_\_\_\_, Received \_\_\_\_\_

Addendum No. 3 \_\_\_\_\_, Received \_\_\_\_\_

Respectfully submitted,

\_\_\_\_\_ Date

By: \_\_\_\_\_

\_\_\_\_\_ Title

\_\_\_\_\_

\_\_\_\_\_ Address

Phone: \_\_\_\_\_

(SEAL)  
If Bidder is Corporation  
Date: \_\_\_\_\_

**NON-COLLUSION AFFIDAVIT OF PRIME BIDDER**

STATE OF TEXAS           §  
  §  
COUNTY OF TARRANT   §

\_\_\_\_\_, being first duly sworn, disposes and says that:

A. S/He is \_\_\_\_\_ of \_\_\_\_\_  
(Owner, Partner, Officer, Representative, or Agent)

\_\_\_\_\_, the Bidder that has submitted the attached bid;

B. S/He is fully informed respecting the preparation and contents of the attached Bid and all of pertinent circumstances respecting such bid;

C. Such Bid is genuine and is not a collusive or sham bid;

D. Neither the said Bidder nor any of its officers, partners, owners, agents, representatives, employees or parties in interest, including this affiant, has in any way colluded, conspired, connived, or agreed, directly or indirectly with any other Bidder, firm or person to submit a collusive or sham Bid in connection with the Contract for which the attached Bid has been submitted or to refrain from bidding in connection with such Contract, or has in any manner, directly or indirectly, sought by agreement or collusion or communication or conference with any other Bidder, firm or person to fix the price or prices in the attached Bid or of any other Bidder, or to fix any overhead, profit or cost element of the Bid price or the bid price of any other Bidder, or to secure through any collusion, conspiracy, connivance or unlawful agreement any advantage against the Owner or any person interested in the proposed Contract; and

E. The price or prices quoted in the attached Bid are fair and proper and are not tainted by any collusion, conspiracy, connivance, or unlawful agreement on the part of the Bidder or any of its agents, representatives, owners, employees, or parties in interest, including this affiant.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

Subscribed and sworn to before me  
this \_\_\_\_\_ day of \_\_\_\_\_,  
20\_\_.

\_\_\_\_\_  
NOTARY PUBLIC in and for

\_\_\_\_\_ County,  
Texas.

My Commission expires: \_\_\_\_\_



**CERTIFICATION OF COMPLIANCE WITH SECTION 109 OF PUBLIC LAW 100-202**

Section 109 of Public Law 100-202 restricts awarding contracts for work on public buildings or public works to contractors or subcontractors from foreign countries that deny fair trade practices to the United States.

On December 30, 1987, the United States Trade Representatives (“USTR”) published an initial list in accordance with Section 109 of Public Law 100-202 and Japan was the only country on this list. As long as Japan remains on this list, CDBG funds may not be obligated or expended for public building and public works contracts with Japanese contractors or subcontractors, or with suppliers of Japanese products.

Prohibitions of Section 109 include contracts for construction, alteration, or repair of any public building or public works project or any contracts for engineering, architectural, or other service directly related to the preparation for or performance of said construction, alteration, or repair of these projects.

Bidder certifies by his/her signature that they will comply with Section 109 of Public Law 100-202 and that:

- A. Their name is not included on the U.S. Firms Published by the USTR List,
- B. They will not enter into any subcontract with a subcontractor or foreign country included on the USTR List, and
- C. They will not provide any product of a country on the USTR List.

Date: \_\_\_\_\_

Company Name: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

Telephone Number: \_\_\_\_\_

By: \_\_\_\_\_  
(Signature and Title)

**VI. STANDARD FORM OF AGREEMENT**

STATE OF TEXAS            §  
  §  
COUNTY OF TARRANT    §

This agreement is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between the TARRANT COUNTY, TEXAS (hereinafter referred to as "OWNER"), and \_\_\_\_\_ of the City of \_\_\_\_\_, County of \_\_\_\_\_, and State of \_\_\_\_\_ (hereinafter referred to as "CONTRACTOR"), by and through its duly authorized officer.

WITNESSETH: In consideration of the payments and agreements mentioned below, the CONTRACTOR agrees with the OWNER to commence and complete the construction of certain improvements described as follows:

Enter a description of the Project (hereinafter referred to as the "Project")

and all extra work in connection with the improvements as noted in the terms of both the General Conditions and the Special Conditions of the Agreement. The materials, supplies, machinery, equipment, tools, superintendence, labor, insurance and all other accessories and services necessary to complete the construction shall be at the CONTRACTOR'S own expense. The construction shall be in accordance with the NOTICE TO BIDDERS, CONTRACTOR/SUBCONTRACTOR INFORMATION, PROPOSAL, PERFORMANCE BOND, PAYMENT BOND, MAINTENANCE BOND, CERTIFICATION OF INSURANCE, GENERAL CONDITIONS OF AGREEMENT, SPECIAL CONDITIONS, FEDERAL LABOR STANDARDS, WAGE DECISIONS, LABOR STANDARD AND WAGE DECISION CERTIFICATION, EQUAL EMPLOYMENT OPPORTUNITY CERTIFICATION, HUD HANDBOOK NO. 1300.17, TRAINING, EMPLOYMENT AND CONTRACTING OPPORTUNITIES FOR BUSINESSES AND LOWER INCOME PERSONS IN CONNECTION WITH ASSISTED PROJECTS, COPELAND ANTI-KICKBACK ACT, SPECIAL SPECIFICATIONS, SPECIAL MATERIAL AND/OR EQUIPMENT SPECIFICATIONS, E-VERIFY, ANTI-BOYCOTT STATUTES, and the drawings and

blueprints as prepared by the OWNER'S engineer; all of which are made a part hereof and collectively evidence and constitute the entire contract (hereinafter "the Contract").

The CONTRACTOR agrees to commence work within ten (10) days from the date agreed to and specified in the "Notice-to-Proceed," and to substantially complete the work within one hundred and fifty (150) calendar days after the date specified in the "Notice-to-Proceed" with construction, subject to such extensions of time as are provided in the General and Special Conditions.

The OWNER agrees to pay the CONTRACTOR the amount shown in the PROPOSAL, which forms a part of this Contract, with such payments subject to the General and Special Conditions of the Contract. Commissioners Court Communication attached hereto states the funding amount available from all sources.

The CONTRACTOR acknowledges and agrees that it has fully, accurately, and completely disclosed all interested parties in the attached Form 1295 and has acknowledged the completeness of this disclosure by filing the Form 1295, attached as Exhibit A, with the Texas Ethics Commission as required by law.

This Contract shall not be interpreted to inure to the benefit of a third party not a party to this Contract. This Contract may not be interpreted to waive any statutory or common law defense, immunity, including governmental immunity, or any limitation of liability, responsibility, or damage of any party to this Contract, party's agent, or party's employee, otherwise provided by law.

This contract shall be interpreted under the laws of the State of Texas. The venue for any lawsuit arising out of this Agreement will be the Fort Worth Division of the Northern District of Texas.

Both OWNER and CONTRACTOR agree to abide by all state and federal laws, statutes, and regulations applicable to the completion of the project described.

SIGNED AND EXECUTED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

TARRANT COUNTY, TEXAS

CONTRACTOR NAME HERE

\_\_\_\_\_  
**B. Glen Whitley,**  
**County Judge**

\_\_\_\_\_  
**Name of Contractor Representative,**  
**Title**

APPROVED AS TO FORM:

CERTIFICATION OF  
AVAILABLE FUNDS: \$\_\_\_\_\_

\_\_\_\_\_  
Criminal District Attorney's Office\*

\_\_\_\_\_  
Tarrant County Auditor

\*By law, the District Attorney's Office may only approve contracts for its clients. We reviewed this document from our client's legal perspective. Other parties may not rely on this approval. Instead, those parties should seek contract review from independent counsel.

**VII. PERFORMANCE BOND**

**PERFORMANCE BOND**

**STATE OF TEXAS**           §  
  §  
**COUNTY OF TARRANT** §

KNOW ALL MEN BY THESE PRESENTS:

That, \_\_\_\_\_ (hereinafter called PRINCIPAL), as PRINCIPAL, and \_\_\_\_\_, a corporation organized and existing under the laws of the State of \_\_\_\_\_, with its principal office in the City of \_\_\_\_\_ (hereinafter called SURETY), as SURETY, are held and firmly bound unto \_\_\_\_\_ (hereinafter call the OWNER) in the amount of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_), for the payment whereof, the said PRINCIPAL and SURETY bind themselves, and their heirs, administrators, executors, successors, and assigns, jointly and severally, firmly by these presents.

WHEREAS, the PRINCIPAL has entered into a certain written contract with the OWNER, dated the \_\_\_\_\_ day of \_\_\_\_\_, 2022, for (Clyde Pittman Park Inclusive Playground) (333-451 N Race St) in the City of Everman, TX 76140 (CDBG-CV Project No. B-20-UW-48-0001-24-25) which contract is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.

NOW THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the said PRINCIPAL shall faithfully perform said Contract and shall in all respects duly and faithfully observe and perform all and singular the covenants, conditions and agreements in and by said contract agreed and covenanted by the PRINCIPAL to be observed and performed, and according to the true intent and meaning of said Contract and the Plans and Specifications hereto annexed, then this obligation shall be void; otherwise to remain in full force and effect;

PROVIDED, HOWEVER, that this bond is executed pursuant to the provisions of Chapter 2253 of the Texas Government Code as amended by Acts of the 73rd Legislature, 1993, and all liabilities on this bond to all such claimants shall be determined in accordance with the provisions of said Chapter to the same extent as if it were copied at length herein.

SURETY, for value received, stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract, or the work performed thereunder, or the plans, specifications, or drawings accompanying the same, shall in anyway affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract, or to the work to be performed thereunder.

IN WITNESS WHEREOF, the said PRINCIPAL and SURETY have signed and sealed this instrument this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
PRINCIPAL

\_\_\_\_\_  
SURETY

By \_\_\_\_\_

By \_\_\_\_\_

Title \_\_\_\_\_

Title \_\_\_\_\_

Address \_\_\_\_\_

Address \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

The name and address of the Resident Agent of SURETY:

\_\_\_\_\_

\_\_\_\_\_



**VIII. PAYMENT BOND**

**PAYMENT BOND**

**STATE OF TEXAS**           §  
  §  
**COUNTY OF TARRANT** §

KNOW ALL MEN BY THESE PRESENTS:

That, \_\_\_\_\_ (hereinafter called PRINCIPAL), as PRINCIPAL, and \_\_\_\_\_, a corporation organized and existing under the laws of the State of \_\_\_\_\_, with its principal office in the City of \_\_\_\_\_ (hereinafter called SURETY), as SURETY, are held and firmly bound unto \_\_\_\_\_ (hereinafter call the OWNER) in the amount of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_), payment whereof, the said PRINCIPAL and SURETY bind themselves, and their heirs, administrators, executors, successors, and assigns, jointly and severally, firmly by these presents.

WHEREAS, the PRINCIPAL has entered into a certain written contract with the OWNER, dated the \_\_\_\_\_ day of \_\_\_\_\_, 2022, for (Clyde Pittman Park Inclusive Playground) (333-451 N Race St) in the City of Everman, TX 76140 (CDBG-CV Project No. B-20-UW-48-0001-24-25) which contract is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.

NOW THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the said PRINCIPAL shall pay all claimants supplying labor and material to them or a subcontractor in the prosecution of the work provided for in said contract, then, this obligation shall be void; otherwise to remain in full force and effect.

PROVIDED, HOWEVER, that this bond is executed pursuant to the provisions of Chapter 2253 of the Texas Government Code as amended by Acts of the 73rd Legislature, 1993, and all liabilities on this bond to all such claimants shall be determined in accordance with the provisions of said Chapter to the same extent as if it were copied at length herein.

SURETY, for value received, stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract, or the work performed thereunder, or the plans, specifications, or drawings accompanying the same, shall in anyway affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract, or to the work to be performed thereunder.

IN WITNESS WHEREOF, the said PRINCIPAL and SURETY have signed and sealed this instrument this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
PRINCIPAL

\_\_\_\_\_  
SURETY

By \_\_\_\_\_

By \_\_\_\_\_

Title \_\_\_\_\_

Title \_\_\_\_\_

Address \_\_\_\_\_

Address \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

The name and address of the Resident Agent of SURETY:

\_\_\_\_\_

\_\_\_\_\_

**IX. MAINTENANCE BOND**

**MAINTENANCE BOND**

**STATE OF TEXAS** §  
§  
**COUNTY OF TARRANT** §

KNOW ALL MEN BY THESE PRESENTS:

That, \_\_\_\_\_ (Contractor) (hereinafter called PRINCIPAL), as PRINCIPAL, and \_\_\_\_\_, (hereinafter called SURETY), a corporation organized and existing under the laws of the State of \_\_\_\_\_, and \_\_\_\_\_ as SURETIES, do hereby expressly acknowledge themselves to be held and bound to pay unto the City of \_\_\_\_\_ and Tarrant County (herein called OWNER), a municipal corporation, in the amount of 100% of the total Contract price, \_\_\_\_\_ Dollars (\$ \_\_\_\_\_), for the payment of which the sum will and truly be made until said City of \_\_\_\_\_ and Tarrant County and its successors, said PRINCIPAL and SURETY do hereby bind themselves, their assigns, and successors jointly and severally.

This obligation is conditioned, however, that whereas said PRINCIPAL has this day has entered into a written contract with said City of \_\_\_\_\_ and Tarrant County for (Clyde Pittman Park Inclusive Playground) (333-451 N Race St) in the City of Everman, TX 76140 (CDBG-CV Project No. B-20-UW-48-0001-24-25) which Contract and the plans and specifications therein mentioned and adopted by the City of Everman and Tarrant County are hereby expressly made a part thereof as though the same were written and embodied herein.

WHEREAS, under the specifications and Contract, it is provided that the PRINCIPAL shall maintain and keep in good repair the work constructed and/or equipment furnished by them as contemplated by the plans, specifications, drawings, etc., and perform for a period of two (2) year(s). The period shall be two (2) year(s) from the date of acceptance as shown on the "Certificate of Completion" as issued by the ENGINEER, or the date of final payment by the OWNER, whichever bears the later date, all necessary repairs, reconstruction and renewal of any part of said construction, and to furnish the labor and materials to make good and to repair any defective condition growing out of or on account of the breakage or failure of any substance or the improper function of any part of the construction work. The PRINCIPAL shall reimburse the OWNER for the costs of all Engineeringural and special services required to be furnished by the OWNER which are directly attributable to the restoration of the constructed work. Said maintenance contemplates the complete restoration of the constructed work to be functional use during the said period as set forth above. It is understood that the purpose of this section is to require the correction of all defective conditions resulting from materials furnished or work and labor performed by the said PRINCIPAL under the conditions prescribed by the plans and specifications; and in case the said PRINCIPAL shall fail or refuse to perform as provided within ten (10) days after proper written notifications have been furnished to them by the OWNER, it is agreed that the OWNER may do said work and supply such materials and the said PRINCIPAL and SURETIES herein shall be subject to the liquidated damages mentioned in said Contract for

each calendar day's failure on its part to comply with the terms of the said provision of said Contract and this Maintenance Bond.

NOW THEREFORE, if the said PRINCIPAL shall keep and perform its said agreement to maintain said work and keep the same in good repair for the said maintenance period as provided above, then these presents shall be null and void and have no further effect, but if default shall be made by the said PRINCIPAL in the performance of its contract to do so maintain and repair damages in the premises, as provided, and it is further understood and agreed that this obligation shall be a continuing one against the PRINCIPAL and SURETIES hereon, and that successive recoveries may be had hereon for successive breaches until the full amount shall have been exhausted; and it is further understood that the obligation herein to maintain said work shall continue throughout said maintenance period, and the same shall not be changed, diminished, or in any manner affected from any clause during said time.

IN WITNESS WHEREOF, the said PRINCIPAL \_\_\_\_\_ has caused these presents to be executed by PRINCIPAL'S Authorized Agent \_\_\_\_\_ and the said SURETY \_\_\_\_\_ has caused these presents to be executed by its Attorney-In-Fact or Official \_\_\_\_\_ and the said Attorney-In-Fact or Official has hereto set her/his hand this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
PRINCIPAL  
  
By \_\_\_\_\_  
  
Title \_\_\_\_\_  
  
Address \_\_\_\_\_  
  
\_\_\_\_\_

\_\_\_\_\_  
SURETY  
  
By \_\_\_\_\_  
  
Title \_\_\_\_\_  
  
Address \_\_\_\_\_  
  
\_\_\_\_\_

NOTE:

1. Date of Maintenance Bond must not be prior to date of Contract. Power of Attorney must be attached.
2. Maintenance Bonds are made payable to Project City and Tarrant County.
3. If City's requirement is of a greater amount, it will supersede the requirements set out in this section.

**X. CERTIFICATE OF INSURANCE**

**(SAMPLE)**

TO: \_\_\_\_\_ Date \_\_\_\_\_  
 \_\_\_\_\_ Project No. \_\_\_\_\_  
 Owner \_\_\_\_\_  
 \_\_\_\_\_ Type of Project \_\_\_\_\_  
 Address \_\_\_\_\_

THIS IS TO CERTIFY THAT \_\_\_\_\_  
 (Name and Address of Insured)

is, at the date of this certificate, insured by this Company with respect to the business operations hereinafter described, for the types of Insurance and in accordance with the provisions of the standard policies used by this Company, and further hereinafter described. Exceptions to standard policy noted on reverse side hereof.

**TYPE OF INSURANCE**

	Policy No.	Effective	Expires	Limits of Liability
Workmen's Compensation				
Public Liability				1 Person \$ _____ 1 Accident \$ _____
Contingent Liability				1 Person \$ _____ 1 Accident \$ _____
Property Damage				
Builder's Risk				
Automobile				
Other				



The foregoing Policies (do) (do not) cover all sub-contractors.

Locations Covered: \_\_\_\_\_

Descriptions of Operations Covered: \_\_\_\_\_

The above policies either in the body thereof or by appropriate endorsement provide that they may not be changed or canceled by the insurer in less than five days after the insured has received written notice of such change or cancellation.

Where applicable local laws or regulations require more than five days actual notice of change or cancellation to the assured, the above policies contain such special requirements, either in the body thereof or by appropriate endorsement thereto attached.

\_\_\_\_\_  
(Name of Insurer)

By \_\_\_\_\_

Title \_\_\_\_\_

**XI. GENERAL CONDITIONS OF AGREEMENT**

**A. Definitions of Terms**

**1. Owner, Contractor, and Engineer**

The OWNER, the CONTRACTOR and the ENGINEER are those persons or organizations identified as such in the Agreement and are referred to throughout the Contract Documents as “they”, “them” and “their”. The term ENGINEER means the Engineer or Architect or their duly authorized representative. The ENGINEER shall be understood to be the ENGINEER of the OWNER, and nothing contained in the Contract Documents shall create any contractual or agency relationship between the ENGINEER and the CONTRACTOR.

**2. Contract Documents**

The Contract Documents shall consist to the Notice of Contractors (Advertisement), Special Conditions (Instructions to Bidders), Proposal, signed Agreement, Performance and Payment Bonds (when required), Special Bonds (when required), General Conditions of the Agreement, Technical Specifications, Plans, and all modifications thereof incorporated in any of the documents before the execution of the Agreement.

The Contract Documents are complementary, and what is called for by anyone shall be as binding as if called for by all. In case of conflict between any of the Contract Documents, priority of interpretation shall be in the following order: Signed Agreement, Performance and Payment Bonds, Special Bonds (if any), Proposal, Special Conditions of Agreement, Notice to Contractors, Technical Specifications, Plans, and General Conditions of Agreement.

**3. Subcontractor**

The term Subcontractor, as employed herein, includes only those having a direct contract with the CONTRACTOR, and it includes one who furnishes material worked to a special design according to the plans or specifications of this work, but does not include one who merely furnishes material not so worked.

**4. Written Notice**

Written notice shall be deemed to have been duly serviced if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended or if delivered at or sent by registered mail to the last business address known to them who gives the notice.

**5. Work**

The CONTRACTOR shall provide and pay for all materials, supplies, machinery, equipment, tools, superintendence, labor, services, insurance, and all water, light, power, fuel, transportation, and other facilities necessary for the execution and completion of the work covered by the contract documents. Unless otherwise specified, all materials shall be new and both workmanship and materials shall be of a good quality. The CONTRACTOR shall, if required, furnish satisfactory evidence as to the kind and quality of materials. Materials or work described in words which so applied have a well-known technical or trade meaning shall be held to refer to such recognized standards.

**6. Extra Work**

The term “Extra Work” as used in this Contract shall be understood to mean and include all work that may be required by the ENGINEER or OWNER to be done by the CONTRACTOR to accomplish any change, alteration or addition to the work shown upon the plans, or reasonably implied by the specifications, and not covered by the CONTRACTOR’S Proposal, except as provided under “Changes and Alterations”, herein.

**7. Calendar Day**

“Calendar Day” is any day of the week or month, no days being excepted.

**8. Substantially Completed**

The term “substantially completed” is meant that the structure has been made suitable for use or occupancy or the facility is in condition to serve its intended purpose, but still may require minor miscellaneous work and adjustment.

**B. RESPONSIBILITIES OF THE ENGINEER AND THE CONTRACTOR**

**1. Owner-Engineer Relationship**

The ENGINEER will be the OWNER’S representative during construction. The duties, responsibilities, and limitations of authority of the ENGINEER as OWNER’S representative during construction are as set forth in the Contract Documents and shall not be extended or limited without written consent of the OWNER.

The ENGINEER will advise and consult with the OWNER, and all of OWNER’S instructions to the CONTRACTOR shall be issued through the ENGINEER.

## **2. Professional Inspection by Engineer**

The ENGINEER shall make periodic visits to the site to familiarize themselves generally with the progress of the executed work and to determine if such work generally meets the essential performance and design features and the technical and functional engineering requirements of the Contract Documents.

## **3. Payments for Work**

The ENGINEER shall review CONTRACTOR'S applications for payment and supporting data, determine the amount owed to the CONTRACTOR and approve, in writing, payment to CONTRACTOR in such amounts; such approval of payment to CONTRACTOR constitutes a representation to the OWNER of ENGINEER'S professional judgment that the work has progressed to the point indicated to the best of their knowledge, information and belief, but such approval of an application for payment to CONTRACTOR shall not be deemed as a representation by ENGINEER that ENGINEER has made any examination to determine how or for what purpose CONTRACTOR has used the moneys paid on account of the Contract price.

## **4. Lines and Grades**

Unless otherwise specified, all lines and grades shall be furnished by the CONTRACTOR or their representative. Whenever necessary, construction work shall be suspended to permit performance of this work, but such suspension will be as brief as practicable, and the CONTRACTOR shall be allowed no extra compensation, therefore. All stakes, marks, etc., shall be carefully preserved by the CONTRACTOR, and in case of careless destruction or removal by CONTRACTOR or their employees, such stakes, marks, etc., shall be replaced at the CONTRACTOR'S expense.

## **5. Contractor's Duties and Superintendence**

The CONTRACTOR shall give adequate attention to the faithful prosecution and completion of this contract and shall keep on the work, during its progress, a competent superintendent, and any necessary assistants. The Superintendent shall represent the CONTRACTOR in their absence and all directions given to them shall be as binding as if given to the CONTRACTOR.

The CONTRACTOR is and at all times shall remain an independent contractor, solely responsible for the manner and method of completing their work under this contract, with full power and authority to select the means, method, and manner of

performing such work, so long as such methods do not adversely affect the completed improvements, the OWNER and ENGINEER being interested only in the result obtained and conformity of such completed improvements to the plans, specifications, and contract.

Likewise, the CONTRACTOR shall be solely responsible for the safety of themselves, their employees, and other persons, as well as for the protection of the safety of the improvements being erected and the property of CONTRACTOR or any other person, as a result of their operations hereunder. Construction drawings and specifications as well as any additional information concerning the work to be performed passing from or through the ENGINEER shall not be interpreted as requiring or allowing CONTRACTOR to deviate from the plans and specifications, the intent of such drawings, specifications and any other such instructions being to define with particularity the agreement of the parties as to the work the CONTRACTOR is to perform. CONTRACTOR shall be fully and completely liable, at their own expense, for design, construction, installation and use, or non-use, of all items and methods incident to performance of the contract, and for all loss, damage or injury incident thereto, either to person or property, including, without limitation, the adequacy of all temporary supports, shoring, bracing, scaffolding, machinery or equipment, safety precautions or devices, and similar items or devices used by them during construction.

Any review of work in process, or any visit or observation during construction, or any clarification of plans and specifications, by the ENGINEER, or any agent, employee, or representative of either of them, whether through personal observation on the project site or by means of approval of shop drawings for temporary construction or construction processes, or by other means or method, is agreed by the CONTRACTOR to be for the purpose of observing the extent and nature of work completed or being performed, as measured against the drawings and specifications constituting the contract, or for the purpose of enabling CONTRACTOR to more fully understand the plans and specifications so that the completed construction work will conform thereto, and shall in no way relieve the CONTRACTOR from full and complete responsibility for the proper performance of their work on the project, including but without limitation the propriety of means and methods of the CONTRACTOR in performing said contract, and the adequacy of any designs, plans or other facilities for accomplishing such performance. Deviation by the CONTRACTOR from plans and specifications that may have been in evidence during any such visitation or observation by the ENGINEER, or any of their representatives, whether called to the CONTRACTOR'S attention or not, shall in no way relieve CONTRACTOR from their responsibility to complete all work in accordance with said plans and specifications.

ENGINEER'S approval of payments to CONTRACTOR for work done and any and all payments actually made by OWNER, shall in no way relieve CONTRACTOR from full and complete responsibility to complete all work according to plans and specifications.

**6. Contractor's Understanding**

It is understood and agreed that the CONTRACTOR has, by careful examination, satisfied himself as to the nature and location of the work, the conformation of the ground, the character, quality and quantity of the materials to be encountered, the character of equipment and facilities needed preliminary to and during the prosecution of the work, the general and local conditions, and all other matters which can in any way affect the work under this contract. No verbal agreement or conversation with any officer, agent or employee of the OWNER or ENGINEER either before or after the execution of this contract, shall affect or modify any of the terms or obligations herein contained.

**7. Character of Workmen**

The CONTRACTOR agrees to employ only orderly and competent persons, skillful in their performance of the type of work required under this contract, to do the work; and agrees that whenever the ENGINEER shall inform CONTRACTOR in writing that any person(s) on the work are, in their opinion, incompetent, unfaithful or disorderly, such person(s) shall be discharged from the work and shall not again be employed on the work without the ENGINEER'S written consent.

**8. Contractor's Buildings**

The building of structures for housing laborers, or the erection of tents or other forms of protection, will be permitted only at such places as the ENGINEER shall direct, and the sanitary conditions of the grounds in or about such structures shall at all times be maintained in a manner satisfactory to the ENGINEER.

**9. Sanitation**

Necessary sanitary conveniences for the use of laborers on the work, properly secluded from public observation, shall be constructed and maintained by the CONTRACTOR in such manner and at such points as shall be approved by the ENGINEER, and their use shall be strictly enforced.

**10. Shop Drawings**

The CONTRACTOR shall submit to the ENGINEER, with such promptness as to cause no delay in CONTRACTOR'S work or in that of any other Contractor, **four** checked copies, unless otherwise specified, of all shop and/or setting drawings and schedules required for the work of the various trades, and the ENGINEER shall pass upon them with reasonable promptness, making desired corrections. The CONTRACTOR shall make any corrections required by the ENGINEER, file with ENGINEER two corrected copies and furnish such other copies as may be needed. The ENGINEER'S approval of such drawings or schedules shall not relieve the CONTRACTOR from responsibility for deviations from drawings or specifications, unless they have in writing called the ENGINEER'S attention to such deviations at the time of submission, nor shall it relieve them from responsibility for errors of any sort in shop drawings or schedules. It shall be the CONTRACTOR'S responsibility to fully and completely review all shop drawings to ascertain their effect on CONTRACTOR'S ability to perform the required contract work in accordance with the plans and specifications and within the contract time.

Such review by the ENGINEER shall be for the sole purpose of determining the sufficiency of said drawings or schedules to result in finished improvements in conformity with the plans and specifications, and shall not relieve the CONTRACTOR of their duty as an independent contractor as previously set forth, it being expressly understood and agreed that the ENGINEER does not assume any duty to pass upon the propriety or adequacy of such drawings or schedules, or any means or methods reflected thereby, in relation to the safety of either person or property during CONTRACTOR'S performance hereunder.

### **11. Preliminary Approval**

The ENGINEER shall not have the power to waive the obligations of this Contract for the furnishing by the CONTRACTOR of good material, and of performing good work as herein described, and in full accordance with the plans and specifications. No failure or omission of the ENGINEER to discover, object to or condemn any defective work or material shall release the CONTRACTOR from the obligations to fully and properly perform the contract, including without limitations, the obligation to at once tear out, remove and properly replace the same at any time prior to final acceptance upon the discovery of said defective work or material; provided, however, that the ENGINEER shall, upon request of the CONTRACTOR, inspect and accept or reject any material furnished.

Any questioned work may be ordered taken up or removed for re-examination, by the ENGINEER, prior to final acceptance, and if found not in accordance with the specifications for said work, all expense of removing, re-examination and replacement shall be borne by the CONTRACTOR; provided that, where



inspection or approval is specifically required by the specifications prior to performance of certain work, should the CONTRACTOR proceed with such work without requesting prior inspection or approval they shall bear all expense of taking up, removing, and replacing this work if so directed by the ENGINEER.

**12. Defects and Their Remedies**

It is further agreed that if the work or any part thereof, or any material brought on the site of the work for use in the work or selected for the same, shall be deemed by the ENGINEER as unsuitable or not in conformity with the specifications, the CONTRACTOR shall, after receipt of written notice thereof from the ENGINEER, forthwith remove such material and rebuild or otherwise remedy such work so that it shall be in full accordance with this contract.

**13. Changes and Alterations**

The CONTRACTOR further agrees that the OWNER may make such changes and alterations as the OWNER may see fit, in the line, grade, form, dimensions, plans or materials for the work herein contemplated, or any part thereof, either before or after the beginning of the construction, without affecting the validity of this contract and the accompanying Performance and Payment Bonds.

If such changes or alterations diminish the quantity of the work to be done, they shall not constitute the basis for a claim for damages, or anticipated profits on the work that may be dispensed with, except as provided for unit price items under the "Measurement and Payment" section. If the amount of work is increased, and the work can fairly be classified under the specifications, such increase shall be paid for according to the quantity actually done and at the unit price, if any, established for such work under this contract, except as provided for unit price items under the "Measurement and Payment" section; otherwise, such additional work shall be paid for as provided under Extra Work. In case the OWNER shall make such changes or alterations as shall make useless any work already done or material already furnished or used in said work, then the OWNER shall recompense the CONTRACTOR for any material or labor so used, and for any actual loss occasioned by such change, due to actual expenses incurred in preparation for the work as originally planned.

**C. GENERAL OBLIGATIONS AND RESPONSIBILITIES**

**1. Keeping of Plans and Specifications Accessible**

The ENGINEER shall furnish the CONTRACTOR with an adequate and reasonable number of copies of all plans and specifications without expense to

them, and the CONTRACTOR shall keep one copy of the same constantly accessible on the work, with the latest revisions noted thereon.

**2. Ownership of Drawings**

All drawings, specifications and copies thereof furnished by the ENGINEER shall not be reused on other work, and, with the exception of the signed contract sets, are to be returned to him on request, at the completion of the work. All models are the property of the OWNER.

**3. Right of Entry**

The OWNER reserves the right to enter the property or location on which the works herein contracted for are to be constructed or installed, by such agent or agents as they may elect, for the purpose of inspecting the work, or for the purpose of constructing or installing such collateral work as said OWNER may desire.

**4. Collateral Contracts**

The OWNER agrees to provide a separate contract or otherwise, all labor and material essential to the completion of the work specifically excluded from this contract, in such manner as not to delay the progress of the work, or damage said CONTRACTOR, except where such delays are specifically mentioned elsewhere in the Contract Documents.

**5. Discrepancies and Omissions**

It is further agreed that it is the intent of this contract that all work must be done and all material must be furnished in accordance with the generally accepted practice, and in the event of any discrepancies between the separate contract documents, the priority of interpretation defined under "Contract Documents" shall govern. In the event that there is still any doubt as the meaning and intent of any portion of the contract, specifications or drawings, the ENGINEER shall define which is intended to apply to the work.

**6. Equipment, Materials, and Construction Plant**

The CONTRACTOR shall be responsible for the care, preservation, conservation, and protection of all materials, supplies, machinery, equipment, tools apparatus, accessories, facilities, all means of construction, and any and all parts of the work, whether the CONTRACTOR has been paid, partially paid, or not paid for such work, until the entire work is completed and accepted.

**7. Damages**

In the event the CONTRACTOR is damaged in the course of the completion of the work by the act, neglect, omission, mistake, or default of the OWNER thereby causing loss to the CONTRACTOR, the OWNER agrees that they will reimburse the CONTRACTOR for such loss. In the event the OWNER is damaged in the course of the work by the act, negligence, omission, mistake, or default of the CONTRACTOR, or should the CONTRACTOR unreasonably delay the progress of the work being done by others on the job so as to cause loss for which the OWNER becomes liable, then the CONTRACTOR shall reimburse the OWNER for such loss.

**8. Protection Against Accident to Employees and the Public**

The CONTRACTOR shall at all times exercise reasonable precautions for the safety of employees and others on or near the work and shall comply with all applicable provisions of Federal, State, and Municipal safety laws and building and construction codes. All machinery and equipment and other physical hazards shall be guarded in accordance with the “Manual of Accident Prevention in Construction” of the Associated General Contractors of America except where incompatible with Federal, State, or Municipal laws or regulations. The CONTRACTOR shall provide such machinery guards, safe walkways, ladders, bridges, gangplanks, and other safety devices. The safety precautions actually taken and their adequacy shall be the sole responsibility of the CONTRACTOR, acting at their discretion as an independent contractor.

**9. Performance and Payment Bonds**

Unless otherwise specified, it is further agreed by the parties to this Contract that the CONTRACTOR will execute separate performance and payment bonds, each in the sum of one hundred (100) percent of the total contract price, in standard forms for this purpose, guaranteeing faithful performance of the work and the fulfillment of any guarantees required, and further guaranteeing payment to all persons supplying labor and materials or furnishing them any equipment in the execution of the Contract, and it is agreed that this Contract shall not be in effect until such performance and payment bonds are furnished and approved by the OWNER. Unless otherwise approved in writing by the OWNER, the surety company underwriting the bonds shall be acceptable according to the latest list of companies holding certificates of authority from the Secretary of the Treasury of the United States.

Unless otherwise specified, the cost of the premium for the performance and payment bonds shall be included in the CONTRACTOR’S proposal.

#### **10. Losses from Natural Causes**

Unless otherwise specified, all loss or damage to the CONTRACTOR arising out of the nature of the work to be done, or from the action of the elements, or from any unforeseen circumstance in the prosecution of the same, or from unusual obstructions or difficulties which may be encountered in the prosecution of the work, shall be sustained, and borne by the CONTRACTOR at their own cost and expense.

#### **11. Protection of Adjoining Property**

CONTRACTOR shall take proper means to protect the adjacent or adjoining property or properties in any way encountered, which might be injured or seriously affected by any process of construction to be undertaken under this agreement, from any damage or injury by reason of said process of construction; and they shall be liable for any and all claims for such damage on account of their failure to fully protect all adjoining property. **The CONTRACTOR agrees to indemnify, save, and hold harmless the OWNER and ENGINEER against any claim or claims for damages due to any injury to any adjacent or adjoining property, arising or growing out of performance of the Contract; but any such indemnity shall not apply to any claim of any kind arising out of the existence or character of the work.**

#### **12. Protection Against Claims of Sub-contractors, Laborers, Materialmen, and Furnishers of Machinery, Equipment, and Supplies**

**The CONTRACTOR agrees that they will indemnify and save the OWNER and ENGINEER harmless from all claims growing out of the lawful demands of sub-contractors, laborers, workmen, mechanics, materialmen, and furnishers of machinery and parts thereof, equipment, power tools, and all supplies, including commissary, incurred in the furtherance of this performance of this Contract.** When so desired by the OWNER, the CONTRACTOR shall furnish satisfactory evidence that all obligations of nature hereinabove designated have been paid, discharged, or waived. If the CONTRACTOR fails so to do, then the OWNER may at the option of the CONTRACTOR either pay directly any unpaid bills, of which the OWNER has written notice, or withhold from the CONTRACTOR'S unpaid compensation a sum of money deemed reasonably sufficient to liquidate any and all such lawful claims until satisfactory evidence is furnished that all liabilities have been fully discharged, whereupon payments to the CONTRACTOR shall be resumed in full, in accordance with the terms of this Contract, but in no event shall the provisions

of this sentence be construed to impose any obligation upon the OWNER by either the CONTRACTOR or his/her SURETY.

### **13. Protection Against Royalties or Patented Invention**

The CONTRACTOR shall pay all royalties and license fees, and shall provide for the use of any design, device, material, or process covered by letters patent or copyright by suitable legal agreement with the Patentee or OWNER. The CONTRACTOR shall defend all suits or claims for infringement or any patent or copyright rights and shall indemnify and save the OWNER and ENGINEER harmless from any loss on account thereof, except that the OWNER shall defend all such suits and claims and shall be responsible for all such loss when a particular design, device, material or process or the product of a particular manufacturer or manufacturers is specified or required by the OWNER; provided, however, if choice of alternative design, device, material or process is allowed to the CONTRACTOR, then CONTRACTOR shall indemnify and save OWNER harmless from any loss on account thereof. If the material or process specified or required by the OWNER is an infringement, the CONTRACTOR shall be responsible for such loss unless they promptly give such information to the OWNER.

### **14. Laws and Ordinances**

The CONTRACTOR shall at all times observe and comply with all federal, state, and local laws, ordinances and regulations, which in any manner affect the Contract or the work and shall indemnify and save harmless the OWNER and ENGINEER against any claim arising from the violation of any such laws, ordinances, and regulations whether by the CONTRACTOR or their employees, except where such violations are called for by the provisions of the Contract documents. If the CONTRACTOR observes that the plans and specifications are at variance therewith, they shall promptly notify ENGINEER in writing, and any necessary changes shall be adjusted as provided in the Contract for changes in the work. If the CONTRACTOR performs any work knowing it to be contrary to such laws, ordinances, rules, and regulations, and without such notice to the ENGINEER, they shall bear all costs arising therefrom. In case the OWNER is a body politic and corporate, the law for which it derives its powers, insofar as the same regulates the objects from which, or the manner in which, or the conditions under which the OWNER may enter into Contract, shall be controlling, and shall be considered as part of this Contract, to the same effect as though embodied herein.

### **15. Assignment and Subletting**

The CONTRACTOR further agrees that they will retain personal control and will give their personal attention to the fulfillment of this contract and that they will not assign by Power of Attorney, or otherwise, or sublet said contract without written consent of the ENGINEER, and that no part or feature of the work will be sublet to anyone objectionable to the ENGINEER or the OWNER. The CONTRACTOR further agrees that the subletting of any portion or feature of the work, or materials required in the performance of this contract, shall not relieve the CONTRACTOR from their full obligations to the OWNER, as provided by this Agreement.

## **16. Indemnification**

The CONTRACTOR shall defend, indemnify, and hold harmless the OWNER and the ENGINEER and their respective officers, agents, and employees, from and against all damages, claims, losses, demands, suits, judgments, and costs, including reasonable attorney's fees and expenses, arising out of or resulting from the performance of the work, provided that any such damages, claim, loss, demand, suit, judgment, cost or expense:

- a. Is attributable to bodily injury, sickness, disease, or death or to injury to or destruction of tangible property (other than the work itself) including the loss of use resulting therefrom; and,
- b. Is caused in whole or in part by any negligent act or omission of the CONTRACTOR, any subcontractor, anyone directly or indirectly employed by any one of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder.

The obligation of the CONTRACTOR under this section shall not extend to the liability of the ENGINEER, their agents or employees arising out of the preparation or approval of maps, drawings, reports, surveys, change orders, designs or specifications, or by giving of or the failure to give directions or instructions by the ENGINEER, their agents, or employees, provided such giving or failure to give is the primary cause of the injury or damage.

## **17. Insurance**

The CONTRACTOR at their own expense shall purchase, maintain, and keep in force such insurance as will protect them from claims set forth below which may arise out of or result from the CONTRACTOR'S operations under the Contract, whether such operations be by themselves or by any Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- a. Workmen's compensation claims, disability benefits and other similar employee benefit acts;
- b. Claims for damages because of bodily injury, occupational sickness or disease, or death of their employees, and claims insured by usual bodily injury liability coverages;
- c. Claims for damages because of bodily injury, sickness or disease, or death of any person other than their employees, and claims insured by usual bodily injury liability coverages, and
- d. Claims for damages because of injury to or destruction of tangible property, including loss of use resulting therefrom.

#### **18. Certificate of Insurance**

Before commencing any of the work; CONTRACTOR shall file with the OWNER valid Certificates of Insurance acceptable to the OWNER and the ENGINEER. Such Certificates shall contain a provision that coverages afforded under the policies will not be canceled until at least fifteen days' prior written notice has been given to the OWNER.

The CONTRACTOR shall also file with the OWNER valid Certificates of Insurance covering all sub-contractors.

### **D. PROSECUTION AND PROGRESS**

#### **1. Time and Order of Completion**

It is the meaning and intent of this contract, unless otherwise herein specifically provided, that the CONTRACTOR shall be allowed to prosecute their work at such times and seasons, in such order of precedence, and in such manner as shall be most conducive to economy of construction; provided, however, that the order and the time of prosecution shall be such that the work shall be substantially completed as a whole and in part, in accordance with this contract, the plans and specifications, and within the time of completion designated in the Proposal; provided, also, that when the OWNER is having other work done, either by contract or by their own force, the ENGINEER may direct the time and manner of constructing the work done under the contract, so that conflict will be avoided and the construction of the various works being done for the OWNER shall be harmonized.

The CONTRACTOR shall submit, at such times as may reasonably be requested by the ENGINEER, schedules which shall show the order in which the CONTRACTOR proposes to carry on the work, with dates at which the CONTRACTOR will start the several parts of the work, and estimated dates of completion of the several parts.

## **2. Extension of Time**

Should the CONTRACTOR be delayed in the completion of the work by any act or neglect of the OWNER or ENGINEER, or of any employee of either, or by other contractors employed by the OWNER, or by changes ordered in the work, or by strikes, lockouts, fires, and unusual delays by common carriers, or unavoidable cause or causes beyond the CONTRACTOR'S control, or by any cause which the ENGINEER shall, upon recommendation and approval by the OWNER, decide justifies the delay, then an extension of time shall be allowed for completing the work, sufficient to compensate for the delay, the amount of the extension to be determined by the ENGINEER; provided however, that the CONTRACTOR shall give the ENGINEER immediate notice in writing of the cause of such delay.

## **E. MEASUREMENT AND PAYMENT**

### **1. Quantities and Measurements**

No extra or customary measurements of any kind will be allowed, but the actual measured and/or computed length, area, solid contents, number and weight only shall be considered, unless otherwise specifically provided.

### **2. Estimated Quantities**

This Agreement, including the specifications, plans and estimate, is intended to clearly show all work to be done and material to be furnished hereunder. Where the estimated quantities are shown for the various classes of work to be done and material to be furnished under this contract, they are approximate and are to be used only as a basis for estimating the probable cost of the work and for comparing the proposals offered for the work. It is understood and agreed that the actual amount of work to be done and material to be furnished under this contract may differ somewhat from these estimates, and that where the basis for payment under this contract is the unit price method, payment shall be for the actual amount of such work done and the material furnished.

Where payment is based on the unit price method, the CONTRACTOR agrees that they will make no claim for damages, anticipated profits or otherwise on account of any differences which may be found between the quantities of work actually



done, the material actually furnished under this contract and the estimated quantities contemplated and contained in the proposal; provided, however, that in case the actual quantity of any major item should become as much as 20% more than, or 20% less than the estimated or contemplated quantity for such items, then either party to this Agreement, upon demand, shall be entitled to a revised consideration upon the portion of the work above or below 20% of the estimated quantity.

A “Major Item” shall be construed to be any individual bid item incurred in the proposal that has a total cost equal to or greater than five (5) percent of the total contract cost, computed on the basis of the proposal quantities and the contract unit prices.

Any revised consideration is to be determined by written agreement between the parties, otherwise by the terms of this Agreement, as provided under “Extra Work”.

### **3. Price of Work**

In consideration of the furnishing of all the necessary labor, equipment and material, and the completion of all work by the CONTRACTOR, and on the completion of all work and of the delivery of all material embraced in this contract in full conformity with the specifications and stipulations herein contained, the OWNER agrees to pay the CONTRACTOR the prices set forth in the Proposal hereto attached, which has been made a part of this contract. The CONTRACTOR hereby agrees to receive such prices in full for furnishing all material and all labor required for the aforesaid work, also for all expense incurred by them, and for well and truly performing the same and the whole thereof in the manner and according to this Agreement.

### **4. Partial Payments**

ENGINEER’S approval of partial payments to CONTRACTOR for work done and any and all payments actually made by OWNER shall in no way relieve CONTRACTOR from full and complete responsibility to complete all work according to plans and specifications.

On or before the 10th day of each month, the CONTRACTOR shall prepare and submit to the ENGINEER for approval or modification a statement showing as completely as practicable the total value of the work done by the CONTRACTOR up to and including the last day of the preceding month; said statement shall also include the value of all suitable materials delivered on the site of the work that are to be fabricated into the work.

The OWNER shall pay the CONTRACTOR within thirty (30) days of the OWNER'S receipt of the statement the total amount of approved statement, less ten percent (10%) of the amount thereof, which 10% shall be retained until final payment, on contracts less than \$400,000.00 ten percent (10%) shall be retained and contracts \$400,000.00 and larger five percent (5%) shall be retained, and further less all previous payments and all further sums that may be retained by the OWNER under the terms of this Agreement. It is understood, however, that in case the whole work be near to completion and some unexpected and unusual delay occurs due to no fault or neglect on the part of the CONTRACTOR, the OWNER may upon written recommendation of the ENGINEER pay a reasonable and equitable portion of the retained percentage to the CONTRACTOR; or the CONTRACTOR at the OWNER'S option, may be relieved of the obligation to fully complete the work, and thereupon, the CONTRACTOR shall receive payment of the balance due under the contract subject only to the conditions stated under "Final Payment."

**5. Use of Completed Portions**

The OWNER shall have the right to take possession of and use any completed or partially completed portions of the work, notwithstanding the time for completing the entire work or such portions may not have expired but such taking possession and use shall not be deemed an acceptance of any work not completed in accordance with the Contract Documents. If such prior use increases the cost of or delays the work, the CONTRACTOR shall be entitled to such extra compensation, or extension of time, or both, as the ENGINEER may determine.

The CONTRACTOR shall notify the ENGINEER when, in the CONTRACTOR'S opinion, the contract is "substantially completed" and when so notifying the ENGINEER, the CONTRACTOR shall furnish to the ENGINEER in writing a detailed list of unfinished work. The ENGINEER will review the CONTRACTOR'S list of unfinished work and will add thereto such items as the CONTRACTOR has failed to include. The "substantial completion" of the structure or facility shall not excuse the CONTRACTOR from performing all of the work undertaken, whether of a minor or major nature, and thereby completing the structure or facility in accordance with the Contract Documents.

**6. Final Completion and Acceptance**

Within ten (10) days after the CONTRACTOR has given the ENGINEER written notice that the work has been completed, or substantially completed, the ENGINEER and the OWNER shall inspect the work and within said time, if the work be found to be completed or substantially completed in accordance with the Contract Documents, the ENGINEER shall issue to the OWNER and the

CONTRACTOR their Certificate of Completion, and thereupon it shall be the duty of the OWNER within ten (10) days to issue a Certificate of Acceptance of the work to the CONTRACTOR or to advise the CONTRACTOR in writing of the reason for non-acceptance.

## **7. Final Payment**

Upon the issuance of the Certificate of Completion, the ENGINEER shall proceed to make final measurements and prepare final statement of the value of all work performed and materials furnished under the terms of the Agreement and shall certify same to the OWNER, who shall pay to the CONTRACTOR on or after the 30th day, and before the 35th day, after the date of the Certificate of Completion, the balance due the CONTRACTOR under the terms of this Agreement, provided they have fully performed their contractual obligations under the terms of this contract; and said payment shall become due in any event upon said performance by the CONTRACTOR. Neither the Certificate of Acceptance nor the final payment, nor any provision in the Contract Documents, shall relieve the CONTRACTOR of the obligation for fulfillment of any warranty which may be required.

## **8. Payments Withheld**

The OWNER may, on account of subsequently discovered evidence, withhold, or nullify the whole or part of any certificate to such extent as may be necessary to protect themselves from loss on account of:

- a. Defective work not remedied.
- b. Claims filed or reasonable evidence indicating probable filing of claims.
- c. Failure of the CONTRACTOR to make payments properly to sub-contractors or for material or labor.
- d. Damage to another contractor.
- e. Reasonable doubt that the work can be completed for the unpaid balance of the contract amount.
- f. Reasonable indication that the work will not be completed within the contract time.

When the above grounds are removed or the CONTRACTOR provides a Surety Bond satisfactory to the OWNER, which will protect the OWNER in the amount withheld, payment shall be made for amounts withheld because of them.

**9. Delayed Payments**

Should the OWNER fail to make payment to the CONTRACTOR of the sum named in any partial or final statement, when payment is due, then the OWNER shall pay to the CONTRACTOR, in addition to the sum shown as due by such statement, interest thereon at the rate of six (6) per cent per annum, unless otherwise specified, from date due as provided under “Partial Payments” and “Final Payments,” until fully paid, which shall fully liquidate any injury to the CONTRACTOR growing out of such delay in payment, but the right is expressly reserved to the CONTRACTOR in the event payments be not promptly made, as provided under “Partial Payments,” to at any time thereafter treat the contract as abandoned by the OWNER and recover compensation, as provided under “Abandonment of Contract,” unless such payments are withheld in accordance with the provisions of “Payments Withheld.”

**F. EXTRA WORK AND CLAIMS**

**1. Change Orders**

Without invalidating this Agreement, the OWNER may, at any time or from time to time, order additions, deletions, or revisions to the work; such changes will be authorized by Change Order to be prepared by the ENGINEER for the execution by the OWNER and the CONTRACTOR. The Change Order shall set forth the basis for any change in contract price, as hereinafter set forth for Extra Work, and any change in contract time which may result from the change.

In the event the CONTRACTOR shall refuse to execute a Change Order which has been prepared by the ENGINEER and executed by the OWNER, the ENGINEER may in writing instruct the CONTRACTOR to proceed with the work as set forth in the Change Order and the CONTRACTOR may make claim against the OWNER for Extra Work involved therein, as hereinafter provided.

**2. Minor Changes**

The ENGINEER may authorize minor changes in the work not inconsistent with the overall intent of the Contract Documents and not involving an increase in Contract price. If the CONTRACTOR believes that any minor change or alteration authorized by the ENGINEER involves Extra Work and entitles them to an

increase in the Contract price, the CONTRACTOR shall make written request to the ENGINEER for a written Field Order.

In such case, the CONTRACTOR by copy of their communication to the ENGINEER or otherwise in writing shall advise the OWNER of their request to the ENGINEER for a written Field Order and that the work involved may result in an increase in the Contract price.

Any request by the CONTRACTOR for a change in Contract price shall be made prior to beginning the work covered by the proposed change.

### 3. **Extra Work**

It is agreed that the basis of compensation to the CONTRACTOR for work either added or deleted by a Change Order or for which a claim for Extra Work is made shall be determined by one or more of the following methods as selected by the OWNER:

- a. Method (A) - By agreed unit prices; or
- b. Method (B) - By agreed lump sum; or
- c. Method (C) - If neither Method (A) or Method (B) be agreed upon before the Extra Work is commenced, then the CONTRACTOR shall be paid the “actual field cost” of the work, plus fifteen (15) percent.

In the event said Extra Work be performed and paid for under Method (C), then the provisions of this paragraph shall apply and the “actual field cost” is hereby defined to include the cost to the CONTRACTOR of all workmen, such as foreman, timekeepers, mechanics and laborers, and materials, supplies, teams, trucks, rentals on machinery and equipment, for the time actually employed or used on such Extra Work, plus actual transportation charges necessarily incurred, together with all power, fuel, lubricants, water and similar operating expenses, also all necessary incidental expenses incurred directly on account of such Extra Work, including Social Security, Old Age Benefits and other payroll taxes, and, a ratable proportion of premiums on Performance and Payment Bonds and Maintenance Bonds, Public Liability and Property Damage and Workmen’s Compensation, and all other insurance as may be required by any law or ordinance, or directed by the OWNER, or by them agreed to. The ENGINEER may direct the form in which accounts of the “actual field cost” shall be kept and the records of these accounts shall be made available to the ENGINEER. The ENGINEER or OWNER may also specify in writing, before the work commences, the method of doing the work and the type and kind of machinery and equipment to be used; otherwise, these matters shall be

determined by the CONTRACTOR. Unless otherwise agreed upon, the prices for the use of machinery and equipment shall be determined by using 100 per cent, unless otherwise specified, of the latest schedule of Equipment Ownership Expense adopted by the Associated General Contractors of America. Where practicable the terms and prices for the use of machinery and equipment shall be incorporated in the Written Extra Work Order. The fifteen (15%) per cent of the “actual field cost” to be paid the CONTRACTOR shall cover and compensate them for their profit, overhead, general superintendence and field office expense, and all other elements of cost and expense not embraced within the “actual field cost” as herein defined, save that where the CONTRACTOR’S Camp or Field Office must be maintained primarily on account of such Extra Work; then the cost to maintain and operate the same shall be included in the “actual field cost.”

No claim for Extra Work of any kind will be allowed unless ordered in writing by the ENGINEER. In case any orders or instructions, either oral or written, appear to the CONTRACTOR to involve Extra Work for which they should receive compensation or an adjustment in the construction time, they shall make written request to the ENGINEER for written order authorizing such Extra Work. Should a difference of opinion arise as to what does or does not constitute Extra Work, or as to the payment therefor, and the ENGINEER insists upon its performance, the CONTRACTOR shall proceed with the work after making written request for written order and shall keep an accurate account of the “actual field cost” thereof, as provided under Method (C).

**4. Time of Filing Claims**

It is further agreed by both parties hereto that all questions of dispute or adjustment presented by the CONTRACTOR shall be in writing and filed with the ENGINEER within thirty (30) days after the ENGINEER has given any directions, order, or instruction to which the CONTRACTOR desires to take exception. The ENGINEER shall reply within thirty (30) days to such written exceptions by the CONTRACTOR and render their final decision in writing.

**G. ABANDONMENT OF CONTRACT**

**1. Abandonment by Contractor**

In case the CONTRACTOR should abandon and fail or refuse to resume work within ten (10) days after written notification from the OWNER, or the ENGINEER, or if the CONTRACTOR fails to comply with the orders of the ENGINEER, when such orders are consistent with the Contract Documents, then, and in that case, where performance and payment bonds exist, the Sureties on these

bonds shall be notified in writing and directed to complete the work, and a copy of said notice shall be delivered to the CONTRACTOR.

After receiving said notice of abandonment the CONTRACTOR shall not remove from the work any machinery, equipment, tools, materials or supplies then on the job, but the same together with any materials and equipment under contract for the work, may be held for use on the work by the OWNER or the Surety on the performance bond, or another contractor in completion of the work; and the CONTRACTOR shall not receive any rental or credit therefor (except when used in connection with Extra Work, where credit shall be allowed as provided for under Subsection A, Paragraph 6, Extra Work and Claims), it being understood that the use of such equipment and materials will ultimately reduce the cost to complete the work and be reflected in the final settlement.

Where there is no performance bond provided or in case the Surety should fail to commence compliance with the notice for completion hereinbefore provided for, within ten (10) days after service of such notice, then the OWNER may provide for completion of the work in either of the following elective manners:

The OWNER may thereupon employ such force of persons and use such machinery, equipment, tools, materials and supplies as said OWNER may deem necessary to complete the work and charge the expense of such labor, machinery, equipment, tools, materials and supplies to said CONTRACTOR, and expense so charged shall be deducted and paid by the OWNER out of such moneys as may be due, or that may thereafter at any time become due to the CONTRACTOR under and by virtue of this Agreement. In case such expense is less than the sum which would have been payable under this contract, if the same had been completed by the CONTRACTOR, then said CONTRACTOR shall receive the difference. In case such expense is greater than the sum which would have been payable under this contract, if the same had been completed by said CONTRACTOR, then the CONTRACTOR and/or their Surety shall pay the amount of such excess to the OWNER; or

The OWNER under sealed bids, after five (5) days' notice published one or more times in a newspaper having general circulation in the county of the location of the work, may let the contract for the completion of the work under substantially the same terms and conditions which are provided in this contract. In case any increase in cost to the OWNER under the new contract as compared to what would have been the cost under this contract, such increase shall be charged to the CONTRACTOR and the Surety shall be and remain bound therefor. However, should the cost to complete any such new contract prove to be less than what would have been the cost to complete under this contract, the CONTRACTOR and/or their Surety shall be credited therewith.

When the work shall have been substantially completed the CONTRACTOR and their Surety shall be so notified and Certificates of Completion and Acceptance, as provided in the paragraphs hereinabove, shall be issued. A complete itemized statement of the contract accounts, certified to by the ENGINEER as being correct, shall then be prepared and delivered to the CONTRACTOR and their Surety, whereupon the CONTRACTOR and/or their surety, or the OWNER as the case may be, shall pay the balance due as reflected by said statement, within fifteen (15) days after the date of such Certificate of Completion.

In the event the statement of accounts shows that the cost to complete the work is less than that which would have been the cost to the OWNER had the work been completed by the CONTRACTOR under the terms of this contract; or when the CONTRACTOR and/or their Surety shall pay the balance shown to be due by them to the OWNER, then all machinery, equipment, tools, materials or supplies left on the site of the work shall be turned over to the CONTRACTOR and/or their Surety. Should the cost to complete the work exceed the contract price, and the CONTRACTOR and/or their Surety fail to pay the amount due the OWNER within the time designated hereinabove, and there remains any machinery, equipment, tools, materials or supplies on the site of the work, notice thereof, together with an itemized list of such equipment and materials, shall be mailed to the CONTRACTOR and their Surety at the respective addresses designated in this contract; provided, however, that actual written notice given in any manner will satisfy this condition. After mailing, or other giving of such notice, such property shall be held at the risk of the CONTRACTOR and their Surety subject only to the duty of the OWNER to exercise ordinary care to protect such property. After fifteen (15) days from the date of said notice the OWNER may sell such machinery, equipment, tools, materials or supplies and apply the net sum derived from such sale to the credit of the CONTRACTOR and their Surety. Such sale may be made at either public or private sale, with or without notice, as the OWNER may elect. The OWNER shall release any machinery, equipment, tools, materials, or supplies, which remain on the work, and belong to persons other than the CONTRACTOR or their Surety, to their proper owners. The books on all operations provided herein shall be open to the CONTRACTOR and their Surety.



**XII. SPECIAL CONDITIONS**

**A. General**

The provisions of this section of the specifications shall govern in the event of any conflict between them and the General Conditions.

**B. Engineering**

The word "Engineer" in these specifications shall be understood as referring to OWNER's representative, from the firm that designed the project.

**C. Forms, Plans, and Specifications**

Forms of the Proposal, Contract, and Bonds, and Plans and Specifications are on file at the Tarrant County Community Development Division, 2501 Parkview Dr, Suite 420, Fort Worth, Texas.

**D. Award of Contract**

1. It is the intent of the OWNER to award a contract on the basis of the lowest acceptable bid submitted by a qualified bidder, as determined by the OWNER. The right is reserved, as the interest of the OWNER may require, to reject any and all bids and to waive any formality in bids received.
2. The OWNER will notify the bidder(s), in writing, as soon as practicable of any bid rejections.
3. The total project (Base Bids with Deductive Alternates) may contain more construction than there is money allotted. Therefore, the OWNER has the option to award any combination of Base Bids only, or with any combination of deductive alternates, in order to define a project that can be constructed within the allotted funds.

**E. Time Allotted for Completion**

The time allotted for the completion of all items of work for this project shall be specified in the Proposal. Such time of construction shall begin on or before the 10th day after the date specified in the "Notice to Proceed," which is a written notice by the OWNER for the CONTRACTOR to proceed with construction of the project. Failure to begin construction on or before the 10th day after the "Notice to Proceed" date as established by the OWNER and CONTRACTOR during the preconstruction conference may result, at the OWNER's option, in liquidated damages at the rate of \$100 per calendar day.

**F. Addenda**

Bidders desiring further information or interpretation of the Plans and Specifications must make requests for such information to the Engineer at least five (5) days prior to the bid opening date. Answers to all such requests will be given in writing to all bidders in addendum form and all addenda will be bound with and made a part of the Contract Documents. No other explanation or interpretation will be considered official or binding. Should a bidder find discrepancies in, or omissions from the Plans, Specifications, or Contract Documents, or should they be in doubt as to their meaning, bidder shall at once notify the Engineer in order that a written addendum may be sent to all bidders. Any addenda issued prior to twenty-four (24) hours of the opening of bids will be mailed or delivered to each CONTRACTOR contemplating the submission of a proposal on this work. The proposal as submitted by the CONTRACTOR will be so construed as to include any addenda if such are issued by the Engineer twenty-four (24) hours prior to the bid opening.

**G. Liquidated Damages for Delay by Contractors**

The CONTRACTOR agrees that time is the essence of this contract and that for each day of delay beyond the number of calendar days agreed upon for the completion of all items of work herein specified and contracted for (after due allowance for such extension of time as is provided for in the General Conditions of Agreement), the OWNER may withhold permanently from the CONTRACTOR's total compensation, the sum of One Hundred Dollars (\$100.00) per calendar day for the first ten (10) calendar days, and Five Hundred Dollars (\$500.00) per calendar day for each day beyond the initial ten days.

**H. Copies of Furnished Plans and Specifications**

Two (2) sets of Plans and Specifications shall be furnished to the CONTRACTOR, at no charge, for construction purposes. Additional copies may be obtained at a cost of fifty dollars (\$50.00) per set.

**I. Reference Specifications**

Where reference is made in these Specifications to specifications compiled by other agencies, organizations or departments, such reference is made for expediency and standardization from the material suppliers' point of view, and such specifications referred to are hereby made a part of these Specifications.

**J. Project Maintenance**

The CONTRACTOR shall maintain and keep in good repair the improvements covered by these Plans and Specifications during the life of this contract.

**K. Cleanup**

### 1. **During Construction**

The CONTRACTOR shall at all times keep the job site as free from material, debris, and rubbish as is practicable and shall remove same from any portion of the job site when it becomes objectionable or interferes with the progress of the project in the opinion of the Engineer.

### 2. **Final**

Upon completion of the work, the CONTRACTOR shall remove from the site, all debris, materials, tools, and equipment belonging to them, and leave the site with an appearance acceptable to the Engineer. The CONTRACTOR shall thoroughly clean all equipment and materials installed and shall deliver over such materials and equipment in a bright, clean, polished, and new appearing condition.

## L. **Guaranty Against Defective Work**

### 1. **Maintenance Bond**

The CONTRACTOR shall indemnify the OWNER against any repairs which may become necessary to any part of the work performed under the Contract, arising from defective workmanship or materials used therein. It is therefore required of the CONTRACTOR a maintenance bond of not less than two (2) years at one hundred percent (100%) of the Contract amount or what the affected City in which the construction is being performed requires for public works or building construction. This bond will be in effect upon the date of final acceptance of the work as stated in a written "Final Acceptance" Letter issued by the OWNER.

## M. **Sanitary Arrangements**

From the commencement to the completion of the operations, approved sanitary arrangements shall be provided by the CONTRACTOR. All sanitary arrangements shall be acceptable to the public authorities having jurisdiction.

## N. **Construction Layout**

The Engineer will provide on the plans, horizontal control in the form of grid reference points and/or bearings and distances and vertical control in the form of benchmarks. From the controls provided on the plans, the CONTRACTOR shall be responsible for the complete layout of the work and for establishing lines and elevations as needed during construction. The CONTRACTOR shall furnish at their own expense labor, including the services of competent personnel, equipment, including accurate surveying instruments,

stakes, templates, platforms, tools, and materials as may be required for laying out any and all parts of the work.

**O. Subcontracting**

1. The CONTRACTOR may utilize the services of specialty subcontractors on those parts of the work which, under normal contracting practices, are performed by specialty subcontractors.
2. The CONTRACTOR shall not award any work to any subcontractor until the CONTRACTOR submits to the OWNER a written statement concerning the proposed award to the subcontractor, which statement shall contain such information as the OWNER may require.
3. The CONTRACTOR shall be fully responsible to the OWNER for the acts and omissions of subcontractors, and of persons either directly or indirectly employed, as they are for the acts and omissions of persons directly employed by them.
4. The CONTRACTOR shall cause appropriate provisions to be inserted in all subcontracts relative to the work to bind subcontractors to the CONTRACTOR by the terms of the General Conditions and other contract documents insofar as applicable to the work of subcontractors and to give the CONTRACTOR the same power as regards terminating any subcontract that the OWNER may exercise over the CONTRACTOR under any provisions of the Contract Documents.
5. Nothing contained in this contract shall create any contractual relation between any subcontractor and the OWNER. The CONTRACTOR is an independent contractor.

**P. Equal Employment Opportunity**

During the performance of this contract the CONTRACTOR agrees as follows:

1. The CONTRACTOR will not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, or national origin, including qualified disabled veterans and qualified disabled individuals. Such action shall include, but not be limited to, employment, upgrading, demotion, or transfer; recruitment, or recruitment advertising; layoff or termination; rates of pay, or other forms of compensation; and selection for training, including apprenticeship. The CONTRACTOR agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

2. The CONTRACTOR will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor; state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, age, or national origin, including qualified disabled veterans and qualified disabled individuals.
3. The CONTRACTOR will send each labor union or representative of workers with which they have a collective bargaining agreement or other contract or understanding, a notice to be provided advising the labor union or worker's representative of the CONTRACTOR's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965 and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
4. The CONTRACTOR will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
5. The CONTRACTOR will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to their books, records, and accounts by the Department of Housing and Urban Development and the Secretary of Labor for purposes of investigating to ascertain compliance with such rules, regulations, and orders.
6. In the event of the CONTRACTOR's noncompliance with the non-discrimination clauses of this contract or with any such rules, regulations, or orders, this contract may be cancelled, terminated, or suspended in whole or in part and the CONTRACTOR may be declared ineligible for further Government contracts or Federally assisted construction contracts, in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, and other such sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
7. The CONTRACTOR will include the provisions of paragraphs (a) through (g) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The CONTRACTOR will take such action with respect to any subcontractor or purchase order as the Department of Housing and Urban Development may direct as a means of enforcing such provisions, including sanctions for noncompliance. Provided, however, that in the event the CONTRACTOR becomes involved in, or is threatened with, litigation with a sub-contractor or vendor as a result of such direction

by the Department of Housing and Urban Development, the CONTRACTOR may request the United States to enter into such litigation to protect the interests of the United States.

**Q. Interest of Member or Delegate to Congress**

No member of or Delegate to Congress, U.S. State or Local Official shall be admitted to any share or part of this contract or to any benefit that may arise therefrom, but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

**R. Other Prohibited Interests**

No official of the OWNER who is authorized in such capacity and on behalf of the OWNER to negotiate, make, accept, or approve, or to take part in negotiating, making, accepting, or approving any architectural, engineering, inspection, construction, or material supply contract or any subcontract in connection with the construction of the project, shall become directly or indirectly interested personally in this contract or in any part hereof. No officer, employee, engineer, attorney, architect, or inspector of or for the OWNER who is authorized in such capacity and on behalf of the OWNER to exercise any legislative, executive, supervisory or other similar functions in connection with the construction of the project, shall become directly or indirectly interested personally in this contract or in any part thereof, any material supply contract, subcontract, insurance contract, or any other contract pertaining to the project.

**S. Work Order Change**

It is understood that the quantities of work to be done at unit prices are approximate only and are intended principally to serve as a guide in evaluating bids.

It is further agreed that the quantities of work to be done at unit prices and materials to be furnished may be increased or diminished as may be considered necessary, in the opinion of the OWNER, to complete the work fully as planned and contemplated and that all quantities of work, whether increased or decreased, are to be performed at the prices set forth except as provided for in the specifications. The OWNER reserves the right to increase or decrease the amount of work to be done by any amount not to be exceeded by twenty five percent (25%) of the original contract amount. In the event the increase pertains to items not originally bid, the CONTRACTOR shall submit a bid in writing to the OWNER for approval.

It is further agreed that lump sum prices may be increased to cover additional work ordered by the OWNER but not shown on the plans or required by the specifications, in accordance

with the provisions of the general conditions; similarly, they may be decreased to cover deletion of work so ordered.

**T. Performance and Payment Bonds**

Performance and payment bonds shall be required only if the contract amount exceeds \$25,000. Paragraph 4 of Subsection E of the XI, General Conditions applies only if the contract amount exceeds \$25,000.00.

**U. Employee Interviews**

In compliance with Federal regulations pertaining to Community Development projects, Employee Interviews shall be conducted by a representative from Tarrant County. These interviews shall be sufficient in number to establish the degree of accuracy of records, be representative of all work classifications of employees on the project, and be conducted during working hours on the job, provided that the interview can be properly and privately conducted on the premises.

Employees shall be informed of these interviews, that the information given is confidential, and that their identity will be disclosed to the employer only with the employee's written permission.

**V. Federal Labor Standards Provision (HUD 4010)**

Federal Labor Standards Provisions (HUD 4010) in the following section represent revisions incorporating Department of Labor regulatory changes. This document must now be used as appropriate for construction contracts. All previous revisions are now obsolete and should be destroyed. The last page is a copy of the notice received concerning repeal of daily overtime compensation on federal and federally assisted contracts.

**W. Governing Law and Venue**

This Agreement shall be interpreted under the laws of the State of Texas. The venue for any lawsuit arising out of this Agreement will be the Fort Worth Division of the Northern District of Texas if the lawsuit arises in Federal Court or Tarrant County, Texas if the matter arises in State Court.



### **XIII. WAGE DECISIONS**

NOTE: ANY MODIFICATIONS TO FEDERAL WAGE REQUIREMENTS PUBLISHED IN THE FEDERAL REGISTER TEN (10) DAYS OR LONGER BEFORE THE START OF CONSTRUCTION ARE CONSIDERED OPERATIVE FOR THE PURPOSES OF ANY CONTRACT LET BY TARRANT COUNTY UNDER THE PROVISIONS OF THE HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1974.

"General Decision Number: TX20230026 01/06/2023

Superseded General Decision Number: TX20220026

State: Texas

Construction Type: Heavy

Counties: Johnson, Parker and Tarrant Counties in Texas.

Heavy Construction Projects (Including Water and Sewer Lines)

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

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

The applicable Executive Order minimum wage rate will be



TRUCK DRIVER.....\$ 7.34 \*\*

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

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

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

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

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

Union Rate Identifiers

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

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

Survey Rate Identifiers

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

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

Union Average Rate Identifiers

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

for the classifications and rates under that identifier.

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

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WAGE DETERMINATION APPEALS PROCESS

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

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

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

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

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

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

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

The request should be accompanied by a full statement of the

interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

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

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

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

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END OF GENERAL DECISIO"



**XIV. FEDERAL LABOR STANDARD AND WAGE DECISION  
CERTIFICATION**

U.S. Department of Housing and Urban Development  
Community Development Block Grant Program  
**CONTRACTOR'S CERTIFICATION**  
**CONCERNING LABOR STANDARDS AND PREVAILING WAGE**  
**REQUIREMENTS**

TO (Appropriate Recipient):	DATE
<b>TARRANT COUNTY, TEXAS</b>	PROJECT NUMBER
c/o	PROJECT NAME
<b>COMMUNITY DEVELOPMENT DIVISION</b>	(Address)

1. The undersigned, having executed a contract with Tarrant County, Texas for the construction of the above-identified project, acknowledges that:
  - a. The Labor Standards provisions are included in the aforesaid contact;
  - b. Correction of any infractions of the aforesaid conditions, including infractions by any of his/her subcontractors and any lower tier subcontractors, in his/her responsibility;

- 
2. S/He certifies that:
    - a. Neither s/he nor any firm, partnership, or association in which s/he has substantial interest in is designated as an ineligible contractor by the Comptroller General of the United States pursuant to Section 5.6(b) of the Regulations of the Secretary of Labor, Part 5 (29 CFR, Part 5) or pursuant to Section 3(a) of the Davis-Bacon Act, as amended (40 U.S.C 276a2(a)).
    - b. No part of the aforementioned contract has been or will be subcontracted to any subcontractor if such subcontractor or any firm, corporation, partnership or associated in which such subcontractor has a substantial interest in designated as an ineligible contractor pursuant to any of the aforementioned regulatory or statutory provisions.

- 
3. S/He agrees to obtain and forward to the aforementioned recipient within ten (10) days after the execution of any subcontract, including those executed by his/her subcontractors and any lower tier subcontractors, a Subcontractor's Certification Concerning Labor Standards and Prevailing Wage Requirements executed by the subcontractors.

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4. S/He certifies that:
    - a. The legal name and the business address of the undersigned are:

b. The undersigned is: (select)

<ul style="list-style-type: none"> <li>• A Single Proprietorship</li> </ul>	<ul style="list-style-type: none"> <li>• A Corporation Organized in the State of _____</li> </ul>
<ul style="list-style-type: none"> <li>• A Partnership</li> </ul>	<ul style="list-style-type: none"> <li>• Other Organization (Describe)</li> </ul>

c. The name, title and address of the owner, partners or officers of the undersigned are:

NAME	TITLE	ADDRESS

d. The names and addresses of all other persons, both natural and corporate, having a substantial interest in the undersigned, and the nature of the interest are (if none, so state):

NAME	ADDRESS	NATURE OF INTEREST

e. The names, addresses and trade classification of all other building construction contractors in which the undersigned has a substantial interest are (if none, so state):

NAME	ADDRESS	TRADE CLASSIFICATION

Date: \_\_\_\_\_

\_\_\_\_\_  
(Contractor)

By: \_\_\_\_\_

**WARNING**

U.S. Criminal Code, Section 1010, Title 18, U.S.C, provides in part: “Whoever, ...makes, passes, utters, or publishes any statement, knowing the same to be false...shall be fined not more than \$5,000 or imprisoned not more than two (2) years, or both.”

Federal Identification Number: \_\_\_\_\_

Approximate Dollar Value of Contract: \_\_\_\_\_

Applicability

The Project or Program to which the construction work covered by this contract pertains is being assisted by the United States of America and the following Federal Labor Standards Provisions are included in this Contract pursuant to the provisions applicable to such Federal assistance.

A.1. (1) Minimum Wages. All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis- Bacon Act of behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of 29 CFR 5.5(a)(1)(iv); also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period.

Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborer or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under 29 CFR Part 5.5 (a)(1)(ii) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)(a) Any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. HUD shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
(2) The classification is utilized in the area by the construction industry; and
(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(b) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and HUD or its designee agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by HUD or its designee to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional

3. (i) Payrolls and basic records. Payrolls and basic records relating thereto shall be maintained by the contractor during the

classification action within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB control number 1215-0140).

(c) In the event the contractor, the laborers, or mechanics to be employed in the classification or their representatives, and HUD or its designee do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), HUD or its designee shall refer the questions, including the views of all interested parties and the recommendation of HUD or its designee, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140).

(d) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (1)(b) or (c) of this paragraph, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program: Provided, that the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140).

2. Withholding. HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other Federally assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, HUD or its designee may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased. HUD or its designee may, after written notice to the contractor, disburse such amounts withheld for and on account of the contractor or subcontractor to the respective employees to whom they are due. The Comptroller General shall make such disbursements in the case of direct Davis-Bacon Act contracts.

course of the work preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or

under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in Section 1 (b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5 (a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs. (Approved by the Office of Management and Budget under OMB Control Numbers 1215-0140 and 1215-0017).

(ii)(a) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to HUD or its designee. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR Part 5.5 (a) (3) (i). This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, D.C. 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. (Approved by the Office of Management and Budget under OMB Control Number 1215-0149).

(b) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be maintained under 29 CFR part 5.5 (a)(3)(i) and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR Part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(c) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph A.3 (ii)(b) of this section.

(ii) **Trainees.** Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage

(d) The falsification of any of the above subject the contractor or subcontractor to prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.

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(iii) The contractor or subcontractor shall make the records required under paragraph A.3 (i) of this section available for inspection, copying, or transcription by authorized representatives of HUD or its designee or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, HUD or its designee may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR Part 5.12.

**4. (i) Apprentices and Trainees. Apprentices.** Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid no less than the applicable wage rate on the wage determination for the work

actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) **Equal employment opportunity.** The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

**5. Compliance with Copeland Act requirements.** The contractor shall comply with the requirements of 29 CFR Part 3 which are incorporated by referenced in this contract.

**6. Subcontracts.** The contractor or subcontractor will insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as HUD or its designee may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR Part 5.5.

**7. Contract termination; debarment.** A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

**8. Compliance with Davis-Bacon and Related Act Requirements.** All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract.

**9. Disputes concerning labor standards.** Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6 and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and HUD or its designee, the U.S. Department of Labor, or the employees or their representatives.

**10. (i) Certification of Eligibility.** By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12 (a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18, U.S.C. 1001. Additionally, U.S. Criminal Code, Section 1010, Title 18, U.S.C., "Federal Housing Administration transactions", provides in part "Whoever, for the purpose of...influencing in any way the action of such Administration...makes, utters or publishes any statement, knowing the same to be false...shall be fined not more than \$5,000 or imprisoned not more than two years, or both."

**11. Complaints, Proceedings, or Testimony by Employees.** No laborer or mechanic to whom the wage, salary, or other labor standards provisions of this Contract are applicable shall be discharged or in any other manner discriminated against by the Contractor or any subcontractor because such employee has filed any complaint or instituted or caused to be instituted any proceeding or has testified or is about to testify in any proceeding under or relating to the labor standards applicable under this Contract to his employer.

**12. Contract Work Hours and Safety Standards Act.** As used in this paragraph, the terms "laborers" and "mechanics" include watchmen and guards.

(1) **Overtime requirements.** No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics

shall require or permit any such laborer or mechanic to work a workweek in which he or she is employed on such contract for more than a total of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek, whichever is greater.

(2) **Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in subparagraph (1) of this paragraph, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in sub-paragraph (1) of this paragraph, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in subparagraph (1) of this paragraph.

(3) **Withholding for unpaid wages and liquidated damages.** HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, for any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contract, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in subparagraph (2) of this paragraph.

(4) **Subcontracts.** The contractor or subcontractor shall insert in any subcontracts the clauses set forth in subparagraph (1) through (4) of this paragraph and also a clause requiring the subcontractor to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor, or lower tier subcontractor with the clauses set forth in subparagraphs (1) through (4) of this paragraph.

#### C. Health and Safety

(1) No laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health and safety as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation.

(2) The Contractor shall comply with all regulations issued by the Secretary of Labor pursuant to Title 29 Part 1926 (formerly part 1518) and failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act (Public Law 91-54, 83 Stat. 96).

(3) The Contractor shall include the provisions of this Article in every subcontract so that such provisions will be binding on each subcontractor. The Contractor shall take such action with respect to any subcontract as the Secretary of Housing and Urban Development or the Secretary of Labor shall direct as a means of enforcing such provisions.

**XV. EQUAL EMPLOYMENT OPPORTUNITY CERTIFICATION**



**A. Equal Opportunity Clause, Section 202, Executive Order 11246 (30 FR 12319-25)**

During the performance of this contract the CONTRACTOR agrees as follows:

1. The CONTRACTOR will not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, national origin, or disability. The CONTRACTOR will take affirmative action to ensure that applicants are employed and that employees are treated fairly during employment without regard to their race, color, religion, sex, age, national origin, or disability. Such action shall include, but not be limited to the following: Employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The CONTRACTOR agrees to post in conspicuous places available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
2. The CONTRACTOR will, in all solicitations or advertisements for employees placed by or on behalf of the CONTRACTOR, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, age, national origin, or disability.
3. The CONTRACTOR will send to each labor union or representative of workers with which they have a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the CONTRACTOR's commitment under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
4. The CONTRACTOR will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
5. The CONTRACTOR will furnish all information and reports required by Executive Order 11246 and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to their books, records, and accounts by the Department and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.
6. In the event of the CONTRACTOR's noncompliance with the non-discrimination clauses of this contract or with any of the said rules, regulations or orders, this contract may be cancelled, terminated, or suspended in whole or in part, and the CONTRACTOR may be declared ineligible for further Government contracts in

accordance with the procedures authorized in Executive Order 11246 or by rules, regulations or order of the Secretary of Labor or as otherwise provided by law.

7. The CONTRACTOR will include the provisions of the sentence immediately preceding paragraph 1 and the provisions of paragraphs 1 through 7 in every subcontract or purchase order unless exempt by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 so that such provisions will be binding upon each subcontractor or vendor. The CONTRACTOR will take such action with respect to any subcontract or purchase order as the Department may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event a CONTRACTOR becomes involved in or is threatened with litigation with a subcontractor or vendor as a result of such direction by the Department, the CONTRACTOR may request the United States to enter into such litigation to protect the interest of the United States.

**B. Section 3 Clause - 24 CFR, Part 75, and HUD Grant Agreement:**

Every applicant, recipient, contracting party, contractor, and subcontractor shall incorporate, or cause to be incorporated, in all contracts for work in connection with a Section 3 covered project, the following clause (referred to as Section 3 clause):

1. The work to be performed under this Contract is on a project assisted under a program providing direct Federal financial assistance from the Department of Housing and Urban Development and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701. Section 3 requires that to the greatest extent feasible, opportunities for training and employment be given lower income residents of the project area and contracts for work in connection with the project be awarded to business concerns which are located in or owned in substantial part by persons residing in the area of the project.
2. The parties to this contract will comply with the provisions of said Section 3 and the regulations issued pursuant thereto by the Secretary of Housing and Urban Development set forth in 24 CFR 75, and all applicable rules and orders of the Department issued thereunder prior to the execution of this contract. The parties to this contract certify and agree that they are under no contractual or other disability which would prevent them from complying with these requirements.
3. The CONTRACTOR will send to each labor organization or representative of workers with which they have a collective bargaining agreement or other contract or understanding, if any, a notice advising the said labor organization or workers' representative of their commitments under this Section 3 clause and shall post

copies of the notice in conspicuous places available to employees and applicants for employment or training.

4. The CONTRACTOR will include this Section 3 clause in every subcontract for work in connection with the project and will, at the direction of the applicant for recipient of Federal financial assistance, take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the Secretary of Housing and Urban Development, 24 CFR 75. The CONTRACTOR will not subcontract with any subcontractor where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR 75 and will not let any subcontract unless the subcontractor has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.
5. Compliance with the provisions of Section 3, the regulations set forth in 24 CFR 75, and applicable rules and orders of the Department issued thereunder prior to the execution of the contract, shall be a condition of the Federal financial assistance provided to the project, binding upon the applicant or recipient, its contractors and subcontractors, its successors, and assigns to those sanctions specified by the grant or loan agreement or contract through which Federal assistance is provided and to such sanctions as are specified by 24 CFR 75.

**XVI. PROCUREMENT STANDARDS**

**A. Applicability**

Tarrant County Community Development established these standards and guidelines for procurement of supplies, equipment, construction and services for Federal assistance programs. These standards are furnished to ensure that such materials and services are obtained efficiently and economically and in compliance with provisions of applicable Federal law and executive orders and State and local laws and regulations.

**B. Code of Conduct**

Tarrant County Community Development maintains a written code or standard of conduct which shall govern the performance of their officers, employees or agents engaged in the award and administration of contracts supported by Federal funds. No employee, officer or agent of Tarrant County shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

1. The employee, officer or agent;
2. Any member of their immediate family;
3. Their partner; or
4. An organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award.

Tarrant County appointed officials, elected officials, employees or agents shall neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to sub-agreements.

To the extent permitted by State or local law or regulations, such standards of conduct shall provide for penalties, sanctions, or other disciplinary actions for violations of such standards by Tarrant County officers, employees, or agents or by contractors or their agents.

**C. Contracting with Small and Minority Firms, Women’s Business Enterprise, and Labor Surplus Area Firms**

It is national policy to award a fair share of contracts to small and minority business firms. Accordingly, affirmative steps must be taken to assure that small and minority businesses are utilized when possible as sources of supplies, equipment, construction and services. Affirmative steps shall include the following:

1. Assuring that small minority businesses are solicited whenever they are potential sources.
2. When economically feasible, dividing total requirements into smaller tasks or quantities so as to permit maximum small and minority business participation.
3. Where the requirement permits, established delivery schedules which encourage participation by small and minority business.
4. Using the services and assistance of the Small Business Administration, the Office of Minority Business Enterprise of the Department of Commerce and Community Services Administration as required.
5. If any subcontracts are to be let, requiring the prime contractor to take affirmative steps in 1 thru 4 above.
  - a. Similar appropriate affirmative action in support of women's business enterprises.
  - b. Procurement of goods and services from labor surplus areas is encouraged when feasible.
  - c. Grantor agencies may impose additional regulations and requirements in the foregoing areas only to the extent specifically mandated by statute or presidential direction.

**D. Selection Procedures**

All procurement transactions, regardless of whether by sealed bids or by negotiation and without regard to dollar value, shall be conducted in a manner that provides maximum open and free competition. Procurement procedures shall not restrict or eliminate competition. Examples of what is considered to be restrictive of competition include but are not limited to: (1) placing unreasonable requirements on firms in order for them to qualify to do business; (2) noncompetitive practices between firms; (3) organizational conflicts of interest; and (4) unnecessary experience and bonding requirements.

Awards shall be made only to responsible contractors that possess the potential ability to perform successfully under the terms and conditions of a proposed procurement. Consideration shall be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

**E. Methods of Procurement**

Procurement under grants shall be made by one of the following methods, as described herein: (a) small purchase procedures; (b) competitive sealed bids (formal advertising); (c) competitive negotiation; (d) noncompetitive negotiation.

Small purchase procedures are those relatively simple and informal procurement methods that are sound and appropriate for procurement of services, supplies or other property, and cost in the aggregate not more than \$50,000. If small purchase procedures are used for procurement under a grant, price or rate quotation shall be obtained from an adequate number of qualified sources.

In competitive sealed bids (formal advertising), sealed bids are publicly solicited, and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is lowest in price.

In order for formal advertising to be feasible, appropriate conditions to be presented include, as a minimum, the following:

1. A complete, adequate, and realistic specification or purchase description.
2. Two or more responsible bidders willing and able to compete effectively for the grantee's business.
3. The procurement lends itself to a firm-fixed-price contract, and selection of the successful bidder can appropriately be made principally on the basis of price.

If formal advertising is used for procurement under a grant the following requirements shall apply:

1. A sufficient time prior to the date set for opening of bids, and bids shall be solicited from an adequate number of known suppliers. In addition, the invitation shall be publicly advertised.
2. The invitation for bids, including specifications and pertinent attachments, shall clearly define the items or services needed in order for bidders to properly respond to the invitation.
3. All bids shall be opened publicly at the time and place stated in the invitation for bids.

4. A firm-fixed-price contract award shall be made by written notice to that responsible bidder whose bid, conforming to the invitation for bids, is lowest. Where specific in bidding documents, factors such as discounts, transportation costs and life cycle shall be considered in determining which bid is lowest. Payment discounts may only be used to determine low bid when prior experience of the grantee indicates that such discounts are generally taken.
5. Any or all bids may be rejected when there are sound documented business reasons in the best interest of the program.

In competitive negotiation, proposals are requested from a number of sources, and the Request for Proposal is publicized, negotiations are normally conducted with more than one of the sources submitting offers, and either a fixed-price or cost- reimbursable type contract is awarded, as appropriate. Competitive negotiation may be used if conditions are not appropriate for the use of formal advertising. If competitive negotiation is used for a procurement under a grant, the following requirements shall apply:

1. Proposals shall be solicited from an adequate number of qualified sources to permit reasonable competition consistent with the nature and requirements of the procurement. The Request for Proposal shall be publicized and reasonable requests by other sources to compete shall be honored to the maximum extent practicable.
2. The Request for Proposal shall identify all significant evaluation factors, including price or cost where required and their relative importance.
3. Mechanisms for technical evaluation of the proposals received, determinations of responsible offerors for the purpose of written or oral discussions, and selection for contract award shall be provided.
4. Award may be made to the responsible offeror whose proposal will be most advantageous to the procuring party, price and other factors considered.
5. Competitive negotiation procedures may be utilized for procurement of architectural/engineering professional services, whereby competitors' qualifications are evaluated, and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation.

Noncompetitive negotiation is procurement through solicitations of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate. Noncompetitive negotiation may be used when the award of a contract is infeasible under small purchase, competitive bidding (formal



advertising) or competitive negotiation procedures. Circumstances under which a contract may be awarded by noncompetitive negotiation are limited to the following:

1. The item is available only from a single source;
2. Public exigency or emergency when the urgency for the requirement will not permit a delay incident to competitive solicitation;
3. The Federal grantor agency authorizes noncompetitive negotiation; or
4. After solicitation of a number of sources, competition is determined inadequate.

Additional innovative procurement methods may be used with the approval of the Federal grantor agency.

**F. Contract Pricing**

The cost plus a percentage of cost and percentage of construction cost method of contracting shall not be used. Grantees shall perform some form of cost or price analysis in connection with every procurement action including contract modifications. Costs or prices based on estimated costs for contracts under grants shall be allowed only to the extent that are incurred or cost estimates included in negotiated prices are consistent with Federal cost principles.

**XVII. SECTION 3**

The work to be performed under this contract is on a project assisted under a program providing direct Federal financial assistance from the Department of Housing and Urban Development Act and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u. Section 3 requires that to the greatest extent feasible, opportunities for training and employment be given lower income residents of the project area and contracts for work in connection with the project be awarded to business concerns which are located in or owned in substantial part by persons residing in the area of the project.

The parties to this contract will comply with the provisions of said Section 3 and the regulations issued pursuant thereto by the Secretary of Housing and Urban Development set forth in 24 CFR 75 and all applicable rules and orders of the Department issued thereunder prior to the execution of this contract. The parties to this contract certify and agree that they are under no contractual or other disability which would prevent them from complying with these requirements.

The CONTRACTOR will develop and implement an affirmative action plan for utilizing business concerns located within or owned in substantial part by persons residing in the area of the project; and the making of a good faith effort, as defined by the regulations, to provide training, employment, and business opportunities required by Section 3 of the Housing and Urban Development Act of 1968.

The CONTRACTOR will send to each labor organization or representative of workers with which they have a collective bargaining agreement or other contract or understanding, if any, a notice advising the said labor organization or workers' representative of their commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.

The CONTRACTOR will include this Section 3 clause in every subcontract for work in connection with the project and will, at the direction of the applicant for or recipient of Federal financial assistance, take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the Secretary of Housing and Urban Development, 24 CFR 75. The CONTRACTOR will not subcontract with any subcontractor where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR 75 and will not let any subcontract unless the subcontractor has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

Compliance with the provisions of Section 3, the regulations set forth in 24 CFR 75, and all applicable rules and orders of the Department issued thereunder prior to the execution of the contract, shall be a condition of the Federal financial assistance provided to the project, binding upon the applicant or recipient for such assistance, its successors, and assigns. Failure to fulfill these requirements shall subject the applicant or recipient, its contractors and subcontractors, its successors, and assigns to those sanctions specified by the grant or loan agreement or contract through which Federal assistance is provided, and to such sanctions as are specified by 24 CFR 75.

# SECTION 3 WORKER & TARGETED SECTION 3 WORKER SELF CERTIFICATION



**i** The purpose of HUD's Section 3 program is to provide employment, training and contracting opportunities to low-income individuals, particularly those who are recipients of government assistance for housing or other public assistance programs. Your response is voluntary, confidential, and has no effect on your employment.

## ELIGIBILITY FOR SECTION 3 WORKER OR TARGETED SECTION 3 WORKER STATUS

**i** A Section 3 worker seeking certification shall self-certify and submit this form to the recipient contractor or subcontractor, that the person is a Section 3 worker or Targeted Section 3 Worker as defined in 24 CFR Part 75.  
*Instructions: Select the appropriate information to confirm your Section 3 worker or Targeted Section 3 Worker status.*

**Employee Name:** [Click here to type your name.](#)

1. Are you a resident of public housing or a Housing Choice Voucher Holder (Section 8)?  
 YES  NO
2. Are you a resident of Tarrant County, Texas?  
 YES  NO
3. In the field below, select the amount of individual income you believe you earn on an annual basis. Choose an item.

**i** *Instructions: Select from ONE of the following two options:*

**I qualify as a:**

Section 3 Worker

**Section 3 Worker Definition:**

- A low or very low-income resident (where annual income is less than \$45,300 effective June 1, 2021); or
- Employed by a Section 3 business concern; or
- A YouthBuild participant.

1 - Form expires June 1, 2023

# SECTION 3 WORKER & TARGETED SECTION 3 WORKER SELF CERTIFICATION



Targeted Section 3 Worker

**Targeted Section 3 Worker Definition**

- Employed by a Section 3 business concern or
- Currently meets or when hired met at least one of the following categories as documented within the past five years:
  - Living within the service area or the neighborhood of the project, as defined in 24 CFR 75.5
- A YouthBuild participant.

### Employee Affirmation

I affirm that the above statements (on front side of this form) are true, complete, and correct to the best of my knowledge and belief. I hereby certify, under penalty of law, that the following information is correct to the best of my knowledge.

**Employee Address:** Click here to enter complete home address.

**Print Name:** Click here to type Name.

**Date Hired:** Click here to enter date hired.

**Signature:** \_\_\_\_\_

**Date:** Click here to enter today's date.

### FOR ADMINISTRATIVE USE ONLY

Is the employee a Section 3 worker based upon their self-certification?  YES  NO

Is the employee a Targeted Section 3 worker based upon their self-certification?  YES  NO

Was this an applicant who was hired as a result of the Section 3 project?  YES  NO

If Yes, what is the name of the company? \_\_\_\_\_

What was the date of hire? \_\_\_\_\_

**EMPLOYERS MUST RETAIN THIS FORM IN THEIR SECTION 3 COMPLIANCE FILE FOR FIVE YEARS.**

**XVIII. COPELAND ANTI-KICKBACK ACT**

**A. TITLE 18 U.S.C.**

18 U.S.C 874. Kickbacks from public works employees:

“Whoever, by force, intimidation, or threat of procuring dismissal from employment, or by any other manner whatsoever induces any person employed in the construction, prosecution, completion or repair of any public building, public work, or building or work financed in whole or in part by loans or grants from the United States, to give up any part of the compensation to which they are entitled under their contract of employment, shall be fined not more than \$5,000 or imprisoned not more than five years, or both.”

(June 25, 1948, ch. 645, I, 62 Stat. 740, eff. Sept. 1, 1948) replaces the former I of the Copeland Act of June 13, 1934 (48 Stat. 948), which was codified as 40 U.S.C. 276b prior to its repeal by 62 Stat. 862, eff. Sept. 1, 1948.

**B. TITLE 40 U.S.C. (as amended)**

40 U.S.C 276c. Regulations governing contractors and subcontractors:

“The Secretary of Labor shall make reasonable regulations for contractors and subcontractors engaged in the construction, prosecution, completion or repair of public buildings, public works or buildings or works financed in whole or in part by loans or grants from the United States, including a provision that each contractor and subcontractor shall furnish weekly a statement with respect to the wages paid each employee during the preceding week. Section 1001 of Title 18 of the United States Code (Criminal Code and Criminal Procedure) shall apply to such statements.”

40 U.S.C. 276c. as amended (48 Stat. 948, as amended by 62 Stat. 862, 63 Stat. 108, and 72 Stat. 967) constitutes the Copeland Act in its present form, which is a revision of Section 2 of the original Act of June 13, 1934, Section 1 of the original Act was repealed coincidentally with its replacement by 18 U.S.C. 874, set out above.

**C. Reorganization Plan No. 14 of 1950 (15 F.R. 3176, 64 Stat. 1267, 5 U.S.C. 133z note):**

“In order to assure coordination of administration and consistency of enforcement of the labor standards provision of each of the foregoing and other enumerated Acts by the Federal agencies responsible for the administration thereof, the Secretary of Labor shall prescribe appropriate standards, regulations, and procedures, which shall be observed by these agencies, and cause to be made by the Department of Labor such investigations, with respect to compliance with and enforcement of such labor standards, as he deems desirable,. ”



**XIX. SPECIAL SPECIFICATIONS**

## A. Special Provisions

1. The provisions of this section of the specifications shall govern in the event of any conflict between them and the "General Conditions of Agreement".
2. The word "OWNER" in these specifications shall be understood as referring to the County of Tarrant, Texas, acting through its duly authorized representative.
3. The word "ENGINEER" in these specifications shall be understood as referring to **(Teague Nall and Perkins, Inc.)**, or such other Engineer, Supervisor, or Inspector as may be authorized by said OWNER to act in any particular position.
4. Location of Work: The work is located in the City of 333-451 N Race St, Everman, TX 76140. Please refer to the location map in the plans for the exact location of each project.
5. Scope of Work: The work consists of installation of approximately (insert general scope of work) and all incidental work and appurtenances as indicated on the plans.

The CONTRACTOR will be responsible to do all the work and furnish all labor, equipment, and materials necessary to fully complete all the work as provided in the plans and these specifications.

6. Time of Completion: The time of completion bid for this project is on the basis of calendar days.
7. Surveys, Lines, and Grades: Refer to Section XI General Conditions of Agreement, Subsection B, Paragraph 4.
8. Copies of Plans and Specifications Furnished: Two (2) sets of plans and specifications shall be furnished to the Contractor at no charge for construction purposes. Additional copies may be obtained at cost of \$50.00 per set
9. List of Drawings: The construction drawings titled Clyde Pittman Inclusive Playground, in the City of Everman, Project No. B-20UW-48-0001-24-25, shall be a part of these specifications and contract documents.
10. Trade Names: Except as specifically specified otherwise, wherever in the specifications an article or class of material is designated by a trade name, or by the name or catalog number of any maker, patentee, manufacturer, or dealer, such designation shall be taken as intending to mean and specify the articles described or another equal thereto in quality, finish, and serviceability for the purpose intended, as may be determined and judged by the ENGINEER in their sole discretion.

11. **Materials and Workmanship:** No material which has been used by the Contractor for any temporary purpose whatever is to be incorporated in the permanent structure without written consent of the ENGINEER.

Where materials or equipment are specified by a trade or brand name, it is not the intention of the OWNER to discriminate against an equal product of another manufacturer, but rather to set a definite standard of quality or performance, and to establish an equal basis for the evaluation of bids. Where the words "equivalent", "proper", or "equal to" are used, they shall become understood to mean that the thing referred to shall be proper, the equivalent of, or equal to some other thing, in the opinion or judgment of the ENGINEER. Unless otherwise specified all materials shall be the best of their respective kinds and shall be in all cases fully equal to approved samples. Notwithstanding that the words "or equal to" or other such expressions may be used in the specifications in connection with a material, manufactured article, or process, the material, article, or process specifically designated shall be used, unless a substitute shall be approved in writing by the ENGINEER, and the ENGINEER shall have the right to require the use of such specifically designated material, article, or process.

12. **Liquidated Damages for Delays:** It is understood and agreed between the parties hereto that time is of the essence of this contract, and that for each calendar day of delay beyond the completion date of this contract (after due allowance for such extension of time as is provided herein) the CONTRACTOR shall pay to the OWNER as liquidated damages for each day of such delay the sum of One Hundred Dollars (\$100.00) for the first ten (10) calendar days, and Five Hundred Dollars (\$500.00) per calendar day for each day beyond the initial ten (10) days, it being understood between the parties hereto that such sum shall be treated as liquidated damages and not as a penalty, and the OWNER may withhold from the CONTRACTOR's compensation such sums as liquidated damages.

13. **Taxes and Insurance:** The CONTRACTOR shall comply with all Federal and local laws relating to Unemployment Insurance, Old Age Benefits, or assessments under such laws.

The CONTRACTOR and/or any Sub-Contractor engaged on this project shall furnish certificates of insurance to the OWNER, that they each carry Public Liability Insurance in an amount not less than One Hundred Thousand Dollars (\$100,000.00) to cover all damages arising out of bodily injuries to or death of one person, and not less than Three-Hundred Thousand Dollars (\$300,000.00) for all damages arising from bodily injuries to, or death of two or more persons in any one accident.

Property Damage Liability Insurance in an amount of not less than One-Hundred Thousand Dollars (\$100,000.00) for all damages arising out of injury to or destruction of property in any one accident.

Tarrant County and the City of Everman shall be named as an additional insured under the required Contractor's insurance policies. Such shall be reflected on the Certificate of Insurance.

Insurance coverage shall in no way be modified from that shown on the Certificate of Insurance without written notice provided to Tarrant County at least fifteen (15) days prior to modification. Such shall be indicated on the Certificate of Insurance.

14. Water for Construction: All water required by the Contractor shall be furnished by the Contractor from their own source. Generally, water may be purchased from the City provided such water is delivered through a working fire hydrant meter obtained from the utility company upon payment of a refundable property deposit.
15. Electricity for Construction: All electricity required by the Contractor shall be furnished by the Contractor from their own source.
16. Testing, Inspection and Control: All testing of materials required by these plans and specifications shall be performed by a Commercial Testing Laboratory under the direction of a Professional Engineer registered in the State of Texas and approved by the OWNER. The expense of such tests which pass shall be borne by the Contractor. All tests which fail will require re-testing, which shall also be paid for by the Contractor. Mill tests will be acceptable when it is definite the test sheets apply to the material being delivered.

The CONTRACTOR shall provide safe and proper facilities at all times for inspection of the work by the OWNER or the ENGINEER or their duly authorized representative.

Work requiring inspection shall not be covered without the approval of the ENGINEER and work covered without such approval shall be promptly uncovered on demand of the ENGINEER.

Work will be subject to final inspection by the ENGINEER after completion. This inspection shall take precedence over any and all inspections of the same material that may have been made previously.

The CONTRACTOR shall adequately protect the work and the equipment and materials for the work from damage or loss by theft or by hazards either caused by their own operations or resulting from weather or other natural conditions.

17. Permits, Easements, Codes, Fees, and Notices: All work shall be installed in strict accordance with all local and state codes and ordinances. Should any change in, or addition to, the plans and specifications be required to make them conform to these codes and ordinances, the CONTRACTOR shall so state when submitting their proposal, and shall include in their proposal any additions to or deductions from the bid price required to comply with such codes and ordinances. If the Contractor fails to give such notice at the time of submitting bids, they shall be held to install the work in compliance with the requirements at no extra compensation.

Building permits and permanent easements will be secured and paid for by the OWNER. All other permits and inspections that may be required shall be secured and paid by the Contractor.

The CONTRACTOR shall serve, in writing, all notices that may be necessary before and during the performance of the work including notices to adjacent property owners.

18. Award of Contract: The OWNER reserves the right to reject any and/or all formalities. No bid may be withdrawn until the expiration of sixty (60) days from the date bids are opened.
19. Designation of Sub Contractor and/or Manufacturers: When designated space is provided in the bid proposal, the CONTRACTOR shall indicate subcontractors and/or all manufacturers that they propose to use for this project.
20. Addenda: Refer to Section III Notice to Bidders, Subsection I.
21. Removal and Disposal of Existing Structures: Structures and/or materials not specified on the plans or by the ENGINEER during construction to be salvaged, shall be removed from the site, and disposed of properly by the Contractor. This shall include all existing HMAC paving and concrete curb and gutter which is to be removed.
22. Use By Owner Prior to Final Acceptance: The OWNER reserves the right, as its interests may direct, to connect into and use prior to final completion and acceptance, such portions of the work as are installed in place and ready for service, provided that in so doing the OWNER does not cause the Contractor hindrance or delay in prosecuting their operations. It shall be fully understood, however, that use of partially completed work by the OWNER does not constitute acceptance of that part or any other part thereof.
23. Protection of Grass, Trees, and Shrubs: The individual owners of plants, trees, and shrubbery inside the right of way lines and within the normal limits of excavation shall be notified by the Contractor prior to excavation and allowed to remove and protect their property; and all such plants, trees, and shrubbery not so protected by the

respective owners shall be removed and disposed of by the Contractor. Other plants, trees, and shrubbery along the right of way shall be protected in a manner satisfactory to the ENGINEER. No trees shall be removed without the prior consent of the ENGINEER.

24. Sanitation: Adequate sanitary conveniences shall be provided, secluded from public observation, and the responsibility for enforcing the use of and policing of such conveniences shall be the responsibility of the Contractor.
25. Barricades, Warning, and Detour Signs: The safety of the public shall be regarded as of prime importance during construction. Provisions for public safety and convenience shall be the responsibility of the CONTRACTOR and shall be provided at their expense.

When any section of a street is closed, the CONTRACTOR shall furnish and maintain at each end of the closed section, and at all intersecting streets within the section, adequate barricades, warning, and directing signs, lights, and red flags to prevent traffic pattern confusion and permit a smooth traffic flow adjacent to construction areas. All lights shall be kept burning between the hours of sunset and sunrise.

No direct payment will be made to the Contractor for any incidentals necessary for the proper direction, safety, and convenience of traffic during the contract, as this work is considered subsidiary to the work for which unit prices are requested in the proposal.

26. Separate Contracts: The OWNER reserves the right to let other contracts in connection with this work. This CONTRACTOR shall afford other Contractors reasonable opportunity for the introduction and storage of their materials and the execution of their work; and where required by the plans and specifications, shall properly connect and coordinate their work with the other Contractor.
27. Restoration of Site and Access: Upon completion of the work and before final acceptance and final payment, the CONTRACTOR shall remove rubbish, unused materials, and temporary structures from the limits of the project and restore, in a manner acceptable to the ENGINEER, all property, both public and private, that has been damaged during prosecution of the work, and shall level and grade all portions of the work where the surface of the natural ground or street surfacing has been disturbed during construction. The site shall be left in a neat and presentable condition free from rut holes. Excavated materials shall not be deposited on adjacent property unless approval is obtained from the property owner. No separate payment shall be allowed for such work.
28. Explosives: Explosives shall not be used on this project.

29. **Materials Furnished by Owner:** Materials shall not be furnished by the OWNER unless approved by the ENGINEER for temporary or emergency use.
30. **Records of Material Purchased:** The CONTRACTOR shall submit with the periodic payment requests, complete records of material purchased for this project. These records will be used to verify unit quantities.
31. **Property Lines and Monuments:** The CONTRACTOR shall protect all existing property line and elevation monuments. In the event a monument is disturbed or destroyed, the CONTRACTOR shall hire at their own expense a competent registered public surveyor to replace the monument.
32. **Disposal of Surplus Materials:** It shall be the CONTRACTOR's responsibility to arrange for the disposal of surplus materials not claimed by the OWNER. Materials shall not be disposed of on public or private property without the written approval of the ENGINEER or property Owner.
33. **Storage of Materials:** Unless prior approval is obtained from the ENGINEER, no materials shall be stored in the street, and when such permission is granted a 12' traffic lane will be maintained free and clear. Materials shall not be stored on private property without the express approval of the property owners so concerned.
34. **Protection of Adjacent Property:** Where construction is such that it blocks private driveways, the CONTRACTOR shall provide at their own expense suitable access to permit safe entrance into the individual driveways. Suitable pedestrian bridges shall be provided at intersecting walk lines.

Where construction requires the removal of private driveways, culverts, or surfacing other than that shown on the plans, such shall be replaced equal to or better than the condition in which they were found prior to the excavation. No separate pay shall be rewarded to Contractor for such replacement.

The plans show as much information as can reasonably be obtained by an engineering survey party and, from City, County, and public utility company records regarding the location and nature of pipelines, storm sewers, sanitary sewer, water lines, natural gas lines, telephone conduits, and underground cables crossing the right of way; however, the OWNER assumes no responsibility for the correctness or completeness of this information. It shall be the CONTRACTOR's responsibility to locate such underground installations sufficiently in advance of excavation to preclude damage to same, and in the event of damage to underground lines, whether shown on the plans or not, the CONTRACTOR shall be required to make the repairs necessary to place the facility back in service and all repairs so made shall conform in all respects to the requirements of the company or agency servicing the facility.

It is the CONTRACTOR's responsibility to provide and install, at their own expense, all necessary bracing, shoring, and sheeting required to support all sewer lines or other utility crossings projecting into or located in the limits of excavation.

Buildings or other structures along the location of the work shall be fully protected from damage, which might result from slides or undermining, by adequate underpinning, shoring, or bracing as the circumstances require.

Telephone, light and power and other poles of a similar nature, privately owned signs, and similar structures which are not located on private property will be protected by the Owner's thereof. The CONTRACTOR, however, shall not undermine or otherwise endanger such items until the owners have been notified and have taken necessary precautions to protect their interests.

Any damage to sidewalks, street pavements, curb and gutter, driveways, drainage structures, street signs, traffic lights, or other public or private property caused by the Contractor's operations shall be repaired at the Contractor's expense, unless otherwise provided.

Fences which must be cut for the proper performance of the work are to be braced and temporary fencing installed. Type H bracing shall be placed before cutting and the fence shall not be allowed to become slack for any reason. Woven wire or ornamental fences in which splices, or repairs would detract from the strength or appearance shall not be cut but shall be tunneled under. After the work is completed, all temporary fencing shall be removed, and fences permanently repaired. Materials used to repair fence shall match the original fence, as nearly as possible, with regard to gauge, mesh, style, and appearance. Wire and posts shall equal or exceed in size and strength those in the original fence. The cost of fence repair or replacement is considered subsidiary to the work for which unit prices are requested in the proposal.

- 35. Schedule of Minimum Wage Rates: Minimum wage rates to be paid the various classes of labor employed directly on this project are included in Section XIII Wage Decisions of the Contract Documents.

Attention is called to the fact that the inclusions of a minimum scale of wages to be paid to employees engaged in the work under this contract does not release the Contractor from compliance with the State Wage Law that may be applicable. The CONTRACTOR shall abide by the Wage and Hour Laws of the State and must not pay less than the rates legally prescribed as set forth therein.

The included wage rates have been determined by the OWNER to be the prevailing rates applicable to the work to be done under this contract.



36. **Employee Payroll Deductions:** The CONTRACTOR shall comply with all Federal and local laws relating to Unemployment Insurance, Old Age Benefits, and Worker's Compensation. No other deductions from employee wages shall be allowed except as authorized or required by law.
37. **Payment of Wages:** Employees of the Contractor shall be paid on a regular basis, weekly or otherwise, by cash or check, with prior arrangements made to cash checks.
38. **Employment Preference:** Preference of employment shall be given to resident citizens of Tarrant County where such persons are available and fully qualified to perform the work to which the employment relates.
39. **Hours of Work:** No work on this project shall be allowed on weekends or holidays unless prior approval is obtained from the ENGINEER. Approved days shall be counted as a full working day and charged against the time of completion.
40. **Non-Discrimination:** The CONTRACTOR shall not discriminate in their employment practices and/or employee relations in regard to race, sex, creed, color, or national origin.
41. **"Kick-Back" Statute:** The CONTRACTOR shall comply with the Copeland Act 48, Statute 948.
42. **Access to Site:** The OWNER will provide rights of way for the proposed construction without cost to the Contractor. The CONTRACTOR shall limit their operations within the limit of the right of way as much as possible. They shall be responsible for all damages which, as a result of their operations, occur inside or outside such limits. Should the Contractor require additional right of way for access or egress, they shall make arrangements with the owners of such property for such right of way at no cost to the OWNER.

The CONTRACTOR shall make every effort to complete construction and allow immediate access to adjacent property at all driveway entrances located along the roads. Owners or tenants of improvements where access and/or entrance drives are located shall be notified at least eight (8) hours prior to the time the construction will be started at their drive ins or entrances and informed as to the length of time driveways will be closed, which period shall not exceed six (6) hours.

No public road shall be entirely closed overnight. It shall be the responsibility of the CONTRACTOR to build and maintain all weather by passes and detours, if necessary, and to properly light, barricade, and mark all by passes and detours that might be required on and across the roads involved in the work included in this contract.

43. **Personal Liability of Public Official:** The CONTRACTOR and their sureties shall indemnify and save harmless the OWNER, the City of (insert city name), the ENGINEER, and all their officers, agents, and employees from all suits, actions, or claims of any character, name, and description brought on account of any injuries or damages received or sustained by any person or persons or property, on account of any negligent act or fault of the Contractor, their agents, or employees, in the execution of said Contract, or on account of the failure of the Contractor or provide necessary barricades, warning lights, or signs, and will be required to pay any judgement, with costs, which may be obtained against the OWNER and/or ENGINEER growing out of such injury or damage.
44. **Specifications:** Titles to divisions and paragraphs in these Contract Documents are introduced merely for convenience and are not to be taken as a part of the specifications and are, furthermore, not to be taken as a correct or complete segregation of the several units of material and labor. No responsibility, either direct or implied, is assumed by the ENGINEER for omissions or duplications by the Contractor or their Subcontractor, due to real or alleged error in arrangement of matter in these Contract Documents.
45. **Abandonment of Project:** The OWNER reserves the right to abandon, without obligation to the Contractor, any part of the project, or the entire project, at any time before the Contractor begins any construction work authorized by the OWNER.
46. **Payment for Materials on Hand:** Materials on hand not yet in place, but to be included in the work, may be included in progress payments as long as the materials are properly stored on site at the Project, or stored in an approved bonded warehouse and the purchase price can be verified by invoice or other means.
47. **Material Overcharge Repayment:** Vendor hereby assigns to Purchaser any and all claims for overcharges associated with this contract which arise under the Anti-Trust Laws of the United States, 15 U.S.C.A., Sec., etc. seq.
48. **Construction Schedule:** Immediately after execution and delivery of the contract, and before the first partial payment is made, the CONTRACTOR shall deliver to the OWNER an estimated construction progress schedule in a form satisfactory to the OWNER, showing the proposed dates of commencement and completion of each of the various subdivisions of work required under the Contract Documents and anticipated amount of each monthly payment that will become due the Contractor in accordance with the progress schedule. The CONTRACTOR shall update this schedule as the work progresses and resubmit it with every pay request.

49. Contract: The CONTRACTOR to whom the work is awarded shall, within ten (10) days after receiving the Contract and Payment, Performance, and Maintenance Bonds for execution, execute a written contract for the work, and deliver same, together with the Payment, Performance, and Maintenance Bonds, to the OWNER for execution and approval of both the bonds and the contract.

If the bidder to whom the work is awarded fails to enter into a contract as herein provided, the OWNER may annul the first award thereof and award the work to the bidder whose proposal is next most acceptable, which bidder will then likewise be bound to enter into a contract as set forth above.

In the event the CONTRACTOR requests an extension of time in which to furnish bond or sign the contract, an extension not exceeding ten (10) days may be granted by the OWNER; however, it shall be fully understood that in such event the work shall be started and completed in the same time and manner as if the extension had not been granted.

50. Maintenance Bond: The CONTRACTOR shall file with the Tarrant County, a good and sufficient Maintenance Bond with an approved surety an amount equal to one hundred percent (100%) of the total cost of the project. Said bond shall guarantee that all materials and workmanship used under these specifications on this project are in all respects first class. Said bond shall guarantee that no defect in said materials or workmanship requiring repair shall appear within two (2) years of the date of acceptance of this project by the OWNER. If during this two (2) year period any repairs which, in the opinion of the ENGINEER, are occasioned by defect or failure of any portion of the materials or workmanship used in this project are required, then upon due notice by Tarrant County the CONTRACTOR shall make the required repair.

Said repairs shall be made at the CONTRACTOR's expense and the CONTRACTOR shall supply all materials required to make such repairs.

Should the CONTRACTOR fail to make the necessary repairs, written notice of their failure shall be sent to both the Contractor and their bonding company. If at the expiration of ten (10) days from the date of this notice no action shall have been taken by either the Contractor or the bonding company, then the OWNER shall have the right, without further notice, to make the necessary repairs or to contract for the repairs and to pay the cost of the repairs. If such cost of repairs so made shall not be paid by the said Contractor or surety upon receipt of notice of the amount thereof, the said OWNER shall have the right of action on the Maintenance Bond; or in case the said repairs shall not actually be made by the OWNER after such failure on the part of the Contractor or surety, the OWNER shall have the right to ascertain and determine the costs of such repairs and to maintain an action against said Contractor or surety, or both, under said

bond, to recover the amount so determined in any court of competent jurisdiction, and the surety in any action upon said bond.

51. Operation of Valves: Valves in the existing water system are to be operated only under the direction and supervision of the City.
52. Damage to Existing Utilities: Damage to any existing utilities during construction will be the sole responsibility of the Contractor, and all costs incurred will be the responsibility of the Contractor.

**B. Construction Pay Items**

As listed in the Proposal, construction pay items shall be measured and paid for in accordance with the applicable measurement and payment paragraphs.

**C. Construction Non-Pay Items**

No direct payment will be made for the following non-pay items, or any other item of work required for the completion of this project, but which is not specifically itemized in the bid proposal. These items will be considered subsidiary to the contract and the cost of same shall be included in the prices for the various construction pay items in the proposal.

**XXIII. TECHNICAL SPECIFICATIONS**

The technical specifications for this project shall be in accordance with the North Central Texas Council of Government's (NCTCOG's) Standard Specifications for Public Works Construction.

**TS-1 NCTCOG Technical Specifications**

For this contract, the NCTCOG Standard Specifications for Public Works Construction, Fifth Edition, November 2017 with latest amendments (as published by the North Central Texas Council of Governments), shall govern and shall constitute the Technical Specifications, except as herein amended or supplemented. They will be referred to as the Standard Specifications and will not be physically bound with the other contract documents. The following list is provided as a reference of applicable items for this project but does not exclude unlisted items from the project. Copies of these standard specifications may be obtained from the North Central Texas Council of Governments, 616 Six Flags Drive, Suite 200, Arlington, Texas 76005-5888, (817) 640-3300.

- Item 101 Definitions and Abbreviations
- Item 102 Proposal Procedures
- Item 103 Award and Execution of Contract
- Item 104 Scope of Work
- Item 105 Control of Work
- Item 106 Control of Material
- Item 107 Legal relations and Contractor Responsibilities
- Item 108 Prosecution and Progress
- Item 109 Measurement and Payment
- Item 201 Temporary Erosion, Sedimentation, and Water Pollution Prevention and Control
- Item 202 Landscaping
- Item 203 Site Preparation
- Item 301 Subgrade, Subbase, and Base Preparation
- Item 302 Asphalt Materials and Pavement
- Item 303 Portland Cement Concrete Pavement
- Item 304 Concrete Paving Units
- Item 305 Miscellaneous Roadway Construction
- Item 401 Crack Sealing
- Item 402 Pavement Cut, Excavation and Repair
- Item 403 Asphaltic Pavement Repair
- Item 404 Surface Treatments
- Item 405 Ultrathin Concrete Pavement
- Item 501 Underground Conduit Materials
- Item 502 Appurtenances
- Item 503 Trenchless Installation
- Item 504 Open Cut – Backfill

Item 505	F Open Cut – General Conduit Installation
Item 506	Open Cut – Water Conduit Installation
Item 507	Open Cut – Wastewater Conduit Installation
Item 508	Open Cut – Storm Water Conduit Installation
Item 509	Crossings
Item 601	Pipeline Rehabilitation
Item 602	Rehabilitation of Manholes or Underground Vaults
Item 603	Abatement of Coatings Containing Certain Heavy Metals
Item 701	General Structures
Item 702	Concrete Structures
Item 703	Steel Structures
Item 704	Piling
Item 801	Barriers, Warning and Detour Signs, and Fences
Item 802	Steps and Retaining Walls
Item 803	Slope and Channel Protection
Item 804	Painting and Other Protective Treatments; Pavement Marking
Item 805	Electrical Components and Conduit
Item 806	Metal Materials

**XXI. E-VERIFY**



In accordance with 73 F.R. 677703, Nov. 14, 2008, CONTRACTOR shall enroll as a Federal Contractor in the E-Verify program within 30 calendar days of the award of this Contract. Within 90 calendar days of enrollment in the E-Verify program, CONTRACTOR shall begin to use E-Verify to verify the employment eligibility of all new hires of the CONTRACTOR who are working in the United States, whether assigned to this Contract or not, within 3 business days after the date of hire; and for each employee assigned to this Contract, CONTRACTOR shall initiate verification within 90 calendar days after date of enrollment in the E-Verify program or within 30 calendar days of the employee's assignment to work under this Contract, whichever date is later. The CONTRACTOR shall include the requirements of this clause in each subcontract that:

1. Has a value of more than \$3,000; and
2. Includes work performed in the United States.

CONTRACTOR may find more information on CONTRACTOR'S requirement to use E-Verify at: [www.dhs.gov/e-verify](http://www.dhs.gov/e-verify)

**XXII. ANTI-BOYCOTT STATUTES**

**A. Boycott of Energy Companies Prohibited**

In compliance with Section 2274.002 of the Texas Government Code, CONTRACTOR verifies that it does not boycott energy companies and will not boycott energy companies during the term of the above-described contract. “Boycott energy company” is defined in Section 809.001(1) of the Texas Government Code (added by 87th Legislature, S.B. 13) and means, without an ordinary business purpose, 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 with a company because the company: (A) engages in the exploration, production, utilization, transportation, sale, or manufacturing of fossil fuel-based energy and does not commit or pledge to meet environmental standards beyond applicable federal and state law; or (B) does business with a company described by subsection (A).

**B. Boycott of Israel Prohibited**

In compliance with Section 2271.002 of the Texas Government Code, CONTRACTOR verifies that it does not boycott Israel and will not boycott Israel during the term of this contract. “Boycott Israel” is defined by Texas Government Code in Section 808.001.

**C. Discrimination Against Firearm Entities or Firearm Trade Associations (FTAs)**

In compliance with Section 2271.002 of the Texas Government Code, CONTRACTOR verifies that it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or FTA; and will not discriminate during the term of the above-described contract against a firearm entity or FTA. “Discriminate against a firearm entity or firearm trade association” is defined in Section 2271.001(3) of the Texas Government Code and means, with respect to the entity or association, to: (i) refuse to engage in the trade of any goods or services with the entity or association based solely on its status as a firearm entity or firearm trade association; (ii) refrain from continuing an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association; or (iii) terminate an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association; the term does not include: (i) the established policies of a merchant, retail seller, or platform that restrict or prohibit the listing or selling of ammunition, firearms, or firearm accessories; and (ii) a company’s refusal to engage in the trade of any goods or services, decision to refrain from continuing an existing business relationship, or decision to terminate an existing business relationship: (aa) to comply with federal, state, or local law, policy, or regulations or a directive by a regulatory agency; or (bb) for any traditional business

reason that is specific to the customer or potential customer and not based solely on an entity's or association's status as a firearm entity or firearm trade association.

**D. Scrutinized Business Operations Prohibited**

In compliance with Section 2252.151 et seq. of the Texas Government Code, CONTRACTOR warrants and represents that: neither CONTRACTOR nor any of its affiliates engages in scrutinized business operations in Sudan, Iran, or with designated foreign terrorist organizations. "Scrutinized business operations in Sudan" is defined in Section 2270.0052 of the Texas Government Code. "Scrutinized business operations in Iran" is defined in Section 2270.0102 of the Texas Government Code. "Scrutinized business operations with designated foreign terrorist organizations" is defined in Section 2270.0152 of the Texas Government Code. CONTRACTOR further represents and warrants that neither CONTRACTOR nor any of its affiliates appears on any of the Texas Comptroller's Scrutinized Companies Lists.

**E. Terms**

CONTRACTOR must adhere to Anti-Boycott Statutes if:

Contractor company is a for-profit entity or business; Company has ten (10) or more full-time employees; and this contract has a value of \$100,000.00 or more that is to be paid wholly or partly from public funds of the government entity.



### BID TABULATION REPORT

CLIENT: CITY OF EVERMAN, TEXAS

DESCRIPTION: CLYDE PITTMAN PARK INCLUSIVE PLAYGROUND

Bidders

TNP JOB NO: EVR 22335  
 ENGINEER'S ESTIMATE: \$  
 BID DATE: Thursday, February 9, 2023  
 BID TIME: 10:00 AM

ITEM NO.	DESCRIPTION OF ITEMS	QUANTITY	UNIT	Whirlix Design Inc.		CGC General Contractors		Ratliff Hardscape, Ltd		123 Builders Co	
				UNIT COST	TOTAL	UNIT COST	TOTAL	UNIT COST	TOTAL	UNIT COST	TOTAL
<b>Base Bid - Paving Improvements Roaring Springs Road South</b>											
1	General Site Preparation	1	LS	\$20,000.00	\$20,000.00	\$22,392.93	\$22,392.93	\$13,000.00	\$13,000.00	\$27,500.00	\$27,500.00
2	Furnish and Install Landscape Structures Omni Spin Playground Equipment (Or Approved Equal)	1	EA	\$13,261.00	\$13,261.00	\$16,415.86	\$16,415.86	\$17,255.00	\$17,255.00	\$15,900.00	\$15,900.00
3	Furnish and Install Landscape Structures Roller Table Playground Equipment (Or Approved Equal)	1	EA	\$18,809.00	\$18,809.00	\$23,350.86	\$23,350.86	\$24,470.00	\$24,470.00	\$22,075.00	\$22,075.00
4	Furnish and Install Landscape Structures Cozy Dome w/ Pod Stepper Playground Equipment (Or Approved Equal)	1	EA	\$7,903.00	\$7,903.00	\$9,717.11	\$9,717.11	\$10,300.00	\$10,300.00	\$15,050.00	\$15,050.00
5	Furnish and Install Landscape Structures Wesaw Playground Equipment (Or Approved Equal)	1	EA	\$17,016.00	\$17,016.00	\$21,109.61	\$21,109.61	\$22,140.00	\$22,140.00	\$20,256.00	\$20,256.00
6	Furnish and Install Landscape Structures Rhapsody Vibra Chimes-Pentatonic Scale Playground Equipment (Or Approved Equal)	1	EA	\$6,675.00	\$6,675.00	\$10,683.36	\$10,683.36	\$11,300.00	\$11,300.00	\$15,745.00	\$15,745.00
7	Furnish and Install Landscape Structures Kettle Drum Playground Equipment (Or Approved Equal)	1	EA	\$2,899.00	\$2,899.00	\$3,683.36	\$3,683.36	\$3,785.00	\$3,785.00	\$5,550.00	\$5,550.00
8	Furnish and Install Tongue Drum Playground Equipment (Or Approved Equal)	1	EA	\$4,806.00	\$4,806.00	\$5,847.11	\$5,847.11	\$6,265.00	\$6,265.00	\$10,500.00	\$10,500.00
9	Furnish and Install Landscape Structures Double Bobble Rider Playground Equipment (Or Approved Equal)	1	EA	\$3,830.00	\$3,830.00	\$4,627.11	\$4,627.11	\$5,000.00	\$5,000.00	\$16,390.00	\$16,390.00
10	Furnish and Install Landscape Structures Single Post Swings w/ Toddler Extension Playground Equipment (Or Approved Equal)	1	EA	\$4,286.00	\$4,286.00	\$5,197.11	\$5,197.11	\$5,590.00	\$5,590.00	\$14,095.00	\$14,095.00
11	Furnish and Install Landscape Structures Tuff Timber Border w/ ADA Ramp (Or Approved Equal)	270	LF	\$14.60	\$3,942.00	\$18.16	\$4,903.20	\$68.00	\$18,360.00	\$33.55	\$9,058.50
12	Furnish and Install Fibar 100 EWF System (Or Approved Equal)	168	CY	\$68.00	\$11,424.00	\$84.76	\$14,239.68	\$150.00	\$25,200.00	\$61.00	\$10,248.00
<b>Total Base Bid - CLYDE PITTMAN PARK INCLUSIVE PLAYGROUND</b>					<b>\$114,851.00</b>		<b>\$142,167.30</b>		<b>\$162,665.00</b>		<b>\$182,367.50</b>

**CITY OF EVERMAN, TEXAS  
RESOLUTION NO. 2023-03-01**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EVERMAN, TEXAS, AWARDING A CONTRACT TO WHIRLIX DESIGNS, INC. FOR THE CLYDE PITTMAN PARK INCLUSIVE PLAYGROUND IN AN AMOUNT NOT TO EXCEED \$114,851.00; AUTHORIZING THE CITY MANAGER TO EXECUTE SAID CONTRACT; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the City of Everman, Texas solicited competitive bids for the Clyde Pittman Park Inclusive Playground project; and

**WHEREAS**, the City staff having received and evaluated the bids for the Clyde Pittman Park Inclusive Playground project has determined that Whirlix Designs, Inc. has submitted the lowest responsible bid for said project and recommends that a contract be awarded to Whirlix Designs, Inc., a Texas for-profit corporation; and

**WHEREAS**, the City Council of the City of Everman, Texas finds it to be in the public interest to approve the recommendations of the City Administration and award the contract for the Clyde Pittman Park Inclusive Playground project to Whirlix Designs, Inc.;

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EVERMAN, TEXAS, THAT:**

**SECTION 1.** The City Council of the City of Everman hereby awards a contract to Whirlix Designs, Inc. for the Clyde Pittman Park Inclusive Playground.

**SECTION 2.** The City Council hereby authorizes the City Manager to sign a contract with Whirlix Designs, Inc. for the Clyde Pittman Park Inclusive Playground in an amount not to exceed one hundred, fourteen thousand, eight hundred and fifty-one and no/100 (\$114,851.00) dollars and to sign such change orders to such contract as the City Manager deems reasonable, necessary, and in the public interest which are in compliance with applicable law and City policy and, in the case of an increase in contract price, subject to the availability of funds.

**SECTION 3.** This Resolution shall be effective immediately upon approval.

**PASSED AND APPROVED** this the 21st day of March 2023.

**APPROVED:**

\_\_\_\_\_  
**Ray Richardson, Mayor**

**ATTEST:**

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Mindi Parks, City Secretary

**APPROVED AS TO FORM:**

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John D. Oliver, Asst. City Attorney  
(031523VWTtm134073)

ESTIMATE

Section 10, Item A.



**Service Address**

City Hall

**Prepared For**

City of Everman

**DHJ Mechanical LLC**

PO Box 161592, License # TACLB44482E  
Fort Worth , Texas 76161  
Phone: (817) 726-2783  
Email: dhjmechanical@gmail.com  
Web: www.dhjmechanical.com

Estimate # 98  
Date 03/03/2023

**Description**

**Total**

RTU 5 ton curb adapter included	\$10,200.00
Replacement of RLPN-A060CK with serial number F461701978	

<b>Subtotal</b>	\$10,200.00
State	\$841.50
<b>Total</b>	<b>\$11,041.50</b>

**Notes:**

Package unit swap cost of crane, roof top unit and labor. \*\*\*RTU available 6-8 weeks lead time\*\*\*



By signing this document, the customer agrees to the services and conditions outlined in this document.

Section 10, Item A.



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Signed on: 03/03/2023  
Adrian Hernandez Jr.

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City of Everman



# C&S Air, Inc

Section 10, Item A.

**Air Conditioning and Heating**  
**P.O. Box 162721**  
**Fort Worth, TX 76161**  
**(817) 477- 2665**  
**TACLB26092E /TACLA3204C /M40972 /OK170981**

Submitted To:	City of Everman	Job Name:	
Street:	212 N. Race St	Job Location:	
City, State, Zip:	Everman Texas	City, State, Zip:	
Phone:		Job Phone:	

**We hereby submit specifications and estimates for the following: SEE BELOW**  
**Scope of Work: Replace (2) 5.0 Ton RTUs**

1. **To disconnect and remove existing electrical and gas piping to units with faulty compressors.**
2. **To remove RTUs from roof.**
3. **To provide and install new 5.0 Ton RTU.**
4. **To reconnect the electrical and drain lines.**
5. **To start and check operation in all modes.**
6. **To provide crane service for removal and placement of units on roof.**

**RTUs 11,000.00 Per Unit (Tax Exempt – City Municipality)**  
**Curb Adapters – 1250.00 Per Unit ( Tax Exempt – City of Municipality)**

**Total for 2 units \$ 24,500.00 Tax Exempt**  
**Total for 4 units \$ 49,000.00 Tax Exempt**

**This pricing is discounted for City of Everman – Normal Price 14,500.00 per unit**

**EXCLUSIONS:**

1. **High Voltage Electrical- if current electrical doesn't meet code requirements.**
2. **Roofing**
3. **Structural**

**PROPOSAL**

To furnish material and labor in accordance with the above specification for the sum of: \$ SEE ABOVE

**Payment to be made as follows:** Monthly Progress Billing

Work to be completed as follows: All material is guaranteed to be specified. Any alteration or deviation from above specifications involving extra costs will be executed only upon written orders, and will become an extra charge over and above the estimate. Execution of all agreements contingent upon strikes, accidents or delays beyond our control. Owner to carry fire, tornado and other necessary insurance.

**This proposal may be withdrawn by us if not accepted within (30) days.**

**ACCEPTANCE OF PROPOSAL** - The above prices, specifications and conditions are satisfactory. You are authorized to do the work as specified. Payment will be made as outlined above.

Submitted By:	Derek O'Keefe	Accepted By:	
Date	February 23, 2023	Date:	

Authorized Signature:		Authorized Signature:	Section 10, Item A.
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This business is regulated by the **TEXAS DEPARTMENT OF LICENSING AND REGULATION**. Unresolved Complaints should be Directed to:  
TEXAS DEPARTMENT OF LICENSING AND REGULATION, P.O. BOX 12157, AUSTIN, TEXAS 78711 1-800-803-9202



**Service Address**

**Prepared For**

Everman water  
Department

EVERMAN/Gilbert  
Ramirez  
212 N Race St.  
Everman , Tx 76140  
(817) 675-2134

**Herrera Heating & Air Conditioning**

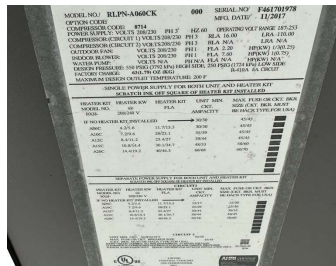
Regulated By The Texas Dept. Of Licensing &  
Regulation, 724 Oak Grove Rd E  
Burleson, Texas 76028  
Phone: (817) 929-9630  
Email: herrerahvac@outlook.com  
Web: www.herrerahvac.com

Estimate # 569  
Date 03/12/2022  
Business / Tax # TACLA58757C

Description	Quantity	Total
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PACKAGE ROOFTOP AIR CONDITIONING UNIT REPLACEMENT	2	\$13,560.00
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- Provide a d install new Roof Top Package unit
- RUUD
- MODEL#RACCZR060ACT000ACAAO
- 5 Ton
- 208/230 volts
- 3 phase
- Refrigerant 410
- Reconnect all electrical
- Clean and flush drain lines
- Provide and install Hail guards



THERMOSTAT	4	\$1,060.00
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Provide and install Honeywell programmable wifi smart thermostat.



**Notes:**

EXCLUSIONS:

-ECONOMIZER not include

By signing this document, the customer agrees to the services and conditions outlined in Section 10, Item A.  
document.

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EVERMAN/Gilbert Ramirez