

AGENDA  
CITY OF DENTON CITY COUNCIL  
November 19, 2013

After determining that a quorum is present, the City Council of the City of Denton, Texas will convene in a Work Session on Tuesday, November 19, 2013 at 2:00 p.m. in the Council Work Session Room at City Hall, 215 E. McKinney Street, Denton, Texas at which the following items will be considered:

WORK SESSION

1. Citizen Comments on Consent Agenda Items

This section of the agenda allows citizens to speak on Consent Agenda Items only. Each speaker will be given a total of three (3) minutes to address any items he/she wishes that are listed on the Consent Agenda. A Request to Speak Card should be completed and returned to the City Secretary before Council considers this item.

2. Requests for clarification of agenda items listed on the agenda for November 19, 2013.

3. Receive a report, hold a discussion, and provide staff with direction regarding the proposed 2014 Bond Program.

4. Receive a report, hold a discussion, and give staff direction regarding a proposed Hotel/Convention Center.

5. Receive a report, hold a discussion, and give staff direction regarding a proposed Taxilane Quebec Hangar Development at Denton Enterprise Airport.

6. Receive a report, hold a discussion, and give staff direction regarding proposed changes to the current Permit and Fee Schedule.

7. Receive a report, hold a discussion, and give staff direction regarding a sponsorship in an amount not to exceed \$13,000 of in-kind services and supplies for the 25<sup>th</sup> Annual Denton Holiday Lighting Festival to be held on Downtown Square on December 6, 2013, and providing an effective date.

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

CLOSED MEETING

1. Closed Meeting:

- A. Deliberations regarding Real Property – Under Texas Government Code Section 551.072; Consultation with Attorneys – Under Texas Government Code Section 551.071.

1. Discuss, deliberate, and receive information from staff and provide staff with direction pertaining to the potential purchase of certain real property interests located in the James Perry Survey, Abstract No. 1040, John Scott Survey, Abstract No. 1222, John Bacon Survey, Abstract No. 1541, and the John Davis Survey, Abstract No. 326, City of Denton, Denton County, Texas, and generally located along Western Boulevard between Airport Road and Jim Christal Road. Consultation with the City's attorneys regarding legal issues associated with the potential acquisition and condemnation of the real property described above where a public discussion of these legal matters would conflict with the duty of the City's attorneys to the City of Denton and the Denton City Council under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas, or would jeopardize the City's legal position in any administrative proceeding or potential litigation.
2. Discuss, deliberate and receive information from staff and provide staff with direction pertaining to the potential purchase of certain real property interests located (1) in the O.S. Brewster Survey, Abstract No. 56, located generally in the 1700 block of South Bonnie Brae Street; and (2) in the James Edmonson Survey, Abstract No. 400, Denton County, Texas, located generally in the 3100 Block of South Bonnie Brae Street, all property interests within the City of Denton, Texas. Consultation with the City's attorneys regarding legal issues associated with the potential acquisition or condemnation of the real property interests described above where a public discussion of these legal matters would conflict with the duty of the City's attorneys to the City of Denton and the Denton City Council under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas, or would jeopardize the City's legal position in any administrative proceeding or potential litigation. (Bonnie Brae Widening)
3. Discuss, deliberate and receive information from staff and provide staff with direction pertaining to the potential purchase of certain real property interests located in the B.B.B. & C.R.R Co. Survey, Abstract No. 196, and the J. Withers Survey, Abstract 1343, and the A. Cannon Survey, Abstract 232, all in Denton County, Texas, and located generally along the north side of the meanders of the Hickory Creek tributary, between U.S. Highway 377 and F.M. Road 1830, and also located generally along the north side of the meanders of the Hickory Creek tributary, west of Old Alton Road, all within City of Denton, Texas. Consultation with the City's attorneys regarding legal issues associated with the potential acquisition or condemnation of the real property interests described above where a public discussion of these legal matters would conflict with the duty of the City's attorneys to the City of Denton and the Denton City Council under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas, or would jeopardize the City's legal position in any administrative proceeding or potential litigation. (Hickory Creek Basin Sanitary Sewer Peak Flow Storage Facility)

- B. Deliberations regarding certain public power utilities competitive matters – Under Texas Government Code, Section 551.086.
  - 1. Receive a presentation from DME staff regarding the GreenSense Energy Efficiency Rebate Program which is authorized under the current DME rate ordinance, Schedule GFR, regarding issues relating to solar energy rebates, including re-establishing the amount of funding under such Schedule, re-analyzing qualifying criteria for such rebates, amending the rebate amounts per solar installation, and making other amendments to the Criteria Manual for such Schedule. Discuss, deliberate and provide staff with direction.
  
- C. Consultation with Attorney – Under Texas Government Code Section 551.071.
  - 1. Consultation with the City’s attorneys regarding legal advice concerning the leasing of land and financing of a proposed Hotel/Convention Center facility of University of North Texas property located at I-35 and North Texas Boulevard where a public discussion of this legal matter would conflict with the duty of the City’s attorneys to the City Council under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas.
  
  - 2. Consult with and provide direction to City’s attorneys regarding legal issues and strategies associated with Gas Well Ordinance regulations and Fire Code regulations relating to gas well drilling and production and safety issues regarding gas well drilling and production within the City Limits and the extraterritorial jurisdiction, including Constitutional limitations, statutory limitations upon municipal regulatory authority, statutory preemption and/or impacts of federal and state law and regulations as it concerns municipal regulatory authority and matters relating to enforcement, and any contemplated litigation or settlement offers regarding drilling in the City of Denton where the duty of the City’s attorneys to the City Council under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas.

ANY FINAL ACTION, DECISION, OR VOTE ON A MATTER DELIBERATED IN A CLOSED MEETING WILL ONLY BE TAKEN IN AN OPEN MEETING THAT IS HELD IN COMPLIANCE WITH TEXAS GOVERNMENT CODE, CHAPTER 551, EXCEPT TO THE EXTENT SUCH FINAL ACTION, DECISION, OR VOTE IS TAKEN IN THE CLOSED MEETING IN ACCORDANCE WITH THE PROVISIONS OF §551.086 OF THE TEXAS GOVERNMENT CODE (THE ‘PUBLIC POWER EXCEPTION’). THE CITY COUNCIL RESERVES THE RIGHT TO ADJOURN INTO A CLOSED MEETING OR EXECUTIVE SESSION AS AUTHORIZED BY TEX. GOV’T. CODE, §551.001, ET SEQ. (THE TEXAS OPEN MEETINGS ACT) ON ANY ITEM ON ITS OPEN MEETING AGENDA OR TO RECONVENE IN A CONTINUATION OF THE CLOSED MEETING ON THE CLOSED MEETING ITEMS NOTED ABOVE, IN ACCORDANCE WITH THE TEXAS OPEN MEETINGS ACT, INCLUDING, WITHOUT LIMITATION §551.071-551.086 OF THE TEXAS OPEN MEETINGS ACT.

Regular Meeting of the City of Denton City Council at 6:30 p.m. in the Council Chambers at City Hall, 215 E. McKinney Street, Denton, Texas at which the following items will be considered:

REGULAR MEETING

**1. PLEDGE OF ALLEGIANCE**

A. U.S. Flag

B. Texas Flag

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

**2. PROCLAMATIONS/PRESENTATIONS**

A. Proclamations/Awards

1. American Diabetes Month

2. One O’Clock Lab Band

**3. CITIZEN REPORTS**

A. Review of procedures for addressing the City Council.

B. Receive citizen reports from the following:

1. Rachel Bewers regarding gas well fracking on Bonnie Brae and Vintage Parkway.

2. Sandy Mattox regarding gas well fracking on Bonnie Brae and Vintage Parkway.

3. Cathy McMullen regarding permits for gas well drilling on Bonnie Brae and Vintage Parkway.

**4. CONSENT AGENDA**

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

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

A. Consider adoption of an ordinance of the City of Denton, Texas to declare the intent to reimburse capital program expenditures of the Electric Utility (\$34,595,000), Solid Waste (\$2,404,000), Streets (\$4,000,000), and General Government (\$8,500,000) with Certificates of Obligation with an aggregate maximum principal amount equal to \$49,499,000; and providing an effective date.

- B. Consider approval of a resolution revising Administrative Policy No. 403.07 “Debt Service Management”; and providing an effective date. The Audit/Finance Committee recommends approval (3-0).
- C. Consider approval of a resolution reviewing and adopting revisions to the Investment Policy regarding funds for the City of Denton; and providing an effective date. The Audit/Finance Committee recommends approval (3-0).
- D. Consider adoption of an ordinance accepting competitive proposals and awarding a public works contract for the installation of a pre-cast concrete security/screening fence at the Cooper Creek Substation for Denton Municipal Electric; providing for the expenditure of funds therefor; and providing an effective date (RFP 5295–awarded to Walsh’s Hawk Construction Co., LLC in an amount not-to-exceed \$354,971). The Public Utilities Board recommends approval (7-0).
- E. Consider adoption of an ordinance accepting competitive bids and awarding a public works contract for water and wastewater improvements as specified in Bid 5366 State School Interceptor II; providing for the expenditure of funds therefor; and providing an effective date (Bid 5366–awarded to the lowest responsible bidder meeting specification, Wright Construction Company, Inc. in the amount of \$2,594,780). The Public Utilities Board recommends approval (7-0).
- F. Consider adoption of an ordinance accepting competitive proposals and awarding contract for Janitorial Services for City of Denton buildings; providing for the expenditure of funds therefor; and providing an effective date (RFP 5317–awarded to Oriental Building Services, Inc. in the annual not-to-exceed amount of \$581,238 for a three (3) year not-to-exceed amount of \$1,743,714).
- G. Consider adoption of an ordinance of the City of Denton authorizing an agreement between the City of Denton, Texas and the Children’s Advocacy Center for Denton County, Incorporated in the amount of \$119,141; providing aid to the City of Denton Police Department in the investigation of child abuse cases; providing client and clinical services to victims of child abuse and non-offending family members; providing for the expenditure of funds therefor; and providing for an effective date.
- H. Consider adoption of an ordinance approving a sponsorship in an amount not to exceed \$13,000 of in-kind services and supplies for the 25<sup>th</sup> Annual Denton Holiday Lighting Festival to be held on Downtown Square on December 6, 2013, and providing an effective date.
- I. Consider adoption of an ordinance authorizing execution of a franchise agreement with the City of Denton, acting through its electric utility, granting a franchise to maintain, and operate facilities within the City of Corinth for the delivery and sale of electricity; providing for the payment of a fee for the use of the public rights-of-way; providing that such fee shall be in lieu of other charges; setting forth the term of the franchise; providing for the ratification and retroactive approval of said agreement; and providing an effective date. (Second Reading)

- J. Consider adoption of an ordinance approving a First Amendment to a Commercial Operator Airport Lease Agreement between the City of Denton, Texas and Nebrig Properties, L.P. for assignment to Sykes-Vaughan Investments, LLC; and providing an effective date. The Council Airport Committee recommends approval (3-0).
- K. Consider adoption of an ordinance authorizing the City Manager to execute an Interlocal Agreement between the Denton County Transportation Authority ("DCTA") and the City of Denton, Texas ("CITY"), to evidence the CITY's and DCTA's agreement regarding the planting of replacement trees by DCTA in relation to the Community Enhancement Project in the Project Area along and/or within the Trail Easement so that DCTA can meet the City of Denton Development Code's Tree Mitigation requirements relating to development of the DCTA Bus Operation and Maintenance Facility, and declaring an effective date.
- L. Consider adoption of an ordinance of the City of Denton authorizing an agreement between the City of Denton, Texas and Coats for Kids Ride, Inc.; providing for the expenditure of funds; and providing for an effective date. (\$1,100).
- M. Consider adoption of an ordinance authorizing the City Manager or his designee to execute a temporary access permit (the "Permit"), by and between the City of Denton, Texas and EagleRidge Operating, LLC, a Texas limited liability company ("EagleRidge"), granting a license to EagleRidge to temporarily access certain City owned lands located in the James Edmonson Survey, Abstract Number 401 and the James L. Harris Survey, Abstract Number 555, located generally 1,800 feet southwest of the intersection of South Bonnie Brae and Vintage Boulevard, City of Denton, Denton County, Texas, in connection with the overland transport of water for gas well operations; and providing an effective date.
- N. Consider adoption of an ordinance of the City of Denton, Texas amending a Professional Services Agreement by and between the City of Denton, Texas and Power Engineers, Inc. for electrical transmission line design, and other engineering related consulting services for Denton Municipal Electric Capital Improvement Projects; authorizing the expenditure of funds therefor; providing an effective date (File 5174–First Amendment to Professional Services Agreement in the original not-to-exceed amount of \$1,576,050, Amendment One in the amount of \$820,492, for a total not-to-exceed amount of \$2,396,542). The Public Utilities Board recommends approval (7-0).
- O. Consider adoption of an ordinance of the City of Denton, Texas providing for, authorizing, and approving the expenditure of funds for the purchase of thirteen (13) vertical break switch upgrade components for Denton Municipal Electric substations which are available from only one source and in accordance with Texas Local Government Code 252.022, exempt from the requirements of competitive bidding; and providing an effective date (File 5113–awarded to Keasler Sales, LLC in the not-to-exceed amount of \$175,370). The Public Utilities Board recommends approval (7-0).

- P. Consider adoption of an ordinance authorizing the City Manager or his designee to execute a Contract of Sale (herein so called) as attached hereto and made a part hereof as Exhibit "A" by and between the City of Denton (the "City"), and Westpark Group, L.P., a Texas Limited Partnership (the "Seller"), contemplating (I) the sale by Seller and purchase by City of a 4.2218 acre tract of land, more or less, for the purchase price of Four Hundred Thirty Five Thousand Six Hundred and No/100 Dollars (435,600.00); and (II) donation of a 10.1164 acre tract of land, more or less, all of said Real Property being generally located along the east side of Western Boulevard between Airport Road and Jim Christal Road in the James Perry Survey, Abstract 1040, City of Denton, Denton County, Texas; authorizing the City Manager, or his designee, to execute, deliver any and all other documents necessary to accomplish closing of the transactions contemplated by the Contract of Sale; authorizing the expenditure of funds therefor; and providing an effective date. The Public Utilities Board recommends approval (7-0).
- Q. Consider adoption of an ordinance of the City of Denton, Texas, authorizing the City Manager or his designee to execute a Contract of Sale (herein so called), by and between the City of Denton (the "City"), and Westpark Group, L.P., a Texas Limited Partnership (the "Seller") contemplating the sale by Seller and purchase by the City of a 3.00 acre tract of land, more or less, for the purchase price of One Hundred Eighty Thousand Nine Hundred Ninety One and 80/100 Dollars (\$180,991.<sup>80</sup>), said Real Property being generally located east of Western Boulevard and North of Airport Road, and located in the James Perry Survey, Abstract 1040, and the John Davis Survey, Abstract 326, Denton County, Texas, authorizing the City Manager, or his designee, to execute and deliver any and all other documents necessary to accomplish closing of the transactions contemplated by the Contract of Sale; authorizing the expenditure of funds therefor; and providing an effective date. The Public Utilities Board recommends approval (7-0).
- R. Consider adoption of an ordinance authorizing the City Manager or his designee to execute a Contract of Sale (herein so called), by and between the City of Denton (the "City"), and Westpark Group, L.P., a Texas Limited Partnership (the "Seller"), contemplating the sale by Seller and purchase by the City of (I) fee simple to a 6.49 acre tract of land, more or less, and (II) a drainage easement encumbering a 1.6234 acre tract of land, more or less (collectively the "Property Interests"), for the purchase price of One Hundred and No/100 Dollars (\$100.00), said Property Interests being generally located east of Western Boulevard and North of Airport road, and located in the James Perry Survey, Abstract 1040, Denton County, Texas, authorizing the City Manager, or his designee, to execute and deliver any and all other documents necessary to accomplish closing of the transactions contemplated by the Contract of Sale ("Closing") and documents contemplated by the Contract of Sale to be executed by the City after closing; authorizing the expenditure of funds therefor; and providing an effective date. The Public Utilities Board recommends approval (7-0).

- S. Consider adoption of an ordinance authorizing the City Manager or his designee to execute a Contract of Sale (herein so called), by and between the City of Denton (the "City"), and Westpark Group, L.P., a Texas Limited Partnership ("Westpark") and Rayzor Investments, Ltd., a Texas Limited Partnership ("Rayzor") (Westpark and Rayzor collectively, the "Seller"), contemplating the sale by seller and purchase by the City of certain Easements (herein so called) related to gas, electric, communication, and thermal commodity purposes, for the purchase price of One Hundred and No/100 Dollars (\$100.00), the Real Property being encumbered by the easements being generally located along both sides of Western Boulevard between Airport road and Jim Christal Road, and located in the John Scott Survey, Abstract 1222, the Thomas Toby Survey, Abstract Number 1285, the James Perry Survey, Abstract Number 1040, and the John Bacon Survey, Abstract Number 1541, Denton County, Texas; authorizing the City Manager, or his designee, to execute and deliver any and all other documents necessary to accomplish closing of the transactions contemplated by the Contract of Sale; authorizing the expenditure of funds therefor; and providing an effective date. The Public Utilities Board recommends approval (7-0).
- T. Consider adoption of an ordinance authorizing the City Manager or his designee to execute a Termination Agreement (the "Agreement") between Rayzor Investments, Ltd., a Texas Limited Partnership and Westpark Group, LP, a Texas Limited Partnership (collectively, the "Seller") and the City of Denton, Texas ("Buyer"), terminating that contract dated effective April 19, 2011, City of Denton Ordinance No. 2011-063, relating to the sale and purchase of certain real property and real property interests located generally in the vicinity of Western Boulevard, between Airport road and Jim Christal Road, Denton, Texas; and providing for an effective date. The Public Utilities Board recommends approval (7-0).
- U. Consider approval of a resolution allowing the Denton Community Theatre to be the sole participant permitted to sell alcoholic beverages at the Beaujolais and More event held on November 21, 2013, upon certain conditions; authorizing the City Manager or his designee to execute an agreement in conformity with this resolution; and providing for an effective date. Staff recommends allowing the Denton Community Theatre to sell alcohol at the Beaujolais and More event in the Civic Center.

**5. ITEMS FOR INDIVIDUAL CONSIDERATION**

- A. Consider approval of a resolution creating a Special Citizens Bond Advisory Committee for the proposed 2014 Bond Election; establishing a charge for the committee; and declaring an effective date.
- B. Consider appointments to the Citizens Bond Advisory Committee for the proposed 2014 Bond Election.
- C. Consider adoption of an ordinance of the City of Denton, Texas updating impact fees by amending Chapter 26, "Utilities," Section 26-210 through section 26-232 of the City of Denton Code of Ordinances; adopting revised land use assumptions and capital improvements plans for water and wastewater impact fees;



establishing new service areas for water and wastewater impact fees; establishing new maximum impact fees per service unit and impact fees to be collected; creating schedules for the assessment and collection of impact fees; repealing conflicting ordinances and resolutions; providing for a severability clause; providing for a penalty not to exceed \$2,000 for each violation thereof; and providing an effective date.

- D. Consider a motion to reconsider adoption of an ordinance regarding a rezoning of approximately 75.3 acres from Neighborhood Residential 2 (NR-2) to a Neighborhood Residential 3 (NR-3) zoning district and give City staff direction regarding same. The subject property is generally located on the south of Ryan Road, north of the Kansas City Southern Railroad, approximately 950 feet east of FM1830 and approximately 800 feet west of Forrest Ridge Road. (Z13-0006) The Planning and Zoning Commission recommends approval (6-1). The City Council denied (3-3).
- E. Consider adoption of an ordinance of the City of Denton, Texas prohibiting parking on both sides of Ponder Avenue from its intersection with Scripture Street to its intersection with Oak Street; providing a repealer clause; providing a savings clause; providing for a penalty not to exceed \$500 for violations of this ordinance; providing that violations of this ordinance shall be governed by Chapter 18 of the Code of Ordinances of the City of Denton; and providing for an effective date.

## 6. **PUBLIC HEARINGS**

- A. Hold a public hearing and consider adoption of an ordinance of the City of Denton, Texas, approving a Specific Use Permit to allow a Basic Utility; a DME electric substation, on approximately 6.21 acres of land within a Neighborhood Residential Mixed Use (NRMU) and Neighborhood Residential Mixed Use 12 (NRMU-12) zoning district classification and use designation, located on the south side of East McKinney Street, approximately 1,300 feet east of Mack Drive and 450 west of Springtree Street, within the City of Denton, Denton County, Texas; providing for a penalty in the maximum amount of \$2,000.00 for violations thereof; providing for a severability clause and an effective date (S13-0005). The Planning and Zoning Commission recommends approval (6-0).
- B. Hold a public hearing and consider adoption of an ordinance of the City of Denton, Texas, providing for an initial district and land use classification of Neighborhood Residential 1 (NR-1) on approximately 2.39 acres of land located on the east side of Bonnie Brae Street, approximately 3,500 feet south of Vintage Boulevard and 3,500 feet north of Fort Worth Drive (U.S. 377), in the City of Denton, Denton County, Texas; and providing for a penalty in the maximum amount of \$2,000.00 for violations thereof, severability clause and an effective date (Z13-0007). The Planning and Zoning Commission recommends approval (6-0).

**7. CITIZEN REPORTS**

- A. Review of procedures for addressing the City Council.
- B. Receive citizen reports from the following:
  - 1. Mark Brady regarding taxi cab licensing.
  - 2. Ed Soph regarding gas well drilling.
  - 3. Carol Soph regarding gas well drilling.
  - 4. Adam Briggie regarding the gas well situation near the Meadows at Hickory Creek on Bonnie Brae and Vintage.
  - 5. Linda Alexander regarding a moratorium on well drilling.
  - 6. Angie Holliday regarding the Vintage neighborhood drilling and fracking.
  - 7. Kelly Higgins regarding gas drilling moratorium.

**8. CONCLUDING ITEMS**

- A. Under Section 551.042 of the Texas Open Meetings Act, respond to inquiries from the City Council or the public with specific factual information or recitation of policy, or accept a proposal to place the matter on the agenda for an upcoming meeting

AND

Under Section 551.0415 of the Texas Open Meetings Act, provide reports about items of community interest regarding which no action will be taken, to include: expressions of thanks, congratulations, or condolence; information regarding holiday schedules; an honorary or salutary recognition of a public official, public employee, or other citizen; a reminder about an upcoming event organized or sponsored by the governing body; information regarding a social, ceremonial, or community event organized or sponsored by an entity other than the governing body that was attended or is scheduled to be attended by a member of the governing body or an official or employee of the municipality; or an announcement involving an imminent threat to the public health and safety of people in the municipality that has arisen after the posting of the agenda.

- B. Possible Continuation of Closed Meeting under Sections 551.071-551.086 of the Texas Open Meetings Act.

**CERTIFICATE**

I certify that the above notice of meeting was posted on the bulletin board at the City Hall of the City of Denton, Texas, on the \_\_\_\_\_ day of \_\_\_\_\_, 2013 at \_\_\_\_\_ o'clock (a.m.) (p.m.)

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CITY SECRETARY

NOTE: THE CITY OF DENTON CITY COUNCIL CHAMBERS IS ACCESSIBLE IN ACCORDANCE WITH THE AMERICANS WITH DISABILITIES ACT. THE CITY WILL PROVIDE SIGN LANGUAGE INTERPRETERS FOR THE HEARING IMPAIRED IF REQUESTED AT LEAST 48 HOURS IN ADVANCE OF THE SCHEDULED MEETING. PLEASE CALL THE CITY SECRETARY'S OFFICE AT 349-8309 OR USE TELECOMMUNICATIONS DEVICES FOR THE DEAF (TDD) BY CALLING 1-800-RELAY-TX SO THAT A SIGN LANGUAGE INTERPRETER CAN BE SCHEDULED THROUGH THE CITY SECRETARY'S OFFICE.

## AGENDA INFORMATION SHEET

**AGENDA DATE:** November 19, 2013

**DEPARTMENT:** Finance

**ACM:** Bryan Langley

*LBL*

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### **SUBJECT**

Receive a report, hold a discussion, and give staff direction regarding the proposed 2014 Bond Program.

### **BACKGROUND**

The City Council and staff held discussions of a 2014 Bond Program during the October 7, 2013 City Council meeting. Based on direction from City Council at this meeting, staff launched a webpage to accept applications for the Citizen Bond Advisory Committee and solicit additional projects for consideration by the committee. In addition, the City Council gave direction as to the charge for this committee and began the appointment process at the November 5, 2013 City Council meeting.

The purpose of this agenda item is to provide the City Council with an additional opportunity for questions and dialogue. If you have any questions, or need additional information, please let me know.

### **PRIOR ACTION/REVIEW**

On October 7, 2013, the City Council discussed the proposed 2014 Bond Program and received presentation from City staff regarding the initial project list. The City Council recommended a fifty (50) member Citizen Bond Advisory Committee with seven appointments by each council member and a committee chair.


On November 5, 2013, the City Council discussed the proposed bond election and appointed members to the Citizen Bond Advisory Committee.

Respectfully Submitted:

*Chuck Springer*

Chuck Springer, 349-8260  
Director of Finance

**AGENDA INFORMATION SHEET**

**AGENDA DATE:** November 19, 2013  
**DEPARTMENT:** City Manager's Office  
**ACM:** Jon Fortune 

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**SUBJECT**

Receive a report, hold a discussion, and give staff direction regarding a proposed Hotel/Convention Center.

**BACKGROUND**

The City has considered many proposals to construct a convention center over the past few years pursuant to the long standing objective to provide adequate convention center facilities to meet community needs and to encourage and promote economic development through convention and tourism related activity. More recently, staff received a proposal from O'Reilly Hospitality Management (OHM) that we believe has all the necessary elements for a successful project. The major development concepts of the OHM proposal were originally identified in January 2012, in a non-binding Memorandum of Preliminary Agreement (MOPA) between the City, OHM and the University of North Texas (UNT). Since then, staff has been working from the MOPA to negotiate and draft a proposed Development Agreement to build a convention center and convention center hotel.

More recently on September 17, 2013 and October 1, 2013, staff provided the City Council an update on the project to discuss the current status, financial proforma and financing of the convention center. As negotiations of the Master Development Agreement are coming to a close, this agenda item was scheduled to provide the Council an overview of the Master Development Agreement, related leases, sublease, and professional service agreements. Due to the number of lengthy documents attached, staff has provided each Council member a binder with a printed version for your review and reference. Staff will provide the Council an overview of these documents and will highlight specific features and major elements of each during the Work Session discussion. Please note that these are preliminary drafts at this time, and while they are substantially complete, staff is still working to review them for constancy of references and finalizing minor terms with the parties. Prior to final review and consideration, additional modifications may be necessary. During the Work Session, as questions of a legal nature arise, a Closed Session has also been posted on the November 19<sup>th</sup> agenda should you have the need to seek advice from the City Attorney. Feedback from the Council will be appreciated as the documents are finalized and provided to you for your consideration in early December.

If approved, the convention center and convention center hotel will be built on UNT property which will be leased to the City to build and own the convention center, and to O'Reilly Hotel Partners Denton (OHPD) to build and own the Hotel. The proposal includes plans for the City to lease the convention center to OHPD which would be operated and managed by OHM (same operator as the hotel). It is important to note that the City would be funding the convention center only and not the hotel. The hotel is planned to be an Embassy Suites of approximately 318 rooms (twelve stories tall), but at a minimum will have 275 rooms (nine stories tall) and includes a Houlihan's restaurant. Both would be funded by OHPD and represent an approximate \$60 million investment.

The convention center is currently proposed to be an approximate 100,000 sq/ft facility and includes an approximate 30,000 sq/ft ballroom. It will be designed to handle very large events and be able to accommodate approximately 2,000 for banquet style seating. The City would fund and own the convention center which is estimated to cost \$25 million.

Financing of the convention center is anticipated through the issuance of Certificates of Obligation Bonds which would be self supported from project related revenue, and includes an annual rent from OHPD to the City necessary to satisfy the City's debt obligation. The project also anticipates the creation of a Tax Increment Investment Zone (TIRZ) to capture the growth in appraised value of the project. Both the County and DISD will be invited to participate, though there have been no formal commitments to do so.

The following is the anticipated schedule for final review and approval of the project.

- November 19 - City Council Work Session for discussion of Convention Center Agreements
- December 2 - Presentation to Joint City Council/DISD Trustees (informational only)
- December 3 - Presentation to Economic Development Partnership Board (informational only)
- December 3 - City Council Work Session for discussion of Convention Center Agreements
- December 5 - UNT Board of Regents Meeting for consideration and approval of Agreements
- December 10 - City Council Meeting for consideration and approval of Agreements

### **PRIOR ACTION/REVIEW**

September 2011 – Received proposal from O'Reilly Hospitality Management (OHM)

January 2012 – City, OHM and UNT reach non-binding agreement on guiding principles to negotiate a development agreement (the Memorandum of Preliminary Agreement.)

March 2012 – City and OHM meet with local hotel operators at the Quarterly Convention and Visitor Bureau Hospitality Meeting to present the proposed project.

May 2012 – City Council Work Session to receive overview of proposed project and meet with the prospective developer, Tim O'Reilly.

December 2012 – City and OHM present proposed project to the DISD Trustees during a Trustee Meeting.

March 2013 – City Council Work Session discussion and update on proposed project.

September 2013 – City Council Work Session discussion and update on proposed project.

October 2013 - City Council Work Session discussion and update on proposed project.

**FISCAL IMPACT**

The proposed Hotel and Restaurant are estimated to cost \$60 Million and will be funded and owned by OHPD. The Convention Center, which will be owned by the City, is estimated to cost \$25 Million and will be funded through the issuance of Certificates of Obligation Bonds. Project related revenue (Hotel Occupancy Taxes, TIRZ revenue and sales taxes) plus rent payments by OHPD will be dedicated to meet the required annual debt obligations to fund the Convention Center.

**EXHIBITS**

PowerPoint Presentation  
Master Development Agreement  
Preliminary Site Plan  
City-UNT Land Lease  
City-OHPD Sublease  
OHPD-UNT Land Lease  
Professional Services Agreement – Construction Manager Agent  
Professional Services Agreement - Design

Respectfully Submitted:



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Jon Fortune  
Assistant City Manager

# Proposed Hotel and Convention Center Document Review

City Council Meeting  
November 19, 2013

# Agenda

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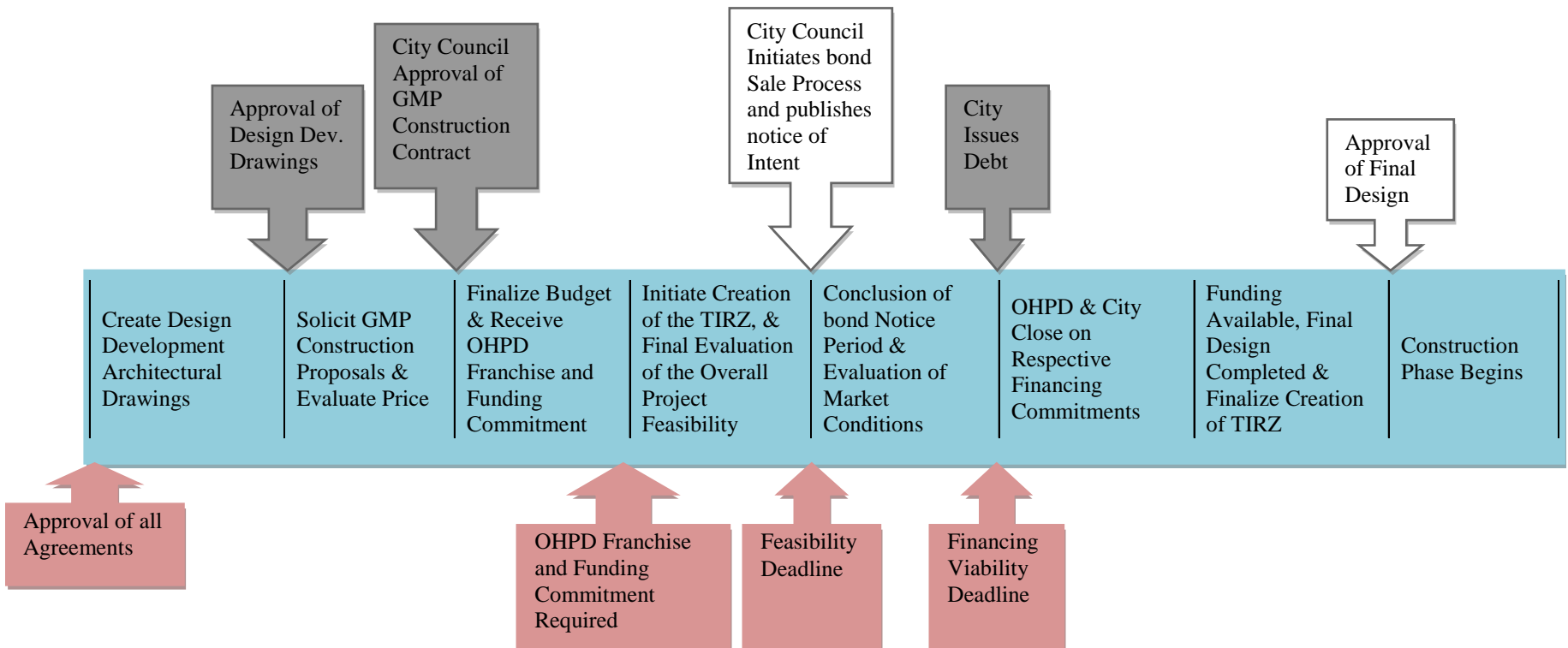
- ▶ **Process Feasibility and Timeline**
- ▶ **Document Review**
  - ▶ Master Development Agreement
  - ▶ Preliminary Site Plan
  - ▶ City-UNT Land Lease
  - ▶ City-OHPD Convention Center Sublease
  - ▶ UNT-OHPD Land Lease
  - ▶ Professional Service Agreements
- ▶ **Pending Items**
- ▶ **Schedule for Consideration of Approval**



# Convention Center Feasibility & Timeline

## DESIGN DEVELOPMENT PHASE

CONSTRUCTION PHASE



# Master Development Agreement

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- ▶ **Definitions (Article I)**
  - ▶ Approved Franchise/Approved Franchisor
  - ▶ Comparable Convention Centers
  - ▶ Comparable Hotel Properties
  - ▶ Convention Center
  - ▶ Hotel
  - ▶ Upscale Condition
- ▶ **Project Overview (Article II)**
- ▶ **Design Development Activities (Article III)**
  - ▶ OHPD Service – Hotel (3.1)
  - ▶ OHM Services to the City (3.2 & 3.3)
  - ▶ Project Feasibility (3.3.2)
  - ▶ Financing Viability (3.3.3)
  - ▶ Hotel Franchise Agreement (3.6)
  - ▶ Tax Increment Reinvestment Zone (3.11)

# Master Development Agreement (Continued)

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- ▶ **Construction Activities** (Article IV)
  - ▶ Payment and Performance Bonds (4.3)
  - ▶ Construction Phase (4.5)
- ▶ **Financing of the Project** (Article V)
  - ▶ Private Financing Contribution (5.1.3)
  - ▶ Feasibility & Viability Deadlines (5.1.4 & 5.1.5)
  - ▶ City Financing Contribution (5.1.6)
  - ▶ City Financing Contribution Limitation (5.3)
- ▶ **Purchasing Services** (Article VI)
  - ▶ Purchasing Services (6.1)
  - ▶ Payment for FF&E (6.2)

# Master Development Agreement (continued)

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- ▶ **Additional Obligations of OHPD (Article VII)**
  - ▶ Assignment, Transfer Lease (7.1)
  - ▶ Conditions to Transfers (7.1.1)
- ▶ **Maintenance and Insurance (Article VIII)**
- ▶ **Conditions, Representations & Warranties (Articles IX & X)**
- ▶ **Termination Provisions (Article XI)**
- ▶ **Defaults and Remedies (Article XII)**
- ▶ **Cost Savings and Expense Requirements (Article XIII)**
  - ▶ Cost Savings (13.1)
  - ▶ Shared Costs and Expenses (13.2)
- ▶ **Miscellaneous (Article XIV)**
  - ▶ Naming Rights (14.1)
  - ▶ Signage on Hotel (14.2)
  - ▶ Coordination with UNT College of Merchandising, Hospitality and Tourism (14.3)

# Preliminary Site Plan



# City-UNT Land Lease

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- ▶ **Definitions (Article I)**
- ▶ **Grant and Term of Lease (Article II)**
  - ▶ Term (2.2)
- ▶ **Lease Payment (Article III)**
  - ▶ City-UNT Base Rent (3.1)
- ▶ **Imposition and Utilities (Article IV)**
- ▶ **Improvements (Article V)**
  - ▶ Convention Center and Related Infrastructure (5.1)
- ▶ **Use of Premises (Article VI)**
  - ▶ Maintenance and Casualty (6.3.5)
  - ▶ Off-Site parking (6.6)
- ▶ **Insurance and Indemnity (Article VII)**
- ▶ **Assignment and Subletting (Article VIII)**
- ▶ **Defaults & Remedies (Article IX)**
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  - ▶ Capital Repair (h)
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- ▶ **Impositions (Article 3)**
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  - ▶ Capital Repair and City Facilities FF&E Forecast (7.1)
  - ▶ AR&R Fund (7.2)
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- ▶ **Casualty (Article 9)**
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- ▶ **Defaults (Articles 12 & 13)**
- ▶ **Miscellaneous (Articles 14 - 17)**



# UNT-OHPD Land Lease

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- ▶ **Definitions** (Article I)
- ▶ **Grant and Term of Lease** (Article II)
- ▶ **Lease Payment** (Article III)
  - ▶ **Base Rent** (3.1)
- ▶ **Imposition and Utilities** (Article IV)
- ▶ **Improvements** (Article V)
- ▶ **Use of Premises** (Article VI)
- ▶ **Insurance & Indemnity** (Article VII)
- ▶ **Assignment & Subletting** (Article VIII)
- ▶ **Defaults & Remedies** (Articles IX & X)
- ▶ **Miscellaneous** (Articles XI – XIII)

# Professional Service Agreements

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- ▶ **Design Services**

- ▶ Phase I - Design Development Drawings Capped at \$200,000
- ▶ Phase II-IV – Final Design/Construction Documents
- ▶ Cost Determined Upon Election to Proceed

- ▶ **Construction Manager - Agent**

- ▶ 3% of Convention Center Construction Cost

# Pending Items

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- ▶ Need receipt of OHPD-OHM Convention Center Management Agreement
- ▶ Reviewing dates and time requirements for accuracy
- ▶ Reviewing references and definitions
- ▶ Review of insurance and default provisions for consistency
- ▶ Finalize minor elements based on continue discussions

# Schedule for Consideration of Approval

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- ▶ Nov 19 – City Council Review
- ▶ Nov 26 – UNT Regents Facility Committee Review
- ▶ Dec 2 – Joint Presentation to City Council/DISD Trustees
- ▶ Dec 3 – Presentation to EDBP (informational only)
- ▶ Dec 3 – City Council Review
- ▶ Dec 5 – UNT Regents Consider Approval
- ▶ Dec 10 – City Council Consider Approval

MASTER DEVELOPMENT AGREEMENT  
DENTON CONVENTION CENTER PROJECT

Dated: December 10, 2013

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STATE OF TEXAS           §

COUNTY OF DENTON       §

**MASTER DEVELOPMENT AGREEMENT**

This Master Development Agreement (“Agreement”) is entered into as of December 10, 2013 (the “Effective Date”) by and between the City of Denton, Texas, a municipal corporation and political subdivision of the State of Texas (“City”) the University of North Texas, an institution of higher education of the State of Texas (“UNT”), O’Reilly Hotel Partners Denton, LLC (“OHPD”), a Missouri limited liability company, and O’Reilly Hospitality Management, LLC (“OHM”), a Missouri limited liability company. The City, UNT, OHPD, and OHM are sometimes referred to collectively as the “Parties.”

**RECITALS**

WHEREAS, UNT is a component institution of higher education of the University of North Texas System, an agency of the State of Texas, the owner of that certain real property as more particularly described on Exhibit “D” attached hereto and incorporated herein for all purposes (the “Project Site”); and

WHEREAS, the City and OHPD are desirous of developing a hotel, restaurant and Convention Center project on the Project Site (as further defined below), in order to promote travel, tourism, meetings, conventions, and events for the economic development and growth of the UNT and City of Denton community and for the economic benefit of the Parties; and

WHEREAS, the City will lease from UNT the Convention Center Site (as defined herein) pursuant to the terms of a long term land lease with UNT (“City-UNT Land Lease”) (as defined below), and will construct the Convention Center, with OHM acting as Construction Manager Agent (“CMA”) and Architect on behalf of the City pursuant to Professional Services Agreements (described more particularly herein), (as further defined below); and

WHEREAS, upon completion of the Convention Center and improvements to the Convention Center Site, the City will sublease the Convention Center to OHPD pursuant to the terms of a sublease between the City and OHPD (“City-OHPD Convention Center Sublease” or “City Facilities Sublease”) (as defined below); and

WHEREAS, OHM will operate and maintain the Convention Center on behalf of the City, as public facilities in accordance with the terms, provisions and requirements of the City Facilities Sublease; and

WHEREAS, OHPD will lease from UNT the Hotel Site (as defined herein) pursuant to the terms of a long term land lease with UNT (“OHPD-UNT Land Lease”), and will construct the Hotel and Restaurant (as further defined below); and

WHEREAS, OHPD will finance and construct the Hotel and Restaurant pursuant to the OHPD-UNT Land Lease and this Agreement;

NOW THEREFORE, in consideration of the foregoing and the mutual promises contained herein, and other valuable consideration the sufficiency and receipt of which are hereby acknowledged, the Parties agree as follows:

**ARTICLE I**

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1.1 **Definitions.** As used herein the following terms are defined as set out below:

“Applicable Law” means all laws or statutes, rules or regulations, and any amendments thereto, of the State or the United States by which the City and its powers, securities, operations and procedures are, or may be governed or from which its powers may be derived, including all City codes, ordinances and development standards. All City codes, ordinances, rules and development standards shall be applicable to this agreement and the Project, irrespective of whether such codes, ordinances, rules and development standards would otherwise normally apply.

“Approved Franchise” means a franchise agreement approved by the City with an Approved Franchisor for a term of no less than eighteen (18) years from the date the Hotel opens for business, whereby OHPD is permitted to operate the Hotel and Restaurant using the name and reservation system of any Approved Franchisor.

“Approved Franchisor” means, initially, an Embassy Suites and a Houlihan’s Restaurant & Bar, or some other restaurant of similar or higher quality; provided that from and after the date the Hotel opens for business to the public throughout the term of the Approved Franchise and in the event, after the expiration of the Approved Franchise, another Franchise is entered into, such term after approval by UNT and the City in their reasonable discretion, shall also include a national or international hotel franchisor for a specific hotel product of the same or higher quality than Embassy Suites, approved by the City and UNT in their reasonable discretion.

“Approved Plans” shall mean the architectural and engineering drawings, plans and specifications relating to the Project as development in accordance with the Master Development Agreement entered into between the City, UNT and OHPD.

“Base Rent” means the amount set forth in the City-OHPD Convention Center Sublease. Base Rent shall commence on the date set forth in the City-OHPD Convention Center Sublease.

“Bond Debt Payments” means the semi-annual debt service payments made by the City on its Certificates of Obligation issued to fund the construction of the Convention Center.

“City Facilities” means the Convention Center and related automobile parking spaces as determined to be required by the City’s development standards.

“City Financing Contribution” means the net proceeds of the City’s issuance of Certificates of Obligation, the principal amount of which shall be determined by the City based upon the Total Convention Center costs; provided that the City shall not be obligated to contribute more than \$25,000,000 (total, including design and construction costs) to the City

Facilities. The City may contribute additional funds or resources to the City Facilities, pursuant to this Agreement, but the City shall not contribute more than \$25,000,000 in net proceeds of its debt financing for the total cost of the City Facilities.

“City-OHPD Convention Center Sublease” or “Sublease” or “City Facilities Sublease” means the sublease agreement to be executed by OHPD and the City, whereby OHPD will sublease the Convention Center and Convention Center Site from the City, which sublease shall be in form and content attached hereto as Exhibit “B,” as same may be modified, amended, extended or renewed from time to time upon the approval of the Parties.

“City-UNT Land Lease” means the lease agreement to be executed by the City and UNT, whereby the City will lease the Convention Center Site from UNT, which land lease shall be in form and content attached hereto as Exhibit “A,” as same may be modified, amended, extended or renewed from time to time with the unanimous agreement by the Parties.

“Closing” means a date specified by the Parties, on which the City has issued its debt and receives money to fund the City Financing Contribution and OHPD receives money to fund its Private Financing Contribution, as evidenced to the City.

“Closing Deadline” means the earlier of (a) 45 days after the date the City sells its debt in the public market, and (b) one-hundred twenty (120) days after the Financing Viability Deadline.

“Commencement of Construction,” “Construction Commences” on, and/or a party will be deemed to “Commence Construction” on an improvement in the Project when a party obligated to construct has:

- (a) obtained all necessary permits and approvals from the City and any other governmental body having jurisdiction over the construction of the improvement to allow the construction thereof;
- (b) entered into a contract with a construction contractor which requires such contractor to construct the entirety of the improvement with all reasonable diligence;
- (c) issued a “Notice to Proceed” or the equivalent to the contractor authorizing the contractor to commence and pursue all of the work necessary to complete the improvement with all reasonable diligence in accordance with the aforementioned contract;
- (d) obtained from general contractor a duly recorded Affidavit of Commencement of Construction in accordance with §53.124 of the Texas Property Code;
- (e) actually commenced substantial site work on the improvement under its construction contract, with the intent of prosecuting all work until completion in accordance with the terms of the contract;

(f) with respect to the Hotel only, entered into a loan or credit agreement with a commercial bank or similar financial institution (a “Commercial Lender”), having the financial capability to perform its obligations under such agreement, which provides construction and permanent financing upon terms typical for “construction/mini-perm” financing (not subject to any contingency or condition other than those typically associated with such loans), which loan must be in a principal amount sufficient, together with other available funds committed by OHPD to the satisfaction of the City and UNT, to pay all costs and expenses for the design, development, construction and furnishing of the Hotel. Upon reasonable notice, a representative of the City and UNT shall be permitted, during normal business hours, to review the loan or credit agreement and accompanying security instruments relating to the Hotel and Restaurant financing; and

(g) In addition to (a)-(f) above, with respect to the Hotel only, the Approved Franchise has been obtained prior to the Feasibility Deadline.

“Comparable Convention Centers” means the operation and maintenance of the Convention Center in a manner such that the condition of the Convention Center shall demonstrate refined, high quality and fully functional appointments; furniture, fixtures and equipment; exterior and interior finishes; landscaping; and mechanical, electrical and structural components consistent with convention centers of comparable size and operation within the State of Texas that are affiliated with Comparable Hotel Properties. For purposes of the City-OHPD Convention Center Sub-Lease, the term Comparable Convention Centers shall include, as of the Effective Date (but which may not be included in the future if such properties no longer meet the definition of “Comparable Convention Centers”), the San Marcos convention center and the Frisco convention center. The City shall inspect the Convention Center on an annual basis to determine compliance with the operation of the Convention Center in the manner of Comparable Convention Centers. Reasonable exceptions to this standard of Comparable Convention Centers may be agreed to by the Parties.

“Comparable Hotel Properties” means a hotel that (i) is a, full-service, “convention-oriented hotel” (not including so-called “budget” or “limited service” hotels or motels) or, (ii) has at least two hundred fifty (250) keys, (iii) contains features, finishes and amenities that are available in hotels of similar age that are at all times during the term of the OHPD-UNT Land Lease, maintained so as to be considered an upscale, full-service, “convention-oriented” or full-service hotel, as applicable, that is operated and maintained according to standards similar to those of the Embassy Suites brand as such brand standards exist on the Effective Date of this Agreement, and (iv) is located within the State of Texas. For purposes of the OHPD-UNT Land Lease, the term Comparable Hotel Properties shall initially include, as of the Effective Date (but which may not be included in the future if such properties no longer meet the definition of “Comparable Hotel Properties”), Embassy Suites – San Marcos, Texas and Embassy Suites – Frisco, Texas.

“Completion of Construction” of any improvement will be deemed to have occurred when the constructing party has accomplished all of the following tasks and the improvement has been substantially completed in accordance with the requirements of this Agreement, including “Punch List Items”:

(a) The constructing party has obtained, for the Hotel, an AIA standard Certificate of Substantial Completion for the improvement, or for the Convention Center, a Certificate of Substantial Completion for the improvement in a form approved by the City, executed by the party's project architect;

(b) The general contractor has provided an Affidavit of Completion and Waiver of Liens and provided proof of payment of all subcontractors and suppliers and waivers or releases of liens for each; and

(c) The constructing party has obtained a permanent certificate of occupancy or such similar document for the improvement, permitting continuous uninterrupted legal use thereof.

"Construction Deadline" means the date on which the Construction Phase commences pursuant to Section 5.2 herein, such date being no later than one hundred eighty (180) days after Closing.

"Convention Center" means an "upscale" convention center facility of approximately 100,000 square feet (but no less than 90,000 square feet) in size under roof and constructed upon the Convention Center Site, containing meeting rooms, and one (1) large ballroom sufficient to lawfully accommodate approximately 2,000 people for a banquet-style event, and related improvements, including landscaping, the required parking spaces as determined by the City's development standards, and required infrastructure.

"Convention Center Budget" means the budget for the design, construction and FFE of the Convention Center and Convention Center Site improvements as described in Article III.

"Convention Center Site" means that part of the Project Site whereon the Convention Center and related improvements shall be constructed, as depicted on Exhibit "D" attached hereto.

"Convention Center Design Development Architectural Drawings" means the design of the City Facilities that reflect an approximately 35% completion rate, more commonly known in the architectural profession as a "Design Development" or "DD": set of architectural and engineering drawings, in order to obtain drawings and specifications necessary to obtain a "proposal package" to construct the City Facilities.

"Contractor Payment Guidelines" means those guidelines attached hereto as Exhibit "G."

"Design Development Phase" means the Period of time commencing upon the execution of this Agreement; provided this Agreement is not terminated in accordance with Article XI prior thereto, and ending upon the date that the Construction Phase commences, as such date may be extended by mutual agreement of the Parties (provided that the Design Development Phase shall terminate no later than the Construction Deadline), during which the Parties shall diligently and in good faith attempt to accomplish and mutually agree upon all of the matters enumerated in Article III hereof.

“Developer” means, with respect to the City Facilities, O’Reilly Hospitality Management, LLC, a Missouri Limited Liability Company or an Affiliate.

“Development Deadline” means the earlier of (1) the expiration of the Design Development Phase when all Design Development Phase activities have been completed and the Project is ready for construction pursuant to the Construction Phase, or (2) the Construction Deadline.

“Development Fees” means the fees paid to the City by OHPD as developer of the Project, pursuant to Applicable Law, which shall include, but shall not be limited to, building permits, utility fees and other technical fees associated with the development and construction of the Hotel and Restaurant.

“Effective Date” is defined in the preamble.

“Event of Bankruptcy or Insolvency” means the dissolution or termination of a party’s existence as a going business, insolvency, appointment of receiver for any part of the party’s property and such appointment is not terminated within ninety (90) days after such appointment is initially made, or any general assignment for the benefit of creditors, or the commencement of any proceedings under any bankruptcy or insolvency laws by or against a party (and, in the case of involuntary proceedings, such proceedings are not dismissed within ninety (90) days after the filing thereof).

“Feasibility Deadline” means, the date that the City has adopted its resolution authorizing Notice of Intent provided that all requirements and/or conditions of Article III and Article V herein that are required to be met/occur prior to the Feasibility Deadline are met pursuant to the provisions of those Articles.

“Financing Viability Deadline” means the date that is ten days subsequent the sale date of the City’s debt obligations published in the Notice of Intent. (The City may sell its debt on or after such published sale date).

“Force Majeure” means any contingency or cause beyond the reasonable control of a party including, without limitation, acts of God or the public enemy, acts of terrorism, war, riot, civil commotion, insurrection, government or defacto governmental action (unless caused by acts or omissions of the party), fires, explosions, rain or other weather delays, floods, strikes, slowdowns or work stoppages.

“Franchise Agreement” shall have the meaning set forth in Section 3.6 hereof.

“Full-Service Hotel” means mid-price, upscale or luxury hotel with a restaurant, lounge facilities and meeting space as well as minimum service levels including bell service and room service.

“GMP Contract” means the guarantee maximum price contract(s) for the construction of the City Facilities and/or the Hotel and Restaurant.

“Gross Revenues” means all revenues and receipts of every kind derived from operating the Hotel, Restaurant and the Convention Center, including, but not limited to: income (from both cash and credit transactions), before commissions and discounts for prompt or cash payments, from rental of rooms, stores, offices, meeting, exhibit or sales space of every kind; license, lease and concession fees and rentals (not including gross receipts of licensees, lessees, and concessionaires from their operations); income from vending machines; health club membership fees; food and beverage sales; wholesale and retail sales of merchandise; service charges and proceeds, if any, from business interruption or other loss of income insurance. Gross Revenues shall not include (a) gratuities, including tips, paid to Hotel or Convention Center employees by third parties; (b) federal, state, and municipal excise, sales, and use taxes or similar impositions collected directly from patrons or guests or included as part of the sales price of any Hotel or Convention Center rooms, goods, or services; (c) the proceeds realized from the sale of City Facilities FF&E no longer necessary to the operation of Convention Center (which sale shall be in accordance with the City’s ordinances and procurement procedures), which shall be deposited in the City AR&R Fund and the proceeds from the sale of the FF&E for the Hotel which shall be deposited into the Hotel Capital Expenditure Fund, as the case may be; (d) proceeds of any insurance other than business interruption insurance (or other insurance against loss of income); (e) condemnation awards; (f) gross receipts received by lessees, licensees, or concessionaires of the Hotel and Conference Center; (g) proceeds from any financing or refinancing; (h) proceeds of any judgment or settlement not received as compensation for actual or potential loss of Gross Revenues or operating profit (i.e., Gross Revenues over Operating Expenses); (i) interest earned on the Hotel Capital Expenditure Fund, which shall be deposited therein; and (j) any funds supplied by OHPD to the Hotel Capital Expenditure Fund.

“Hotel” means a Full-Service Hotel (i) constructed and operated pursuant to and in accordance with the standards of an Approved Franchise and pursuant to the terms of this Agreement and any related agreements, (ii) constructed upon the Hotel Site in accordance with the Approved Plans, and (iii) consisting of at least 9 (nine) stories and containing a minimum of two-hundred seventy-five (275) guestrooms, or such other number as is agreed to by the Parties, and a restaurant, recreational amenities, adequate on-site parking, and other related amenities and space for providing the services customarily found in a full-service upscale hotel, open to the public and serving the Convention Center, adjacent business community, the UNT community and citizens of the City. Notwithstanding anything to the contrary herein, OHPD shall have the right upon the expiration or termination of any Approved Franchise to operate the Hotel and Restaurant without a franchise so long as such facilities are kept in an Upscale Condition and in compliance with the OHPD-UNT Land Lease. The names of any non-franchise Hotel and Restaurant shall be suggested by OHPD and approved by UNT and the City, with such approval not to be unreasonably withheld.

“Hotel Budget” means the budget for the Hotel and Restaurant FFE and related improvements.

“Hotel Design Development Architectural Drawings” means the design of the Hotel and Restaurant that reflect approximately 35% completion more commonly known as a “Design Development” or “DD” set of architectural and engineering drawings, in order to obtain drawings and specifications necessary to obtain a “bid package” to construct the Hotel and Restaurant.



“Hotel Site” means that part of the Project Site wherein the Hotel and Restaurant and related improvements shall be constructed, depicted on Exhibit “D” attached hereto.

“Notice of Intent” means the notice authorized by the City Council and published in a newspaper of general circulation in the City that notifies the public that the City intends to issue certificates of obligation pursuant to Chapter 271, Texas Local Government Code, as amended, to fund the construction of the Convention Center.

“OHPD-UNT Land Lease” means the lease agreement to be executed by OHPD and UNT, whereby OHPD will lease the Hotel Site from UNT, which lease shall be in form and content attached hereto as Exhibit “A,” as same may be modified, amended, extended or renewed from time to time upon approval by the Parties.

“OHM Development Fee” means the fee paid to OHM by the City as the City’s CMA for the City Facilities, as such fee is set forth in the Professional Services Agreement.

“Operator” means OHM, or its Affiliate, or such other management entity as UNT, the City, and OHPD may mutually approve.

“Parties” means OHM, OHPD, UNT and the City.

“Private Financing Contribution” means the private funds, raised by OHPD which, together with certain equity contributions, will equal an amount sufficient for the purpose of developing, constructing, furnishing and equipping the Hotel and Restaurant pursuant to the GMP Contract for the Hotel. OHPD’s obligations hereunder are conditioned upon obtaining binding commitments from credible financing sources satisfactory to the City and UNT in their sole reasonable discretion (i.e., loan commitment) that contain no conditions to funding the Private Financing Contribution, other than the City’s delivery of its City Financing Contribution pursuant to Article VI herein.

"Person" means any individual, public or private corporation, limited or general partnership, joint venture, association, joint stock company, trust, limited liability company, unincorporated organization, governmental authority or any other form of entity.

“Project” means the Hotel, Restaurant and the City Facilities and related site development on the leased site.

“Project and Financing Plan” means the required project plan for the TIRZ pursuant to Chapter 311, Texas Tax code, setting forth the projects and participation in the TIRZ.

“Project Site” means the Hotel Site and the Convention Center Site, collectively.

“Punch List Items” means details of construction, decoration and mechanical adjustment which, individually and in the aggregate, are minor in character and do not, either by their nature or because of the repair or completion work necessary, materially interfere with the use or enjoyment of the improvement.

“Reasonable and Prudent Hotel Operator” means an operator of hotel projects similar in scope, size and complexity to the Hotel seeking to perform its contractual obligations and in so doing and in the general conduct of its undertakings exercises that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced Approved Franchisor of Comparable Hotel Properties complying with all Applicable Laws and engaged in the same type of undertaking.

“Restaurant” or “Restaurant and Bar” shall mean a Houlihan’s Restaurant and Bar, or another restaurant of similar or higher quality and style, that will be located on the Hotel Site as depicted on the Site Plan (defined below).

“Site Plan” means a preliminary architectural plan, landscape architecture document, and a detailed engineering drawing of the proposed Hotel and Restaurant and/or City Facilities, including building footprints, travelways, parking, drainage facilities, sanitary sewer lines, water lines, trails, lighting, and landscaping elements for either or both the Hotel and Restaurant and/or City Facilities.

“Tax Increment Reinvestment Zone” or “TIRZ” shall mean the Tax Increment Reinvestment Zone created by the City pursuant to Chapter 311, Texas Tax Code, as amended, the boundaries of which are coterminous with the Project Site.

“Three Diamond Rating” means a Three Diamond Rating under the AAA Diamond Rating Process or if the AAA Diamond Rating Process is not available, a comparable rating under the successor rating process pursuant to the terms of the City-UNT Land Lease with whatever rating system used to include reasonable exceptions to or variations from such rating standards to the extent they: (a) differ from Embassy Suites standards during the existence of the Approved Franchise; or (b) would require significant alterations or additions to the structural, mechanical, electrical, electronic, operational, communications, audio visual or entertainment systems of the Hotel that exceed the Embassy Suites standards, or if Embassy Suites does not exist, the standards for Comparable Hotel Properties; provided however, that in no event shall the Hotel be operated in a manner that falls below the standard or quality of a Comparable Hotel Property. In no circumstance shall the Three Diamond Rating result in a standard with respect to the design, development, construction, furnishing, opening and operation of the Hotel which is less than what would be required of by Three Diamond Rating as it exists of the Effective Date, subject to the exceptions or variations as stated above.

“Total Convention Center Costs” means all fees, expenses, and costs for any materials, labor, and services required to design, construct, and furnish the Convention Center.

“Total Hotel Costs” means all fees, expenses, and costs for any materials, labor and services required to design, construct, furnish and fund the Hotel and Restaurant.

“True Interest Cost” means the rate necessary to discount the amounts payable on the respective principal and interest payment dates to the purchase price received for the City’s debt obligations issued to fund the City Financing Contribution.

“Upscale Condition” means, with respect to the Hotel, the operation of the Hotel in a manner such that the condition of the Hotel shall demonstrate refined, high quality and fully

functional appointments; furniture, fixtures and equipment; exterior and interior finishes; landscaping; and mechanical, electrical and structural components consistent with Comparable Hotel Properties, normal wear and tear excepted, that is consistent with the standards of operations and operating plans that an Approved Franchisor, acting as a Reasonable and Prudent Hotel Operator, would reasonably be expected to undertake and follow for the operation of a Comparable Hotel Property in order to obtain a Three Diamond Rating; provided, however, OHPD, as tenant, shall not be required as a result of the aforesaid covenant to (a) provide amenities or facilities that are impracticable as a result of the Hotel Final Design, (b) undertake any actions prohibited by the OHPD-UNT Land Lease, (c) actually obtain a Three Diamond Rating for the Hotel. UNT and the City shall have the right to inspect the Hotel on an annual basis to determine compliance with the operation of the Hotel in an Upscale Condition. Reasonable exceptions to this standard of Upscale Condition may be agreed to by the Parties and the Parties may agree to commission an independent experienced hotel industry consultant to assist in their evaluation and/or to identify necessary repairs or replacements necessary to bring such facilities to the property condition consistent with an Upscale Condition.

“Upscale Manner” means the process of developing, designing, constructing and maintaining the Hotel as required so that it will exist in an Upscale Condition.

## **ARTICLE II**

### **PROJECT OVERVIEW**

2.1 **Summary of Project Development.** Subject to the terms and conditions of this Agreement and of the other instruments and agreements to be entered into pursuant to this Agreement, the City and OHPD shall cause the Project to be developed and constructed as follows:

2.2 **Project Overview.**

2.2.1 **City Facilities.** The City shall commit the City Financing Contribution for development, in the manner provided in this Agreement for the City Facilities:

The City Facilities shall be constructed of a quality comparable to and compatible with the standards of quality and efficiency found in the Hotel, and otherwise in accordance with designs, plans and specifications approved by the City, UNT, and OHPD, as provided herein, and in accordance with all applicable building codes and other ordinances and laws, and all requirements of the City.

The City Facilities are public facilities and must be open to the public as required by state and federal law.

2.2.2 **Hotel.** OHPD must obtain and expend the Private Financing Contribution for development on behalf of OHPD, in the manner provided in this Agreement, of the Hotel and Restaurant, and appropriate support facilities such as a restaurant(s), a lounge(s) or bar(s), supporting back-of-the-house areas, food preparation facilities, a swimming pool, spa, and fitness center, together with such other amenities and features characteristic of a full-service hotel, to be operated pursuant to the Franchise Agreement or otherwise in an Upscale Manner.

The Hotel shall be constructed of a quality comparable to and compatible with the standards of quality and efficiency found in the Convention Center as an adjacent, but operationally independent, facility to the Hotel, subject to the approved Hotel Budget and otherwise in accordance with designs, plans and specifications approved by OHPD, the City and UNT, and in accordance with all Applicable Laws.

2.3 **Project Phases**. The Parties shall undertake the design, planning, development and construction of the Project and shall perform their various obligations as outlined in this Agreement in accordance with the following schedule of phases:

2.3.1 **Design Development Phase**. During the Design Development Phase, the City and OHPD shall prepare the Convention Center Design Development Architectural Drawings and UNT and OHPD shall prepare the Hotel Design Development Architectural Drawings for the Convention Center and Hotel, respectively, sufficiently complete and detailed so as to obtain guaranteed maximum price proposals or best-valued responses from qualified contractors, all as set forth in Article III below. Upon obtaining a guaranteed maximum price proposal from the Convention Center Design Development Architectural Drawings and the Hotel Design Development Architectural Drawings and entering into a GMP contract, and once the Feasibility Deadline and Financing Viability Deadline have expired, OHPD and the City shall proceed with Closing of their respective financings as set forth in Article V and pursuant to Article V, OHPD and the City shall then complete the Final Design and Final Hotel Design as well as prepare, negotiate and finalize the form of the various documentation necessary for the, development, construction, completion and ongoing occupancy, use, operation, maintenance and repair of the Project, as set forth in Article III below.

2.3.2 **Construction Phase**. Following the Closing and on or before the Construction Deadline, OHPD shall complete any necessary modifications to the final construction plans and specifications for the Hotel and Restaurant and any resulting modifications to the GMP contracts, as approved by the City and UNT, each that conform to all Applicable Law. OHPD and OHM shall obtain applicable building permits from the City, and shall commence construction of the Project in accordance therewith. During construction, OHPD, with respect to the Hotel and Restaurant, and OHM, with respect to the Convention Center, shall coordinate and oversee all aspects of the development and construction of the Project in conjunction with UNT and the City, all in accordance with Article IV, and assist the City with services with respect to FF&E for the Project as set forth in Article VI. OHM shall follow the City's Contractor Payment Guidelines set forth in Exhibit "G" with respect to the City Facilities.

2.3.3 **Pre and Post Construction Operation of the City Facilities**. Prior to Completion of Construction of the City Facilities and their sub-lease to OHPD pursuant to the City Facilities Sublease, OHPD shall engage Operator to oversee the pre-opening operations preparation, hiring, sales and marketing efforts and upon the Completion of Construction, the use, operation, management, maintenance and repair of the Hotel and the City Facilities pursuant and subject to the OHPD-UNT Land Lease and the City Facilities Sublease, respectively, and subject to the Approved Franchise.

2.4 **Term.** This Agreement shall commence on the Effective Date and shall continue for the term of the City-OHPD Convention Center Sublease.

**ARTICLE III  
DESIGN DEVELOPMENT ACTIVITIES**

3.1 **OHPD Services- Hotel.** OHPD shall initiate design of the Hotel and Restaurant. OHPD shall produce, with assistance from subcontractors including architects and engineers, Hotel Design Development Architectural Drawings acceptable to the City and UNT. OHPD shall produce Hotel Design Development Architectural Drawings acceptable to UNT and the City, with such acceptance not to be unreasonably withheld; provided, the design conforms with reasonable standards. The City and UNT will appoint designated representatives that will have substantial day to day involvement with OHM in the development of the Hotel Design Development Architectural Drawings. OHPD shall solicit bids based upon the Hotel Design Development Architectural Drawings in order to obtain a guaranteed maximum price (“GMP”) bids and shall execute a GMP contract for the construction of the Hotel and Restaurant contingent on the City and OHPD obtaining appropriate financing for the Project as set forth in Article V. It is anticipated that the architect for the Hotel and Restaurant will be the same as for the Convention Center Facilities. If the architect and engineers selected by OHPD to conduct the Hotel Design Development Architectural Drawings is not the same as selected by the City’s process in 3.3 below, or is not a full-time employee of OHPD, OHPD, subject to UNT’s and the City’s approval, shall select the architect and engineers on the basis of demonstrated competence and qualifications. The costs of the Hotel Design Development Architectural Drawings shall be paid as set forth in Section 5.1.2 herein.

3.1.1 OHPD shall select a general contractor for the Hotel and Restaurant based on the Hotel Design Development Architectural Drawings and GMP contract for the Hotel construction, subject to City and UNT approval, not to be unreasonably withheld. OHPD shall pay all costs relating to the selection and hiring of a general contractor. It is anticipated that the same general contractor shall be selected for the Hotel and Restaurant and the Convention Center Facilities pursuant to Section 3.3.1 below. As such, OHPD shall ensure that the work for the Hotel and Restaurant is separate and apart from the work for the Convention Center Facilities and that no City Financing Contribution shall go to pay for the work on the Hotel and Restaurant.

3.1.2 Prior to the Feasibility Deadline, OHPD shall obtain a letter of commitment or other evidence acceptable to the Parties from the Hotel Franchisor indicating its commitment to enter into an Approved Franchise at or prior to Closing, subject to satisfaction of the Hotel Franchisor’s criteria and conditions.

3.2 **Agency of OHM for the City.** OHM will act as the City’s “Construction Manager - Agent” (“CMA”), pursuant to the terms of Chapter 2267 of the Texas Local Government Code (the “Code”), and specifically Subchapter E, sections 2267.201 through 2267.208, for the construction of the Convention Center, and said parties shall execute the “Professional Services Agreement - CMA” which is attached hereto as Exhibit “E,” and incorporated herein by reference. Pursuant to the same code provisions set forth above, and also subsequent to and contingent upon the approval of this Agreement by the City Council the City will hire OHM to act as its Architect for the development of the Convention Center Site and

Convention Center, and said parties shall execute the “Professional Services Agreement - Architect” attached hereto as Exhibit “F” and incorporated herein by reference. The City and OHM agree to abide by all aspects of the Code sections referred to above, this Agreement, Exhibit “F” and all Applicable Law. The Professional Services Agreement shall be subject to and provide for the City’s 5% retainage of fees, as set forth therein. The City and UNT shall approve any architectural services provided by third-party contractors. The only fee paid to OHM for its services for the City Facilities shall be the OHM Development Fee received by OHM as the City’s CMA, the City’s agent, for the City Facilities. The City acknowledges that all costs to construct the City Facilities, including soft costs, shall be funded by the City from the City Financing Contribution, and such costs shall include fees from third parties not employed by OHM in addition to the OHM Development Fee. OHM shall, as the City’s agent, assist the City in obtaining a GMP contract for the construction of the City Facilities. If the engineer or architect is not a full-time employee of OHM, OHM, subject to UNT’s and the City’s approval, shall assist the City in the selection of the engineer or architect on the basis of demonstrated competence and qualifications as provided by Section 2254.004, Government Code. The method of selecting a general contractor for construction must comply with Chapter 252 and Chapter 271, Texas Local Government Code

3.3 **OHM Services – City Facilities.** OHM shall coordinate with the City to produce the Convention Center Design Development Architectural Drawings. The City and UNT will appoint designated representatives that will have substantial day to day involvement with OHM in the development of the Convention Center Development Architectural Drawings. The Convention Center Design Development Architectural Drawings shall be used by the City, with assistance from OHM, to solicit GMP proposals and a GMP contract for the construction of the City Facilities pursuant to Section 3.3.1 below. The costs of the Convention Center Design Development Architectural Drawings shall be paid as set forth in Section 5.1.1 herein.

3.3.1 **City Facilities – Convention Center Design Development Architectural Drawings.** OHM shall provide or cause to be provided, in conjunction with the City and UNT, the following services to the City during the Design Development Phase with respect to the Convention Center Design Development Architectural Drawings:

- (a) Preparation of schematic design concepts and drawings and specification for the Project in accordance with design criteria approved by UNT and the City and their consultants and design professionals;
- (b) Preparation of a development and construction schedule and projected opening date for the Project;
- (c) Preparation of the preliminary Convention Center Budget and preliminary Hotel Budget, which shall include any improvements necessary for development of the Project. OHPD shall pay the costs attributable to the Hotel and Restaurant as a part of its Private Financing Contribution and the City shall pay the costs attributable to the Convention Center, as a part of its City Financing Contribution;

(d) Provide general descriptions of the categories of the FF&E, operating supplies, fixed asset supplies and the like anticipated to be required for the City Facilities for approval by the City and its consultants, and OHM;

(e) Preparation of a recommended listing of and qualifications for proposed general contractors for the Hotel and Restaurant and the City Facilities for approval by the City (those potential contractors ultimately approved by the City being referred to herein as the “City of Denton Contractor Contact List”). The City, UNT, OHM and OHPD shall work together to develop criteria for the selection of a general contractor, but final selection of the general contractor shall be at the discretion of the City. The City of Denton shall communicate the solicitation for the general contractor as required by Texas statutes;

(f) Preparing a proposal package in compliance with state law regarding such design development plans and specifications and soliciting responses from the City of Denton Contractor Contact List, notification in the local newspaper, and notification to Historically Underutilized Businesses as required by Texas Government Code, Chapter 252, as amended;

(g) After approval of the Convention Center Design Development Architectural Drawings by all parties, OHM shall submit such Convention Center Design Development Architectural Drawings to the City to administer the procurement process for the Convention Center construction and shall submit listings for the \_\_\_\_\_ to the City of Denton Contractor Contact List, such procurement process shall be administered pursuant to applicable law and the process set forth in Exhibit “F” hereto. The City shall issue a solicitation, receive, evaluate, value engineer (if necessary) and proceed to negotiate final contractual terms, with the assistance of OHM, for the City Facilities. In a separate procurement process, OHM shall administer the procurement process for the Hotel and Restaurant, in compliance with Applicable Law. During this process all parties will be involved in all steps of the process and shall provide input and suggestions as to all matters pertaining to the process. The City of Denton shall perform the administrative process of collecting all responses submitted to the solicitation, in accordance with the statutory provisions of Texas Local Government Code Chapters 252, 271 and 2267, as amended. OHM may provide assistance to the City of Denton in the evaluation process, provided that OHM shall assist the City in selecting a general contractor for the City Facilities (the “General Contractor”) in accordance with the provisions of Texas Local Government Code, Chapters 252, 271 and Texas Government Code 2267, as amended. Any General Contractor selected by the City shall comply with the City’s requirements for payment and performance bonds and the Contractor Payment Guidelines set forth in Exhibit “G” and shall be subject to the City 5% retainage of fees; and

(h) Upon the completion and approval of the Convention Center Design Development Architectural Drawings, OHM shall assist the City with the process of negotiating, reviewing, evaluating and finalizing the GMP contracts

with the General Contractor whose response is ultimately selected for approval by the City, it being understood that it is anticipated that there shall be separate construction contracts for the Hotel on the one hand, and for the City Facilities on the other hand, but that all subcontractors shall (whenever possible) propose on a single, combined basis for the Hotel and for the City Facilities. The City shall retain the General Contractor pursuant to a GMP contract for the construction of the Convention Center Facilities to be entered into by the City prior to the Feasibility Deadline and Financing Viability Deadline. However, such GMP contract for the construction of the City Facilities shall be subject to, payable from and contingent upon the City Closing in Section 5.1.7. OHPD shall retain the General Contractor pursuant to a GMP contract for the construction of the Hotel and Restaurant. The City agrees to retain the General Contractor pursuant to a GMP contract entered into under a method provided by Chapter 271, Subchapter H, Texas Local Government Code, or Chapter 2257, Texas Government Code, for the construction of the City Facilities, and OHM shall assist the City in administration of such contract on the City's behalf as development manager for the City during the construction phase of the general contract. The contracts with the General Contractor shall require the General Contractor to provide payment and performance bonds in accordance with general Texas law applicable to municipalities and shall provide for a 5% retainage to the City and shall comply with the Contractor Payment Guidelines set forth in Exhibit "G."

3.3.2 **Project Feasibility.**

(a) Prior to the Feasibility Deadline, OHM shall submit to the City and UNT, for their approval, the Convention Center Design Development Architectural Drawings and the Hotel Design Development Architectural Drawings including the preliminary Convention Center Budget and the preliminary Hotel Budget. The City and UNT shall: (1) approve the Convention Center Design Development Architectural Drawings and preliminary Convention Center Budget, and the Hotel Design Development Architectural Drawings and preliminary Hotel Budget; (2) reject the Convention Center Design Development Architectural Drawings and preliminary Convention Center Budget, and the Hotel Design Development Architectural Drawings and preliminary Hotel Budget; or (3) conditionally approve of the Convention Center Design Development Architectural Drawings and preliminary Convention Center Budget, and the Hotel Design Development Architectural Drawings and preliminary Hotel Budget with requested changes to such Convention Center Design Development Architectural Drawings and Hotel Design Development Architectural Drawings and to the preliminary budgets for the City Facilities and Hotel and Restaurant to be provided within thirty (30) days of receipt thereof. If neither approval, rejection nor comments or changes to such Convention Center Design Development Architectural Drawings or Hotel Design Development Architectural Drawings or the respective preliminary budgets have been received from City or UNT by OHM and/or OHPD within such thirty (30) day period, then such Convention Center Design Development Architectural Drawings and Hotel Design Development Architectural Drawings shall be deemed approved by the City and UNT. Should OHM and OHPD receive any comments or changes pursuant to this process, they shall work diligently with UNT and the City to address such changes and incorporate them into the design documents if reasonably feasible, and shall complete such revisions within ten (10) days of receive thereof. Any Party may request from the



other Parties an extension of the time periods set forth in the Section, which consent shall not be unreasonably withheld but in no event shall exceed ninety (90) days.

(b) Upon approval of the Convention Center Design Development Architectural Drawings and preliminary Convention Center Budget and the Hotel Design Development Architectural Drawings and preliminary Hotel Budget or upon receipt by OHM of comments or changes by the City to the Convention Center Design Development Architectural Drawings and preliminary Convention Center Budget and any changes by UNT to the Hotel Design Development Architectural Drawings and preliminary Hotel Budget, if any, as well as the expiration of the ten (10) day period set forth in (a) above, the City shall proceed with obtaining a GMP contract pursuant to section 3.3.1 herein. After execution of the GMP contracts for the City Facilities and Hotel and Restaurant, OHM shall, within twenty (20) days or less, provide OHPD, the City and UNT with the final Convention Center Budget and the final Hotel Budget and the Parties shall make a determination within thirty (30) days of receipt of the final budgets, unless a different time period is agreed to by the Parties, but in any event, prior to the expiration of the Feasibility Deadline, as to whether they believe the Project is feasible. If, based on the Convention Center Design Development Architectural Drawings, the budgets and the GMP contracts for the City Facilities and Hotel Design Development Architectural Drawings (incorporating the comments and changes of the City to the Convention Center Budget and any comment and changes of UNT to the Hotel Budget pursuant to (a) above), the City, UNT or OHM determines that the Project is not feasible, then any Party making such a determination shall notify the other Parties in writing, and the obligations to proceed with the Project pursuant to this Agreement shall terminate.

(c) Notwithstanding the determination of feasibility in (b) above, if the Private Financing Contribution is not in place pursuant to 5.1.3 herein, or the Approved Franchise requirement of 3.1.2 has not been met, this Agreement shall terminate pursuant to Article XI herein.

3.3.3 **Financing Viability.** On or immediately before the Financing Viability Deadline, unless another date is agreed upon by the Parties, the City shall notify OHPD of the current market conditions for the issuance of the City's debt to fund the City Financing Contribution, including current interest rates and the estimated debt service schedule. If the projected True Interest Cost of the City's obligations, as calculated by the City's financial advisor (which calculations shall be provided to OHM and OHPD), is in excess of 6.00%, then the City or OHPD may terminate this Agreement pursuant to Article XI herein, and all obligations to proceed with the Project pursuant to this Agreement shall terminate.

3.3.4 **City Facilities – Final Design.** After the expiration of the Feasibility Deadline and the Financing Feasibility Deadline, and upon the election of all Parties to proceed with the Project and upon availability of the City Financing Contribution, OHM shall provide the following services to the City during the Design Development Phase to reach the final design, specifications and Site Plan for the City Facilities (the "Final Design"). Costs of the Final Design shall be paid from the proceeds of the City Financing Contribution available at Closing.

(a) On or before the Development Deadline OHM shall deliver to the City and UNT, the Final Design, Final Hotel Design (as defined below), the

revised Convention Center Budget and revised Hotel Budget for the Project, based upon the GMP contracts for the Convention Center and the Hotel, and the “Final Construction Drawings” for the entirety of the Project and ancillary improvements, which are based on the Final Design and Final Hotel Design, and any additional revisions thereto. The construction evidenced by the Final Site Plan and Final Construction Drawings, and the Final Design and Final Hotel Design, as well as the Final Construction Drawings themselves must comply with all Applicable Laws. The City and UNT shall have a maximum of thirty (30) days within which to review such documents and deliver any objections and/or required revisions to OHM. Upon receipt of such objections and/or required revisions, OHM shall, within ten (10) days thereafter, cause the Final Construction Drawings, Final Design, the Final Hotel Design and the revised budgets to be revised and resubmit same to the City for review and approval. If changes requested by the City or UNT are substantial, the Parties may agree on the date for delivery of such revised documents. For purposes hereof, the “Final Design and Final Hotel Design” means design documents for the Convention Center, Hotel, Restaurant and ancillary improvements consisting of architectural drawings and other documents illustrating the style and relationship of the components of the improvements, including, the exterior and interior of the Hotel, Convention Center and Project that are required by Applicable Law sufficient to secure a Building Permit.

(b) OHM shall work with the City and its consultants to enhance compatibility of the final architectural drawings for the City Facilities with other elements such as interior design, front desk design, kitchen and laundry facilities and the like;

(c) OHM shall consult and work with the City in the selection and designation of names of ballrooms, suites, and rooms within the Convention Center;

(d) OHM shall prepare a final development schedule for the City Facilities, in conjunction with the development schedule for the Hotel;

(e) Wherever the terms of this Agreement call for or reference, City’s and UNT’s approval of any architectural or other drawings and/or specifications relating to construction of the Project or any component thereof, it is expressly agreed that City’s and UNT’s approval of such drawings and/or specifications will constitute City’s and UNT’s approval of the general design and layout scheme described in such drawings and/or specifications only and will not, however, make City or UNT responsible in any way for the technical adequacy of such drawings or for any liabilities arising out of any construction undertaken in accordance therewith.

(f) OHM shall obtain, for itself and on behalf and with the cooperation and assistance of UNT and the City, all building, development and other permits necessary to commence construction of the Project;

3.3.5 **Hotel and Restaurant – Final Hotel Design.** On or before the Development Deadline, OHPD shall complete the final design, specifications and Site Plan for the Hotel and Restaurant (the “Final Hotel Design”) and construction of the Hotel and Restaurant shall occur simultaneously with the City Facilities and shall attempt, without guaranteeing, to complete construction of the Hotel on approximately the same day the City Facilities are completed. OHM shall work with UNT and its consultants to enhance compatibility of the final architectural drawings for the Hotel and Restaurant with other elements such as interior design, front desk design, kitchen and laundry facilities and the like and OHM shall consult and work with UNT in the selection and designation of names of suites, and meeting/conference rooms within the Hotel. The costs of the Final Hotel Design shall be paid from the Private Financing Contribution. During the final design process of the Design Development Phase and prior to commencement of construction of the Hotel, OHPD shall provide UNT and the City the documents listed below as well as any other documents reasonably required, and where necessary shall make the requisite filings of such documents with appropriate officials:

- (a) Two copies each of the Final Hotel Design for the Hotel and Restaurant, which OHPD will submit to the City and UNT in accordance with Section 3.3.4;
- (b) A certificate of insurance evidencing that all insurance required hereunder with respect to the Project has been procured;
- (c) The final Hotel Budget;
- (d) Preliminary operating projections for the Hotel, Restaurant and the City Facilities;
- (e) A development schedule for the Hotel and Restaurant, and a development schedule for the City Facilities;
- (f) An executed copy of the Approved Franchise which shall have been obtained prior to the Feasibility Deadline pursuant to 3.1.2 herein; and
- (g) Such other documentation, including plans and specifications, schematic drawings and renderings of the Hotel and Restaurant, as may reasonably be requested by the City or UNT to ensure the orderly development of the Project.

3.4 **Project Agreements.** During the Design Development Phase, UNT, the City, OHM and the Operator (with respect to the Approved Franchise) shall diligently and in good faith negotiate mutually acceptable final forms of the following agreements to be entered into at the Closing. In the event of discrepancies between this Agreement and the final agreements listed below in sections 3.4.1 through 3.4.3, the terms of each individual agreement shall control:

3.4.1 **Hotel Lease.** The OHPD-UNT Land Lease, containing the following minimum terms:

(a) primary term of fifty (50) years, with renewal options of ten (10) and ten (10) years, respectively, with rent in the amount of \$1.00 per annum for the first three (3) years after opening of the Hotel, then rent in the amount of one and a half percent (1.5%) of the Gross Revenue of the Project, as adjusted by the amount of the contributions set forth in the OHPD-UNT Land Lease and minus \$100,000 per year in each year that OHPD pays any rent to the City in order to pay the debt service cost on the City's debt issued to fund the City Financing Contribution, through Lease Year 25.

(b) provisions relating to OHPD and UNT's agreements relating to the College of Hospitality working in concert to further their respective aims with respect to the integration of UNT students into the Hotel operating process.

(c) OHPD shall have a right of first refusal to purchase the Hotel Site if sold by UNT.

(d) OHPD shall establish an asset replacement and renewal reserve account for capital expenditures in connection with the operation and maintenance of the Hotel and Restaurant and for repairs and replacements by OHM of all portions of the Hotel and Restaurant that are subject to deterioration, including the Hotel and Restaurant FF&E and other relevant items, in the for the Hotel and Restaurant (the "Hotel Capital Expenditure Fund"). OHPD shall annually contribute to the Hotel Capital Expenditure Fund, an aggregate amount equal to two percent (2%) of such Gross Revenues. Funds in the Hotel Capital Expenditure Fund shall only be used for capital expenditures for the Hotel. OHPD shall annually provide UNT with a five (5) year budget for the Hotel Capital Expenditure Fund which shall be subject to approval by UNT, which approval shall not be unreasonably withheld. In addition, OHPD shall provide UNT with thirty (30) days prior notice of expenditures from the Hotel Capital Expenditure Fund. If OHPD makes expenditures from the Hotel Capital Expenditure Fund in excess of the approved budgeted amounts, OHPD shall provide UNT, as a part of its 30-day notice, documentation and explanations regarding the expenditures. UNT shall have the right to annually review the expenditure of the Hotel Capital Expenditure Fund to ensure budgeted funds have been expended to keep the Hotel in an Upscale Manner. The Parties acknowledge that the City shall have no control over the funds in the Hotel Capital Expenditure Fund or the expenditures made with such funds.

(e) The form of the OHPD-UNT Land Lease attached hereto as Exhibit "C" is hereby approved with such changes and modifications as may be agreed to by UNT and OHPD. The Parties acknowledge that the Project cannot proceed without an equity source or lender for OHPD and that such parties will likely have comments on the form of the OHPD-UNT Land Lease and accordingly, UNT agrees to give reasonable consideration to changes in the MDA and the OHPD-UNT Land Lease that may be requested by the equity source or lender for OHPD's Private Financing Commitment. If UNT and OHPD fail to

mutually agree upon the final form of the OHPD-UNT Land Lease by Closing then either OHPD or UNT can terminate this Agreement upon written notice.

3.4.2 **City-UNT Land Lease.** The City-UNT Land Lease, containing the following minimum terms:

(a) a primary term of fifty (50) years, with renewal options of ten (10) and ten (10) years, respectively, for a rent equal to \$1.00 per year during the Phase that the City's debt financing for the Convention Center is outstanding, and \$175,000 per year beginning in year 26, and continuing for a period of ten years. Beginning in year 37, rent shall increase in the amount of 1.7% each year until termination of the City-UNT Land Lease.

(b) at the end of its primary term and of any option Phases extending the term of the City-UNT Land Lease, UNT shall receive possession of the City Facilities; and

(c) if at any time, UNT shall desire to sell the Convention Center Site, the City shall have the right of first refusal to purchase such site pursuant to the terms set forth in the OHPD-UNT Land Lease and subject to the City Facilities Sublease.

(d) If the City does not exercise its right of first refusal pursuant to (c) above, OHPD shall then have the right of first refusal to purchase such site pursuant to reasonable terms substantially similar to those terms offered to the City by UNT; provided, that should OHPD exercise such right of first refusal, no modifications of the rights or roles of either OHPD or the City or any modification of this Agreement or the City-OHPD Convention Center Sublease shall occur without the mutual written agreement of the parties.

(e) The form of the City-UNT land lease attached hereto as Exhibit "A" is hereby approved, with such modifications as may be approved by the City Manager and City Attorney.

3.4.3 **City Facilities Sublease.** The City Facilities Sublease between the City and OHPD, containing the following minimum terms:

(a) a primary term of fifty (50) years, with options of renewal for ten (10) and ten (10) years, respectively, with fixed rent equal to the amount set forth in the City-OHPD Convention Center Sublease in each year for the Period of time the City's debt is outstanding and thereafter \$1.00 per year during the primary term, and \$1.00 per year during each option Phase;

(b) an obligation of OHPD to operate and maintain the City Facilities in keeping with Comparable Convention Centers for the term of the City Facilities Sublease;

(c) an express requirement that OHPD shall take the property on an “as is” basis and that the City Facilities Sublease shall be a “triple-net lease,” and shall clearly and unequivocally state that the City shall have no obligation or responsibility, financial or otherwise, to operate or maintain the City Facilities during the term of the City Facilities Sublease (unless otherwise specified herein);

(d) the creation of an asset replacement and renewal reserve account for capital replacement expenditures in connection with the operation of the City Facilities and for capital repairs and replacements of all portions of the City Facilities that are subject to deterioration, in the City Facilities AR&R Fund (the “City AR&R Fund”) to be used solely to pay for such capital replacements, expenditures and repairs and replacements. The City AR&R Fund shall be segregated and maintained separately from the Hotel Capital Expenditure Fund and shall be funded in part by the City as set forth in the (e) below;

(e) each year from lawfully available funds, the City shall deposit an amount to the City AR&R Fund. Such amount shall be determined by the City on an annual basis during its budget process, shall be subject to annual appropriation and shall be based upon capital expenditures needed for maintenance of the Convention Center in a sufficient amount to reasonably keep the City Facilities to the standard of Comparable Convention Centers as set forth in the City Facilities Sublease;

(f) the City AR&R Fund shall be controlled by the City and such funds shall be limited to appropriate expenditures as included in the annual capital budgets for the City Facilities approved by the City in accordance with the City Facilities Sublease or as required in an emergency, or otherwise with the approval of the City. The City may utilize the City AR&R Fund for such purposes in the event of a failure by OHPD to perform such capital expenditures or repairs and replacements;

(g) a clear list of events of default by OHPD and specific remedies for such defaults including self-help remedies with reimbursement and for the hiring of a third party management consultant to mediate disputes as to whether the City Facilities are being operated and maintained in the manner provided in the City Facilities Sublease;

(h) a provision providing the City with the right to audit OHM and/or OHPD to determine whether or not the City AR&R Fund obligations contemplated under the City Facilities Sub-Lease have been properly conducted or honored;

(i) an obligation by OHPD to maintain the Approved Franchise, and to maintain and operate the Hotel in an Upscale Manner (regardless of whether a franchise is maintained with respect to the Hotel), and cross default provisions for defaults under the Hotel Loan Agreement and the Approved Franchise. After the expiration of the Approved Franchise according to its terms, and in the event there

is no renewal of the Approved Franchise or a replacement Approved Franchisor pursuant to the City-UNT Convention Center Sublease, OHPD shall continue to operate the Hotel in an Upscale Manner throughout the term of the City-OHPD Convention Center Sublease;

(j) provisions as reasonably required by the Hotel Lender providing that the Hotel Lender shall be given a concurrent copy of any notice of default by OHPD under the City Facilities Sublease, and the right to cure any such default in the place and stead of OHPD, and a reasonable time as may be required by the Hotel Lender to effect such cure and enforce its rights under the Hotel Loan Agreement and related documents, provided the Franchise Agreement, or a substitute franchise agreement with an approved Hotel Franchisor remains in full force and effect during the Period of such cure;

(k) a requirement that OHPD shall pay Base Rent to the City;

(l) The commencement of the Sublease to be on the date set forth in the Sublease, and to be effective upon the Closing of the City's Financing Contribution and the Private Financing Contribution; and

(m) an obligation of OHPD to comply with all requirements of the City-UNT Land Lease.

(n) The form of the City Facilities Sublease attached hereto as Exhibit "B" is hereby approved with such changes and modifications as may be agreed to by the City Manager and City Attorney. The Parties acknowledge that the Project cannot proceed without an equity source or lender for OHPD and that such parties will likely have comments on the form of the City Facilities Sublease and accordingly, the City agrees to give reasonable consideration to changes in the MDA and the City Facilities Sublease that may be requested by the equity source or lender for OHPD's Private Financing Commitment. If the City and OHPD fail to mutually agree upon the final form of the City Facilities Sublease by Closing, then either OHPD or the City can terminate this Agreement upon written notice.

3.5 **Reciprocal Access Agreement.** One or more access, easement and use agreements, in recordable form, between the City, OHPD and UNT, providing for the shared use of and access to the Hotel and the City Facilities, and creating mutual reciprocal easements therefor, which shall be considered covenants running with the land and which shall benefit and bind title to the Hotel and the City Facilities (the "Reciprocal Access Agreement"). The Parties shall mutually agree on such access agreements and such agreements shall be consistent with the Site Plan.

3.6 **Hotel Franchise Agreement.** OHPD shall have obtained an Approved Franchise with an Approved Franchisor. The Approved Franchise shall state that OHPD shall maintain the Hotel in an Upscale Manner to the standards required of the Approved Franchisor and shall provide for a furniture, fixture and equipment reserve fund on the Approved Franchisor's

standard terms, subject to approval by UNT and the City. After the expiration of the term of the Approved Franchise or any replacement Approved Franchise, OHPD shall have the right to operate the Hotel and Restaurant without a franchise, subject to approval by UNT and the City, such approval not to be unreasonably withheld. During the term of the Approved Franchise if the Approved Franchise is terminated pursuant to its terms, OHPD shall be required to obtain a replacement Approved Franchisor until the end of the term of the initial Approved Franchise.

3.7 **Cooperation.** OHPD and City shall cause OHM, and its architects and engineers, or any other agents, architects or design professionals, to design complementary structures, landscaping, and related amenities (such as parking), it being understood that the Convention Center and the Hotel (including the Restaurant) will be separate but connected buildings (with separate facilities, such as mechanical, electrical and plumbing systems, necessary for the operation of each), but connected by one or more interior hallways to give the appearance and function of an integrated building.

3.8 **Consultation.** OHM and OHPD shall consult with designated representatives of the City and UNT in connection with the design of the Hotel, Restaurant and Convention Center and make available to such representatives copies of the plans and specifications for the Hotel and Convention Center upon the request of the City.

3.9 **Requirements.** All improvements constructed as part of the Project must:

3.9.1 be designed with an architectural style and materials appropriate to the Denton, Texas, University of North Texas setting of the Project;

3.9.2 be built and operated in accordance with applicable environmental standards under federal, state, and local laws and ordinances (the “Environmental Standards”);

3.9.3 be constructed in accordance with LEED (Leadership in Energy and Environmental Design) practices and procedures; and

3.9.4 comply with all Applicable Law.

3.10 **Control of the Convention Center Site.** The City and UNT shall execute the City-UNT Land Lease and the City and OHPD shall execute the City-OHPD Convention Center Sublease whereby the City will transfer its rights relating to the Convention Center Site to OHPD pursuant to the terms and conditions thereof.

3.11 **Tax Increment Reinvestment Zone.** During the Design Development Phase, the City, subject to the discretion of the City Council, shall begin the process of creating the TIRZ. The City agrees that the creation of the TIRZ is appropriate and shall diligently pursue the creation of the TIRZ with the designated project of the TIRZ Project and Financing Plan being the construction of the Convention Center Facilities only. No TIRZ revenues shall be expended on the construction or operation of the Hotel. The City shall, prior to the expiration of the Feasibility Deadline, give notice to OHPD of the intent of other taxing jurisdictions within the TIRZ to participate in the TIRZ and their associated levels of participation.



3.12 **Budget Adjustments.**

3.12.1 After execution of the GMP contracts has occurred, and throughout the design and construction of the Project, OHM shall, on a timely basis, communicate budget changes to the City and UNT and submit to the City and to UNT all changes to the Convention Center Budget for the Total Convention Center Costs and all changes to the Hotel Budget for the Total Hotel Costs for the Hotel and Restaurant. The City and UNT shall review such budget changes and shall submit additional revisions to such budgets or approve such budgets within twenty (20) days. No expenditures pursuant to such budget revisions shall be made until the City and UNT have approved such budget changes and expenditures; provided, however that the City's Financing Contribution shall be adjusted but it shall never exceed more than \$25,000,000 (total, including design and construction costs).

3.12.2 All budget changes for the Hotel and Restaurant that exceed the GMP Contract for the Hotel and Restaurant shall be paid by OHPD. Any increases in the Hotel Budget that are incurred prior to Closing shall be considered in the calculation of the Private Financing Contribution and shall be available at closing. Any increases in the Hotel Budget that are incurred after Closing shall not be approved until OHPD provides assurances satisfactory to the City and UNT that OHPD will provide funds to pay for the increased costs.

**ARTICLE IV  
CONSTRUCTION ACTIVITIES**

4.1 **Agency by OHM for OHPD.** OHM shall at all times act as agent for OHPD pursuant to a Development Agreement and Management Agreement executed by the OHPD and OHM. OHM and OHPD will be responsible for all design, construction and operations of the Hotel.

4.2 **Construction Permits.** No later than the Commencement of the Construction Phase, OHM shall submit and obtain approval of applications for building, plumbing, electrical, mechanical and other construction permits for the Project in accordance with applicable provisions of the Applicable Law. The City will be the code review authority for the construction of the Hotel, Restaurant and Convention Center.

4.3 **Payment and Performance Bonds.** OHM shall obtain all payment and performance bonds required by the City under Applicable Law.

4.4 **Hotel and Restaurant Construction.**

4.4.1 **Hotel.** During construction of the Hotel, OHPD agrees to the following conditions and instructions:

- (a) To construct or cause to be constructed the Hotel in conformance with the final plans and specifications approved by UNT and the City and in accordance with any and all rights of review or approval of the Hotel Franchisor and the Hotel Lender, and in accordance with all Applicable Laws, including the payment of all Development Fees to the City;

(b) To be fully responsible for causing the Hotel to be constructed, to pay all development costs of the Hotel as they come due, and under no circumstances require the City or UNT to pay for any labor, materials, or other costs ordered, purchased, or incurred by OHPD or others in and about the construction of the Hotel;

(c) To cause all electric and telephone utility lines and equipment for the Property to be placed under ground within public rights-of-way or utility easements located within the Property lines;

(d) To apply for or cause to be applied for the balance of the utility permits, utility easements, certificates of occupancy and all other licenses and permits required for the operation of the Hotel, including an alcoholic beverage permit, with such alcoholic beverage permit to possibly be delayed by six (6) months or more after opening of the Hotel and Restaurant; and

(e) To pay for the hard surface portion of the landscaping at the Hotel Site, such as stone, concrete, brick or other approved surfaces, and the irrigation systems for the Hotel. The Parties also agree that the landscape plan is subject to Applicable Law and to the approval of UNT, the City and OHPD and is subject to such modifications and variances, as may be agreed upon by the Parties.

4.5 **Construction Phase.** OHM will cause to be prepared final construction plans and specifications for the City Facilities for the approval of the City and UNT. OHPD will cause to be prepared final construction plans and specifications for the Hotel and Restaurant for the approval of UNT. OHPD (with respect to the Hotel and Restaurant) and OHM (with respect to the City Facilities) shall cause Commencement of Construction of the Project to commence promptly upon receiving a notice to proceed from the City and UNT, and will expeditiously pursue Completion of Construction with completion of the construction to be not later than twenty (20) months following commencement of construction, subject to City delay and Force Majeure, and any extension pursuant to 6.8 herein. OHPD and OHM estimate construction to take approximately 18 months. OHPD and OHM shall consult with the City and UNT regarding any proposed changes and modifications to the final drawings and specifications of the Project which may result in a material change in the design or character of the City Facilities or the Hotel or increase the City Financing Contribution, and coordinating issuance of change orders with the approval of the City and UNT and other necessary parties. The City may also request through action of the City Council proposed changes or modifications to the scope or character of the City Facilities, subject to the approval of OHPD and OHM. Once construction of the Project commences, OHM shall serve as construction manager and shall provide the following services with respect to the Project:

4.5.1 Providing on-site supervision including, at a minimum, a project manager/superintendent;

4.5.2 Making physical visits to the job site to review the work and progress of construction with the Contractors, and hold community meetings and discussions with interested citizens of the City about the status and progress of the Project;

4.5.3 Responding to any questions from the City, UNT, or the Hotel Franchisor regarding the work or progress of construction, construction methods, scheduling, and the like;

4.5.4 Coordinating the acceptance of the City Facilities, as and when the same are appropriately Substantially Completed, by OHPD as the sub-lessee under the City Facilities Sublease;

4.5.5 Coordinating efforts by all appropriate Parties to complete the City Facilities and Hotel and Restaurant substantially in accordance with the final drawings and specifications, as the same may be amended from time to time with the approval of all necessary Parties, such efforts to include assisting in the scheduling of inspections and the preparation of punch lists;

4.5.6 Obtaining, or causing the General Contractor to obtain, on behalf of the City, a temporary, if applicable, and permanent certificate of occupancy (or other appropriate and necessary governmental permission to occupy) with respect to the City Facilities;

4.5.7 OHM shall, subject to section 6.8 herein and to events of “Force Majeure,” cause Commencement of Construction of the Convention Center to occur on the Convention Center Site on or before the Construction Deadline and cause Completion of Construction of the same within twenty (20) months after the actual Commencement of Construction (“Completion of Construction Deadline” ) OHPD and OHM estimate that construction will take approximately eighteen (18) months;

4.5.8 The Convention Center must be constructed in a good and workmanlike manner free of liens in favor of any person or entity providing labor or materials in connection with such construction;

4.5.9 The Convention Center must be constructed in accordance with the approved Final Site Plan, Final Design and this Agreement; and

4.5.10 The Convention Center will be designed and constructed in accordance with Applicable Law, including the coordination with the City’s independent construction materials engineering testing and inspection of the facility as required by Texas Government Code, Chapter 2267.

4.5.11 OHM shall promptly pay or cause to be paid all contractors and subcontractors on the Project in accordance with the City’s Contractor Payment Guidelines.

4.5.12 Construction Draws.

(a) All draws for the Convention Center construction will be submitted to the City, pursuant to a draw request as required by the City. The City shall approve each draw request and make payment within thirty (30) days of receiving a draw request from OHM; provided however, such draw requests (which will include multiple individual draw requests) shall not be submitted to

the City more than one per thirty (30) day period during the development, design and construction process.

(b) All Change Orders for the Convention Center construction shall be submitted to the City, and such Change Orders shall be reviewed by the City within thirty (30) days. The City shall not be obligated to approve any Change Orders that would exceed the City Financing Contribution. "Change Orders" will be defined as any document submitted to or received from the general contractor hired to construct the Convention Center that requires that additional funds be expended over the Convention Center Budget or that alters the Site Plan or building exterior.

4.5.13 **Conditions to City's Performance.** The City's commitment to construct the Convention Center is conditioned upon: (a) OHPD and OHM having timely performed all of their obligations under this Agreement, including the Private Financing Contribution; (b) OHPD having caused Commencement of Construction of the Hotel to have occurred; and (c) the issuance of debt to finance the construction of the Convention Center (the issuance of such debt in the sole discretion of the City Council), as set forth in Article VI herein.

## **ARTICLE V FINANCING OF THE PROJECT**

### **5.1 Design Development Phase.**

5.1.1 **Payment of Costs of the Convention Center Design Development Architectural Drawings.** The City shall pay the costs of the Convention Center Design Development Architectural Drawings in an amount not to exceed \$200,000. Upon completion of the Convention Center Design Development Architectural Drawings, the City may elect to terminate this Agreement on or before the Feasibility Deadline pursuant to 3.3.2 and 11.1.2 herein. The City may reimburse itself for expenditures relating to the Convention Center Design Development Architectural Drawings from the proceeds of its debt issued to fund the City Financing Contribution.

5.1.2 **Payment of Costs of the Hotel Design Development Architectural Drawings.** OHPD shall pay the costs of the Hotel Design Development Architectural Drawings.

5.1.3 **Private Financing Contribution.** On or before the Feasibility Deadline, OHPD and the equity partners or the lender providing the construction debt portion of the Private Financing Contribution (the "Hotel Lender") in accordance with the Hotel Budget shall have mutually agreed upon the form of the loan agreement to be entered into at or before the Closing (the "Hotel Loan Agreement"); and OHPD shall have obtained a binding commitment acceptable to the City and UNT (containing no conditions other than the City's Financing Contribution to the Convention Center) for the permanent financing for the Hotel and Restaurant from the Hotel Lender or a successor Hotel Lender. The Hotel Loan Agreement shall provide that the Hotel Lender shall not have any liens on the City Facilities or any fund created to benefit the City. OHPD and the investor or investors providing the equity portion of the Private Financing Contribution shall have mutually agreed upon the form of the venture

documentation to be entered into at the Closing providing for the investment of such equity capital. OHPD shall send the Hotel Loan Agreement to UNT and the City for review and approval. OHPD shall pay the costs of the Final Hotel Design from its Private Financing Contribution.

5.1.4 **Feasibility Deadline.**

(a) On or before the Feasibility Deadline, the City shall notify OHPD of its inability or unwillingness to secure the entire amount of the City Financing Contribution on terms and conditions acceptable to OHPD and UNT. Upon such notification, the obligations to proceed with the Project pursuant to this Agreement shall terminate pursuant to Article XI herein.

(b) On or before the Feasibility Deadline, if OHPD is unable or unwilling to provide written evidence to the City and UNT, in form reasonably acceptable to the City and UNT pursuant to Section 5.1.3 above, that it has secured the entire amount of the Private Financing Contribution, then the obligations to proceed with the Project pursuant to this Agreement shall terminate pursuant to Article XI herein.

(c) If the Parties are able to provide assurances with respect to their financing contributions, as set forth in (a) and (b) above and all other requirements that are required prior to the expiration of the Feasibility Deadline have been met, then the Parties shall proceed to the Final Design of the Design Development Phase as set forth in Article III and Closing as set forth in Section 5.1.7 herein and the City shall move forward with the publication of the Notice of Intent. The City shall not issue debt to fund the City Financing Contribution until the expiration of the Financing Viability Deadline and the Private Financing Contribution is fully available to the satisfaction of the City and UNT as set forth in (d) below. The costs of Final Design shall be paid solely from the City Financing Contribution which will not be available until Closing occurs. The issuance of debt is in the sole discretion of the City Council.

(d) OHPD acknowledges that the City's contribution of the City Financing Contribution is subject to the issuance of debt by the City on terms deemed reasonable by the City Council in its sole discretion and that the issuance of debt is a discretionary, governmental action of the City Council. The City shall not issue debt to fund the City Financing Contribution and shall not fund the City Financing Contribution until it has received from OHPD, an executed loan commitment or other funding commitment(s) from financial institution(s) or investors in favor of OHPD in form and content acceptable to the City containing no conditions to funding except the City's issuance of debt, and in an amount equal to the Total Hotel Costs. The discretion to issue debt is vested in the City Council and in no event will the City have any obligation to issue debt pursuant to this Agreement or have any commitment or obligation to provide funds above the City Financing Contribution.

5.1.5 **Financing Viability Deadline.** On or before the Financing Viability Deadline, the City shall notify OHPD of the current market conditions for the issuance of the City's debt to fund the City Financing Contribution, including current interest rates and the estimated debt service schedule. If the projected true interest cost of the City's obligations, as calculated by the City's financial advisor, is in excess of 6.00%, then this Agreement shall terminate pursuant to Article XI herein, unless otherwise agreed to by the Parties.

5.1.6 **City Financing Contribution.** Upon the obtaining of a GMP Contract pursuant to Article III and the expiration of the Feasibility Deadline, the City shall begin the preliminary statutory requirements for the issuance of debt to fund the City Financing Contribution, which shall include the publication of the Notice of Intent. Upon the expiration of the Financing Viability Deadline and in the event there is no petition filed during the time period between publication of the Notice of Intent and the date of the adoption of the City's Ordinance authorizing the debt, the City shall move forward with the adoption of an ordinance authorizing the issuance of the City's debt. The timing of the adoption of such ordinance is in the sole discretion of the City. The City shall not adopt an ordinance issuing its debt and shall not sell its debt unless the conditions of 5.1.3 herein have been met and the Feasibility Deadline and Financing Viability Deadline have passed. The City shall make a good faith effort to time the sale of its debt in favorable market conditions in order to lower the overall financing cost of the City Facilities and shall use all possible urgency and diligence to sell the debt such that the True Interest Cost does not exceed the range of 6.0% -6.5%; however, the City shall not close on its debt until the City Council has approved the funding of the City Financing Contribution and the conditions in Section 5.1.7(a) herein have been met. Notwithstanding any provision of this Agreement or this Section, the issuance of debt is subject to the sole discretion of the City Council. The costs of the Final Design shall be paid by the City from the proceeds of the City's debt issuance pursuant to Section 5.1.7 below.

5.1.7 **Closing.** Closing shall occur as follows:

(a) Subject to the City Council's determination to fund the City Financing Contribution, the City shall sell its debt and close upon the City Financing Contribution, and OHPD shall close upon the Private Financing Contribution on or before the Construction Deadline such that funds are available for the construction of the Project (each, the "Closing"). The proceeds of such financing contributions shall be invested in accordance with their respective terms and shall be made available for disbursement for construction of the City Facilities and the Hotel and Restaurant. The disbursement of the City Financing Contribution shall be controlled by the City pursuant to its established disbursement process and procedures.

(i) Upon Closing, OHPD shall lease the Hotel Site and its improvements from UNT pursuant to the Hotel Lease, and the City will lease the City Facilities Site from UNT pursuant to the City-UNT Land Lease, such lease to commence and be effective according to its terms and shall be contingent on Closing.

(ii) Upon Closing, OHPD, as sub-lessor, and OHPD, as sublessee, shall sublease the City Facilities Site and its improvements to OHPD, pursuant to the City Facilities Sublease, such lease to commence and be effective according to its terms and shall be contingent on Closing.

## 5.2 **Construction Phase.**

5.2.1 **Payment of Construction Phase Costs.** Costs for the construction of the City Facilities shall be paid from the proceeds of obligations issued by the City. Costs for the construction of the Hotel Facilities shall be paid from OHPD's Private Financing Contribution. The City's payment of the costs of the City Facilities and OHPD's costs of the Hotel Facilities are subject to Section 5.1.7 herein.

5.3 **City Financing Contribution Limitation.** In no event shall any payment required by this Agreement obligate the City to make any payment in excess of the City Financing Contribution. In the event the Final Design of the City Facilities and its budgeted costs as determined in the Design Development Phase exceed the City Financing Contribution, City and OHM and OHPD will work together to resolve such funding issues. After the exhaustion of all reasonable means, in the event the Parties cannot reach an agreement as to the resolution of such funding issues, this Agreement shall terminate. Any costs or expenses for the Project which arise as a result of Force Majeure during the Construction Phase shall be divided among OHPD and the City with the City paying only for costs and expenses related to the City Facilities, as specified in the construction contracts and construction manager contract for the construction of the City Facilities.

## ARTICLE VI

### PURCHASING SERVICES

6.1 **Purchasing Services.** During the course of development of the Project, OHPD and/or OHM shall perform or cause to be performed the following services with respect to FF&E to be installed in the City Facilities and the Hotel and Restaurant:

6.1.1 **FF&E Schedule.** The Development Plan prepared by OHM with the approval of the City and UNT shall include a prototypical schedule setting forth by category the types of FF&E for the Hotel and the City Facilities, consistent with the design and style of the Hotel and of sufficient quality such that the Hotel will be developed in an Upscale Manner and be in an Upscale Condition (hereinafter referred to as the "FF&E Schedule") and the City Facilities will meet the standards of Comparable Convention Centers.

6.1.2 **FF&E Specifications.** The FF&E shall be those items specified in specifications therefor (hereinafter referred to as "FF&E Specifications") as coordinated by

OHPD and approved by the City, and shall specify the type of FF&E consistent with the design and style of the Hotel and of sufficient quality such that the Hotel will be developed in an Upscale Manner and shall be in an Upscale Condition and the City Facilities will meet the standards of Comparable Convention Centers. The City shall perform the procurement process for acquisition of the FF&E for the City Facilities, who shall coordinate purchasing of the FF&E for the City Facilities pursuant to purchase orders naming the City as owner or purchaser. All purchases applicable to City Facilities under this Article shall comply with Chapter 252 and Chapter 271, Texas Local Government Code.

6.1.3 **Approval of FF&E Specifications.** OHM shall cause the FF&E Specifications for the City Facilities to be delivered, prepared and submitted to the City for its approval as promptly as reasonably practicable during the design development or construction phases.

6.1.4 **Pricing and Procurement.** The City shall diligently seek to obtain the most favorable prices and terms available in connection with the purchase of the FF&E for the City Facilities to the extent required by Chapter 252 and Chapter 271, Texas Local Government Code, subject to the FF&E specifications described in sections 6.1.2 and 6.1.3 above. The cost of the FF&E for the Convention Center shall be a part of the City Financing Contribution.

6.1.5 **Delivery Schedule.** With regard to the City Facilities, OHM shall assist the City with the preparation of a projected delivery schedule for goods purchased based on production and delivery dates furnished by suppliers. OHM shall use reasonable efforts to coordinate the schedule with the construction schedule under the construction contracts. OHM shall coordinate with the City, the issuance of purchase orders within sufficient time to allow delivery in accordance with the projected construction schedule.

6.1.6 **Records.** OHM shall assist the City with the maintenance of proper, accurate and complete accounting records including purchasing receipts and delivery tickets made in connection with the purchase of the FF&E for the City Facilities. Upon receipt and acceptance of the FF&E Equipment for the City Facilities, OHM will deliver the receipt to the City within 48 hours, to ensure prompt payment is achieved. OHM shall maintain proper, accurate and complete accounting records, including competitive bids and proposals, purchase orders, purchasing receipts and delivery tickets made in connection with the purchase of the FF&E for the Hotel. OHPD and/or OHM shall make available these records for audit, inspection and photocopying by UNT and the City, or any other persons designated by the City upon five (5) business days' notification. Following Final Completion of the Project or termination of this Agreement, OHPD and/or OHM shall, at OHPD and/or OHM's sole cost, deliver to the City and UNT a copy of all such records. OHPD and/or OHM shall retain copies of such records for a Period of three (3) years after Final Completion.

6.1.7 **Inventory.** OHPD and/or OHM shall provide an inventory of goods and materials to UNT and the City, or such other persons, as may be designated by the City or UNT, within ninety (90) days after delivery of the last item of FF&E for the Project.



6.2 **Payment for FF&E.**

6.2.1 The City shall purchase the FF&E for the City Facilities of the type and quantity described in the FF&E Schedule as prepared by OHM and approved by the City and OHM in accordance with the FF&E Budget and this Agreement. The City agrees to make directly to OHM, in its capacity as development manager for the City, monthly payments based upon invoices received for purchases of FF&E for the City Facilities, for payments required during such month not to exceed the amounts specified in the FF&E Budget, as part of the City Financing Contribution. OHM shall substantiate and provide verifications to the City of goods received. Purchase of FF&E for the City Facilities are exempt from sales taxes.

6.2.2 The FF&E costs for the Convention Center shall be part of the Total Convention Center Costs and shall be identified in the Design Development phase as a part of the budget for the City Facilities. Any costs paid by the City shall be part of the City Financing Contribution. If the FF&E costs in the Convention Center Budget would cause the City to exceed the City Financing Contribution, OHM and the City will work to resolve such budget issues. In the event that the City and OHM cannot resolve such budget and funding issues, the City shall have the option to terminate this Agreement.

6.2.3 It is understood that all purchase orders and agreements for FF&E for the City Facilities executed by the City shall specify the FF&E as being acquired for the account of the City (provided the City shall not be required to contribute to or expend any amount in connection with the City Facilities in excess of the City Financing Contribution), and OHPD shall not be responsible for payment of any such purchase orders and agreements, except to the extent of funds therefor actually received from the City or except to the extent that such amounts exceed the total amount of the City Financing Contribution.

6.2.4 All FF&E for the City Facilities shall be subject to the terms and provisions of the City Facilities Sublease.

6.3 **Infrastructure.**

6.3.1 **Storm Water Drainage and Detention.**

(a) The Parties will cooperate in connection with the identification and design of the off-site storm water drainage and detention system for the Project, including any necessary channels and/or other easements and improvements necessary to direct and collect storm water discharge from the Project Site. The costs of any necessary storm water drainage improvements attributable to the Convention Center shall be included as part of the Total Convention Center Costs and any costs paid by the City shall be a part of the City Financing Contribution. The costs of off-site storm water drainage and detention improvements shall be shared by the Convention Center and Hotel proportionately in accordance with Section 13.2.

(b) Costs associated with perpetual maintenance of storm water detention facilities necessitated by the Project, wherever located, shall be borne

equally by the City and OHPD in accordance with Applicable Law and the requirements of Section 13.2.

6.4 **Easements.**

6.4.1 **Project Easements.** The Parties agree to cooperate in good faith to grant to each other, without additional consideration, such easements as may be necessary to allow the efficient operation of the Project (including, but not limited to, right-of-way, utility, access, drainage, and cross-parking easements) provided however, nothing in this Section is intended to impose on any party an obligation to grant any easement if such easement would materially interfere with the grantor's use or intended use of its own property. Anticipated Easements are:

- (a) for access to the Project Site;
- (b) for construction easements in order to help facilitate the construction of the Project;
- (c) for utility access as needed for the Project; and
- (d) for parking of Hotel, restaurant and Convention Center guests off site on UNT land;

6.4.2 Any and all such easements shall be set forth in recordable form and the Parties must agree on the form of and execute and deliver such easements on or before OHPD Commences Construction of the Hotel. To the extent either party has granted a lien or other encumbrance on its respective site prior to the date the easements are executed and recorded, such party must cause the holder of such lien or encumbrance to execute such instruments as the other may require to evidence the fact that such holder's interest is subordinate to the easements.

6.5 **Waiver of Development Standards.** To the extent OHPD or OHM desires any modification to City development standards, OHM or OHPD shall follow the City's procedures for obtaining waivers, which request shall be accompanied by detailed plans and specifications for the Project. City staff will review the plans and specifications with OHPD or OHM to determine the nature and extent of modifications and waiver of City regulations. The City Council shall have the sole discretion to grant any waivers.

6.6 **No Relinquishment of Municipal Regulatory Authority.** Notwithstanding anything contained in this Agreement to the contrary, the City's and UNT's review and (if applicable, approval) of proposed architectural plans, specifications, site plans, plats, drawings, or other submittals from OHPD, OHM or other persons in connection with this Agreement shall constitute approval for purposes of this Agreement only, and not be deemed to constitute approval, or replace, the City's and UNT's right to review and approve same, under City's regulatory authority and/or police power under Texas or local law.

6.7 **Title Search.** UNT shall conduct a title search of the land constituting the Project to ensure there are no existing liens or encumbrances that would prevent the development of the Project. The results of such title search shall be provided to OHPD and OHM.

6.8 **Extensions of Deadlines.** In the event of a delay of the Project, the parties agree to a 30 (thirty) day extension of the date for Commencement of Construction and Completion of Construction as is required for the development of the Project. Any further reasonable extensions will be considered by the Parties and must be agreed to in writing.

## ARTICLE VII

### ADDITIONAL OBLIGATIONS OF OHPD

7.1 **Assignment, Transfer Lease.** During the Term, OHPD shall continuously lease and operate the Hotel and Hotel Site and shall not, without the express written consent of the City and UNT (which may not be unreasonably withheld), sell, convey, lease, sublease, or transfer OHPD's leasehold interest in the Hotel, the Hotel Site, or OHPD's leasehold estate under the Lease or Sublease, or any portion thereof (whether by sale, lease, sublease, assignment, deed of trust, mortgage, other instrument, transfer of the beneficial interest in OHPD or other means) (each, a "Transfer"). The City's and UNT's consent to any Transfer, or the occurrence of a permitted Transfer, shall not constitute, or be deemed or construed as constituting, (i) the City's or UNT's consent to any future Transfer or (ii) a waiver of City's or UNT's right to consent to subsequent Transfers. Any Transfer by OHPD, other than a Transfer permitted hereunder, made without the consent of the City and UNT shall constitute an Event of Default hereunder without the necessity of any notice or opportunity to cure being given to OHPD.

#### 7.1.1 **Conditions to Transfers.**

(a) In the event the City and UNT consent to any Transfer, the permitted assignee, transferee, or sublessee of OHPD must expressly assume all of the covenants and obligations of OHPD herein and in any related Agreements in a writing acceptable to the City and UNT in their sole discretion. Furthermore, no such Transfer shall release, or be deemed or construed as releasing, OHPD from any obligations and/or liabilities it may have under this Agreement or any related agreements.

(b) OHPD hereby assigns to UNT the right of OHPD to receive payment as a result of any approved Transfer (except for Transfers permitted under Section 7.1.2 below) to the extent (and only to the extent) of the amount of the unpaid and remaining portion of OHPD's obligations to UNT due under this Agreement and any related agreements. OHPD hereby authorizes the person or entity making such payment to pay such amount directly to UNT. The provisions of this Section 7.1.1 shall survive termination of this Agreement.

7.1.2 **Permitted Transfers.** Subject to the transfer provisions in the OHPD-UNT Land Lease, and without waiving the City's and UNT's right to review and approve any Transfer that is not otherwise expressly permitted under this Section, and provided that no Event of Default (defined below) exists hereunder, UNT agrees that OHPD may:

(a) grant a mortgage lien on the Hotel Site and Hotel to the lender(s) providing OHPD construction or permanent financing for the Hotel, which

financing must be subordinate to the Hotel Lease, the Declaration, and OHPD's covenants and obligations under this Agreement (including the obligation to pay the rents to UNT and the City under the respective Leases); and

(b) enter into leases for retail or gift shops within the Hotel and/or leases for franchise restaurants within the Hotel, (provided that all of the foregoing in this Section 7.1.2 must be first approved by UNT and any Approved Franchisor), such approval not to be unreasonably withheld.

7.1.3 **Prohibited Transfers.** OHPD agrees that the City and UNT are not obligated to grant its consent for a Transfer if:

(a) the proposed transferee is eligible for exemption from ad valorem or other taxation under the laws of the State of Texas (an "Exempt Entity");

(b) the proposed transferee is a third party which, in the City's and UNT's reasonable discretion, does not have an appropriate level of experience, and/or reputation for quality, as OHPD or OHM in operating projects such as the Project;

(c) Completion of Construction of the Hotel and Convention Center has not occurred; and/or

(d) The transfer is not permitted under the City-OHPD Convention Center Sublease.

7.1.4 **Transfer to Exempt Entity.** If the Hotel is transferred at any time during the Term of this Agreement to an entity, exempt from the payment of taxes, such Transfer will, in addition to constituting an Event of Default under the Lease and this Agreement (and without limiting the City's and UNT's remedies in connection therewith), result in:

(a) an increase in the rent owed pursuant to the terms of the Convention Center Sublease, all as more particularly set forth therein; and

(b) OHPD will be responsible for yearly payments to the City in an amount equal to the most recent appraised value used in determining the property tax revenue which the City in its reasonable discretion expects to receive over the terms of the City Facilities Sublease and OHPD-UNT Land Lease following the Transfer.

7.2 **Compliance with Applicable Law.** All Parties agree to comply with all Applicable Laws.

7.3 **Project Quality and Operation.** At all times during the Term, OHPD must cause the Hotel to be continuously operated, and the Hotel and Hotel Site (including, without limitation, all landscaping constructed and/or placed thereon) to be maintained, in an Upscale Condition and repair in accordance with the standards of any Approved Franchise. The results of any quality inspection made by any Approved Franchisor of the Hotel and/or the Convention

Center shall be made available to the City upon request. During the Term, the Hotel must be operated as a full service, upscale hotel and related amenities, open to the public and operating under and in accordance with the standards of an Approved Franchise. OHPD shall continuously maintain and operate the Convention Center and Hotel in accordance with the standards set forth in the Convention Center Sublease and OHPD-UNT Land Lease.

In keeping with the foregoing, if at any time prior to the expiration of the term of the OHPD-UNT Land Lease, the Hotel is totally or partially damaged or destroyed by fire, the elements, unavoidable accident or other casualty, OHPD must, at OHPD's expense, repair and restore the Hotel to the condition same was in immediately prior to such damage; provided, however, if the damage occurs during the last five (5) years of the term of the OHPD-UNT Land Lease and as a result thereof the Hotel is damaged to an extent that the cost to repair same is greater than fifty percent (50%) of the then value thereof (exclusive of the value of the land constituting the Hotel Site), OHPD shall have no obligation to repair or restore the Hotel. If OHPD is obligated to repair and restore the Hotel in accordance with the terms of this Section 7.3, OHPD must commence such repair and restoration within a reasonable timeframe based on the severity of the damage, as agreed to by UNT and the City, and prosecute same with all reasonable diligence until completed; provided, however, any and all such repair and restoration work must be completed no later than one year from the date of damage.

7.4 **Payment of Taxes.** OHPD shall not permit any real or personal property taxes, sales taxes, hotel/motel occupancy taxes, or any other tax, assessment, or other charge imposed by any governmental authority that may be owed by OHPD, its successors and affiliates to the City or any other applicable taxing unit, or as may be assessed against the Hotel, the Hotel Site, the Convention Center, the Convention Center Site, and/or the leasehold estate under the Lease, or any other property owned by OHPD, to become delinquent (provided OHPD shall retain the right to timely and properly contest such taxes or assessment). This Section 7.4 shall survive the termination of this Agreement while the OHPD is lessee under the City-OHPD Convention Center Sublease.

7.5 **Survival of Obligations.** The obligations of the Parties under this Agreement, the City-UNT Land Lease, the City Facilities Sublease and the Hotel Lease shall survive during the Term, and shall survive any conveyance, foreclosure or other transfer of the Hotel, Hotel Site, Convention Center, Convention Center Site and the Parties interests under this Agreement.

## ARTICLE VIII

### MAINTENANCE AND INSURANCE

8.1 **Maintenance.** As further set forth in the City-OHPD Convention Center Sublease, the OHPD-UNT Land Lease and the City-UNT Land Lease, OHPD and OHM agree to maintain all improvements hereafter constructed on the Hotel and Restaurant Site in a condition to satisfy the definition of Upscale Condition, and OHPD and the City (pursuant to its obligations under Section 3.4.3 herein) agree to maintain all improvements hereafter constructed on the Convention Center Site (including, without limitation, landscaping), respectively, in a manner that meets the standard of Comparable Convention Centers. OHPD shall make all necessary replacements to the Hotel and Restaurant and OHPD, OHM and the City (pursuant to

its obligations under Section 3.4.3 herein) shall make all necessary replacements to the Convention Center Site so that throughout the term of this Agreement, the Hotel, Restaurant, Hotel and Restaurant Site, Convention Center and Convention Center Site are maintained in a manner that meets the standard of Comparable Convention Centers.

8.2 **Insurance.** OHPD, with respect to the Hotel, Restaurant and the Hotel and Restaurant Site, OHM or OHPD and the City, with respect to the Convention Center and Convention Center Site, shall maintain at their respective sole cost and expense pursuant to each party's responsibilities under this Agreement:

8.2.1 "Special Causes of Loss Form" Commercial Property Insurance on any improvement now or hereafter constructed on the Project Site. All insurance, unless agreed by the other party, shall be for the full insurable value of the improvements and contents on the respective properties, with a deductible amount approved in writing by UNT and no greater than that retained by owners of similar properties in the State of Texas at the time the policy in question is obtained. No policy of insurance required under this Section 8.2.1 shall be written such that the proceeds thereof will produce less than the minimum of coverage required hereunder by reason of co-insurance provisions or otherwise. The term "full insurable value" means one hundred percent (100%) of the actual replacement cost of the improvements constructed on said property (excluding foundation and excavation costs and costs of underground flues, pipes, drains and other uninsurable items). Additionally, the Property Insurance Policy shall provide for Business Income/Interruption coverage with sufficient limits based on the potential loss of income generated by the Convention Center and Hotel. The insurance maintained by OHPD and OHM shall name the City and UNT as loss payee.

8.2.2 Commercial General Liability Insurance on a "occurrence" basis against claims for personal injury, liability and liability for death, bodily injury and damage to property, products and completed operations, all in limits, from time to time, equal to those customarily held by owners of similar projects in the State of Texas, with respect to any one occurrence and the aggregate of all occurrences during any given annual policy Phase. The liability insurance maintained by OHPD with respect to the Hotel and Hotel Site shall name the City as an Additional Insured. The City, in its sole discretion, may choose to satisfy the requirements of 8.2.2 through a self-insurance program.

8.2.3 During any Period of construction on either property, the leaseholder and owner thereof shall maintain, or cause others to maintain, builder's risk insurance (non-reporting form) with completed operations coverage of the type customarily carried in the case of similar construction for one hundred percent (100%) of the full replacement cost of work in place and materials, supplies and equipment that are intended to be installed in the construction regardless of whether same are stored at or upon the property or off of the property in question, except that the parties agree to reasonable deductibles necessary to obtain reasonable insurance rates.

8.2.4 In addition to the foregoing, each party shall cause any contractor performing work on its property to provide and maintain commercial general liability insurance for all employees of the contractor meeting the requirements of Section 8.2.2 and 8.2.3 above.

8.2.5 In addition to the foregoing, each party shall cause any contractor and subcontractor performing work on the Project to provide business automobile liability in an amount not less than \$500,000 per occurrence/\$1,000,000 in the aggregate, providing coverage for any Auto, or for Hired or Non-Owned Vehicles. All business automobile policies shall name the City as an Additional Insured.

8.2.6 In addition to the foregoing, each party shall cause any contractor and subcontractor performing work on the property to provide workers' compensation coverage with Texas Statutory limits of coverage.

8.2.7 Each policy of insurance (i) shall be issued by one or more insurance companies each of which must have an A.M. Best Company financial and performance rating of A-:IX or better and be qualified or authorized by the laws of the State of Texas to assume the risk covered by such policy (ii) with respect to the insurance maintained by OHPD and OHM and described under the preceding subsections 8.2.1 and 8.2.3, shall have attached thereto standard non-contributing, non-reporting mortgagee clauses in favor of the City and UNT without contribution to collect any and all proceeds payable under such insurance (iii) shall provide that such policy shall not be canceled or modified without at least thirty (30) days prior written notice to City and (iv) shall provide that any loss otherwise payable thereunder shall be payable notwithstanding any act or negligence of the named insureds which might, absent such agreement, result in a forfeiture of all or a part of such insurance payment. Each party shall promptly pay all premiums when due on such insurance and not less than fifteen (15) days prior to the expiration date of each such policy, deliver to the other acceptable evidence of insurance, such as a renewal policy or policies marked "Premium Paid," or other evidence satisfactory to the other parties, reflecting that all required insurance is current and in force. Each party will immediately give notice to the others of any cancellation of, or material change in, any insurance policy required to be maintained hereunder. Each party may satisfy any insurance requirement hereunder by providing one or more "blanket" insurance policies.

8.2.8 The Parties agree to cooperate in the investigation and procurement of any joint insurance policies that may substantially lower the cost of any insurance required or which is reasonable for the Project. All insurance policies procured for the Project Site by any Party shall name the other Parties as "additional insureds" unless such endeavor would interfere with or jeopardize the insurance coverage, or cause substantial increase in the cost of the insurance.

8.2.9 OHM shall maintain workers' compensation coverage pursuant to Section 406.002 of the Texas Labor Code. Coverage shall be maintained throughout the term of the contract and shall comply with all provisions of Title 5 of the Texas Labor Code to ensure coverage is maintained. Any termination of workers' compensation insurance coverage shall be a material breach of this contract. Any workers' compensation policy obtained by OHPD or OHM must be endorsed to include a waiver of subrogation in favor of the City and must include the following limits:

Employer's Liability with limits of at least \$1,000,000 each accident, \$1,000,000 by disease policy limit and \$1,000,000 by disease each employee shall also be obtained and maintained throughout the term of this Agreement.

8.3 **Policy Requirements.** The following general requirements shall apply to all insurance coverage carried by OHPD and OHM pursuant to Section 8.1:

8.3.1 To the extent available, each policy shall contain a clause whereby the insurer waives all rights of subrogation against the City, UNT, OHM and OHPD;

8.3.2 The City and UNT shall be named as an additional insured in all policies hereunder as their respective interests may appear;

8.3.3 Such policies shall be with reputable insurance companies reasonably acceptable to the City and UNT and licensed to do business in the State of Texas;

8.3.4 OHPD and OHM shall provide the City and UNT with policies or certificates of insurance evidencing such coverage prior to the start of construction;

8.3.5 Within thirty (30) days prior to expiration of coverage, or as soon as practicable, renewal policies or certificates of insurance evidencing renewal and payment of premium shall be provided by OHPD and OHM; and

8.3.6 The coverages must be noncancelable unless the carrier provides to the City and UNT thirty (30) days' prior written notice of cancellation.

## **ARTICLE IX**

### **CONDITIONS**

9.1 **Conditions to Performance.** This Agreement, and the Parties' obligations hereunder, shall be subject to the following conditions precedent:

9.1.1 **City Contractor.** The City selecting a General Contractor for the Convention Center construction.

9.1.2 **Hotel Financing.** OHPD obtaining and retaining sufficient financing for the construction of the Hotel.

9.1.3 **Environmental and Geotechnical Condition of the Project Site.** OHPD's determination, that the environmental condition of the Project Site is acceptable and does not contain pollutants and contamination of any sort that could present potential liability or a threat to human health, and the geotechnical (subsurface) condition of the Project Site is adequate and acceptable for the development and construction of the Hotel, Restaurant, Convention Center, Hotel and Restaurant Site and Convention Center Site. UNT will cooperate in providing any information or reports in its possession or control.

9.1.4 **Title or Regulatory Issues.** Issuance of a title commitment covering the Convention Center site and the Hotel Site, showing all matters affecting title and binding the title company to issue in favor of OHPD, the City and the Hotel Lender at closing owner/mortgagee policies of title insurance on the standard form of policy, subject to standard printed exceptions, showing that there are no title issues of any sort that could reasonably delay



or prohibit the intended development or construction of the Project Site. OHPD shall pay the basic cost associated with issuance of the title policy and the cost of any endorsements to the title policy requested by OHPD, OHM, the City, or the Hotel Lender.

9.1.5 **No Intervention.** No preliminary or permanent injunction or other order, decree or ruling having been issued by a governmental entity and no statute, rule, regulation or executive order promulgated or enacted by a governmental entity shall be in effect which restrains, enjoins, prohibits or otherwise makes illegal the consummation of the transactions contemplated by this Agreement and/or the City's proposed structure for financing the cost of its obligations relating to the Convention Center and no proceedings by a governmental entity shall be commenced or threatened against the City, UNT or OHPD (or any of their respective affiliates, associates, directors or officers) seeking to prevent or challenge the transactions contemplated by this Agreement and/or the City's proposed structure for financing the cost of its obligations relating to the Convention Center and no proceeding before a court of competent jurisdiction having been commenced against the City, UNT or OHPD (or any of their respective affiliates, associates, directors or officers) seeking to prevent or challenge the transactions contemplated by this Agreement and/or the City's proposed structure for financing the cost of its obligations relating to the Convention Center or seeking material damages in connection therewith.

If any of the foregoing conditions in 9.1.1 – 9.1.5 of this Article X have not been satisfied on or before the expiration of the Feasibility Deadline, this Agreement shall terminate and thereafter neither party shall have any further rights or obligations one unto the other hereunder unless, at such time, the Parties enter into a written agreement acknowledging that this Agreement shall continue notwithstanding the failure of any such condition to have been satisfied at such time. Upon the expiration of the Feasibility Deadline, the foregoing conditions in 9.1.1 – 9.1.4 of this Article X shall no longer apply.

## ARTICLE X

### REPRESENTATIONS, WARRANTIES AND COVENANTS

10.1 **Representations and Warranties of the City.** The City hereby represents and warrants to OHPD and UNT that the following statement is true as of the date hereof.

10.1.1 **Due Authority; No Conflict.** The City has all requisite power and authority to execute this Agreement and to carry out its obligations hereunder and the transactions contemplated hereby. This Agreement has been, and the documents contemplated hereby will be, duly executed and delivered by the City and constitute legal, valid and binding obligations enforceable against the City in accordance with the terms subject to principles of governmental immunity and the enforcement of equitable rights. The consummation by the City of the transactions contemplated hereby is not in violation of or in conflict with, nor does it constitute a default under, any of the terms of any agreement or instrument to which the City is a party, or by which the City is bound, or of any provision of any applicable law, ordinance, rule or regulation of any governmental authority or of any provision of any applicable order, judgment or decree of any court, arbitrator or governmental authority.

10.1.2 **Due Authority; No Litigation.** No litigation is pending or, to the knowledge of the City, threatened in any court to restrain or enjoin the construction of the City Facilities or the City's issuance or delivery of the City's debt issuance, or otherwise contesting the powers of the City or the authorization of this Agreement or any agreements contemplated herein.

10.2 **OHM's and OHPD's Representations and Warranties.** OHPD and OHM, separately and not jointly, represent and warrant to the City and UNT that the following representations and warranties are true as of the date hereof.

10.2.1 **Due Organization and Ownership.** OHPD and OHM are limited liability companies validly existing under the laws of the State of Missouri and are duly qualified to do business in the State of Texas; and that the person executing this Agreement on behalf of is authorized to enter into this Agreement.

10.2.2 **Due Authority: No Conflict.** OHPD and OHM have all requisite power and authority to execute and deliver this Agreement and to carry out its obligations hereunder and the transactions contemplated hereby. This Agreement has been, and the documents contemplated hereby will be, duly executed and delivered by OHPD and OHM and constitute OHPD's and OHM's legal, valid and binding obligations enforceable against OHPD and OHM in accordance with their terms. The consummation by OHPD and OHM of the transactions contemplated hereby is not in violation of or in conflict with, nor does it constitute a default under, any term or provision of the organizational documents of OHPD or OHM, or any of the terms of any agreement or instrument to which OHPD or OHM is a party, or by which OHPD and OHM is bound, or of any provision of any applicable law, ordinance, rule or regulation of any governmental authority or of any provision of any applicable order, judgment or decree of any court, arbitrator or governmental authority.

10.2.3 **Consents.** No consent, approval, order or authorization of, or declaration or filing with any governmental authority is required on the part of OHPD in connection with the execution and delivery of this Agreement or for the performance of the transactions herein contemplated by the respective Parties hereto.

10.2.4 **Litigation.** To the best knowledge of OHPD and OHM, after reasonable inquiry, there are no pending or, to the best knowledge of OHPD and OHM, threatened, judicial, municipal or administrative proceedings, consent decree or, judgments which might effect OHPD's ability to consummate the transaction contemplated hereby.

10.2.5 **Legal Proceedings.** To the knowledge of OHPD and OHM, after reasonable inquiry, no preliminary or permanent injunction or other order, decree, or ruling issued by a governmental entity, and no statute, rule, regulation, or executive order promulgated to enacted by a governmental entity, shall be in effect which restrains, enjoins, prohibits, or otherwise makes illegal the consummation of the transactions contemplated by this Agreement.

10.3 **UNT's Representations and Warranties.** UNT represents and warrants to the City and OHPD that the following representations and warranties are true as of the date hereof.

10.3.1 **Due Organization and Ownership.** UNT is a component institution of higher education of the University of North Texas System, an agency of the State of Texas, validly existing under the laws of the State of Texas; and that the person executing this Agreement on behalf of is authorized by the Board of Regents of UNT to enter into this Agreement and any related agreements to which they are a party.

10.3.2 **Due Authority: No Conflict.** UNT has all requisite power and authority to execute and deliver this Agreement and to carry out its obligations hereunder and the transactions contemplated hereby. This Agreement has been, and the documents contemplated hereby will be, duly executed and delivered by UNT and constitute UNT's legal, valid and binding obligations enforceable against UNT in accordance with their terms. The consummation by UNT of the transactions contemplated hereby is not in violation of or in conflict with, nor does it constitute a default under, any term or provision of the organizational documents of UNT, or any of the terms of any agreement or instrument to which UNT is a party, or by which UNT is bound, or of any provision of any applicable law, ordinance, rule or regulation of any governmental authority or of any provision of any applicable order, judgment or decree of any court, arbitrator or governmental authority.

10.3.3 **Consents.** No consent, approval, order or authorization of, or declaration or filing with any governmental authority is required on the part of UNT in connection with the execution and delivery of this Agreement or for the performance of the transactions herein contemplated by the respective Parties hereto.

10.3.4 **Litigation, Liens and Encumbrances.** To the knowledge of UNT, after reasonable inquiry, there are no pending or, to the best knowledge of UNT, threatened, judicial, municipal or administrative proceedings, consent decree or, judgments which might effect UNT's ability to consummate the transaction contemplated hereby, nor are there any liens, encumbrances, threatened or actual lawsuits or legal claims on the Project Site or surrounding area which would encumber or in any way affect the Project Site or the land leases intended by the terms herein.

10.3.5 **Legal Proceedings.** To the best knowledge of UNT, after reasonable inquiry, no preliminary or permanent injunction or other order, decree, or ruling issued by a governmental entity, and no statute, rule, regulation, or executive order promulgated to enacted by a governmental entity, shall be in effect which restrains, enjoins, prohibits, or otherwise makes illegal the consummation of the transactions contemplated by this Agreement.

## **ARTICLE XI TERMINATION PROVISIONS**

11.1 **Termination Events.** The following events shall allow for termination of this Agreement and the Project

11.1.1 **Termination at Financing Viability Deadline.** The City or OHPD may terminate the Agreement pursuant to Section 5.1.5 on the Financing Viability Deadline.

11.1.2 **Termination at Feasibility Deadline.** The City or OHPD may terminate the Agreement pursuant to Sections 5.1.4, 3.1.2 or 3.3.2 herein on or before the Feasibility Deadline.

11.1.3 **Creation of Tax Increment Reinvestment Zone.** The City shall have created or shall be in the process of creating the TIRZ, prior to the expiration of the Feasibility Deadline. If the City has not created or is not in the process of creating the TIRZ by the expiration of the Feasibility Deadline, or it if the actual or proposed participation by other taxing units in the City is not at a level necessary to fund the Convention Center Facilities in an amount that is approved by OHPD; provided that the City has approved the terms of the TIRZ creation and Project and Financing Plan, then this Agreement shall terminate and each Party shall be responsible for its own costs through the date of termination. The City shall notify OHPD of the proposed participation levels of the participating taxing units in the TIRZ prior to the Feasibility Deadline and OHPD shall only have the option to terminate this Agreement pursuant to this Section on or before the Feasibility Deadline.

11.1.4 **Satisfaction of Phase Requirements.** In the event that any of the items or agreements as set forth in Article III are not, after the good faith, diligent efforts of the Parties, completed or agreed-upon on or before the Development Deadline, including the obtaining of GMP contracts for the Project, then UNT, the City or OHPD may unilaterally terminate this Agreement by written notice to the other Parties on or before the Development Deadline, and thereupon this Agreement shall be of no further force or effect, except as expressly set forth herein. OHPD acknowledges and agrees that any costs advanced by OHPD are not subject to reimbursement from the other Parties to this Agreement for any reason in the event of a termination of this Agreement.

11.1.5 **Financing Commitments.** In the event that OHPD has not obtained the Private Financing Contribution pursuant to Section 5.1.3 herein, then this Agreement shall terminate; or, in the event that OHPD has not closed on the Private Financing Contribution pursuant to Section 5.1.7 and the City has not closed on the City Financing Contribution pursuant to Section 5.1.7 by the Closing Deadline, then this Agreement shall terminate. The failure of the City to fund the City Financing Contribution shall not be an event of default under this Agreement but shall be deemed a termination event.

11.1.6 **Termination for Cost Overruns – City Facilities.** In the event the design of the City Facilities and its budgeted costs exceed the City Financing Contribution, City and OHM and OHPD will work together to resolve such funding issues. In the event the Parties cannot reach an agreement as to the resolution of such funding issues, this Agreement shall terminate upon 30 days written notice by OHPD or the City.

11.1.7 **Termination for Cost Overruns - FF&E.** If the FF&E costs in the Convention Center Budget would cause the City to exceed the City Financing Contribution, OHM and the City will work to resolve such budget issues. In the event that the City and OHM cannot resolve such budget and funding issues, the City shall have the option to terminate this Agreement upon 30 days written notice.

11.1.8 **Mutual Termination.** Prior to the sale of the City’s debt in the market, all parties may mutually agree to terminate this Agreement at any time upon written notice to the other parties.

11.1.9 **Termination for Failure to Meet Conditions.** If any of the conditions in 9.1.1 – 9.1.5 of this Agreement are not satisfied on or before the Feasibility Deadline this Agreement shall terminate and thereafter neither party shall have any further rights or obligations one unto the other hereunder unless, at such time, the Parties enter into a written agreement acknowledging that this Agreement shall continue notwithstanding the failure of any such condition to have been satisfied at such time.

11.1.10 **Termination Pursuant to Leases.** If changes to the OHPD-UNT Land Lease, the City Facilities Sublease or the City – UNT Land Lease as a result of the requests of the equity source or lender for OHPD’s Private Financing Commitment are not agreed to by the parties pursuant to Sections 3.4.1, 3.4.3 and 3.4.2, respectively, this Agreement may be terminated by any Party.

11.1.11 **Payment of Costs Upon Termination.** OHPD acknowledges and agrees that any costs advanced by OHPD with respect to the Project are not subject to reimbursement from the other Parties to this Agreement for any reason in the event of a termination of this Agreement.

11.2 **Termination upon Default.** This Agreement shall terminate upon a default by either Party pursuant to Article XII herein.

## ARTICLE XII

### DEFAULT AND REMEDIES

12.1 **Default by OHPD.** The occurrence of any of the following shall be an “Event of Default” by OHPD under this Agreement:

12.1.1 The filing by OHPD of a voluntary proceeding under present or future bankruptcy, insolvency, or other laws respecting debtors, rights;

12.1.2 The consent by OHPD to an involuntary proceeding under present or future bankruptcy, insolvency, or other laws respecting debtor’s rights;

12.1.3 The entering of an order for relief against OHPD or the appointment of a receiver, trustee, or custodian for all or a substantial part of the property or assets of OHPD in any involuntary proceeding, and the continuation of such order, judgment or degree unstayed for any Period of ninety (90) consecutive days;

12.1.4 OHPD’s failure to pay or cause to be paid when due any sum of money owed by OHPD to the City or UNT pursuant to this Agreement, and the continuation of such failure for fifteen (15) days after written notice from the City or UNT as applicable, specifying the nature and extent of any such default with opportunity to cure;

12.1.5 The failure of OHPD to perform or to observe any covenant, obligation or requirement of this Agreement not otherwise specifically named as a default in this Section 13.1, and the continuation of such failure for thirty (30) days after written notice from the City or UNT specifying the nature and extent of any such default, or, if such default cannot reasonably be cured within such thirty (30)-day period, the failure either (i) to commence to cure such default within such thirty (30)-day period and to diligently continue to pursue such efforts to cure to completion, or (ii) to cure such default within a reasonable time after the expiration of the first thirty (30)-day period, in no event to exceed ninety (90) days after the written notice of default;

12.1.6 The termination of the Approved Franchise and OHPD's failure to obtain a replacement Approved Franchise for at least the number of remaining years necessary to reach 18 years from the date the Hotel is operational, pursuant to the City-OHPD Convention Center Sublease.

12.1.7 The failure of OHPD to begin construction on the Project by the Construction Deadline, or to have the Project Completed within twenty (20) months after Construction Deadline, unless the delay in completion is attributable to any Force Majeure, city delay, or the institution of litigation concerning the Project or any component thereof by a third party; The deadlines in this section are subject to Section 6.8 herein.

12.1.8 A termination of the City Facilities Sublease resulting from a default by OHPD thereunder; or

12.1.9 A Transfer by OHPD other than a Transfer permitted under Section 7.1.

12.2 **Default by OHM.** The occurrence of any of the following shall be an "Event of Default" by OHM under this Agreement:

12.2.1 The filing by OHM of a voluntary proceeding under present or future bankruptcy, insolvency, or other laws respecting debtors, rights;

12.2.2 The consent by OHM to an involuntary proceeding under present or future bankruptcy, insolvency, or other laws respecting debtor's rights;

12.2.3 The entering of an order for relief against OHM or the appointment of a receiver, trustee, or custodian for all or a substantial part of the property or assets of OHM in any involuntary proceeding, and the continuation of such order, judgment or decree unstayed for any Period of ninety (90) consecutive days;

12.2.4 OHM's failure to pay or cause to be paid when due any sum of money owed by OHM to the City or UNT pursuant to this Agreement, and the continuation of such failure for fifteen (15) days after written notice from the City or UNT as applicable, specifying the nature and extent of any such default with opportunity to cure;

12.2.5 The failure of OHM to perform or to observe any covenant, obligation or requirement of this Agreement not otherwise specifically named as a default in this Section 12.2 and the continuation of such failure for thirty (30) days after written notice from the City or UNT

specifying the nature and extent of any such default, or, if such default cannot reasonably be cured within such thirty (30)-day period, the failure either (i) to commence to cure such default within such thirty (30)-day period and to diligently continue to pursue such efforts to cure to completion, or (ii) to cure such default within a reasonable time after the expiration of the first thirty (30)-day period, in no event to exceed ninety (90) days after the written notice of default;

12.2.6 The termination of the Franchise Agreement due to the breach of its terms by OHPD;

12.2.7 The failure of OHM to begin construction on the Project by the Construction Deadline, or to have the Project Completed within twenty (20) months after Construction Deadline, unless the delay in completion is attributable to any Force Majeure, City delay, or the institution of litigation concerning the Project or any component thereof by a third party; The deadlines in this section are subject to Section 6.8 herein.

12.3 **Default by the City.** The occurrence of any of the following shall be an “Event of Default” by the City under this Agreement:

12.3.1 The filing by the City of a voluntary proceeding under present or future bankruptcy, insolvency, or other laws respecting debtors’ rights;

12.3.2 The consent by the City to an involuntary proceeding under present or future bankruptcy, insolvency, or other laws respecting debtor’s rights;

12.3.3 The entering of any order for relief against the City or the appointment of a receiver, trustee, or custodian for all or a substantial part of the property or assets of the City in any involuntary proceeding, and the continuation of such order, judgment or decree unstayed for any Period of ninety (90) consecutive days;

12.3.4 The City’s failure to pay or cause to be paid when due any sum of money owed by the City to OHPD pursuant to this Agreement, and the continuation of such failure for thirty (30) days after written notice from OHPD, as applicable, specifying the nature and extent of any such default with opportunity to cure;

12.3.5 The failure of the City to perform or to observe any nonmonetary covenant, obligation or requirement of this Agreement and the continuation of such failure for thirty (30) days after written notice from OHPD specifying the nature and extent of any such default, or, if such default cannot reasonably be cured within such thirty (30)-day period, the failure either (i) to commence to cure such default within such thirty (30)-day period and to diligently continue to pursue such efforts to cure to completion, or (ii) to cure such default within a reasonable time after the expiration of the first thirty (30)-day period, in no event to exceed ninety (90) days after the written notice of default; or

12.3.6 A termination of the City Facilities Sublease resulting from a material default by the City thereunder.

12.4 Default by UNT.

12.4.1 The filing by UNT of a voluntary proceeding under present or future bankruptcy, insolvency, or other laws respecting debtors' rights;

12.4.2 The consent by UNT to an involuntary proceeding under present or future bankruptcy, insolvency, or other laws respecting debtor's rights;

12.4.3 The entering of any order for relief against UNT or the appointment of a receiver, trustee, or custodian for all or a substantial part of the property or assets of UNT in any involuntary proceeding, and the continuation of such order, judgment or decree unstayed for any Period of ninety (90) consecutive days;

12.4.4 UNT's failure to pay or cause to be paid when due any sum of money owed by UNT to OHPD pursuant to this Agreement, and the continuation of such failure for thirty (30) days after written notice from OHPD, as applicable, specifying the nature and extent of any such default with opportunity to cure;

12.4.5 The failure of UNT to perform or to observe any nonmonetary covenant, obligation or requirement of this Agreement and the continuation of such failure for thirty (30) days after written notice from OHPD specifying the nature and extent of any such default, or, if such default cannot reasonably be cured within such thirty (30)-day period, the failure either (i) to commence to cure such default within such thirty (30)-day period and to diligently continue to pursue such efforts to cure to completion, or (ii) to cure such default within a reasonable time after the expiration of the first thirty (30)-day period, in no event to exceed ninety (90) days after the written notice of default; or

12.4.6 A termination of OHPD-UNT Land Lease resulting from a material default by UNT thereunder.

12.5 Remedies.

12.5.1 Upon the occurrence and continuance of an Event of Default by OHPD described in Section 12.1, the City or UNT may elect (after written notice to the Hotel Lender and subject to the Hotel Lender's right to cure) to terminate this Agreement by giving written notice of such termination to OHPD, and this Agreement shall terminate as of the date specified in such notice (which date shall be on or after the date of the notice of termination); provided, however, that the City or UNT shall have no right to terminate the Agreement unless the City and UNT delivered to OHPD a second notice which expressly provides that the City or UNT will terminate within thirty (30) days if the default is not addressed as herein provided.

12.5.2 Upon the occurrence and continuance of an Event of Default by OHM described in Section 12.2, the City or UNT may elect (after written notice to the Hotel Lender and subject to the Hotel Lender's right to cure) to terminate this Agreement by giving written notice of such termination to OHPD, and this Agreement shall terminate as of the date specified in such notice (which date shall be on or after the date of the notice of termination) ; provided, however, that the City or UNT shall have no right to terminate the Agreement unless the City



and UNT delivered to OHPD a second notice which expressly provides that the City or UNT will terminate within thirty (30) days if the default is not addressed as herein provided.

12.5.3 Upon the occurrence of an Event of Default by the City under Section 12.3, OHPD or UNT may elect to terminate this Agreement by giving written notice of such termination to the City, and this Agreement shall terminate as of the date specified in such notice (which date shall be on or after the date of the notice of termination).

12.5.4 Upon the occurrence of an Event of Default by UNT under Section 12.4, OHPD or the City may elect to terminate this Agreement by giving written notice of such termination to UNT, and this Agreement shall terminate as of the date specified in such notice (which date shall be on or after the date of the notice of termination).

12.6 **OHM/OHPD's Remedies**. Upon the occurrence of any Event of Default by the City or UNT, and to the extent permitted by law, OHPD may pursue any legal or equitable remedies or remedies, including specific performance and termination of this Agreement, including reasonable attorneys fees, costs, expenses and expert witness fees, as authorized by Applicable Law; provided, however, that OHPD shall have no right to terminate this Agreement unless OHPD delivers to the City and UNT a second notice which expressly provides that OHPD will terminate within thirty (30) days if the default is not addressed as herein provided. All remedies in the Section shall be cumulative.

12.7 **City's Remedies**. Upon the occurrence of an Event of Default by OHPD, the City may pursue any legal or equitable remedy or remedies, including, without limitation, specific performance, damages, (including reasonable attorneys' fees), and termination of this Agreement. Termination or non-termination of this Agreement upon an OHPD Event of Default shall not prevent the City from suing OHPD for specific performance, damages, injunctive relief or other available remedies with respect to obligations that expressly survive termination. Upon termination by the City, the City may occupy the Convention Center, and OHPD shall assign to the City any of its contracts and agreements related to the Convention Center requested by the City to be so assigned. In the event OHPD fails to pay any of the expenses or amounts or perform any obligation specified in this Agreement, then to the extent such failure constitutes an Event of Default hereunder, the City may, but shall not be obligated to do so, pay any such amount or perform any such obligations and the amount so paid and the reasonable out of pocket costs incurred by the City in said performance shall be due and payable by OHPD to the City within thirty (30) days after OHPD's receipt of an itemized list of such costs. The City shall have no right to terminate this Agreement unless City delivers to OHPD a second notice which expressly provides that the City will terminate within thirty (30) days if the default is not addressed as herein provided. All remedies of the City under this Agreement shall be cumulative.

12.8 **Accounting**. Upon the termination of this Agreement by reason of a default hereunder, OHPD shall render an accounting to the City and UNT, and, without diminishing the rights and remedies referred to in Sections 12.5 and 12.7, from and after such date, the City and UNT shall not have any further rights or obligations under this Agreement.

**ARTICLE XIII**

**COST SAVINGS AND EXPENSE REIMBURSEMENT**

13.1 **Cost Savings.** Cost savings realized in Development Budget categories for the City Facilities during the course of development thereof may be applied to cost overruns, if any, in other Development Budget categories for the City Facilities (subject to the approval of the City), or, if there are no such cost overruns, the cost savings (other than de minimus amounts) that remain after all revisions to the Convention Center Budget have been made, shall be used by the City for the following purposes in the following priority: (a) pay debt service on the City's debt, (b) establish debt service reserves for the payment of debt service in the next year, or (c) for upgrades to the City Facilities or enhancements to the FF&E for the City Facilities installed therein.

13.2 **Shared Costs and Expenses.**

13.2.1 For the cost of improvements that are necessary for the development of the Project where such improvements benefit both the Hotel and Restaurant and the City Facilities, if the benefits of such improvements to the City Facilities and Hotel can be reasonably ascertained, subject to the mutual approval of the City, UNT and OHM, the costs and expenses of such shared improvements shall be allocated to the Hotel and Restaurant and the City Facilities in amounts that reflect the respective benefits to each; and

13.2.2 Where the shared benefits to the City Facilities and Hotel of costs and expenses cannot be reasonably ascertained, the costs and expenses of such shared improvements shall be allocated between the Hotel and City Facilities on a fifty-fifty basis.

13.3 **Monthly Draw Requests.** OHM's requests for payments that are due and payable on contracts with the Contractors for the City Facilities, shall be made by OHM in written draw requests given monthly by OHM to the City during the term of this Agreement. Each such draw request shall include documentation of all costs and expenses in reasonably sufficient detail to permit the City to determine the appropriateness of such reimbursement payment and, with respect to draw requests during the Period of construction of the City Facilities, shall include a certification by the Project Architect of the status of completion of the City Facilities in accordance with the Construction Plans, and a partial release of mechanic's liens from the General Contractor with respect to all portions of the Project for which payment to the General Contractor has been made. The City shall pay the amounts set forth in such draw requests to, or as directed by, OHM within thirty (30) days after receipt of each such draw request.

13.4 **City Payments.** In any instance in which this Agreement provides that the City shall make payments to or at the direction of OHM within thirty (30) days of receipt of an invoice, draw request or the like, the City shall endeavor to make such payment within forty-five (45) days or such other Phase less than forty-five (45) days to the extent reasonably possible in light of the City's procedural requirements, but in all events such payments shall be made within no more than forty-five (45) days after the City's receipt of the applicable documentation.

**ARTICLE XIV**

**MISCELLANEOUS**

14.1 **Naming Rights.** The City has the exclusive authority, control and rights in selecting the name of the Convention Center as a whole or for any portion thereof.

14.2 **Signage on Hotel.** OHM/OHPD will attempt to include a reference in the Hotel signage in form and design acceptable to UNT, indicating “University of North Texas,” but the Parties understand and acknowledge that such signage shall be at the discretion of the Hotel Franchisor pursuant to any Approved Franchise. The Parties agree that the name of the Hotel shall be designed to take advance of the sales and marketing recognition in the franchise reservation system, Global Distribution System.

14.3 **Coordination with UNT College of Merchandising, Hospitality and Tourism.** OHM will coordinate with UNT for hospitality sponsorship programs for the benefit of UNT College of Merchandising, Hospitality and Tourism students and shall provide for and support such University programs “hands on” participation in hospitality management of the Property with a designated room for seminars and other elements as set forth on Exhibit “h” attached hereto and made a part hereof for all purposes.

14.4 **Standard of Care.** In performing its services hereunder with respect to development and construction of the Project, OHM makes no representations or warranties, express or implied, regarding the sufficiency of any design, plans or drawings prepared by others, but agrees to work with such persons to correct such designs, plans or drawings with such corrections to be made at no expense to UNT and at no additional expense to the City if and to the extent such corrections are not required due to the fault of the City, or its employees, agents, or other contractors or consultants. Any responsibility of OHM hereunder for development and construction of the City Facilities shall be for services directly performed by it; shall be limited solely to deficiencies that are directly attributable to OHM’s failure to exercise the reasonable care usually exercised by individuals and firms providing similar services; and in no event shall OHM be liable for defects in materials or workmanship in the City Facilities. OHM shall use reasonable good faith to protect the economic interests of the City and UNT with respect to design, development and construction of the Project. Upon termination of the OHPD-UNT Land Lease or earlier termination of the Project, OHPD and OHM, as applicable, shall assign (i) to UNT all warranties from the Contractors and any and all suppliers of goods and/or services to the Hotel (for OHPD to use in connection with its obligations to maintain and repair the Hotel as the OHPD thereof), and (ii) to the City all warranties from the Contractors and any and all suppliers of goods and/or services to the City Facilities. OHPD and OHM shall cooperate fully with the City and UNT in pursuing such warranties, including without limitation, providing copies of documentation needed to support such claim.

14.5 **Contractors, Specialists and Consultants.** OHPD and OHM shall use reasonable care to ensure that all contractors and professionals selected in connection with the design and construction of the Project shall be highly qualified to do the work they are engaged to perform, and OHPD and OHM shall make reasonable inquiries as to such persons’ background, experience and reputation to assure they are well qualified to undertake such work.

14.6 **Operation and Maintenance of the Hotel.** OHPD shall continuously operate and maintain the Hotel in an Upscale Manner for the term of the City-UNT Land Lease. OHPD's obligation to operate and maintain the Hotel in an Upscale Manner shall survive the expiration of this Agreement and shall be in effect throughout the primary term and any extension of the OHPD-UNT Land Lease pursuant to the terms of the OHPD-UNT Land Lease.

14.7 **Assignment.** The Parties recognize that UNT and the City have selected OHPD because of its unique abilities to develop the Project, therefore OHPD shall have the right, with the prior written consent of UNT and the City which shall not be unreasonably withheld, to assign its rights and obligations under this Agreement to an Affiliate. For purposes of this Agreement, "Affiliate" shall mean, with respect to any Person, (a) each Person that, directly or indirectly, owns or controls, whether beneficially, or as a trustee, guardian or other fiduciary, ten percent (10%) or more of the capital stock having ordinary voting power in the election of directors of such Person, (b) each Person that controls, is controlled by or is under common control with such Person, and (c) in the case of individuals, the immediate family members, spouses and lineal descendants of individuals who are Affiliates of the Person. For purpose of this definition, "control" of a Person shall mean the possession, directly or indirectly, of the power to direct or cause the direction of its management or policies, whether through the ownership of voting shares or interests, by contract, by virtue of being an executive officer or a director or otherwise. A permitted assignment by any Party of its interests in this Agreement shall not relieve the assigning Party from its obligations under this Agreement unless the nonassigning Parties shall expressly consent in writing to any such release. Any assignee of any Party's rights under this Agreement, as a condition of such assignment, shall execute an assumption of the assigning Party's duties and obligations under this Agreement, such assumption to be in form reasonably acceptable to the other Parties to this Agreement.

14.8 **Brokers.** Each party represents to the other party that it has not employed or retained any broker or finder in connection with the lease of any property and/or transaction contemplated hereby.

14.9 **Conflicts.** In the event any one or more of the provisions contained in this Agreement conflict with any one or more of the provisions contained in any one or more of the Related Agreements, the provision(s) of the specific Related Agreement(s) shall control.

14.10 **Counterparts.** This Agreement may be executed in counterparts. Each of the counterparts shall be deemed an original instrument, but all of the counterparts shall constitute one and the same instrument.

14.11 **Entire Agreement.** This Agreement and the agreements described herein constitute the entire agreement among the Parties with respect to the transactions covered in this Agreement. There is no other collateral oral or written agreement among the Parties that in any manner relates to the subject matter of such agreements. This Agreement supersedes the Memorandum of Preliminary Understanding between the Parties dated January 11, 2012.

14.12 **University Liability.** The University does not assume and does not have nor is it subject to any liability or monetary obligation under this Agreement of any kind or in any amount or for any cause.

14.13 **City Liability.** This Agreement is not intended to and does not create or constitute a debt or financial obligation of the City except from the sources herein expressly provided. Any and all amounts payable by City hereunder are payable solely and exclusively from amounts provided in the City Financing Contribution and from the sources of such funds.

14.14 **Governing Law.** The validity of this Agreement and any of its terms and provisions, as well as the rights and duties of the Parties, shall be governed by the laws of the State of Texas; and venue for any action concerning this Agreement shall be in the State District Court of Denton County, Texas.

14.15 **General Provisions.**

14.15.1 **Contractor Failure.** OHM shall, subject to exhaustion of all applicable performance bonds, insurance policies and contractor or subcontractor funds, be solely responsible for malfeasance, neglect or failure of any Contractors or suppliers to meet their schedules for completion or to perform their duties and responsibilities under their respective agreements with respect to the FF&E for the City Facilities.

14.15.2 **Cancellation.** The City acknowledges that cancellation and return of FF&E for the City Facilities cannot be made except under terms and conditions acceptable to the manufacturer and/or vendor thereof, and that custom items of FF&E for the City Facilities are non-cancelable and non-returnable.

14.15.3 **No Warranty.** OHM shall use reasonable diligence in making recommendations regarding the procurement of FF&E for the City Facilities, but OHM extends no guarantees and makes no warranty, express or implied, of merchantability or fitness for a particular purpose or otherwise with respect to any of such FF&E for the City Facilities purchased hereunder. Claims made against such guarantees as may be offered by the manufacturers or vendors of FF&E for the City Facilities must be settled directly with the manufacturers or vendors. OHM shall assist and coordinate with the City, however, in the processing, prosecution and enforcement of such claims provided it incurs no additional costs, expenses or liability on account thereof. Where OHM has not previously paid for FF&E for the City Facilities which has been received by the City and, if prior to such payment, OHM determines that the goods are defective or otherwise do not conform to the contract with such supplier, OHM shall not pay for such FF&E for the City Facilities and shall make all necessary provisions, at the vendor's expense, for return of such FF&E for the City Facilities to the supplier.

14.15.4 **Risk of Loss.** Unless otherwise agreed to in writing, all FF&E for the City Facilities shall be shipped to the City Facilities or a warehouse arranged for by OHM on behalf of the City. OHM shall provide for all such FF&E for the City Facilities to be shipped "DDP (Denton, Texas, USA)" pre-paid.

14.15.5 **Overages.** The City hereby acknowledges that it is customary for manufacturers to ship additional quantities of certain types of FF&E (fabric, wallpaper, carpet, etc., commonly referred to as "attic stock") above and beyond the actual amount ordered. This is a common practice in the industry over which OHM has no control. The City agrees to accept

such overages and to pay for its share of the same; provided, however, in no event shall the City ever be liable for any costs in excess of the City Financing Contribution without the prior written approval of the City. All overages in FF&E for the City Facilities shall be the property of the City but shall be used exclusively by OHPD for the repair and maintenance of the City Facilities. Allowances for such overages shall be included in the FF&E Budget.

14.15.6 **OHPD Indemnity**. OHPD hereby indemnify and agrees to hold UNT and the City, and their respective officers, directors, members, agents and employees, harmless and defend from and against any and all loss, cost, liability, claim, demand, damage or expense (including, without limitation, reasonable attorneys, fees and litigation expenses) which any of the foregoing indemnitees may incur or sustain or which may be claimed or asserted against any of the foregoing on account of, in connection with, or arising from injuries, death, loss or damage to persons or property (including, without limitation, the Hotel) including any claim for payment or demand for payment caused by or in any way whatsoever arising out of, or resulting from (i) any negligence on the part of OHPD or its members, officers, directors, contractors, agents, and employees arising out of or resulting from this Agreement or any of the other agreements contemplated to be entered into with respect to the Project as described herein; (ii) any FF&E for the City Facilities that OHPD has purchased in the name of the City that does not substantially conform with the FF&E Specifications due to the negligence, carelessness or willful misconduct of OHPD, (iii) any material breach of any representation or warranty of OHPD herein contained, or (iv) any claim arising out of employment, non-employment or discharge of OHPD's employees or agents; provided, however, the City or UNT, as applicable, shall seek recovery first from any insurance proceeds which are made available with respect to the liabilities and losses described above, prior to seeking any recovery directly from OHPD. This indemnity shall survive the expiration or termination of this Agreement.

14.15.7 **OHM Indemnity**. OHM hereby indemnify and agrees to hold UNT and the City, and their respective officers, directors, members, agents and employees, harmless and defend from and against any and all loss, cost, liability, claim, demand, damage or expense (including, without limitation, reasonable attorneys, fees and litigation expenses) which any of the foregoing indemnitees may incur or sustain or which may be claimed or asserted against any of the foregoing on account of, in connection with, or arising from injuries, death, loss or damage to persons or property (including, without limitation, the Hotel) including any claim for payment or demand for payment caused by or in any way whatsoever arising out of, or resulting from (i) any negligence on the part of OHM or its members, officers, directors, contractors, agents, and employees arising out of or resulting from this Agreement or any of the other agreements contemplated to be entered into with respect to the Project as described herein; (ii) any FF&E for the City Facilities that OHM has purchased in the name of the City that does not substantially conform with the FF&E Specifications due to the negligence, carelessness or willful misconduct of OHPD, (iii) any material breach of any representation or warranty of OHPD herein contained, or (iv) any claim arising out of employment, non-employment or discharge of OHM's employees or agents; provided, however, the City or UNT, as applicable, shall seek recovery first from any insurance proceeds which are made available with respect to the liabilities and losses described above, prior to seeking any recovery directly from OHM. This indemnity shall survive the expiration or termination of this Agreement.

14.16 **Extensions of Deadlines.** The parties may agree in writing to reasonable extensions of any deadlines set forth in this Agreement; provided, however, that in no event shall any extension exceed one hundred eighty (180) days, unless agreed in writing by the Parties.

14.17 **Independence of Action.** It is understood and agreed by and among the Parties that in the design, construction and development of the Project and any of the related improvements described herein, and in the Parties' satisfaction of the terms and conditions of this Agreement, that each party is acting independently, and the City and UNT assumes no responsibility or liability to any third parties in connection to OHPD's obligations hereunder.

14.17.1 **No Third Party Beneficiaries.** The provisions of this Section 14.15 are solely for the benefit of the Parties hereto and are not intended to create or grant any rights, contractual or otherwise to any third person or entity.

14.17.2 **Survival.** The entirety of this Section 14.15 shall survive the termination of this Agreement.

14.18 **No Joint Venture.** It is acknowledged and agreed by and among the Parties that the terms hereof are not intended to, and shall not be deemed to, create any partnership or joint venture among the Parties. The past, present and future officers, elected officials, employees and agents of the City do not assume any responsibilities or liabilities to any third party in connection with the development, design, construction or operation of any of the improvements contemplated by this Agreement. In addition, OHPD and UNT acknowledge and agree that there shall be no recourse against any of the aforesaid parties, none of whom will incur any liability in respect to any claims based upon or relating to the Agreement.

14.19 **Notices.** All notices or other communications required or desired to be given with respect to this Agreement shall be in writing and shall be delivered by hand or by courier service, sent by registered or certified mail, return receipt requested, bearing adequate postage, or sent by nationally recognized overnight delivery service (such as Federal Express or UPS), or sent by facsimile, and properly addressed as provided below. Each notice given by mail shall be deemed to be given by the sender when received or refused by the Party intended to receive such notice; each notice delivered by hand or by courier service shall be deemed to have been given and received when actually received by the Party intended to receive such notice or when such Party refuses to accept delivery of such notice; each notice given by overnight delivery service shall be deemed to have been given and received on the next business day following deposit thereof with the overnight delivery company; and each notice given by facsimile shall be deemed to have been given and received upon transmission, provided confirmation of receipt is received back by the sending facsimile prior to 5:00 p.m. local time at the sending location, or on the next business day if after 5:00 p.m. local time at the sending location. Upon a change of address by either Party, such Party shall give written notice of such change to the other parties in accordance with the foregoing. Inability to deliver because of changed address or status of which no notice was given shall be deemed to be receipt of the notice sent, effective as of the date such notice would otherwise have been received.

If intended for the City:

Attn: City Manager  
City of Denton, Texas  
215 E. McKinney  
Denton, Texas 76201  
Telephone: (940) 349-8200  
Facsimile: (940) 349-8596

With Copies to:

Attn: City Attorney  
City of Denton  
215 E. McKinney  
Denton, Texas 76201  
Telephone: (940) 349-8200  
Facsimile: (940) 382-7923

If intended for OHPD:

OHPD  
Tim O'Reilly  
2808 S. Ingram Mill, Bldg. A-104  
Springfield, MO 65804  
Telephone: (417) 851-8700  
Facsimile: (417) 890-1778

With Copies to:

Craig Preston, Esq.  
O'Reilly, Jensen & Preston, LLC  
2808 S. Ingram Mill Road, Bldg A-104  
Springfield, MO 65804  
Telephone: (417) 890-1555  
Facsimile: (417) 890-1778

If intended for UNT:

University of North Texas  
Denton, Tx xxxxx  
Telephone: (xxx) xxx-xxxx  
Facsimile: (417) xxx-xxxx

With Copies to:

14.20 **Severability.** In the event any section, subsection, paragraph, sentence, phrase or word herein is held invalid, illegal or unconstitutional, the balance of this Agreement, shall be enforceable and shall be enforced as if the Parties intended at all times to delete said invalid section, subsection, paragraph, sentence, phrase or word; and such invalid, illegal, unconstitutional or unenforceable section, subsection, paragraph, sentence, phrase or word shall be substituted by a section, subsection, paragraph, sentence, phrase or word as near in substance thereto as may be valid, legal, constitutional and enforceable.

14.21 **Time.** Time is of the essence for the performance of any obligation under this Agreement or the Related Agreements. If any date or Phase for performance provided for herein ends on a Saturday, Sunday, or legal holiday of the City of Denton, Texas, then the applicable date or Phase will be extended to the first day following such Saturday, Sunday, or legal holiday.

14.22 **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall comprise but a single document.

SIGNATURE PAGE FOLLOWS



EXECUTED on this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

CITY OF DENTON, TEXAS

\_\_\_\_\_

\_\_\_\_\_

O'REILLY HOTEL PARTNERS –  
DENTON, LLC  
A Missouri limited liability company

By: \_\_\_\_\_  
Tim O'Reilly

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

Its: Manager

Its: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_  
JENNIFER WALTERS, CITY SECRETARY

UNIVERSITY OF NORTH TEXAS

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

O'REILLY HOSPITALITY MANAGEMENT, LLC

By: \_\_\_\_\_  
Tim O'Reilly

Its: Chief Executive Officer & Manager

List of Exhibits:

Exhibit "A" – City-UNT Land Lease

Exhibit "B" – City-OHPD Convention Center Sublease

Exhibit "C" – OHPD-UNT Land Lease

Exhibit "D" – Preliminary Site Plan

Exhibit "E" – Professional Services Agreement – CMA

Exhibit "F" – Professional Services Agreement - Architect

Exhibit "G" – Contractor Payment Guidelines

Exhibit "H" – Hospitality Management Guidelines

EXHIBIT "A"  
CITY-UNT LAND LEASE

EXHIBIT "B"

CITY-OHPD CONVENTION CENTER SUBLEASE

EXHIBIT "C"

OHPD-UNT LAND LEASE

EXHIBIT "D"  
PRELIMINARY SITE PLAN

EXHIBIT "E"

PROFESSIONAL SERVICES AGREEMENT – CMA

EXHIBIT "F"

PROFESSIONAL SERVICES AGREEMENT - ARCHITECT



EXHIBIT "G"

CONTRACTOR PAYMENT GUIDELINES

EXHIBIT “H”

HOSPITALITY MANAGEMENT GUIDELINES

University  
of  
North Texas



**Site Plan**

1" = 60'  
Landscaped Area: 3.07 acres (133,715 s.f.) 25%  
592 parking spaces  
13.3 acres



preliminary design for  
**Embassy Suites Hotel**  
City of Denton Convention Center  
Denton, Texas

sheet

**1**

11-8-13

EXHIBIT "C"

CITY-UNT LAND LEASE

THIS CITY-UNT LAND LEASE (the "Lease") is made as of the \_\_\_ day of \_\_\_\_\_, 2013 (the "Commencement Date"), by and between University of North Texas, an institution of higher education of the State of Texas ("UNT") and the City of Denton, Texas, a municipal corporation and political subdivision of the State of Texas ("City"). UNT and City sometimes are referred to herein collectively as the "Parties" or singularly as a "Party".

RECITALS

A. UNT, City, O'Reilly Hotel Partners Denton, LLC, a Missouri limited liability company ("OHPD"), and O'Reilly Hospitality Management, LLC, a Missouri limited liability company ("OHM") have entered into that certain Master Development Agreement (the "Master Agreement"), dated effective \_\_\_\_\_, 2013, providing for, among other things, the construction and operation by OHPD of a full-service Upscale Hotel and Restaurant on the Hotel Site, as well as the construction by City, with OHM acting as Construction Manager Agent and Architect on behalf of City, of an Upscale Convention Center facility and related improvements, including parking areas, on the Convention Center Site containing meeting rooms, exposition center and one (1) large ballroom sufficient for a banquet-style event adjacent to the Hotel Site.

B. Pursuant to the terms of the Master Agreement, UNT has agreed to lease the Hotel Site to OHPD in accordance with the terms and conditions of the OHPD-UNT Land Lease which document has been executed by UNT and OHPD of even date herewith.

C. Pursuant to the terms of the Master Agreement, UNT has agreed to lease the Convention Center Site to City, and City has agreed to take and lease the same in accordance with the terms and conditions set forth in this Lease.

D. Pursuant to the terms of the Master Agreement, City has agreed to sublease the Convention Center Site to OHPD in accordance with the terms of the Sublease, and UNT has herein consented and agreed to the Sublease.

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, UNT and City agree as follows:

**ARTICLE I**

**DEFINITIONS**

1.1 Certain Definitions. Any capitalized terms used in this Lease which are not defined in this Article or otherwise in this Lease shall have the meanings assigned to the same in the Master Agreement.

1.1.1 "Affiliate" shall mean, with respect to any Person: (a) each Person that, directly or indirectly, owns or controls, whether beneficially, or as a trustee, guardian or other fiduciary, ten percent (10%) or more of the capital stock having ordinary voting

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power in the election of directors of such Person; (b) each Person that controls, is controlled by or is under common control with such Person; and (c) in the case of individuals, the immediate family members, spouses and lineal descendants of individuals who are Affiliates of the Person. For purpose of this definition, “control” of a Person shall mean the possession, directly or indirectly, of the power to direct or cause the direction of its management or policies, whether through the ownership of voting shares or interests, by contract, by virtue of being an executive officer or a director or otherwise.

1.1.2 “Applicable Law” shall mean all laws or statutes, rules or regulations, and any amendments thereto, of the State or the United States by which the City and its powers, securities, operations and procedures are, or may be governed or from which its powers may be derived, including all City codes, ordinances and development standards. All City codes, ordinances, rules and development standards shall be applicable to this agreement and the Project, irrespective of whether such codes, ordinances, rules and development standards would otherwise normally apply.

1.1.3 “Certificates of Obligation” shall mean the City’s Certificates of Obligation issued to fund the City Financing Contribution for the construction of the Convention Center.

1.1.4 “City Facilities” means the Convention Center and related automobile parking spaces as determined to be required by the City’s development standards.

1.1.5 “City Facilities FF&E” shall mean those items of furniture; fixtures and equipment specified in the City Facilities FF&E Specifications purchased for the City Facilities in accordance with the terms of the Master Agreement.

1.1.6 “City Financing” Contribution means the net proceeds of the City’s issuance of Certificates of Obligation, the principal amount of which shall be determined by the City based upon the Total Convention Center Costs; provided that the City shall not be obligated to contribute more than \$25,000,000 to the City Facilities (total, including design and construction costs) to the City Facilities. The City may contribute additional funds or resources to the City Facilities, pursuant to the Master Agreement, but the City shall not contribute more than \$25,000,000 in debt financing for the total costs of the City Facilities.

1.1.7 “City Repayment Period” shall be the period running from the Commencement Date through the earlier to occur of: (a) twenty-five (25) years after the issuance of the Certificates of Obligations by City in order to fund the City Financing Contribution; or (b) payment in full of the Certificates of Obligation.

1.1.8 “City-UNT Base Rent” shall mean the lease payments for the Leased Premises provided in Article III below.

1.1.9 “Commencement Date” shall mean the date first set forth above in the introductory paragraph of this Lease.

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1.1.10 “Convention Center Site” shall mean the tract of land situated in Denton, Texas, as described in Exhibit “A” attached hereto and made a part hereof for all purposes.

1.1.11 “Convention Center” means an “upscale” convention center facility of approximately 100,000 square feet (but no less than 90,000 square feet) in size under roof and constructed upon the Convention Center Site, containing meeting rooms, and one (1) large ballroom sufficient to lawfully accommodate approximately 2,000 people for a banquet-style event, and related improvements, including landscaping, the required parking spaces as determined by the City’s development standards, and required infrastructure.

1.1.12 “Environmental Laws” shall refer to and include, without limitation, all Federal, State, City, and local statutes, laws, ordinances, rules and regulations, now or hereafter in effect, and as amended from time to time, that are intended for the protection of the environment, or that govern, control, restrict, or regulate the use, handling, treatment, storage, discharge, disposal, or transportation of Hazardous Materials. Environmental Laws specifically include but are not limited to, the National Environmental Policy Act, the Comprehensive Environmental Response, Compensation and Liability Act, the Resource Conservation and Recovery Act, the Hazardous Materials Act, the Toxic Substances Control Act, the Clean Water Act, the Clean Air Act, the Superfund Authorization and Recovery Act, the Occupational Safety and Health Administration Hazard Communication Standards, the Texas Hazardous Materials Act, and the Texas Water Quality Control Act.

1.1.13 “Event of Default” shall have the meaning set forth in Section 9.1 below.

1.1.14 “Force Majeure” means any contingency or cause beyond the reasonable control of a party including, without limitation, acts of God or the public enemy, acts of terrorism, war, riot, civil commotion, insurrection, government or defacto governmental action (unless caused by acts or omissions of the party), fires, explosions, rain or other weather delays, floods, strikes, slowdowns or work stoppages.

1.1.15 “Hazardous Materials” shall have the meaning set forth in Subsection 7.8.3 below.

1.1.16 “Hotel” means a Full-Service Hotel (i) constructed and operated pursuant to and in accordance with the standards of an Approved Franchise and pursuant to the terms of the Master Agreement and any related agreements, (ii) constructed upon the Hotel Site in accordance with the Approved Plans, and (iii) consisting of at least nine (9) stories and containing a minimum of two-hundred seventy-five (275) guestrooms, or such other number as is agreed to by the Parties to the Master Agreement, and a restaurant, recreational amenities, adequate on-site parking, and other related amenities and space for providing the services customarily found in a full-service upscale hotel, open to the public and serving the Convention Center, adjacent business community, the UNT community and citizens of the City.

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1.1.17 “Impositions” shall mean taxes including real or personal property taxes and ad valorem taxes assessed against the Improved Leased Premises or City’s interest therein, if any, during the Term, special assessments, levies and liens for any construction performed by or at the direction of City (other than liens, if any, which are payable by UNT pursuant to written agreements executed by UNT), assessed and becoming due during the Term and that are levied or assessed against the Improved Leased Premises.

1.1.18 “Improved Leased Premises” shall mean the Leased Premises together with any Improvements.

1.1.19 “Improvements” shall mean all: (a) buildings, structures, equipment, improvements and fixtures, including the Convention Center, installed, constructed, connected to or situated on the Convention Center Site after the Commencement Date; (b) Related Infrastructure from time to time installed, constructed, connected to or situated on the Convention Center Site after the Commencement Date; and (c) landscaping and parking facilities installed or constructed on the Convention Center Site after the Commencement Date.

1.1.20 “Lease” shall mean this Lease by and between UNT, as lessor, and City, as lessee, covering the Leased Premises.

1.1.21 “Lease Year” shall mean each twelve (12) calendar month period commencing on October 1st and expiring on September 30th during the Term, except for: (a) the first Lease Year of the Term which shall commence on the Operational Date and end on the immediately following September 30th; and (b) the final Sublease Year of the Term which shall commence on October 1st following the expiration of the immediately preceding Lease Year and shall continue until the expiration date of this Lease.

1.1.22 “Leased Premises” shall mean the Convention Center Site with all existing improvements, if any, located on the Convention Center Site as of the Commencement Date, together with any and all non-exclusive easements over and across other properties of UNT necessary for access to the Convention Center Site or to ancillary parking facilities for the Convention Center Site provided for in this Lease and/or necessary to provide utilities to the Convention Center Site.

1.1.23 “Master Agreement” shall have the meaning set forth in the Recitals.

1.1.24 “Operational Date” shall mean the date when the Convention Center is substantially complete and a Certificate of Occupancy has been issued by City and received by OHPD.

1.1.25 “OHPD” shall mean in all instances O’Reilly Hotel Partners Denton, LLC, a Missouri limited liability company, and shall include any assignee or successor of its rights and obligations under the Sublease.

1.1.26 “Person” shall mean any person or entity.

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1.1.27 “Project Site” shall mean the Hotel Site and the Convention Center Site, collectively.

1.1.28 “Related Infrastructure” shall mean any automobile parking areas as determined to be required by the City’s development standards, water or sewer facilities, plazas, landscaped areas, pedestrian circulation areas or other construction on the Convention Center Site in connection with the use or operation of the Convention Center.

1.1.29 “Restaurant” or “Restaurant and Bar” shall mean a Houlihan’s Restaurant and Bar, or another restaurant of similar or higher quality and style, that will be located on the Hotel Site as depicted on the Site Plan for the Hotel and Restaurant.

1.1.30 “Site Plan” means an architectural plan, landscape architecture document, and a detailed engineering drawing of the proposed City Facilities, including building footprints, travelways, parking, drainage facilities, sanitary sewer lines, water lines, trails, lighting, and landscaping elements for the City Facilities.

1.1.31 “Sublease” shall mean that certain City-OHPD Convention Center Sublease between City and OHPD, dated the Commencement Date and covering the City Facilities on the terms set forth therein, as required pursuant to the terms of the Master Agreement.

1.1.32 “Term” shall mean the Primary Term and any Extended Term(s) as provided in Section 2.2 below.

1.1.33 “Upscale” shall mean comparable to or better than the Upscale Condition required for the Hotel pursuant to the Master Agreement.

**ARTICLE II**

**GRANT AND TERM OF LEASE**

2.1 Leasing Clause. Upon and subject to the terms and provisions contained herein, UNT does hereby lease, demise and let unto City, and City does hereby take and lease from UNT, the Leased Premises, to have and to hold the Leased Premises for the Term.

2.2 Term. Unless earlier terminated as provided herein, the initial term of this Lease shall commence on the Commencement Date and shall continue to the Operational Date (the “Initial Term”), and the primary term of this Lease shall commence on the Operational Date and continue for a term of fifty (50) years from the Operational Date (“Primary Term”), with two (2) ten (10)-year automatic renewal options (the “Extended Term(s)”) thereafter, which will automatically extend the Primary Term for such additional ten (10)-year periods without any act of the Parties, unless such Extended Terms are terminated by City in writing no less than one hundred eighty (180) days before the expiration of the Primary Term or the initial Extended Term, as applicable or unless earlier terminated in accordance with the terms hereof.

2.3 Possession. UNT shall deliver possession of the Leased Premises to City promptly upon the execution of this Lease.



**ARTICLE III**

**LEASE PAYMENT**

3.1 City-UNT Base Rent. During the Initial Term and the first twenty-five (25) Lease Years of the Primary Term, City-UNT Base Rent shall be \$1.00 per annum and shall be paid by City in advance commencing on the Commencement Date and continuing regularly and annually thereafter on or before each anniversary of the Commencement Date until the expiration of the twenty-fifth (25<sup>th</sup>) Lease Year of the Primary Term. After the expiration of the twenty-fifth (25<sup>th</sup>) Lease Year of the Primary Term, City-UNT Base Rent shall be paid by City in advance commencing on January 1<sup>st</sup> of the twenty-sixth (26<sup>th</sup>) Lease Year of the Primary Term and continuing regularly and annually thereafter on or before January 1<sup>st</sup> of each successive Lease Year until the expiration or earlier termination of the Lease in the following amounts:

<b>LEASE YEARS AFTER INITIAL TERM</b>	<b>CITY-UNT BASE RENT</b>
26-35	\$175,000 per annum
36-45	\$177,975 per annum
46-55	\$181,000 per annum
56-65	\$184,077 per annum
66-70	\$187,206 per annum

City-UNT Base Rent shall be delivered to UNT at the address set forth in Section 13.5.

3.2 UNT's Audit Right. Subject to the terms of this Section, UNT, at UNT's sole expense, shall have the right no more than once per Lease Year to audit the books and records in City's possession regarding the financial operations of the Improved Leased Premises. City shall allow UNT and UNT's authorized auditors reasonable access to the books and records in the City's possession regarding the financial operations of the Improved Leased Premises for the purpose of performing such audits; provided that UNT agrees: (a) that any information disclosed to it or its agents in connection therewith shall not be disclosed to any other person or entity (except as required by Applicable Law or by court order); (b) the information disclosed to UNT in any such audit shall be used solely for the purposes stated in this Section; (c) UNT's access to such records is subject to UNT's giving City reasonable prior notice of its intent to audit such records and to City's right to restrict such access to reasonable business hours and such periods of time as use of such records is not necessary for City's own purposes; (d) all audits shall be solely at the expense of UNT and City shall not incur or be responsible for any costs or expenses in connection with the audits; and (e) City shall have no liability or responsibility to UNT for the accuracy or veracity of the information regarding the financial operations of the Improved Leased Premises provided to City by OHPD, OHM or their respective successors or assign or any subsequent subtenant or management company.

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3.3 Late Payment Charge. Other remedies for nonpayment notwithstanding, if any installment of City-UNT Base Rent is not received by UNT on or before the tenth (10th) day after the date on which such payment is due, City agrees to pay UNT a late payment charge in the amount of five percent (5%) of such past due amount in addition to all other amounts then owed under this Lease.

3.4 Holding Over. If City fails to surrender the Improved Leased Premises at the expiration or termination of the Term, occupancy of the Improved Leased Premises after the termination or expiration of this Lease shall be that of a tenancy at sufferance. City's occupancy of the Improved Leased Premises during the holdover shall be subject to all the terms and provisions of the Lease, and City shall pay to UNT an amount (on a per month basis without reduction for partial months during the holdover) equal to one-twelfth (1/12) of one hundred fifty percent (150%) of one hundred fifty thousand dollars (\$150,000.00). No holdover by City or payment by City after the expiration or termination of this Lease shall be construed to extend the Term or prevent UNT from immediate recovery of possession of the Improved Leased Premises by summary proceedings or otherwise. In addition to the payment of the amounts provided above, if UNT is unable to deliver possession of the Improved Leased Premises to a new tenant, or to perform improvements for a new tenant, as a result of City's holdover and City fails to vacate the Improved Leased Premises within thirty (30) days after UNT notifies City in writing of UNT's inability to deliver possession, or perform improvements, City, to the maximum extent allowed by law, shall be liable to UNT for all actual damages that UNT suffers from any holdover.

## **ARTICLE IV**

### **IMPOSITION AND UTILITIES**

4.1 Payment of Impositions. City shall pay, or cause to be paid, all Impositions before the same become delinquent, and City shall furnish to UNT receipts or copies thereof showing timely payment of such Impositions. City shall be entitled to pay any Impositions in installments as and to the extent the same may be permitted by the applicable taxing authority or claimant without additional penalty or interest. UNT agrees to cooperate with City in seeking the delivery of all notices of Impositions to City directly from the applicable taxing authorities. UNT shall promptly deliver all notices of Impositions to City that are delivered to UNT. UNT shall retain the right to pay any and all Impositions related to the Leased Premises that are not paid before the same become delinquent or subject to interest or penalties; provided however, UNT agrees not to pay any such Impositions if the City is contesting the same pursuant to Section 4.2 below. If UNT pays any such Impositions, City shall reimburse UNT within five (5) business days after written notice thereof from UNT.

4.2 Contest of Impositions. If the levy of any of the Impositions shall be deemed by City to be improper, illegal or excessive, or if City desires in good faith to contest the Impositions for any other reason, City may after first notifying UNT in writing, at least three (3) days before the date of delinquency, at City's sole cost and expense, dispute and contest the same and file all such protests or other instruments and institute or prosecute all such proceedings for the purpose of contest as City shall deem necessary and appropriate. Subject to the foregoing, any item of contested Impositions need not be paid until the earlier of: (a) the time it is finally

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adjudged to be valid; or (b) such time as the entity assessing the Impositions could commence foreclosure proceedings or similar action against the Leased Premises or UNT's interest therein, it being agreed that City may not take any action or fail to pay any Impositions if such action or failure would result in the commencement of any such foreclosure procedures or similar action. City shall be entitled to any refund of any Impositions (and the penalties or interest thereon) refunded by the levying authority pursuant to any such proceeding or contest, if such Impositions shall have been either (a) paid directly by City, or (b) paid directly by UNT, and UNT was reimbursed therefor by City.

4.3 Standing. If City determines that it lacks standing to contest any Impositions imposed by a governmental authority or to obtain an extended payment period for any Impositions, UNT (to the maximum extent allowed by law) and at City's sole cost and expense shall join in such contest or otherwise provide City with sufficient authority to obtain such standing.

4.4 Utilities. City shall pay, or cause to be paid, all bills for utility service provided to the Improved Leased Premises after the Commencement Date.

**ARTICLE V**

**IMPROVEMENTS**

5.1 Convention Center and Related Infrastructure. UNT agrees that City shall have the right to construct or cause the construction of the Convention Center and Related Infrastructure on the Convention Center Site in accordance with the terms of the Master Agreement, and City agrees to construct or to cause the construction of the same in accordance with the terms of the Master Agreement. UNT agrees to join with City in the execution of such applications for permits and licenses from any governmental authority as may be reasonably necessary or appropriate in connection with the construction of the Convention Center and Related Infrastructure or to otherwise effectuate the intents and purposes of this Lease. At all times during the Term of this Lease, legal and beneficial title to the Improvements, including the Convention Center, the Related Infrastructure, and the City Alterations (defined below) shall be vested solely in City, and City alone shall be entitled to all attributes of ownership of the same including, without limitation, the right to claim depreciation or cost recovery deductions, if applicable. Upon expiration or termination of the Lease, the Improvements, including the Convention Center, the Related Infrastructure, and the City Alterations shall become the sole property of UNT and must be surrendered to UNT by City at no cost to UNT.

5.2 City Alterations. After the completion of the construction of the Convention Center and Related Infrastructure, City shall not make or allow to be made any alterations, physical additions, or improvements (collectively, the "City Alterations") to the Improved Leased Premises without complying with all local, state, and federal ordinances, laws, statutes and without first obtaining the written consent of UNT, which consent shall not be unreasonably withheld; provided, however, that consent shall not be required for: (a) the initial construction of the Convention Center and Related Infrastructure on the Convention Center Site in accordance with the terms of the Master Agreement; (b) City Alterations to the Convention Center or Related Infrastructure that will not affect the exterior appearance, the systems, or the structural

elements thereof; or (c) any maintenance, repairs, or replacements of the Improvements. City shall not interfere with or disrupt the structural integrity of the Convention Center during the construction of any City Alterations. Prior to commencing any City Alteration which requires UNT's consent, City shall provide UNT with a copy of the plans and specifications for such City Alterations. For any City Alteration which does not require UNT's consent, City shall provide UNT with a copy of the as-built drawings and specifications for such City Alterations after the completion of the same.

## **ARTICLE VI**

### **USE OF PREMISES**

6.1 Use. City shall use the Improved Leased Premises during the Term solely for the construction and operation of an Upscale Convention Center facility, parking facility, and ancillary uses for holding conventions, meetings, and exhibits for the benefit of UNT, City and the general public. City must, throughout the Term of this Lease, continuously maintain the Convention Center that will be built on the Convention Center Site.

6.2 Compliance with Laws. City agrees not to use the Improved Leased Premises for any use or purpose in violation of any valid Applicable Law, including, without limitation, the Americans with Disabilities Act of 1990, as amended; provided, however, there shall be no violation by City of this provision: (a) so long as City shall, in good faith within a reasonable time after City acquires actual knowledge thereof, by appropriate proceedings and with due diligence, contest the alleged violation or the validity or applicability of the law, regulation, or ordinance; (b) until City has had a reasonable time after a final adjudication that such law, regulation or ordinance, in fact, has been violated to address any such violation; and (c) so long as neither UNT nor any portion of the Leased Premises, during the period of such contest, will be subject to any possible liability, loss, penalty or forfeiture.

6.3 Maintenance; Casualty.

6.3.1 UNT is not required to make any improvements, replacements or repairs of any kind or character to the Improved Leased Premises during the Term.

6.3.2 If the Improved Leased Premises fall into a state of disrepair that has a substantial, detrimental effect to the business activity, aesthetic appeal, functionality, or long term structural or mechanical viability of the Improved Leased Premises, and same has not been remedied within sixty (60) days after City's receipt of written notice from UNT thereof or within such other period of time agreed to by UNT and City or if the condition is not capable of being remedied in sixty (60) days and City has not commenced remedying the same within sixty (60) days after City's receipt of written notice from UNT and thereafter diligently pursued completion, UNT shall have the right to make such reasonable repairs as it deems necessary, and shall provide all receipts, plans and documents associated with such repairs to City who shall reimburse UNT for the reasonable costs of such repairs, within a reasonable timeframe not to exceed thirty (30) days. UNT shall have the right to periodically inspect the Improved Leased Premises in accordance with Section 13.1 below.

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6.3.3 City shall, at its sole cost and expense, maintain the entirety of the Improved Leased Premises in good condition and the Convention Center in an Upscale condition at all times throughout the Term, reasonable wear and tear, obsolescence, loss by casualty (except to the extent City is required under this Lease to repair casualty damage) excepted. Without limiting the foregoing, City must make all repairs and replacements necessary to keep the Improved Leased Premises in the required condition. Upon termination of this Lease, City shall deliver to UNT the Improved Leased Premises in the condition existing at the Operational Date reasonable wear and tear, obsolescence, and loss by casualty (except to the extent City is required under this Lease to repair casualty damage) excepted.

6.3.4 To the extent any of the components of the Convention Center that City is obligated to maintain and repair hereunder are covered by a warranty provided by the manufacturer thereof, City agrees to take all such actions, including the manufacturer's required and recommended scheduled maintenance, necessary to maintain the warranty without impairment. Furthermore, regardless of whether any such component is covered by a manufacturer's warranty, to the extent the manufacturer of any component of the Convention Center that City is obligated to repair under this Lease recommends regularly scheduled maintenance for the component, City shall be obligated to comply with the manufacturer's recommendations. Specifically included in the foregoing obligation is the obligation of City to perform all scheduled maintenance recommended by the manufacturers of the HVAC system servicing any aspect of the Convention Center at the times recommended by such manufacturer.

6.3.5 With regard to casualty damage to the Improvements, provided that City receives the proceeds of the commercial property insurance which City is required to maintain pursuant to Section 7.3 below, City shall, as soon as reasonably practicable, but in no event later than ninety (90) days after the date of a casualty, commence the preparation of the plans for and work of repair, reconstruction or replacement of the damaged Improvements and proceed with all due diligence until completion. Notwithstanding the foregoing sentence, if the casualty occurs during the last five (5) Lease Years of the Term and the extent of damage to the Improvements is greater than fifty percent (50%) (in City's reasonable business judgment based on objective information and criteria) of the then replacement value thereof (exclusive of the land value of the Convention Center Site), City shall have the option, within ninety (90) days from the date of the occurrence of such casualty damage, to terminate this Lease by giving written notice of such termination to UNT within said 90-day period, in which event: (a) this Lease shall terminate as of the termination date specified in such notice to UNT, which shall not be less than thirty (30) days after the date of such notice; (b) City shall no longer be required to pay City-UNT Base Rent for any period subsequent to such termination date; (c) City shall not be required to repair the damage; (d) all insurance proceeds available as a result of such damage shall be paid to and be the property of UNT; and (e) the Parties shall have no further liability of obligations one to the other except for liabilities incurred or accruing prior to such termination date or as may be expressly provided for herein.

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6.4 Operational Rights and Restrictions; Revenue. Subject to the provisions and conditions of this Lease and the Master Agreement, City shall have full and exclusive control of the development, design, construction, management and operation of and revenues from the Convention Center, including all booking, room rental, food and beverage and catering rights; provided, however, that City shall not, without UNT's advance written consent, assign this Lease or enter into any subleases, management agreements or operating agreements, except as provided in Article VIII and in the: (a) the Sublease and any other agreements contemplated by the Master Agreement; or (b) the OHM Management Agreement (as described in the Sublease) or any Replacement Management Agreement (as described in the Sublease) providing for the operation, management, and maintenance of the Improved Leased Premises, none of which shall require UNT's prior written consent.

6.5 Signs. No signs, advertisements, logos, or notices of any type may be erected, painted, or placed in, on or about the Improved Leased Premises, except those of such color, size, style, and in such places as are first approved according to the process set forth in the Master Agreement and which are in compliance with the applicable City code, ordinances and development standards. City shall not remove any existing signage on the Project Site without the prior written consent of UNT, which consent shall not be unreasonably withheld.

6.6 Off-Site Parking. UNT shall allow City, at no additional cost to City, non-exclusive use of the ancillary parking facility as shown on the Site Plan on an overflow basis (provided that the parking on the Convention Center Site has already been fully utilized). UNT shall not be responsible for any liability related to such use of the ancillary parking facility by City or its patrons. UNT shall, at UNT's sole cost and expense, construct and maintain a connector road between the Convention Center Site and the ancillary parking facility in a location and using materials selected by UNT, in UNT's sole discretion. UNT hereby grants to City a non-exclusive easement over and across the connector road for purposes of vehicular and pedestrian ingress and egress between the Convention Center Site and the ancillary parking facility. UNT shall retain exclusive use and City shall not be entitled to utilize any portion of the ancillary parking facility during any portion of any day on which: (a) there is a UNT home football game; or (b) in UNT's sole discretion, any other event utilizing the football stadium for which the ancillary parking facility is required provided that UNT allows City to utilize other off-site parking facilities in the vicinity of the Convention Center Site, if available. UNT shall provide written notice to City of the dates of any scheduled events (other than home football games) which will result in the ancillary parking facility not being available to City and of the availability of any alternative parking facilities promptly after the same is determined by UNT. If the ancillary parking facility is not available to City at any time during the Term on a permanent basis, UNT shall provide and maintain a comparable replacement ancillary parking facility in the vicinity of the Convention Center Site at UNT's sole cost and expense.

**ARTICLE VII**

**INSURANCE AND INDEMNITY**

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7.1 Liability Insurance. City agrees, at its sole expense, to obtain and maintain, or to cause OHPD under the Sublease to obtain and maintain, at its sole expense, commercial general liability insurance at all times during the Term hereof with reputable insurance companies authorized to transact business in the State of Texas for bodily injury (including death) and property damage with minimum limits from time to time of the greater of: (a) \$5,000,000 with respect to any one occurrence and the aggregate of all occurrences during a given policy period; and (b) those customarily held by owners/operators of similar projects in the State of Texas, protecting UNT and City against any liability, damage, claim or demand arising out of or connected with the condition or use of the Improved Leased Premises. Such insurance shall include contractual liability, personal injury and advertising liability and independent contractor liability as well as products and completed operations coverage and business automobile liability insurance (including owned, non-owned and hired). Such insurance coverage must be written on an “occurrence” basis. The insurance required to be maintained by City or OHPD, may be maintained by any combination of single policies and/or umbrella or blanket policies, so long as the level of coverage is not impaired or reduced by the use thereof. UNT (and City and its elected officials, employees, agents and volunteers for insurance policies maintained by OHPD) shall be named as an Additional Insured(s), as its or their interests appear, on all insurance policies required by this Section. If City’s or OHPD’s liability insurance policies do not contain the standard ISO Separation of Insured’s Provision, or a substantially similar clause, such liability insurance policies shall be endorsed to provide cross-liability coverage at City’s or OHPD’s expense, as applicable. City, in its sole discretion, may choose to satisfy the requirements of this Section through a self-insurance program.

7.2 Workers’ Compensation Insurance. City agrees, at its sole expense, to obtain and maintain or, to cause OHPD, at its sole expense, to obtain and maintain, workers’ compensation insurance, as required by Applicable Law, during the Term. The policy will be endorsed to provide a waiver of subrogation as to UNT (and City and its elected officials, employees, agents and volunteers if the policy is maintained by OHPD). The City, in its sole discretion, may choose to satisfy the requirements of this Section through a self-insurance program.

7.3 Commercial Property Insurance. At all times during the Term of this Lease, City shall maintain a policy or policies of special causes of loss form commercial property insurance, with all premiums paid in advance, issued by and binding upon an insurance company reasonably acceptable to UNT and City, authorized to transact business in the State of Texas, insuring all buildings and structures on the Convention Center Site, and covering all City Facilities FF&E located in the Convention Center, for full replacement cost thereof as of the date of the loss (exclusive of foundation and excavation cost and costs of underground flues, pipes, drains, and other uninsurable items) with a retention amount no greater than that retained by owners of similar properties in the State of Texas at the time the policy is obtained. City shall be named as the loss payee, on all such policies. City may require OHPD to reimburse City for the costs of such policies pursuant to the terms of the Sublease. Any loss under any such insurance policy required under this Section shall be made payable to City for the benefit of City, to the end that City shall be entitled to collect all money due under such insurance policies payable in the event of and by reason of the loss of or damage to the Improved Leased Premises or the City Facilities FF&E to be applied pursuant to Subsection 6.3.5 above.

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7.4 Builder's Risk. City shall obtain Builder's Risk insurance during any period of construction, or cause OHPD or others to maintain, builder's risk insurance (non-reporting form) with completed operations coverage of the type customarily carried in the case of similar construction for one hundred percent (100%) of the full replacement cost of work in place and materials, supplies and equipment that are intended to be installed in the construction regardless of whether same are stored at or upon the property or off of the property in question, except that the City agrees to reasonable deductibles necessary to obtain reasonable insurance rates.

7.5 Additional Coverage/Requirements of Policies.

7.5.1 In addition to the insurance required in Sections 7.1, 7.2, 7.3, and 7.4 above, City must also maintain such other insurance, both in terms of: (a) risks insured and scope of coverage; and (b) amounts of coverage, as may from time to time during the Term be customarily carried by owners/operators of properties similar to the Improved Leased Premises in the State of Texas with the effect that at any given time during the Term, City shall maintain such additional insurance coverage on the Improved Leased Premises and its operations thereon equal to that carried by the owners/operators of other similar Convention Center facilities in the State of Texas.

7.5.2 All insurance required of City under this Article shall be primary and non-contributing with any insurance that may be carried by UNT. Also, each policy of insurance required under this Article shall: (a) be issued by one or more insurance companies each of which must have an A.M. Best Company financial and performance rating of A-IX or better and be qualified or authorized by the laws of the State of Texas to assume the risk covered by such policy; (b) provide that such policy shall not be canceled or modified without at least thirty (30) days prior written notice to UNT and (c) provide that any loss otherwise payable thereunder shall be payable notwithstanding any act or negligence of the named insureds which might, absent such agreement, result in a forfeiture of all or a part of such insurance payment. On the Commencement Date and thereafter as UNT may require, City shall provide UNT with certificates of insurance, or other evidence and documentation, acceptable to UNT evidencing City's full compliance with the insurance requirements of this Lease. If requested by UNT, City shall provide UNT with certified copies of any of the required policies. City shall promptly pay all premiums when due on such insurance and not less than fifteen (15) days prior to the expiration date of each such policy, deliver to UNT acceptable evidence of insurance, such as a renewal policy or policies marked "Premium Paid", or other evidence satisfactory to UNT, reflecting that all required insurance is current and in force. City will immediately give written notice to UNT of any cancellation of, or change in, any insurance policy required to be maintained hereunder. City may satisfy any insurance requirement hereunder by providing one or more "blanket" insurance policies or through a self-insurance program, provided same is reasonably acceptable to UNT, or by causing OHPD or its successors or assigns or any other subtenant of City to obtain and maintain any insurance required hereunder.

7.6 Waiver. UNT AND CITY HEREBY WAIVE ALL CLAIMS, RIGHTS OF RECOVERY AND CAUSES OF ACTION THAT EITHER PARTY OR ANY PARTY CLAIMING BY, THROUGH OR UNDER SUCH PARTY BY SUBROGATION OR



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OTHERWISE MAY NOW OR HEREAFTER HAVE AGAINST THE OTHER PARTY OR ANY OF THE OTHER PARTY'S PRESENT AND FUTURE SUBSIDIARIES, AFFILIATES, MEMBERS, PARTNERS, OFFICERS, DIRECTORS, EMPLOYEES, DIRECT OR INDIRECT STOCKHOLDERS, AGENTS, OTHER REPRESENTATIVES, SUCCESSORS AND ASSIGNS FOR LOSS OR DAMAGE TO PROPERTY OF UNT OR CITY, EVEN IF CAUSED BY THE NEGLIGENCE OR FAULT OF THE RELEASED PARTY OR ITS PARTNERS, DIRECTORS, OFFICERS, EMPLOYEES, AGENTS OR REPRESENTATIVES, TO THE EXTENT THAT THE LOSSES OR DAMAGES ARE COVERED BY THE INSURANCE POLICIES ACTUALLY MAINTAINED PURSUANT TO THIS ARTICLE OR OTHERWISE. UNT AND CITY EACH SHALL CAUSE THEIR RESPECTIVE INSURANCE CARRIERS TO ENDORSE, IF REQUIRED TO MAKE THIS WAIVER EFFECTIVE, ALL APPLICABLE POLICIES WAIVING THE CARRIER'S RIGHTS OF RECOVERY UNDER SUBROGATION OR OTHERWISE AGAINST THE OTHER PARTY.

7.7 Payment of Losses. Subject to Subsection 6.3.5 above and City's obligation to pay UNT in the event of termination of this Lease by reason a casualty loss, any loss under any insurance policy required under Section 7.3 above shall be made payable to City for the benefit of City, to the end that City shall be entitled to collect all money due under such insurance policies payable in the event of and by reason of the loss of or damage to the Improved Leased Premises, to be applied pursuant to Subsection 6.3.5 above. Any accumulation of interest on the insurance proceeds collected by City shall be added to, and become a part of, the fund being held by City for the benefit of City. The adjustment of losses with the insurer shall be made by City.

7.8 Environmental Investigation and Remediation.

7.8.1 UNT represents to City that to the best of UNT's knowledge: (a) the Convention Center Site is in compliance with all Applicable Laws pertaining to the protection of the environment ("Environmental Laws"); (b) that there are no underground storage tanks located on the Convention Center Site; (c) the Convention Center Site has not been used as a landfill or for the deposit or storage of any Hazardous Materials; (d) UNT has not received any notice or claim of and there are no past, pending or threatened investigations, proceedings or claims against the UNT or the Convention Center Site that are known to the UNT relating to the presence, release or remediation of any substance which is a Hazardous Material or for non-compliance with any Environmental Laws with respect to the Convention Center Site; and (e) no conditions or circumstances with respect to the Convention Center Site are known to UNT to exist or to have existed that could impose any liability on the City with respect to any Environmental Laws.

7.8.2 City shall be responsible, at its sole cost and expense, for performing any environmental investigation and remediation work that may be required as a result of City's use and occupancy of the Improved Leased Premises after the Commencement Date and that is caused by the presence of Hazardous Materials which City placed or released or allowed to be placed or released on the Improved Leased Premises during the Term, except and to the extent the presence thereof results from the act or omission of UNT or its agents, employees, contractors, lessees or invitees or was present on the Convention Center Site on or before the Commencement Date. Such environmental

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investigation and remediation work shall be conducted in accordance with all Environmental Laws. City shall notify and advise UNT before performing any work of the remediation City desires to undertake and the procedures to be used. City shall complete the remediation with due diligence and shall comply with, and shall cause its agents and contractors to comply with all Environmental Laws regarding the use, removal, storage, transportation, disposal and remediation of Hazardous Materials. City's obligation as provided herein to undertake environmental investigation and remediation of the Improved Leased Premises shall be a continuing obligation of City that shall survive the expiration or termination of the Term for a period of two (2) years. UNT shall retain responsibility and liability for all environmental conditions, the presence of Hazardous Materials and violations of Environmental Laws arising: (a) on or before the Commencement Date; (b) after the Commencement Date due to environmental conditions, the presence of Hazardous Materials or violations of Environmental Laws on or in connection with the Improved Leased Premises on or before the Commencement Date; and (c) from any act or omission of UNT or its agents, employees, contractors, lessees or invitees.

7.8.3 The term "Hazardous Materials" shall refer to, and include, without limitation, all substances whose use, handling, treatment, storage, disposal, discharge, or transportation is governed, controlled, restricted, or regulated by Environmental Laws, that have been defined, designated or listed by any responsible regulatory agency as being hazardous, toxic, radioactive, or that may present an actual or potential hazard to human health or the environment if improperly used, handled, treated, stored, disposed, discharged, generated or released. Hazardous Materials specifically include, without limitation, asbestos and asbestos-containing-materials, petroleum products, solvents, and pesticides, but shall exclude any such items that are necessary for the ordinary performance of City's or any subtenant's business activities, provided that such are used, stored or disposed of in compliance with all Applicable Laws. If City breaches its obligations under this Section and such breach is not cured following notice and within the applicable cure period specified in Article IX below, UNT may take any and all action reasonably appropriate to remedy such breach, and City shall promptly pay all reasonable costs incurred by UNT in connection therewith.

7.8.4 The provision of this Section shall survive the termination of this Lease for a period of two (2) years and are solely for the benefit of UNT and City and shall not be deemed for the benefit of any other person or entity.

7.9 Limitation of Liability. UNT shall not be liable to City or to City's agents, servants, employees, customers, invitees, successor, or assigns for any damage to person or property occurring on the Improved Leased Premises caused by any act, omission, or neglect of City, its agents, servants, employees, successors, or assigns during the Term of the Lease, nor shall UNT be liable for any loss, cost, expense, or claim arising out of the ownership or operation of the Convention Center during the Term of the Lease, except to the extent such claims are based upon the willful acts or gross negligence of UNT or UNT's agents, servants, employees, contractors, lessees, customers or invitees or arise from the existing condition of the Convention Center Site as of the Commencement Date.

**ARTICLE VIII**

**ASSIGNMENT AND SUBLETTING**

8.1 Transfers and Assignments. Except as provided in Sections 8.2 and 8.3 below, City shall not sell, convey, assign, or sublet this Lease or all or any portion of the leasehold estate created hereby without the express prior written consent of UNT, which consent shall not be unreasonably withheld; provided, however, in no event shall UNT be obligated to consent to any assignment if the same is to any Person who, in UNT's reasonable judgment, does not have a suitable level of experience and reputation for quality in operating convention centers such as the Convention Center. In connection with any proposed assignment, City shall submit a written request for approval to UNT with the name, address, financial condition and business references of any proposed assignee, together with a complete copy of the proposed form of assignment. UNT shall give City written notice of approval or disapproval of the proposed assignee and the form of assignment within thirty (30) days of UNT's receipt of a request, and if disapproved, specific reasons for the disapproval. In the event of UNT's disapproval of any proposed assignee or form of assignment, UNT and City shall meet within thirty (30) days of the date of the notice of disapproval and use best effort to resolve any objectionable issues with respect to the proposed assignee or form of assignment. Nothing contained in this Section shall be construed as (a) prohibiting City from withdrawing any request or submitting subsequent requests for approval of proposed assignees and forms of assignment; or (b) entitling UNT to terminate this Lease in connection with any proposed assignee or assignment. If UNT disapproves any proposed assignee or form of assignment after the City Repayment Period, City shall be entitled to terminate this Lease on no less than thirty (30) days' written notice to UNT. Upon approval by UNT of any proposed assignment of this Lease in its entirety, City shall deliver to UNT a fully executed assignment, in the form approved by UNT, whereby such assignee shall assume all obligations of City pertaining to the Improved Leased Premises and accruing under this Lease after the date of such assignment, and City shall thereafter be released from all obligations and liabilities under this Lease accruing after the date of such assignment. No subletting by City shall release, or be deemed or construed as releasing, City from its obligations and liabilities hereunder.

8.2 Sublease(s). UNT hereby consents to City entering into the Sublease and to any amendments or modifications to the Sublease provided that the same are consistent with the terms of the Master Agreement and this Lease and that City delivers to UNT fully executed copies of any such amendments or modifications. In the event of the expiration or termination of the Sublease prior to the expiration or termination of this Lease, City may submit a written request for approval to UNT with the name, address, financial condition and business references of any proposed replacement sublessee, together with a complete copy of the proposed form of sublease. UNT shall give City written notice of approval or disapproval of the proposed sublessee and form of sublease within thirty (30) days of UNT's receipt of a request for approval, and if disapproved, specific reasons for the disapproval. In the event of UNT's disapproval of any proposed replacement sublessee or sublease, UNT and City shall meet within thirty (30) days of the date of the notice of disapproval and use best efforts to resolve any objectionable issues with respect to the proposed replacement sublessees or sublease. UNT shall not unreasonably withhold, condition or delay its approval of a proposed replacement sublessee or sublease provided that (a) the replacement sublease is in substantially the same form as the

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Sublease, (b) the replacement sublessee has the financial ability to perform the obligations under the replacement sublease, (c) the replacement sublessee has experience in the hotel/conference center industry and in operating properties such as the Convention Center, (d) the replacement sublessee is approved by the Approved Franchisor. Nothing contained in this Section shall be construed as (i) prohibiting City from withdrawing any request or submitting subsequent requests for approval of proposed replacement sublessees or subleases; or (ii) entitling UNT to terminate this Lease in connection with any proposed replacement sublessee or sublease. If UNT disapproves any proposed replacement sublessee or sublease after the City Replacement Period, City shall be entitled to terminate this Lease on no less than thirty (30) days' written notice to UNT. Upon approval by UNT of any proposed replacement sublessee and sublease, City shall deliver to UNT a fully executed sublease, in the form approved by UNT.

8.3 Management, Operating and Other Agreements. UNT consents to City's delegation of any or all of its obligations and assignment of any or all of its rights with respect to the operation, management and maintenance of the Improved Leased Premises to OHPD pursuant to the Sublease (or any replacement sublease) and to OHPD entering into the OHM Management Agreement with OHM providing for the operation, management and maintenance of the Improved Leased Premises as further described in the Sublease. The procedures and terms set forth in Section 8.2 shall apply to City's submittal and UNT's approval or disapproval of any proposed replacement management or operating agreements or other agreements which require UNT's prior approval.

**ARTICLE IX**

**DEFAULT OF CITY**

9.1 Default. City shall be in default if any of the following events (each an "Event of Default") shall occur and continue beyond any cure period provided for in this Lease: (a) the failure on the part of City to pay, when due, City-UNT Base Rent or any other payment required pursuant to this Lease (a "Monetary Default") and the continuation of such failure for thirty (30) days after UNT has provided to City a written notice of such failure; (b) the sale, conveyance, assignment or subletting of this Lease or all or any portion of the leasehold estate created hereby other than as permitted under Article VIII or Section 6.4 above (an "Assignment Default") if UNT provides to City written notice within sixty (60) days of the date of such Assignment Default of its disapproval of the same, but if such notice is not given, an Assignment Default shall not constitute an Event of Default; (c) the failure on the part of City to comply with any material term, provision or covenant of this Lease (other than a Monetary Default or an Assignment Default), and the continuation of such failure for a period of sixty (60) days from and after the date notice of such failure is given by UNT to City; provided, however, no Event of Default shall exist if City shall have commenced to cure such failure and shall be proceeding with reasonable diligence to completely cure such failure (provided such failure must be cured within one hundred eighty (180) days after such notice); (d) the filing of a voluntary petition in bankruptcy or a voluntary petition for an arrangement or reorganization under the United States Federal Bankruptcy Act (or similar statute or law of any foreign jurisdiction) by City or any guarantor of City's obligations hereunder if not withdrawn or dismissed within one hundred eighty (180) days of filing; or (e) the appointment of a receiver or trustee for all or substantially

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all of City's interest in the Improved Leased Premises or its leasehold estate hereunder if not removed within one hundred eighty (180) days of such appointment.

9.2 Remedies.

9.2.1 Upon the occurrence of any Event of Default set forth in this Lease, UNT is entitled to pursue any one or more of the remedies set forth herein after thirty (30) days prior written notice to City:

9.2.2 Without declaring this Lease terminated, UNT may enter upon and take possession of the Improved Leased Premises, without judicial process, and, in compliance with Applicable Law, lock out, expel or remove City and any other Person who may be occupying all or any part of the Improved Leased Premises without being liable for any claim for damages unless caused by the negligence or willful misconduct of UNT or any of its agents or employees, in which event UNT shall be entitled to receive: (a) all City-UNT Base Rent and other amounts accrued hereunder as of the date of termination of possession; (b) reimbursement of any reasonable expenditures made by UNT in order to relet the Improved Leased Premises, including, but not limited to, leasing commissions, lease incentives, remodeling and repair costs; and (c) all City-UNT Base Rent and other net sums required hereunder to be paid by the City during the remainder of the Term, diminished by any net sums thereafter received by UNT through reletting the Improved Leased Premises during such period, after deducting all costs incurred by UNT in reletting the Improved Leased Premises. UNT shall not be liable for, nor shall City's obligations hereunder be diminished because of, UNT's failure to relet the Improved Leased Premises or to collect rent due for such reletting; provided however, City shall use commercially reasonable efforts to mitigate damages by reletting the Improved Leased Premises. City shall not be entitled to the excess of any consideration retained by reletting over the City-UNT Base Rent due hereunder. Reentry by UNT in the Improved Leased Premises shall not affect City's obligations hereunder for the unexpired Term. Unless UNT delivers written notice to City expressly stating that it has elected to terminate this Lease, all actions taken to dispossess or exclude City from the Improved Leased Premises shall be deemed to be taken under this Section. If UNT elects to proceed under this Section, it may at any time elect to terminate this Lease under Subsection 9.2.4 below.

9.2.3 Without declaring this Lease terminated, UNT may enter upon the Improved Leased Premises, without judicial process and without being liable for any claim for damages unless caused by the negligence or willful misconduct of UNT or any of its agents or employees, and perform any act City is obligated to perform under the terms of this Lease. City agrees to reimburse UNT on demand for any reasonable expenses UNT may incur in effecting compliance with City's obligations under this Lease; further, City agrees that UNT will not be liable for any damages resulting to City from effecting compliance with City's obligations under this Lease unless caused by the negligence or willful misconduct of UNT or any of its agent or employees.

9.2.4 UNT may terminate this Lease, in which event City shall immediately surrender the Improved Leased Premises to UNT, and if City fails to surrender the

Leased Premises, UNT may, without prejudice to any other remedy that it may have for possession or arrearages in rent, enter upon and take possession of the Improved Leased Premises, without judicial process, and, in compliance with Applicable Law, lock out, expel or remove City and any other Person who may be occupying all or any part of the Improved Leased Premises without being liable for any claim for damages unless caused by the negligence or willful misconduct of UNT or any of its agents or employees. City agrees to pay on demand the amount of all loss and actual damage that UNT may suffer by reason of the termination of this Lease under this Section (but City shall not be liable for any indirect, consequential and punitive damages), including without limitation, loss and damage due to the failure of City to maintain and or repair the Improved Leased Premises as required in this Lease. In addition, upon termination UNT may collect from City an amount equal to the difference between the amount of all future rentals required to be paid under this Lease from the date UNT terminates this Lease until the original termination date, discounted to the present value less the then fair market rental value of the Improved Leased Premises during such period, both calculated using a discount rate of five percent (5%) per annum. Notwithstanding anything contained in this Lease to the contrary, this Lease may be terminated by UNT pursuant to this Section only by delivering written notice of such termination to City, and no other act or omission of UNT constitutes a termination of this Lease.

9.2.5 City hereby expressly waives any and all rights of redemption granted by or under any present or future laws in the event of City being evicted or dispossessed pursuant to Section 9.2 or in the event of UNT obtaining possession of the Improved Leased Premises pursuant to Section 9.2.

9.2.6 UNT's pursuit of any remedy specified in this Lease will not constitute an election to pursue that remedy only, nor preclude UNT from pursuing any other remedy available at law or in equity, nor constitute a forfeiture or waiver of any City-UNT Base Rent or other amount due to UNT as described in this Lease.

9.3 Limitation of Remedies. Prior to the expiration of the City Repayment Period, UNT agrees that it shall not exercise any of its remedies under this Lease or Applicable Law which would result in the termination of this Lease or City's or its subtenant's right to possess the Improved Leased Premises, but shall be entitled to exercise any or all other remedies.

## **ARTICLE X**

### **DEFAULT OF UNT**

10.1 Defaults and Remedies. In the event of any default by UNT or if any representation by UNT is false in any material respect, City shall be entitled to pursue any available remedies at law or in equity or as otherwise provided in this Lease including, without limitation, termination of this Lease, but prior to any such action City will give UNT written notice specifying such default or misrepresentation with particularity, and UNT shall thereupon have a reasonable period of time in which to cure any such default, but in no event more than sixty (60) days from and after the date notice of such default or misrepresentation is given by City to UNT; provided however, if the default or misrepresentation is incapable of being cured or

corrected within sixty (60) days, UNT shall be entitled to up to ninety (90) days to cure or correct the same provided that UNT proceeds with reasonable diligence to cure or correct such default or misrepresentation. Unless and until UNT fails to so cure any default or misrepresentation after notice from the City, City shall not have any remedy or cause of action by reason thereof.

## **ARTICLE XI**

### **CONDEMNATION**

11.1 Definitions. Whenever used in this Article, the following words shall have the definitions and meanings hereinafter set forth:

11.1.1 “Condemnation Proceeding” means any action brought for the purpose of any taking of the Improved Leased Premises, or any part thereof or of any property interest therein (including, without limitation, the right to the temporary use of all or any portion of the Improved Leased Premises), by competent authority as a result of the exercise of the power of eminent domain, including a voluntary sale to such authority either under threat of condemnation or while such action or proceeding is pending.

11.1.2 “Taking” or “Taken” means the event and date of vesting of title to the Improved Leased Premises or any part thereof or any property interest therein (including, without limitation, the right to the temporary use of all or any portion of the Improved Leased Premises), pursuant to a Condemnation Proceeding.

11.1.3 “Entire Taking” means if all or substantially all of the Improved Leased Premises shall be Taken in Condemnation Proceedings, this Lease shall terminate as of the date of the Taking.

11.1.4 “Partial Taking” means if less than all of the Improved Leased Premises shall be Taken in any Condemnation Proceeding and the remaining Improved Leased Premises is sufficient to operate the Convention Center as reasonably contemplated by the Parties hereto.

11.1.5 “Temporary Taking” means if any right of temporary (hereinafter defined) possession or occupancy of all or any portion of the Improved Leased Premises shall be Taken, the City-UNT Base Rent shall be reduced during the duration of such Taking in a fair and equitable manner that reflects the inability of City to use the affected portion of the Improved Leased Premises. A Taking shall be considered “temporary” only if the period of time during which City is deprived of usage of all or part of the Improved Leased Premises as the result of such Taking does not materially interfere with the ability of City to use and operate the Improved Leased Premises as a Convention Center in the manner reasonably contemplated by the Parties hereto. Any other “Taking” that is not “temporary” as described above shall be treated as an Entire Taking or as a Partial Taking.

11.2 Notice of Condemnation & Settlement with Condemning Authority. UNT and City shall each promptly notify the other of the commencement of any condemnation, eminent

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domain or other similar proceedings with regard to the Improved Leased Premises. UNT shall not make any settlement with the condemning authority in any Condemnation proceedings nor convey or agree to convey the whole or any portion of the Improved Leased Premises to such authority in lieu of condemnation without first obtaining the written consent of City, which consent will not be unreasonably withheld, conditioned or delayed.

### 11.3 Effect of Condemnation on Lease.

11.3.1 In the event of an Entire Taking, the City-UNT Base Rent shall be fully abated from and after the date of such Taking and from and after such date City and UNT shall not have any other obligations under this Lease with respect to the Improved Leased Premises, except for those obligations that expressly survive the termination hereof.

11.3.2 In the event of a Partial Taking, this Lease shall terminate as to the portion of the Improved Leased Premises Taken and a fair and equitable portion of City-UNT Base Rent attributable to the portion of the Improved Leased Premises Taken shall be abated from and after the date of such partial Taking and from and after such date City and UNT shall not have any other obligations under this Lease with respect to the portion of the Improved Leased Premises that has been Taken, except for those obligations that expressly survive the termination hereof.

(1) If, following a Partial Taking, the remaining Improved Leased Premises is not sufficient to operate the Convention Center as reasonably contemplated by the Parties hereto, then City, at its election by delivering written notice to UNT, may terminate this Lease, whereupon the City-UNT Base Rent shall be fully abated from and after such date of such partial Taking, and from and after such date, City and UNT shall not have any further obligations under this Lease with respect to the Improved Leased Premises, except for those obligations that expressly survive the termination hereof. Such election to terminate the Lease must be exercised no later than ninety (90) days after the date of such Taking.

(2) If City does not elect, or does not have the right, to terminate this Lease upon any partial Taking, then: (a) the Leased Premises shall be reduced by the portion thereof Taken, the City-UNT Base Rent payable hereunder shall be equitably reduced during the unexpired portion of the Term as provided above and this Lease shall remain in full force and effect; and (b) City shall commence and proceed with reasonable diligence to repair or reconstruct the remaining Improvements on the Leased Premises, but only to the extent that repairs or reconstruction are necessary to operate the Convention Center as reasonably contemplated by the Parties and provided that City receives a sufficient portion of the Condemnation award to pay for such repairs or reconstruction.

11.4 Settlement of Condemnation Proceeds. Any condemnation award shall be divided between UNT and City in accordance with the value of the fee estate to UNT and the value of the leasehold estate and Improvements to City, and City shall be entitled to any consequential damages awarded with respect to the on-going operation of the Convention Center



and/or the costs of restoration of or repairs to the Convention Center. UNT shall deliver to City that portion of any condemnation award that UNT may receive to which City is entitled as provided in this Section. The provisions of this Section shall survive any termination pursuant to the terms of this Article XI.

## ARTICLE XII

### REPRESENTATIONS AND SPECIAL COVENANTS

12.1 UNT's Representations. UNT hereby represents and covenants as follows:

12.1.1 Authority. The University of North Texas System and UNT have all requisite power and authority to own the Convention Center Site, to execute, deliver and perform its obligations under this Lease and to consummate the transactions herein contemplated and any proper action in accordance with all Applicable Law, has duly authorized the execution and delivery of this Lease, the performance of its obligations under this Lease and the consummation of the transactions herein contemplated.

12.1.2 Binding, Obligation. This Lease is a valid and binding obligation of UNT and is enforceable against UNT in accordance with its terms subject to (a) applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, rearrangement, moratorium, receivership, liquidation and similar laws affecting creditor's rights or (b) general principles of equity.

12.1.3 Consents. No permission, approval or consent by third parties or any other governmental authorities is required in order for UNT to enter into this Lease, make the agreements herein contained or perform the obligations of UNT hereunder other than those which have been obtained.

12.1.4 Quiet Enjoyment. During the Term of this Lease and subject to the terms of this Lease, City shall have the quiet enjoyment and peaceable possession of the Leased Premises and may exercise all of its rights hereunder. UNT agrees to warrant and forever defend City's right to such occupancy, use and enjoyment and the title to the Leased Premises against the claims of any and all persons whomsoever lawfully claim the same, or any part thereof by, through and under UNT, but not otherwise.

12.1.5 Limitations. EXCEPT AS PROVIDED IN SUBSECTION 7.8.1 OR OTHERWISE EXPRESSLY PROVIDED HEREIN, THIS LEASE IS MADE BY UNT WITHOUT REPRESENTATION OR WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, AS TO THE CONDITION OF THE CONVENTION CENTER SITE, ITS MERCHANTABILITY, ITS CONDITION OR ITS FITNESS FOR CITY'S INTENDED USE OR FOR ANY PARTICULAR PURPOSE.

12.1.6 Title and Liens. The University of North Texas System is the sole owner of and holds good and indefeasible, fee simple title to the Conference Center Site free and clear of all liens and encumbrances. UNT and the University of North Texas System

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shall not create, grant or permit any liens, mortgages, deeds of trust, easements or licenses against fee title to the Convention Center Site or to otherwise encumber the fee title to the Convention Center Site during the Term.

12.1.7 Environmental Matters. UNT's representations and warranties with respect to environmental matters pertaining to the Convention Center Site are set forth in Subsection 7.8.1.

12.2 City's Representations and Special Covenants. City hereby represents and covenants as follows:

12.2.1 Existence. City is duly organized and validly existing under the laws of the State of Texas and is authorized to do business in the State of Texas.

12.2.2 Authority. City has all requisite power and authority to own its property, operate its business, enter into this Lease and consummate the transactions herein contemplated, and by proper action have duly authorized the execution and delivery of this Lease and the consummation of the transactions herein contemplated.

12.2.3 Binding Obligation. This Lease is a valid and binding obligation of City and is enforceable against City in accordance with its terms, subject to (a) applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, rearrangement, moratorium, receivership, liquidation and similar laws affecting creditors' rights, (b) general principles of equity, and (c) principles of governmental immunity.

12.2.4 No Default. The execution by City of this Lease and the consummation by City of the transactions contemplated hereby do not, as of the Commencement Date, result in a breach of any of the terms or provisions of, or constitute a default or condition which upon notice or the lapse of time or both would ripen into default under, the organizational documents of City or under any indenture, agreement, instrument or obligation to which City is a party or is bound.

12.2.5 Consents. No permission, approval or consent by third parties or any other governmental authorities is required in order for City to enter into this Lease, make the agreements herein contained or perform the obligations of City hereunder other than those which have been obtained.

12.2.6 Proceedings. There are no actions, suits or proceedings pending or, to the actual knowledge of City, without independent investigation, threatened or asserted against City, affecting City at law or at equity or before or by any federal, state, municipal or other governmental department, commission, board, bureau, agency, or instrumentality, domestic or foreign, which restrains, enjoins, prohibits or otherwise makes illegal the consummation of the transactions contemplated by this Lease.

**ARTICLE XIII**

**MISCELLANEOUS**

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13.1 Inspection. City shall permit UNT and its agents, upon no less than twenty-four (24) hours prior written notice (except in cases where UNT reasonably believes that a bona fide emergency exists, in which event no prior notice will be needed and no limitation on such entry shall apply), to enter into and upon the Improved Leased Premises during normal business hours for the purpose of inspecting the same on the condition that any such inspection does not unreasonably interfere with City's operations at the Improved Leased Premises.

13.2 Estoppel Certificates. City and UNT shall, at any time and from time to time upon not less than ten (10) business days prior written request by the other Party, execute, acknowledge and deliver to UNT or City, as the case may be, a statement in writing certifying (a) its ownership of the interest of UNT or City hereunder, as the case may be, (b) that this Lease is unmodified and in full force and effect (or if there have been any modifications, that the same is in full force and effect as modified and stating the modifications), (c) the dates to which the City-UNT Base Rent and any other charges have been paid, and (d) that, to the then current actual knowledge, without independent investigation of UNT or City, as the case may be, no default hereunder on the part of the other Party exists (except that if any such default does exist, the certifying Party shall specify such default).

13.3 Release. If requested by UNT, City shall, upon termination of this Lease, execute and deliver to UNT an appropriate release, in form proper for recording, of all City's interest in the Leased Premises, and UNT is hereby granted an irrevocable power of attorney, which is coupled with an interest, to execute such release if City fails to do so within ten (10) days after UNT's written request.

13.4 Interest on Past Due Amount. If City fails to pay any amounts due to the UNT hereunder when due, the same shall bear interest from the date due until the date of payment at the lesser of (a) six percent (6%) per annum above the "Prime Rate" as published in the The Wall Street Journal, Southwest Edition, in its listing of "Money Rates" (or any successor publication), or (b) the maximum rate under Applicable Law.

13.5 Notices. All payments required to be made by City must be paid to UNT at the address set forth below. All notices, demands, and other communications required to be given or made hereunder shall be in writing and shall be duly given if delivered by hand, messenger, facsimile or reputable overnight courier or if mailed by certified or registered mail, first class postage prepaid, to the respective parties hereto at the addresses set forth below, or to such other address furnished in writing to the other party hereto, and shall be deemed received upon the earlier of: (a) actual receipt; and (b) (whether or not actually received) four (4) days after such mailing or upon receipt of confirmation of successful transmission of facsimile by the transmitting facsimile.

If to UNT:

with copy to:

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If to City:

with copy to:

13.6 Successors and Assigns. This Lease shall be binding upon and shall inure to the benefit of the Parties and their permitted successors and assigns.

13.7 Amendment. Except as expressly provided herein, neither this Lease nor any term hereof may be amended, waived, discharged or terminated, except by a written instrument signed by the Parties hereto.

13.8 Headings and Subheadings. The headings of the articles, sections, and subsections of this Lease are for convenience or reference only and in no way define, limit, extend or describe the scope of this Lease or the intent of any provisions hereof.

13.9 Unavoidable Default and Delays. After the Commencement Date, the time within which any Party to this Lease shall be required to perform any act under this Lease, other than the payment, when due, of City-UNT Base Rent or any other payment by City, shall be extended by a period of time equal to the number of days during which performance of such act is delayed due to the occurrence of a Force Majeure event.

13.10 Severability. In the event one or more of the terms or provisions of this Lease or the application thereof to any Party or circumstances shall, to any extent, be held invalid, illegal or unenforceable, the remainder of this Lease, and each term and provision of this Lease shall be valid and enforceable to the fullest extent permitted by law.

13.11 Governing Law. THIS LEASE SHALL BE GOVERNED BY, AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE UNITED STATES APPLICABLE THERETO AND THE LAWS OF THE STATE OF TEXAS APPLICABLE TO A LEASE EXECUTED, DELIVERED AND PERFORMED IN SUCH STATE, WITHOUT REGARD TO ANY OTHERWISE APPLICABLE PRINCIPLES OF CONFLICTS OF LAW.

13.12 Venue for Actions. The venue for any legal action or dispute arising out of this Lease shall lie exclusively in Denton County, Texas.

13.13 Attorneys' Fees. Should either Party to this Lease engage the services of attorneys or institute legal proceedings to enforce its rights or remedies under this Lease, the prevailing party to such dispute or proceedings shall be entitled to recover its reasonable

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attorneys' fees, court costs and similar costs incurred in connection with the resolution of such dispute or the institution, prosecution or defense in such proceedings from the other Party.

13.14 Relationship of Parties. Nothing contained in this Lease shall be deemed or construed by the Parties hereto or by any third party as creating the relationship of principal and agent, partnership, joint venture or any association between the Parties hereto, it being understood and agreed that none of the provisions contained herein or any acts of the Parties in the performance of their respective obligations hereunder shall be deemed to create any relationship between the Parties hereto other than the relationship of landlord and tenant. It is understood and agreed that this Lease does not create a joint enterprise, nor does it appoint either Party as an agent of the other for any purpose whatsoever. Neither Party shall in any way assume any of the liability of the other for acts of the other or obligations of the other. Each Party shall be responsible for any and all suits, demands, costs or actions proximately resulting from its own individual acts or omissions.

13.15 Net Lease. It is the intention of the UNT and City that the City-UNT Base Rent payable under this Lease after the Commencement Date and all Impositions and other costs related to City's use or operation of the Improved Leased Premises under this Lease, shall be absolutely net to UNT, and the City shall pay during the Term, without any offset or deduction whatsoever, all such Impositions and other costs due by City under this Lease. City's covenant to pay City-UNT Base Rent is independent of every other covenant in this Lease.

13.16 Non-Waiver. No Party shall have or be deemed to have waived any Event of Default under this Lease by the other Party unless otherwise expressly provided herein or such waiver is embodied in a document signed by the waiving Party that describes the Event of Default that is being waived. Further, no Party shall be deemed to have waived its rights to pursue any remedies under this Lease, unless otherwise expressly provided herein or such waiver is embodied in a document signed by such Party that describes any such remedy that is being waived.

13.17 Obligations to Defend Validity of Lease. If litigation is filed by a third party against City or UNT in an effort to enjoin either Party's performance of this Lease, the Parties hereto who are named as parties in such action shall take all commercially reasonable steps to support and defend the validity and enforceability of this Lease. Either Party may intervene in any such matter in which the other Party hereto has been named as a defendant. Each Party shall be responsible for its attorneys' fees and costs of litigation.

13.18 Survival. All provisions herein which are expressly stated to survive or covenants in this Lease providing for performance after termination of this Lease shall survive the termination of this Lease.

13.19 Entire Agreement. This Lease (including the Exhibits attached hereto and incorporated herein, if any), the Master Agreement and the other documents delivered pursuant to this Lease or referenced herein constitute the full and entire understanding and agreement between the Parties with regard to the subject matter hereof. There are no representations, promises or agreements of UNT or City regarding the subject matter of this Lease not contained

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in this Lease, the Exhibits attached hereto or the other documents delivered pursuant to this Lease or referenced herein.

13.20 Counterparts. This Lease may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument.

13.21 Right of First Refusal of City Provided that City in not in default of this Lease, in the event that UNT shall at any time during the Term of this Lease desire to sell the Convention Center Site on terms acceptable to UNT pursuant to a bona fide offer from a third party unrelated to UNT (a "Bona Fide Offer") that it shall have received, UNT shall notify City in writing that it offers City the Convention Center Site at the same price and terms as set forth in such Bona Fide Offer. City shall have thirty (30) days after receipt of such written notice of such Bona Fide Offer to notify UNT in writing that it agrees to purchase the Convention Center Site at such price and terms. If UNT does not receive notice from City that it exercises its right within such thirty (30) day period, UNT may proceed with the sale of the Convention Center Site without regard to City's right of first refusal. If the sale to such third party is not consummated, UNT shall notify City in writing of all other Bona Fide Offers it receives for the purchase of the Convention Center Site, and City shall have the right to purchase the Convention Center Site at the same price and terms as set forth in such Bona Fide Offer(s) as provided in this Section. If UNT timely receives notice from City that it exercises its right within such thirty (30) day period, City shall purchase the Convention Center Site at the same price and on the same terms as set forth in the Bona Fide Offer, provided, however, that such purchase by City must be closed and funded within one hundred eighty (180) days after the date of such timely notice from City or such right of first refusal shall be null and void. The right of first refusal set forth in this Section is personal to City and may not be transferred in any manner.

13.22. Right of First Refusal of OHPD. In the event that City does not exercise its right of first refusal as provided in Section 13.21, then, OHPD shall have the right of first refusal to purchase the Convention Center Site pursuant to terms acceptable to UNT provided that: (a) OHPD is the then current subtenant under the Sublease and is not in default under the Sublease, (b) the leasehold estate or other interests of OHPD created by the Sublease shall not merge with the fee estate; and (c) no modifications of the rights or roles of either OHPD or City or any modification of the Master Agreement, this Lease or the Sublease shall occur without the written consent of City.

13.23 Memorandum. Contemporaneously with the execution of this Lease, UNT and City shall execute a memorandum of lease and arrange for the same to be recorded in the Real Property Records of Denton County, Texas. The memorandum of lease shall contain the primary terms of this Lease including, without limitation, the description of the Convention Center Site, the Term and renewal options, UNT's agreement not to grant, place or permit liens or encumbrances on the fee title to the Convention Center Site and City's right of first refusal pursuant to Section 13.21 above. In the event of conflicts between the provisions of the memorandum of lease and this Lease, this Lease shall control.

13.24 Non-Merger. Notwithstanding the fact that fee title to the Convention Center Site and to the leasehold estate hereby created may, at any time, be held by the same party, there shall be no merger of the leasehold estate hereby created unless the owner thereof executes and files

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for record in the Real Property Records of Denton County, Texas, a document expressly providing for the merger of such estates.

IN WITNESS WHEREOF, the Parties hereto have executed and delivered this Lease as of the date first set forth above.

**UNT:**

UNIVERSITY OF NORTH TEXAS,  
an institution of higher education of the State of Texas

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**CITY:**

CITY OF DENTON, TEXAS,  
a municipal corporation and political subdivision of the State of Texas

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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**CITY-OHPD CONVENTION CENTER SUBLEASE**

**BETWEEN**

**CITY OF DENTON, TEXAS**

**AND**

**O'REILLY HOTEL PARTNERS – DENTON, LLC**



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**EXHIBITS**

- Exhibit A – Description of Convention Center Site
- Exhibit B – Description of Capital Repair Items
- Exhibit C – Description of Maintenance Items
- Exhibit D – Form of OHM Management Agreement

**CITY-OHPD CONVENTION CENTER SUBLEASE**

**THIS CITY-OHPD CONVENTION CENTER SUBLEASE** (“Sublease”) is made as of the \_\_\_\_ day of \_\_\_\_\_, 2013 (the “Effective Date”), by and between the City of Denton, Texas, a municipal corporation and political subdivision of the State of Texas, (“City”), as sublessor, and O’Reilly Hotel Partners – Denton, LLC, a Missouri limited liability company (“OHPD”) as subtenant. City and OHPD are sometimes referred to herein collectively as the “Parties” or singularly as a “Party”.

**RECITALS**

City, OHPD, the University of North Texas, an institution of higher education of the State of Texas (“UNT”), and O’Reilly Hospitality Management, LLC (“OHM”) entered into that certain Master Development Agreement dated effective \_\_\_\_\_, 2013 (the “Master Agreement”), providing for, among other terms, the development of a hotel and restaurant on the Hotel Site (hereafter defined) and a Convention Center (hereafter defined) on the Convention Center Site (hereafter defined) and for the operation and maintenance of the improvements after construction.

Pursuant to the terms of the Master Agreement, City and UNT entered into a ground lease dated effective \_\_\_\_\_, 2013 wherein UNT leased the Convention Center Site to City (“City-UNT Land Lease”) for the purpose of the construction of the Convention Center on the Convention Center Site.

Pursuant to the terms of the Master Agreement, City agreed to enter into this Sublease with OHPD, as of the Effective Date with the Term (hereinafter defined) to commence on the Operational Date on the completion of Convention Center, for the purpose of OHPD’s operation and maintenance of the Convention Center on the terms and conditions set forth herein.

For good and valuable consideration, the receipt and sufficiency of which are acknowledged, City and OHPD agree as follows:

**ARTICLE 1**  
**DEFINITIONS, GRANT OF SUBLEASE AND TERM**

1.1 Certain Definitions. Any capitalized terms used in this Sublease which are not defined in this Section 1.1 or otherwise in this Sublease shall have the meanings assigned to the same in the Master Agreement or the City-UNT Land Lease, as applicable. The following terms shall have the meaning set forth in this Section 1.1.

(a) “Affiliate” shall mean, with respect to any Person: (a) each Person that, directly or indirectly, owns or controls, whether beneficially, or as a trustee, guardian or other fiduciary, ten percent (10%) or more of the capital stock having ordinary voting power in the election of directors of such Person; (b) each Person that controls, is controlled by or is under common control with such Person; and (c) in the case of individuals, the immediate family members, spouses and lineal descendants of individuals who are Affiliates of the Person. For

purpose of this definition, “control” of a Person shall mean the possession, directly or indirectly, of the power to direct or cause the direction of its management or policies, whether through the ownership of voting shares or interests, by contract, by virtue of being an executive officer or a director or otherwise.

(b) “Annual FF&E Inventory” shall mean the annual inventory of the City Facilities FF&E and the OHPD FF&E as set forth in Section 5.8 of this Sublease.

(c) “Applicable Law” shall mean all laws or statutes, rules or regulations, and any amendments thereto, of the State or the United States by which the City and its powers, securities, operations and procedures are, or may be governed or from which its powers may be derived, including all City codes, ordinances and development standards. All City codes, ordinances, rules and development standards shall be applicable to this agreement and the Project, irrespective of whether such codes, ordinances, rules and development standards would otherwise normally apply.

(d) “AR&R Fund” shall mean the asset, replacement and renewal account to be established, funded and utilized in accordance with Article 7 of this Sublease.

(e) “AV Taxes” shall mean any and all real or personal property taxes and ad valorem taxes assessed against the Subleased Premises or OHPD’s interest therein during the Term.

(f) “Base Rent” shall mean an amount in each Sublease Year, except the Initial Base Rent Period, equal to the City’s aggregate Bond Debt Payments, reduced by: (a) the total hotel occupancy tax, sales tax and City ad valorem tax generated by the Hotel, Hotel Site, Convention Center and Convention Center Site and paid to City; (b) the TIRZ tax increment revenue paid to City for the Convention Center pursuant to an agreement between the TIRZ and City for the applicable Sublease Year ((a) and (b) collectively, the “Tax Revenue(s)”), and (c) a credit of up to \$100,000 per each Sublease Year in which the application of the Tax Revenues are not sufficient to pay the City’s Bond Debt Payments (the “Base Rent Credit”). The Base Rent Credit shall be in the amount of the deficiency between the Tax Revenues and the City’s aggregate Bond Debt Payments for the applicable Sublease Year, but in no event shall exceed \$100,000 per Sublease Year. The Base Rent Credit shall not be applicable to or given in any Sublease Year in which the Tax Revenues exceed the amount of the City’s aggregate Bond Debt Payments or after City’s payment in full of all Bond Debt Payments. No Base Rent shall be due: (i) until the earlier to occur of the expiration of twenty-four (24) months after the Operational Date or the expiration of forty-eight (48) months after date of issuance of the Certificates of Obligation (the “Base Rent Commencement Date”); or (ii) in any Sublease Year in which the Tax Revenue generated exceeds the City’s aggregate Bond Debt Payments for the applicable Sublease Year. During the period of time commencing with the Base Rent Commencement Date and ending on the immediately following September 30<sup>th</sup> (the “Initial Base Rent Period”), Base Rent shall mean an amount equal to the City’s aggregate Bond Debt Payments due during that period, reduced by: (a) Tax Revenues; and (b) the Base Rent Credit, if any. Upon City’s payment in full of all Bond Debt Payments, the amount of the Base Rent shall be adjusted in accordance with Section 2.2. For illustrative purposes only, the following examples for Base Rent calculations are provided:

	Example A	Example B	Example C
City's Annual Aggregate Bond Debt Payment	1,000,000	1,000,000	1,000,000
Tax Revenues (subtract)			
(hotel occupancy tax)	(400,000)	(700,000)	(800,000)
(sales tax)	(50,000)	(50,000)	(50,000)
(City ad valorem tax)	(100,000)	(100,000)	(150,000)
(TIRZ revenue)	(100,000)	(100,000)	(150,000)
Tax Revenues sub-total	(650,000)	(950,000)	(1,150,000)
Difference between Bond Payment and Tax Revenue	350,000	50,000	(150,000)
Applicable Base Rent Credit (subtract)	(100,000)	(50,000)	-
Total Base Rent	250,000	-	-

(g) “Bond Debt Payments” shall mean the semi-annual debt service payments made by the City on its Certificates of Obligation issued to fund the construction of the Convention Center.

(h) “Capital Repair” means any work (including all labor, supplies, materials and equipment) reasonably necessary to repair, restore, refurbish or replace the equipment, facilities, structure or other components of the Subleased Premises described in Exhibit B attached hereto; provided that such work and costs therefor must be a “capital cost” pursuant to Generally Accepted Accounting Principles and would be so classified by the City’s auditor and is necessitated by: (a) physical obsolescence (including replacement necessitated by repeated breakdown of a component of the Subleased Premises despite efforts to repair or restore it short of such replacement); (b) requirements imposed by the Approved Franchisor; or (c) modifications required from and after the Operational Date by Applicable Law. *[Need Exhibit B.]*

(i) “Certificates of Obligation” shall mean the City’s Certificates of Obligation issued to fund the construction of the Convention Center.

(j) “City” shall mean in all instances the City of Denton, Texas, a municipal corporation and political subdivision of the State of Texas and shall not include any assignee of City’s rights and obligations under this Sublease.

(k) “City Facilities” shall mean the Convention Center and related automobile parking spaces as determined to be required by the City’s development standards.

(l) “City Facilities FF&E” shall mean those items of furniture, fixtures and equipment specified in the City Facilities FF&E Specifications purchased for the City Facilities in accordance with the terms the Master Agreement.

(m) “City-UNT Land Lease” shall have the meaning set forth in the Recitals.

(n) “Comparable Convention Centers” shall mean the operation and maintenance of the Convention Center in a manner such that the condition of the Convention

shall demonstrate refined, high quality and fully functional appointments; furniture, fixtures and equipment; exterior and interior finishes; landscaping; and mechanical, electrical and structural components consistent with convention centers of comparable size and operation within the State of Texas that are affiliated with Comparable Hotel Properties . For purposes of this Sublease, the term Comparable Hotel Properties shall include, as of the Effective Date (but which may not be included in the future if such properties no longer meet the definition of “Comparable Convention Centers”), the San Marcos convention center and the Frisco convention center. The City shall inspect the Convention Center on an annual basis to determine compliance with the operation of the Convention Center in the manner of Comparable Convention Centers. Reasonable exceptions to this standard of Comparable Convention Centers may be agreed to by the Parties.

(o) “Convention Center” means an “upscale” convention center facility of approximately 100,000 square feet (but no less than 90,000 square feet) in size under roof and constructed upon the Convention Center Site, containing meeting rooms, and one (1) large ballroom sufficient to lawfully accommodate approximately 2,000 people for a banquet-style event, and related improvements, including landscaping, the required parking spaces as determined by the City’s development standards, and required infrastructure.

(p) “Convention Center Site” means that part of the Project Site whereon the Convention Center and related improvements shall be constructed, as depicted or described on Exhibit A attached hereto.

(q) “Effective Date” shall mean the date this Sublease is fully executed by City and OHPD upon the Closing of the City’s Financing Contribution.

(r) “Environmental Laws” shall refer to and include, without limitation, all Federal, State, City, and local statutes, laws, ordinances, rules and regulations, now or hereafter in effect, and as amended from time to time, that are intended for the protection of the environment, or that govern, control, restrict, or regulate the use, handling, treatment, storage, discharge, disposal, or transportation of Hazardous Materials. Environmental Laws specifically include but are not limited to, the National Environmental Policy Act, the Comprehensive Environmental Response, Compensation and Liability Act, the Resource Conservation and Recovery Act, the Hazardous Materials Act, the Toxic Substances Control Act, the Clean Water Act, the Clean Air Act, the Superfund Authorization and Recovery Act, the Occupational Safety and Health Administration Hazard Communication Standards, the Texas Hazardous Materials Act, and the Texas Water Quality Control Act.

(s) “Event of Default” shall have the meaning set forth in Section 12.1.

(t) “Hazardous Materials” shall refer to, and include, without limitation, all substances whose use, handling, treatment, storage, disposal, discharge, or transportation is governed, controlled, restricted, or regulated by Environmental Laws, that have been defined, designated or listed by any responsible regulatory agency as being hazardous, toxic, radioactive, or that may present an actual or potential hazard to human health or the environment if improperly used, handled, treated, stored, disposed, discharged, generated or released. Hazardous Materials specifically include, without limitation, asbestos and asbestos-containing-



materials, petroleum products, solvents, and pesticides, but shall exclude any such items that are necessary for the ordinary performance of City's or any subtenant's business activities, provided that such are used, stored or disposed of in compliance with all Applicable Laws.

(u) "Hotel" means a Full-Service Hotel (i) constructed and operated pursuant to and in accordance with the standards of an Approved Franchise and pursuant to the terms of the Master Agreement and any related agreements, (ii) constructed upon the Hotel Site in accordance with the Approved Plans, and (iii) consisting of at least nine (9) stories and containing a minimum of two-hundred seventy-five (275) guestrooms, or such other number as is agreed to by the Parties to the Master Agreement, and a restaurant, recreational amenities, adequate on-site parking, and other related amenities and space for providing the services customarily found in a full-service upscale hotel, open to the public and serving the Convention Center, adjacent business community, the UNT community and citizens of the City.

(v) "Hotel Lender" means the lender that OHPD selects to provide the required debt financing for the Private Financing Contribution, subject to the provisions of Section 5.1.3 of the Master Agreement.

(w) "Hotel Site" shall mean that part of the Project Site whereon the Hotel and Restaurant and related improvements shall be constructed.

(x) "Impositions" shall mean taxes including real or personal property taxes and ad valorem taxes assessed against the Subleased Premises including Improvements thereon or OHPD's interest therein, if any, during the Term, special assessments, levies and liens for any construction performed by or at the direction of OHPD (other than liens, if any, which are payable by City pursuant to written agreements executed by City), assessed and becoming due during the Term and that are levied or assessed against the Subleased Premises including Improvements thereon.

(y) "Improvements" shall mean the Convention Center and all other buildings, structures, equipment, improvements, fixtures and Related Infrastructure from time to time connected, installed or situated on the Convention Center Site, including all landscaping.

(z) "Interest" shall mean a rate per annum equal to the lesser of (a) 6% above the "Prime-Rate" as published in the *The Wall Street Journal*, Southwest Edition, in its listing of "Money Rates" (or any successor publication), or (b) the maximum under Applicable Law.

(aa) "Maintenance" means all work (including all labor, supplies, materials and equipment) which is of a routine, regular, and predictable nature and reasonably necessary for the cleaning and routine upkeep and repair of any property, structures, surfaces, facilities, fixtures (including, but not limited to, media plug-ins and cable and all wiring attendant thereto), equipment or furnishings, landscaping or any other component of the Subleased Premises in order to maintain such items in a manner comparable to or better than Comparable Convention Centers. Maintenance shall include, but not be limited to, the following: (a) preventative or routine maintenance that is stipulated in the operating manuals for the components as regular, periodic maintenance procedures; (b) periodic testing of building systems, such as mechanical, card-key security, fire alarm, lighting, and sound systems; (c) ongoing trash removal; (d) regular

maintenance and installation of replacements, if needed, of all landscaping and regular cleaning and maintenance of all parking lots and spaces; (e) regular maintenance procedures for HVAC, plumbing, and electrical and structural systems such as periodic cleaning, lubrication, and changing air filters and lights (other than field lights); (f) touch up painting; (g) cleaning prior to, during and following all conferences, conventions and other events held at the Subleased Premises; (h) repairs to the Subleased Premises other than Capital Repair; (i) changing of standard, isolated light bulbs, fuses and circuit breakers, as they burn out; (j) readying the Subleased Premises for the upcoming conferences, conventions or other events held on the Subleased Premises; (k) the labor required to perform routine maintenance on the components of the Subleased Premises which are subject to Capital Repair; and (l) any other work of a routine, regular and generally predictable nature that is reasonably necessary to keep the Subleased Premises in a manner comparable to or better than Comparable Convention Centers. Maintenance shall not include any work included within the term “Capital Repair. *[Need Exhibit C.]*

(bb) “Master Agreement” shall have the meaning set forth in the Recitals.

(cc) “OHM” shall mean O’Reilly Hospitality Management, LLC, a Missouri limited liability company.

(dd) “OHPD” shall mean in all instances O’Reilly Hotel Partners – Denton, LLC, a Missouri limited liability company, and shall not include any assignee of its rights and obligations under this Sublease.

(ee) “OHPD FF&E” shall mean the furniture, trade fixtures, equipment and other personal property purchased by OHPD necessary for the use and operation of the Subleased Premises pursuant to Section 5.7.

(ff) “Operating Expenses” means the following costs and expenses incurred by OHPD in operating the Convention Center: (a) cost of sales, salaries, wages, fringe benefits, payroll taxes and other cash payroll costs related to Convention Center employees; (b) departmental expenses, administrative and general expenses and the cost of advertising and business promotion, all utility costs including water, heat, light and power, and costs for Maintenance; (c) the cost of inventories and supplies consumed in the operation of the Convention Center; (d) a reasonable reserve for uncollectible accounts receivable; (e) all costs and fees of independent professionals or other third parties who perform services required or permitted hereunder; (f) the cost and expense of technical consultants and operational experts for specialized services in connection with non-routine Convention Center work; (g) all costs and expenses incurred by OHPD in connection with marketing for the Convention Center; (h) all costs and expenses incurred by OHPD pursuant to the Approved Franchise including, but not limited to, franchise fees, advertising, chain services, insurance, etc.; provided, however, no initial licensing fee nor capital expenditure necessary for compliance with the Approved Franchise; (i) insurance costs and expenses required under this Sublease; (j) all Impositions; (k) all costs and expenses incurred by OHPD to obtain and keep in full force and effect all licenses and permits required for the operation of the Convention Center, including without limitation, liquor licenses for the sale of alcoholic beverages at all restaurants, bars, lounges, banquet rooms,

meeting rooms and the Convention Center; and (l) such other costs and expenses incurred by OHPD reasonably necessary for the proper and efficient operation of the Convention Center.

(gg) “Operational Date” shall mean the date when the Convention Center is substantially complete and a full Certificate of Occupancy has been issued and obtained.

(hh) “Person” shall mean any person or entity.

(ii) “Plans” shall mean the designs, plans and specifications relating to the Convention Center Site as developed and approved in accordance with the Master Agreement.

(jj) “Project” means the Hotel, Restaurant and the City Facilities.

(kk) “Project Site” means the Hotel Site and the Convention Center Site, collectively.

(ll) “Related Infrastructure” shall mean any automobile parking spaces as determined to be required by the City’s development standards, water or sewer facilities, plazas, landscaped areas, pedestrian circulation areas or other construction on the Convention Center Site in connection with the use and/or operation of the Convention Center.

(mm) “Sublease” shall mean this “City-OHPD Convention Center Sublease” by and between City, as sublessor, and OHPD, as sublessee, covering the Subleased Premises.

(nn) “Subleased Premises” shall mean the City Facilities.

(oo) “Sublease Year” shall mean each twelve (12) calendar month period commencing on October 1<sup>st</sup> and expiring on September 30<sup>th</sup> during the Term, except for: (a) the first Sublease Year of the Term which shall commence on the Operational Date and end on the immediately following September 30<sup>th</sup>; and (b) the final Sublease Year of the Term which shall commence on October 1<sup>st</sup> following the expiration of the immediately preceding Sublease Year and shall continue until the expiration date of this Sublease.

(pp) “Term” shall mean the term of this Sublease as provided in Section 1.4 hereof.

(qq) “TIRZ” shall mean a Tax Increment Reinvestment Zone created by City pursuant to Chapter 311 of the Texas Tax Code, as amended, the boundaries of which are coterminous with the Project Site.”

(rr) “Upscale” shall mean comparable to or better than the Upscale Condition required for the Hotel pursuant to the Master Agreement.

1.2 Sublease. This Sublease shall be effective and binding between the parties on the Effective Date; provided however, the grant of the Subleased Premises to OHPD shall not be effective until the Operational Date, and OHPD shall not have the right of use or possession of the Subleased Premises until the Operational Date except for access to the Subleased Premises solely for the purpose fulfilling any obligation of OHPD pursuant to the Master Agreement in

connection with the design or construction of the Convention Center (the “Design Activities”) provided that: (a) OHPD first obtains the prior consent of UNT and City; (b) that such access and Design Activities do not interfere with, impair or damage any operations, activities or improvements on the Subleased Premises; and (c) OHPD hereby indemnifies and holds City and UNT harmless from any claims or damages arising in connection with the Design Activities. Effective as of the Operational Date and subject to the terms and provisions contained herein, City subleases and demises to OHPD and OHPD subleases from City, the City Facilities which are hereinafter referred to as the “Subleased Premises.”

1.3 No Warranty. OHPD accepts the Subleased Premises when conveyed in their then current “as is” condition. City makes no specific warranties, express or implied, concerning the title, condition, or use of the Subleased Premises, including those uses authorized by this Sublease, unless otherwise specified in this Sublease. Without limiting City’s disclaimer of warranty, City and OHPD expressly agree that City neither warrants nor bears any responsibility whatsoever, and expressly disclaims and is released from, any and every warranty whatsoever, express or implied, related to the Subleased Premises.

1.4 Term. Unless earlier terminated as provided herein and subject to the other terms and provisions of this Sublease, the initial term of this Sublease shall commence on the Operational Date and be for a period which is coterminous with the remainder of the Primary Term of the City-UNT Land Lease (the “Initial Term”). So long as (a) the City-UNT Land Lease is in force and the term of the same has been extended or City has the unilateral right to extend the term in accordance with the provisions of the City-UNT Land Lease; and (b) OHPD is not in default under the terms of this Sublease, the Master Agreement or any related document described in the Master Agreement, the Initial Term will automatically extend for up to two (2) terms of ten (10) year each (the “Extended Term(s)”) unless OHPD gives written notice to City of its intent to terminate this Sublease on or before three hundred and sixty-five (365) days prior to the expiration of the Initial Term or the expiration of the first Extended Term, as applicable. As used herein, the “Term” shall mean the Initial Term, plus the Extended Term(s). Notwithstanding the foregoing: (i) in all events this Sublease shall automatically terminate upon the expiration or termination of the Master Agreement or the City-UNT Land Lease for any cause; and (ii) the Term of this Sublease shall in no event extend beyond the term of the City-UNT Land Lease and in all events shall expire no less than one (1) day prior to the expiration of the City-UNT Land Lease.

## **ARTICLE 2** **SUBLEASE PAYMENTS**

2.1 Base Rent. OHPD agrees to pay City for the use of the Subleased Premises the Base Rent at such place and in such manner as City may designate, without any prior demand, and without any abatement, deduction or set-off by OHPD whatsoever. For the Initial Base Rent Period, Base Rent shall be paid on the Base Rent Commencement Date, and thereafter, Base Rent shall be paid in advance annually on January 1<sup>st</sup> of each Sublease Year and continuing regularly and annually thereafter on or before each January 1<sup>st</sup> of every Sublease Year of the Term. On or before thirty (30) days prior to January 1<sup>st</sup> of the Sublease Year following the Initial Base Rent Period and each January 1<sup>st</sup> of every Sublease Year thereafter until the Bond Debt Payments are paid in full, City shall deliver to OHPD an invoice with a calculation of the

Base Rent due which calculation shall include the aggregate Bond Debt Payments for the applicable Sublease Year, the estimated Tax Revenues for the applicable Sublease Year based on Tax Revenues for the immediately preceding Sublease Year and the amount of any Base Rent Credit for the applicable Sublease Year. Each invoice from City for Base Rent due following the initial invoice shall include the amount of the actual Tax Revenues for the prior Sublease Year and any credits due to OHPD or amounts due from OHPD based on the difference between the estimated and actual Tax Revenues for the applicable Sublease Year (the “True-Up Amount(s)”). Subject to any credits due to OHPD as itemized on the annual invoices from City, OHPD agrees to pay City the True-Up Amounts itemized on annual invoices from City on October 1<sup>st</sup> of the applicable Sublease Years in which the invoices are received.

2.2 Adjustment of Base Rent. Upon City’s payment in full of all Bond Debt Payments, the amount of the Base Rent shall be \$1.00 per Sublease Year for the remainder of the Term which OHPD agrees to pay to City without any invoice from City.

2.3 Additional Rent. In addition to the Base Rent, OHPD agrees to pay City the costs of the property insurance carried by City pursuant to the terms of Section 8.1 or other insurance carried by City pursuant to the terms of Section 8.2 hereof at such place and in such manner as City may designate. OHPD shall pay City such insurance costs annually within thirty (30) days of OHPD’s receipt of City’s statement for the same. Any monies or amounts due City from OHPD at any time during the Term, or otherwise pursuant to the terms of this Sublease, other than Base Rent, shall be deemed “Additional Rent.”

2.4 Late Payment Charge. Other remedies for nonpayment notwithstanding, if any installment of Base Rent or Additional Rent, as the case may be, is not received by City when the same is due, OHPD agrees to pay City on demand a late payment charge in the amount of five percent (5%) of such past due amount in addition to all other amounts owed under this Sublease.

2.5 Holding Over. If OHPD fails to surrender the Subleased Premises at the expiration or termination of the Term, occupancy of the Subleased Premises after the termination or expiration shall be a tenancy at sufferance. OHPD’s occupancy of the Subleased Premises during the holdover shall be subject to all the terms and provisions of the Sublease, and OHPD shall pay to City an amount (on a per month basis without reduction for partial months during the holdover) equal to one-twelfth of one hundred fifty percent (150%) of the amount of the Bond Debt Payments for the period immediately preceding the holdover or if the Bond Debt Payments have been paid in full, the last period for which Bond Debt Payments were due. No holdover by OHPD or payment by OHPD after the expiration or early termination of this Sublease shall be construed to extend the Term or prevent City from immediate recovery of possession of the Subleased Premises by summary proceedings or otherwise. In addition to the payment of the amounts provided above, if City is unable to deliver possession of the Subleased Premises to a new tenant, or to perform improvements for a new tenant, as a result of OHPD’s holdover and OHPD fails to vacate the Subleased Premises within fifteen (15) days after City notifies OHPD of City’s inability to deliver possession, or perform improvements, OHPD SHALL INDEMNIFY CITY AND HOLD CITY HARMLESS AGAINST LOSS OR LIABILITY RESULTING FROM THE DELAY BY OHPD IN SO SURRENDERING THE SUBLEASED PREMISES, INCLUDING ANY CLAIMS MADE BY ANY SUCCEEDING OCCUPANT FOUNDED ON SUCH DELAY BY OHPD AND ALL DAMAGES, INCLUDING, WITHOUT

LIMITATION, CONSEQUENTIAL DAMAGES, THAT CITY SUFFERS FROM THE HOLDOVER.

2.6 Payments. OHPD agrees to make all payments of Base Rent and other rents, charges, fees or other consideration payable to City required under this Sublease by wire or electronic transfer of funds (or in such other manner as the City may direct) in accordance with the directives of City throughout the Term. OHPD shall make all payments required under this Sublease in lawful currency of the United States of America. OHPD shall make its payments free from any claim, demand, setoff or counterclaim of any kind against City. OHPD's agreement to pay Base Rent and any other rents under this Sublease is an independent covenant, and no act or circumstance, regardless of whether such act or circumstance constitutes a breach of this Sublease by City, shall release OHPD of its obligation to pay Base Rent or any other rents required by this Sublease.

2.7 Security. On or before the Financing Viability Deadline, OHPD shall obtain and deliver to City of the following to secure OHPD's full performance of this Sublease, including the payment of all fees and other amounts now or hereafter payable to or required to be remitted to City under this Sublease (the "Security"): an irrevocable direct pay letter of credit or wire or electronic transfer of funds in the amount of one million dollars (\$1,000,000). The form, provisions and nature of the Security, and the identity of the issuer thereof, shall at all times be subject to City's approval. The Security shall remain in place at all times throughout the Term until City's payment in full of all Bond Debt Payments.

2.8 Application of Security. If applicable, City may apply all or part of the proceeds of the Security to unpaid amounts due under this Sublease, to the unpaid Base Rent or any other unpaid amount due under this Sublease. The Security shall remain on deposit with City throughout the Sublease Term, and, in addition to any and all other remedies available to it hereunder or otherwise, City shall have the right, in its sole discretion and at any time, to draw upon the entire stated amount of such Security on the occurrence of an Event of Default hereunder and to hold and apply any proceeds of such draw in excess of amounts then due to City as a cash deposit hereunder. OHPD hereby agrees to the deposit of any such excess proceeds with City. City shall have no obligation to draw upon the Security, and neither the existence of such right nor the holding of the Security itself shall cure any default or breach on the part of OHPD under this Sublease. Within sixty (60) days after the expiration or earlier termination of the Sublease and upon request therefor by OHPD, City will return the Security to OHPD, less any amounts then due from OHPD to City under this Sublease. OHPD hereby waives any right to any interest which may be earned or accrued on the proceeds of a draw under the Security during the Sublease and agrees that City shall have no obligation to hold excess proceeds of a draw under the Security in a segregated account, and City may commingle such proceeds with its other funds. No trust relationship is created with respect to the Security.

### **ARTICLE 3** **IMPOSITIONS**

3.1 Payment of Impositions. Except as otherwise provided in this Article 3, OHPD shall timely pay all Impositions prior to delinquency, and OHPD shall furnish to City receipts or copies thereof showing payment of such Impositions within thirty (30) days of payment of the

same. OHPD shall be entitled to pay any Impositions in installments as and to the extent and in the manner permitted by the applicable taxing authority or claimant without additional penalty or interest. City agrees to cooperate with OHPD in seeking the delivery of all notices of Impositions to OHPD directly from the applicable taxing authorities. City shall promptly deliver all notices of Impositions to OHPD which are delivered to City. City retains the right to pay any and all Impositions related to the Subleased Premises that are not paid before the same become delinquent or subject to interest or penalties; provided however, City agrees not to any such Impositions if the OHPD is contesting the same pursuant to Section 3.3 below. If City pays any such Impositions, OHPD shall reimburse City within ten (10) business days after written notice thereof from City.

3.2 Payment of Personal Property Taxes. To the extent not paid with the payment of Impositions pursuant to Section 3.1, OHPD shall pay prior to delinquency all taxes assessed against or levied upon fixtures, furnishings, equipment and all other personal property of OHPD contained in the Subleased Premises. OHPD shall cause its personal property to be assessed and billed separately from the property of City. If any of OHPD's personal property shall be assessed with City's property, OHPD shall pay City the taxes attributable to OHPD within ten (10) days after receipt of written statement therefor.

3.3 Contest of Impositions. If the assessment or levy of any of the Impositions shall be deemed by OHPD to be improper, illegal or excessive, or if OHPD desires in good faith to contest the Impositions for any other reason, OHPD may, at OHPD's sole cost and expense, dispute and contest the same and file all such protests or other instruments and institute or prosecute all such proceedings for the purpose of contest as OHPD shall deem necessary and appropriate provided that OHPD (a) notifies City that it intends to contest such claim, levy or assessment, (b) provides City with an indemnity, bond or other security satisfactory to City assuring the discharge of OHPD's obligations for such claims, levies or assessments, including interest and penalties, and (c) diligently pursues such contest in good faith to conclusion prior to the commencement of foreclosure proceedings or similar actions by the governmental authority which assessed or levied the contested Imposition. OHPD may not take any action or fail to pay any Impositions if such action or failure would result in the commencement of any such foreclosure procedures or similar action or a lien on the Convention Center Site, the Subleased Premises or UNT's or City's interest therein. OHPD shall be entitled to any refund of any Impositions (and the penalties or interest thereon) refunded by the levying governmental authority pursuant to any such proceeding or contest, if such Impositions shall have been either (a) paid directly by OHPD, or (b) paid directly by City and City was reimbursed therefore by OHPD. Notwithstanding the foregoing, OHPD waives any right it may have and agrees not to contest the assessment or levy of any AV Taxes or Impositions by City.

#### **ARTICLE 4**

#### **USE OF SUBLEASED PREMISES**

4.1 Permitted Use. OHPD shall use the Subleased Premises during the Term solely for the operation of a convention, meeting and exhibit center for holding conventions, meetings, and exhibits for the benefit of City, UNT and the general public. OHPD shall, throughout the Term of this Sublease, continuously operate and maintain the Convention Center in a manner comparable to or better than Comparable Convention Centers as an Upscale convention center in

strict accordance with the Approved Franchise, to the extent the same is applicable to the Convention Center (the “Permitted Use”).

4.2 Continuous Use. OHPD shall continuously occupy and use the Subleased Premises only for the Permitted Use during the Term in accordance with the terms of this Sublease and with the City-UNT Land Lease.

4.3 Availability of Subleased Premises. OHPD shall make the Subleased Premises available to the general public on an equal non-discriminatory basis with the goal of increasing tourism within the City.

4.4 Prohibited Uses. OHPD shall not: (a) use or occupy or allow the Subleased Premises or any part thereof to be used or occupied for any illegal or unlawful purposes or in violation of any Applicable Law, certificate of occupancy issued to or for the Subleased Premises or any part thereof or in any manner which would cause material structural injury to the Subleased Premises or any part thereof; (b) use or occupy or allow the Subleased Premises or any part thereof to be used or occupied for any purpose in violation of City’s policies and /or ordinances regarding sexually oriented businesses, as such policies may be amended from time to time; (b) suffer any act to be done or any condition to exist on the Subleased Premises, or any part thereof, or any action to be brought thereon, which may be dangerous, or which constitutes a public nuisance or waste, or which may make it impossible to obtain the insurance provided for herein; (c) use any of the parking spaces or facilities constituting a portion of the Related Infrastructure for any purpose other than to benefit the Convention Center and Hotel; (d) do or suffer any waste or damage, disfigurement or injury to the Subleased Premises or any part thereof; or (e) use, suffer or permit the Subleased Premises, or any part thereof, to be used by OHPD, any third party or the public, as such, without restriction or in a manner that impairs UNT’s title to or City’s leasehold interest in the Subleased Premises. Nothing contained in this Sublease and no action by City shall be construed to mean that City has granted to OHPD any authority to do any act or make any agreement that may create any such third party or public right, title, interest, lien, charge or other encumbrance upon the estate of UNT or City in the Subleased Premises.

4.5 Signs. No signs, advertisements, logos or notices of any type may be erected, painted or placed in, on or about the Subleased Premises, except those of such color, size, style and in such places as are first approved according to the process set forth in the Master Agreement and which are in compliance with the applicable City code, ordinances and development standards. OHPD shall not remove any existing signage on the Subleased Premises without the prior written consent of City, which consent shall not be unreasonably withheld, and the prior written consent of UNT pursuant to the terms of the City-UNT Land Lease.

4.6 Reserved Naming Rights. City shall retain the naming rights for the Convention Center and any of the ballrooms and meeting rooms located within the Convention Center and shall be entitled to all revenues generated from and associated with such naming rights. Subject to the terms of this Sublease, City may, in its sole discretion, assign such rights or grant or enter into any other agreements of any nature transferring such rights, whether or not such assignment or agreement is concomitant with an assignment of this Sublease. OHPD must use the name of the Convention Center in all of its promotional materials and efforts for the Hotel including, without limitation, OHPD’s website, the website of OHM or any Replacement Manager approved by City in accordance with Section 5.1 and/or any other website advertising or promoting the Hotel, if any; provided, however, that OHPD may not use the name of the



Convention Center for any other purpose without the prior written consent of City. Notwithstanding any of the foregoing to the contrary, City may not name the Convention Center or any of the rooms located therein in a fashion that would result in a violation of the Approved Franchise for the Hotel. City further agrees to: (a) consult with OHPD on the proposed names of the ballrooms and meeting rooms located within the Convention Center to assure that the same are consistent with and enhance the design of and marketing plan for the Hotel and Convention Center; and (b) make an effort to select the names of the ballrooms and meeting rooms located with Convention Centers prior to the Feasibility Deadline .

4.7 Reserved Right to Enter Subleased Premises. OHPD shall permit City, UNT and their respective authorized representatives to enter the Subleased Premises at all reasonable times and during normal business hours upon reasonable prior notice to OHPD or its manager (which shall have the opportunity to have a representative of OHPD present), which may be oral notice, except in cases of real or apparent emergency (in which case no notice shall be required), for the purpose of (a) inspecting the same, and (b) in the case of City, making any necessary repairs thereto and performing any work therein that City may be entitled to make or perform, respectively, pursuant to the provisions of Section 5.12. Nothing herein shall imply any duty upon the part of City to do any such work, and performance thereof by City shall not constitute a waiver of OHPD's default in failing to perform the same. On or before the Operational Date, OHPD shall provide City with contact information for OHPD's manager for contact purposes, and if not provided, notice pursuant to this Section 4.7 shall be to OHPD.

## **ARTICLE 5** **OPERATIONS, MANAGEMENT AND MAINTENANCE**

5.1 Exclusive Rights and Obligations. Subject to the terms and provisions of this Sublease and the City-UNT Land Lease, OHPD shall have the exclusive right and obligation to operate, manage and maintain the Subleased Premises, including all booking and catering rights; provided, however, OHPD shall not have the right to assign such rights or grant or enter into any licenses, subleases, management agreements, operating agreements or any other agreements of any nature transferring such rights except in connection with an assignment of this Sublease permitted by Section 10.1. OHPD covenants to operate, manage and maintain the Subleased Premises throughout the Term in a manner comparable to or better than Comparable Convention Centers in accordance with the terms and provisions of this Sublease and the City-UNT Land Lease. During the Term, it is intended by OHPD and City that City shall have no obligation, in any manner whatsoever, for the operation and management of the Subleased Premises.

(a) The foregoing notwithstanding, OHPD has proposed to enter into a management agreement with OHM in the form attached hereto as Exhibit D to operate, manage and maintain the Subleased Premises (the "OHM Management Agreement") and has requested City's consent for OHPD to enter into the OHM Management Agreement. City hereby consents to OHPD entering into the OHM Management Agreement provided that: (i) the same form as the form attached hereto as Exhibit D be executed, without modification, and a fully executed copy be provided to City by no later than the Operational Date; (ii) OHPD shall not enter into any modification, amendment, termination or replacement of the OHM Management Agreement without the prior written consent of City; (iii) the OHM Management Agreement shall terminate automatically with the termination of this Sublease or the City-UNT Land Lease; and (iv) OHPD

shall remain primarily liable for the performance of all of the obligations and duties pursuant to this Sublease and shall cause OHM to perform all of its obligations and duties pursuant to the OHM Management Agreement and in compliance with this Sublease and the City-UNT Land Lease.

(b) In the event that OHPD proposes to replace OHM and the OHM Management Agreement for the operation, management and maintenance of the Subleased Premises (the "Replacement Management Agreement"), City's prior written consent to the same shall be required. City's consent to any Replacement Management Agreement shall be subject to the following minimum requirements: (i) prior review and written approval by City of the form of the Replacement Management Agreement and of replacement manager of the Subleased Premises (the "Replacement Manager"); (ii) inclusion of the following provisions in the Replacement Management Agreement: (A) City shall be a third-party beneficiary and shall have the express right, among other rights thereunder, to enforce all rights and remedies of OHPD thereunder, but has no obligations thereunder; (B) no modification, amendment, termination or replacement thereof without the prior written consent of City; (C) will terminate automatically with the termination of this Sublease or the City-UNT Land Lease; (D) express obligation of Replacement Manager to perform in accordance with the terms of this Sublease and the City-UNT Land Lease; and (iii) such other terms and provisions as City may require. Notwithstanding the foregoing, City shall not unreasonably withhold its approval of a proposed Replacement Manager provided that: (1) the proposed Replacement Manager has a minimum of \_\_\_years of documented experience in operating and managing Comparable Convention Centers and provides letters of recommendation on request of City; and (2) has a minimum net worth of \$\_\_\_\_\_ and good credit standing. In the event that City approves a Replacement Management Agreement, OHPD shall remain primarily liable for the performance of all of the obligations and duties pursuant to this Sublease and shall cause any Replacement Manager to perform all of its obligations and duties pursuant to the Replacement Management Agreement and in compliance with this Sublease and the City-UNT Land Lease.

5.2 Related Obligations. OHPD further covenants to continuously operate and maintain the Hotel in an Upscale Manner comparable to or better than Comparable Hotel Properties for the Term of the Sublease. OHPD's obligation to operate and maintain the Hotel in an Upscale Manner comparable to or better than Comparable Hotel Properties shall survive the expiration of this Sublease and shall be in effect throughout the primary term and any extension of the Hotel Lease.

5.3 Maintenance. Except for Capital Repairs, during the Term OHPD shall, at its own cost and expense, perform all necessary Maintenance of the Subleased Premises so that the same are operated in a manner comparable to or better than Comparable Convention Centers and in compliance with Applicable Law. OHPD's obligation to perform all necessary Maintenance shall include, without limitations, not only those items included in the definition of "Maintenance," but also those items described on Exhibit C attached hereto. On default of OHPD in performing Maintenance that continues after the expiration of any applicable notice and cure period provided herein, City may, but shall not be required to, perform such Maintenance for OHPD's account, and the actual expense thereof, together with Interest thereon, shall constitute and be collectible as Additional Rent. At least thirty (30) days before the end of each Sublease Year, OHPD shall deliver to City a certificate from an engineer reasonably

acceptable to City certifying that the building's HVAC, life safety, plumbing, electrical and mechanical systems have been maintained in accordance with this Section 5.3. To the extent any of the components of the Subleased Premises which OHPD is obligated to maintain and repair hereunder are covered by a warranty provided by the manufacturer thereof, OHPD agrees to take all such actions, including the manufacturer's required and/or recommended scheduled maintenance, necessary to maintain the warranty without impairment. Furthermore, regardless of whether any such component is covered by a manufacturer's warranty, to the extent the manufacturer of any component of the Subleased Premises that OHPD is obligated to repair under this Sublease recommends regularly scheduled maintenance for the component. OHPD shall be obligated to comply with the manufacturer's recommendations. Specifically included in the foregoing obligation is the obligation of OHPD to perform all scheduled maintenance recommended by the manufacturers of the HVAC system servicing the Subleased Premises at the times recommended by such manufacturer. Upon the expiration or termination of this Sublease, OHPD shall surrender the Subleased Premises to City in the condition existing at the Operational Date reasonable wear and tear, obsolescence and loss by casualty excepted, except to the extent OHPD is required under this Sublease to repair casualty damage. *[Need Exhibit C.]*

5.4 Repair and Maintenance Obligations. During the Term, it is intended by OHPD and City that City shall have no obligation, in any manner whatsoever, for the Maintenance of the Subleased Premises or for those items of maintenance, repair or replacement described on Exhibit C, whether structural or nonstructural, all of which obligations are intended, as between City and OHPD, to be those of OHPD. OHPD expressly waives the benefit of any statute now or in the future in effect which would otherwise afford OHPD the right to perform any Capital Repairs at City's expense or to terminate this Sublease because of City's failure to make or finance Capital Repairs.

5.5 Capital Repairs. During the Term, City shall perform all Capital Repairs to the Subleased Premises described on Exhibit B attached hereto in a manner comparable to or better than Comparable Convention Centers, subject to the provisions of Section 7.2. It is intended by OHPD and City that OHPD shall have no obligation to perform Capital Repairs to the Subleased Premises during the Term, but shall be responsible for performing routine Maintenance on the components of the Subleased Premises which are subject to Capital Repairs. The routine Maintenance to be performed by OHPD on the components of the Subleased Premises which are subject to Capital Repairs shall include, without limitation, cleaning the same and performing scheduled maintenance recommended by manufactures. Notwithstanding anything to the contrary herein, if the need for any repair or replacement is caused by the negligence or willful misconduct of OHPD, its employees, agents or contractors, then the cost of such repair or replacement shall be paid solely by OHPD immediately upon demand for same by City. Nothing contained herein entitles OHPD to make any repairs, alterations or additions to the Subleased Premises at City's expense or to terminate this Sublease based on the physical condition of the Subleased Premises.

5.6 City Facilities FF&E. To the extent City purchases any City Facilities FF&E pursuant to the terms of the Master Agreement, OHPD shall have the right to use the City Facilities FF&E in connection with its operations at the Subleased Premises. OHPD must maintain any and all City Facilities FF&E in good condition and repair on a regular and ongoing basis and promptly replace, at OHPD's sole cost and expense, such City Facilities FF&E with

reasonably comparable items as needed should the same become worn out or obsolete. Upon termination or expiration of this Sublease, OHPD shall surrender to City the Subleased Premises with all of the City Facilities FF&E (or reasonably comparable replacements thereof) in the same condition existing at the Operational Date, loss by casualty and normal wear and tear excepted, except to the extent OHPD is required under this Sublease to repair casualty damage. Upon termination or expiration of this Sublease, City shall pay OHPD the then fair market value of any City Facilities FF&E which OHPD purchased at its sole cost and expense within five (5) years of the date of such termination or expiration (the “FF&E Reimbursement”).

5.7 OHPD FF&E. Except for the City Facilities FF&E purchased pursuant to the terms of the Master Agreement, OHPD, at its sole cost and expense, shall purchase all furniture, trade fixtures, equipment and other personal property necessary for the use and operation of the Subleased Premises commencing on the Operational Date and continuing throughout the Term (the “OHPD FF&E”). Any and all such OHPD FF&E must be comparable to or better than the quality of the City Facilities FF&E and the quality mandated by the Approved Franchisor of the Hotel. OHPD must, throughout the Term of this Sublease, furnish and equip the Subleased Premises with such OHPD FF&E as is necessary for the continual operation of the Subleased Premises in a manner comparable to or better than Comparable Convention Centers. Any OHPD FF&E shall remain the property of OHPD and may be removed from the Subleased Premises by OHPD at the expiration of the Term provided that (a) OHPD is not then in default under this Sublease and (b) OHPD repairs any and all damage caused to the Subleased Premises as a result of such removal.

5.8 Annual FF&E Inventory. On or before December 1<sup>st</sup> of each calendar year during the Term, OHPD must prepare and deliver to City for approval an inventory of the City Facilities FF&E and any and all replacements of the same and an inventory of the OHPD FF&E (the “Annual FF&E Inventory”). To the extent any of City Facilities FF&E has become worn out or obsolete during the preceding twelve (12) month period, OHPD shall note such fact on the applicable Annual FF&E Inventory and include a description of the replacement equipment purchased pursuant to Section 5.6 on the applicable Annual FF&E Inventory. Once purchased by OHPD pursuant to Section 5.6, any such replacement furniture, fixture or equipment shall be owned by City and be a part of the City Facilities FF&E for all purposes under this Sublease. City shall have the continual right to audit OHPD’s books and records regarding any Annual FF&E Inventory and to make on-site visits to the Subleased Premises in connection with any such audits. OHPD shall cooperate fully with City in responding to any such audits and promptly prepare any necessary revisions to the applicable Annual FF&E Inventory as a result of such audits.

5.9 Services. During the Term, OHPD shall pay the costs of all utilities and routine services including, without limitation, drainage fees, electricity, heating, ventilating and air conditioning, water, natural gas, lighting, replacement for all lights, restroom supplies, telephone service, window washing, security service, janitor and disposal services, landscaping services and such other services as OHPD determines to furnish to the Subleased Premises. To the extent required by Applicable Law, OHPD shall also pay for all maintenance upon such utilities. City shall not be in default hereunder or be liable to OHPD for any damage or loss directly or indirectly resulting from, nor shall Base Rent be abated or a constructive or other eviction be deemed to have occurred by reason of, the installation, use or interruption of use of any

equipment in connection with the furnishing of any of the foregoing services, any failure to furnish or delay in furnishing any such services, whether such failure or delay is caused by accident or any condition beyond the control of City or OHPD or by the making of repairs or improvements to the Subleased Premises or otherwise, or any limitation, curtailment, rationing or restriction on use of water, electricity, gas or any form of energy serving the Subleased Premises, whether such results from mandatory governmental restriction or voluntary compliance with governmental guidelines or otherwise. OHPD shall be the named account holder for all such services and utilities and shall timely pay prior to delinquency for all such services and utilities directly to the provider thereof.

5.10 Operating Expenses. During the Term, OHPH shall be solely responsible for and timely pay the costs of all Operating Expenses for the Subleased Premises.

5.11 Liens. OHPD shall not create or permit to be created any lien, encumbrance or charge upon the Subleased Premises or any part thereof or the income therefrom or the leasehold estate created by this Sublease, and OHPD shall not suffer any other matter or thing whereby the estate, rights and/or interest of OHPD and/or City (or any part thereof) in the Subleased Premises or any part thereof might be encumbered by any such lien, encumbrance or charge. If any mechanic's, laborer's or materialman's lien shall at any time be filed against the Subleased Premises or any part thereof, OHPD within thirty (30) days after notice of the filing thereof, will cause the same to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or otherwise. If OHPD shall fail to cause such lien to be discharged within the period aforesaid, then, in addition to any other right or remedy City may have hereunder or at law or equity, City may, but shall not be obligated to, discharge the same, and City shall be entitled, if City so elects, to compel the prosecution of an action for the foreclosure of such lien by the lien claimant and to pay the amount of the judgment in favor of the lien claimant with interest, costs and allowances. Any amount so paid by City and all costs and expenses, including, without limitation, reasonable attorneys' fees and disbursements, incurred by City in connection with the discharge of the lien and/or the prosecution of such action, together with Interest thereon from the respective dates of City's making of the payment or incurring of the cost and expense to the date OHPD reimburses City for such amount, shall constitute additional rent payable by City under this Sublease and shall be paid by OHPD to City immediately on demand.

5.12 City's Right to Perform. Upon OHPD's failure to perform any obligation or make any payment required of OHPD hereunder, City shall have the right (but not the obligation) to perform such obligation of OHPD on behalf of OHPD and/or to make payment on behalf of OHPD. OHPD shall reimburse City the reasonable cost of City's performing such obligation on OHPD's behalf, including reimbursement of any amounts that may be expended by City, plus Interest.

## **ARTICLE 6** **ALTERATIONS**

6.1 OHPD Alterations. OHPD shall not make or allow to be made any alterations, physical additions or improvements (collectively referred to herein as "OHPD Alterations") in or to the Subleased Premises without complying with all Applicable Law and first obtaining the written consent of City, which consent shall not be unreasonably withheld, and written consent

of UNT pursuant to the terms of the City-UNT Land Lease. In any event, OHPD shall provide City with (a) a copy of the plans and specifications for any such OHPD Alterations prior to the commencement of construction of such OHPD Alteration, (b) identity of and copies of contracts with contractors and suppliers prior to the commencement of constructions, (b) as-built drawings of any OHPD Alterations after completion of construction, and (c) such other information and documents as the City may request. OHPD shall not interfere with the operations of the Convention Center or take any action which may impair or damage the structural elements or integrity of the Convention Center during the construction of or as result of any OHPD Alteration. OHPD shall not make any OHPD Alterations during the Term that interferes with the development or use of the Convention Center primarily as a public convention and meeting facility, other than short term interruptions for construction as approved by City. Any alterations, physical additions or improvements to the Subleased Premises made by City or OHPD shall become the property of City and must be surrendered to City upon the termination or expiration of this Sublease without compensation or credit to OHPD; provided, however, City, at its option, may require OHPD to remove any OHPD Alterations or other physical additions and alterations which the City has not consented to in writing in order to restore the Subleased Premises to the condition existing at the Operational Date, with all costs of removal and/or alterations to be borne by OHPD. Notwithstanding the foregoing, OHPD shall not be required to remove any OHPD Alterations or other physical additions or improvements if City agrees at the time of approval of such additions or improvements that they do not have to be removed on the termination or expiration of this Sublease.

6.2 Additional Requirements for OHPD Alterations. All OHPD Alterations shall be subject in all cases to the following:

(a) All OHPD Alterations shall be made promptly at the sole cost and expense of OHPD and in a good and workmanlike manner, in a manner comparable to or better than Comparable Convention Centers and in compliance with all Applicable Law.

(b) The Subleased Premises shall at all times be free of liens for labor and materials supplied or claimed to have been supplied to the Subleased Premises, subject to the provisions of Section 5.11.

(c) NOTICE IS HEREBY GIVEN THAT CITY SHALL NOT BE LIABLE FOR ANY LABOR OR MATERIALS FURNISHED TO OR FOR OHPD. FURTHERMORE, NOTICE IS HEREBY GIVEN TO OHPD AND OHPD'S MECHANICS, LABORERS AND MATERIALMEN WITH RESPECT TO THE SUBLEASED PREMISES THAT NO MECHANIC'S, MATERIALMAN'S OR LABORER'S LIEN SHALL ATTACH TO OR AFFECT THE REVERSION OR OTHER INTEREST OF CITY OR UNT IN OR TO THE SUBLEASED PREMISES. Any contract entered into by OHPD for the construction of such improvement or alteration must include the foregoing conspicuous notice.

(d) Worker's compensation and commercial general liability insurance with respect to the alterations and improvements as required by this Sublease and the Master Agreement shall be maintained and/or provided.

(e) City's consent to or approval of any OHPD's Alterations (or the plans therefor) shall not constitute a representation or warranty by City, nor City's acceptance, that the same comply with sound architectural and/or engineering practices or with all Applicable Laws, and OHPD shall be solely responsible for ensuring all such compliance.

**ARTICLE 7**  
**REPLACEMENT FORECAST AND AR&R FUND**

7.1 Capital Repair and City Facilities FF&E Forecast. On or before January 1st of each calendar year during the Term, OHPD will prepare and submit to City a proposed replacement forecast for Capital Repairs for the Subleased Premises and for replacement or repairs of the City Facilities FF&E (the "FF&E Replacements") for the subsequent five (5) calendar year period that takes into account all relevant factors, including the physical condition or obsolescence of components of the Subleased Premises and of the City Facilities FF&E and the requirement herein that OHPD operate the Subleased Premises in a manner comparable to or better than Comparable Convention Centers. Each proposed replacement forecast shall be in such form and shall be accompanied by such supporting information (including relevant assumptions made in formulating the proposed forecast) and evidence of funds available to OHPD to pay the costs of the FF&E Replacements as City may reasonably require. City, in its reasonable discretion, shall have the right to approve any item in the proposed replacement forecast for Capital Repairs to be paid from the AR&R Fund and FF&E Replacements to be paid for by OHPD and shall notify OHPD within thirty (30) business days after receipt of such proposed replacement forecast if the same is not approved and included with the notice details of any items of Capital Repairs or FF&E Replacements which are disapproved. OHPD shall within ten (10) business days of receipt of City's notice of such disapproval submit a revised replacement forecast to City. If the revised replacement forecast also is disapproved by City, OHPD shall promptly submit further revisions to the proposed replacement forecast until the same is accepted and approved by City (the "Approved Replacement Forecast"). OHPD shall make FF&E Replacements for the Subleased Premises in manner comparable to or better than Comparable Convention Centers, and City, subject to the terms of Section 7.2, shall make items of Capital Repair to the Subleased Premises in a manner comparable to or better than Comparable Convention Centers, in accordance with the then current Approved Replacement Forecast until a new Approved Replacement Forecast is approved by City. To the extent that it becomes necessary from time to time to perform any Capital Repair to the Subleased Premises that is not included in the then current Approved Replacement Forecast, OHPD shall submit supporting information to City for such Capital Repair and on approval of City which approval shall not be unreasonably withheld, funds available in AR&R Fund may be used therefore subject to the terms of Section 7.2.

7.2 AR&R Fund. On or before the Operational Date, City shall establish an account for the AR&R Fund in accordance with Section 3.4.3(d) of the Master Agreement. During each Sublease Year, City shall deposit in the AR&R Fund from lawfully available funds an amount determined by City during its annual budget process based upon the then current Approved Replacement Forecast for Capital Repair. Subject to the provisions of Section 7.3, the AR&R Fund shall be used by City solely for items of Capital Repair included in the Approved Replacement Forecasts and shall not be available to pay for any Maintenance performed by OHPD or for FF&E Replacements purchased by OHPD. All funds in the AR&R Fund shall be

the sole property of City, and OHPD shall not create, incur, assume, claim or permit to exist any security interest or lien on the AR&R Fund or any proceeds thereof and shall not be entitled to any disbursements from the AR&R Fund. Notwithstanding the foregoing, in no event shall City be required to expend funds for items of Capital Repair for the Subleased Premises if funds are not appropriated by City or are not lawfully available to City for such purposes.

7.3 City's Right to Audit. OHPD shall keep or cause OHM to keep at the Subleased Premises a complete and accurate set of books and records regarding the expenditures for FF&E Replacements required under Section 5.6 and Section 7.1 which shall be preserved for at least thirty (36) months. City and its agents may, at any reasonable time, inspect copy and/or audit any or all of OHPD's books and records that in any manner relate to the FF&E Replacements required under Section 5.6 and Section 7.1 and, at City's request, OHPD shall make all such data available for such examination at such reasonable times as City shall specify. Upon a failure by OHPD to make FF&E Replacements as required by Section 5.6 and Section 7.1 or to maintain the Convention Center in accordance with Section 5.3 that continues after the expiration of any applicable notice and cure period provided herein, City may, at its election, use funds in AR&R Fund for the purpose of making the FF&E Replacements required of OHPD under Section 5.6 or Section 7.1 or for the purpose of maintenance of the Convention Center required by OHPD under Section 5.3.

## **ARTICLE 8**

### **INSURANCE AND ENVIRONMENTAL PROVISIONS**

8.1 Commercial Property Insurance. At all times during the Term of this Sublease, City shall maintain a policy or policies of special causes of loss form commercial property insurance, with all premiums paid in advance, issued by and binding upon an insurance company reasonably acceptable to City and authorized to transact business in the State of Texas, insuring all buildings and structures included in the Subleased Premises, and covering all City Facilities FF&E located in the Subleased Premises, in accordance with the requirements of Section 8.2 of the Master Agreement. City shall be named as the loss payee, on all such policies. OHPD shall be required to reimburse City for the costs of such policies in accordance with Section 2.3 hereof. Any loss under any such insurance policy required under this Sections 8.1 shall be made payable to City for the benefit of City, to the end that City shall be entitled to collect all money due under such insurance policies payable in the event of and by reason of the loss of or damage to the Subleased Premises or the City Facilities FF&E, to be applied pursuant to Section 9.1 below. City agrees to use reasonable diligence to obtain insurance at the best rate possible; however, City and OHPD acknowledge that that price is only one factor in City's selection of insurance.

8.2 Additional City Insurance. In addition to the commercial property insurance described in Section 8.1, at all times during the Term of this Sublease, City shall maintain all policies of insurance (or provide through self-insurance programs) required by Section 8.2 of the Master Agreement, in accordance with the requirements of the Master Agreement. OHPD shall be required to reimburse City for the costs of such policies in accordance with Section 2.3 hereof to the extent that such coverage is not provided through City's self-insurance programs. Any loss under any such insurance policy required under Sections 8.2 thereof shall be made payable to City for the benefit of City, to the end that City shall be entitled to collect all money due under



such insurance policies payable in the event of and by reason of the loss of or damage to the Subleased Premises or the City Facilities FF&E, to be applied in City's sole discretion, but subject to the provisions of Section 8.7 and Section 9.1.

8.3 OHPD Insurance. At all times during the Term of this Sublease, OHPD shall maintain: (a) all policies of insurance required by Sections 8.2, 8.3 & 8.4 of the Master Agreement, in accordance with the requirements of the Master Agreement; and (b) the following policies of insurance:

(a) Liability Insurance. OHPD agrees, at its sole expense, to obtain and maintain commercial general liability insurance at all times during the Term hereof with reputable insurance companies authorized to transact business in the State of Texas for bodily injury (including death) and property damage with minimum limits from time to time of the greater of (i) \$5,000,000 with respect to any one occurrence and the aggregate of all occurrences during a given policy period and (ii) those customarily held by owners/operators of similar projects in the State of Texas, (a) protecting City and OHPD against any liability, damage, claim or demand arising out of or connected with the condition or use of the Subleased Premises. Such insurance shall include contractual liability, personal injury and advertising liability, and independent contractor liability as well as products and completed operations coverage, and (b) business automobile liability insurance (including owned, non-owned and hired). Such insurance coverage must be written on an "occurrence" basis. The insurance required to be maintained by OHPD, may be maintained by any combination of single policies and/or umbrella or blanket policies, so long as the level of coverage is not impaired or reduced by the use thereof. City and its elected officials, employees, agents and volunteers shall be named as Additional Insureds, as their interests appear, on all insurance policies required by this Sublease or the Master Agreement. If OHPD's liability insurance policies do not contain the standard ISO Separation of Insureds Provision, or a substantially similar clause, such liability insurance policies shall be endorsed to provide cross-liability coverage at OHPD's expense.

(b) Workers' Compensation Insurance. OHPD agrees, at its sole expense to obtain and maintain workers' compensation insurance, as required by Applicable Law, during the Term. The policy will be endorsed to provide a waiver of subrogation as to City.

(c) Property Insurance. At all times during the Term of this Sublease, OHPD shall, at its sole expense, maintain a policy or policies of special causes of loss form commercial property insurance, with all premiums paid in advance, issued by and binding upon an insurance company reasonably acceptable to City and authorized to transact business in the State of Texas, insuring all OHPD FF&E and other personal property of OHPD located in the Subleased Premises, for the amount of the full replacement cost thereof as of the date of the loss with a deductible amount no greater than that retained by owners of similar properties in the State of Texas at the time the policy in question is obtained. Furthermore, no policy of insurance required under this Section 8.3 shall be written such that the proceeds thereof will produce less than the minimum of coverage required hereunder by reason of co-insurance provisions or otherwise.

8.4 Additional Coverage/Requirements of Policies. In addition to the insurance required in Sections 8.3 hereof, OHPD must also maintain such other insurance, both in terms of

(i) risks insured and scope of coverage, and (ii) amounts of coverage, as may from time to time during the Term be customarily carried by owners/operators of properties similar to the Subleased Premises in the State of Texas with the effect that at any given time during the Term. OHPD shall maintain such additional insurance coverage on the Sublease Premises and its operations thereon equal to that carried by the owners/operators of other similar Convention center facilities in the State of Texas.

All insurance required of OHPD under this Article 8 shall be primary and non-contributing with any insurance that may be carried by City. Also, each policy of insurance required under this Article 8 shall (i) be issued by one or more insurance companies each of which must have an A.M. Best Company financial and performance rating of A-IX or better and be qualified or authorized by the laws of the State of Texas to assume the risk covered by such policy; (ii) provide that such policy shall not be canceled or modified without at least thirty (30) days prior written notice to City and (iii) provide that any loss otherwise payable thereunder shall be payable notwithstanding any act or negligence of the named insureds which might, absent such agreement, result in a forfeiture of all or a part of such insurance payment. On the Operational Date and thereafter as City may require, OHPD shall provide City with certificates of insurance, or other evidence and documentation, acceptable to City evidencing OHPD's full compliance with the insurance requirements of this Sublease. If requested by City, OHPD shall provide City with certified copies of any of the required policies. OHPD shall promptly pay all premiums when due on such insurance and not less than fifteen (15) days prior to the expiration date of each such policy, deliver to City acceptable evidence of insurance, such as a renewal policy or policies marked "Premium Paid", or other evidence satisfactory to City, reflecting that all required insurance is current and in force. OHPD will immediately give notice to City of any cancellation of, or change in, any insurance policy required to be maintained hereunder. OHPD may satisfy any insurance requirement hereunder by providing one or more "blanket" insurance policies provided same is reasonably acceptable to City.

**8.5 WAIVER OF SUBROGATION. CITY AND OHPD HEREBY WAIVE ALL CLAIMS, RIGHTS OF RECOVERY AND CAUSES OF ACTION THAT EITHER PARTY OR ANY PARTY CLAIMING BY, THROUGH OR UNDER SUCH PARTY BY SUBROGATION OR OTHERWISE MAY NOW OR HEREAFTER HAVE AGAINST THE OTHER PARTY OR ANY OF THE OTHER PARTY'S PRESENT AND FUTURE SUBSIDIARIES, AFFILIATES, PARTNERS, OFFICERS, DIRECTORS, EMPLOYEES, DIRECT OR INDIRECT STOCKHOLDERS, AGENTS, OTHER REPRESENTATIVES, SUCCESSOR AND ASSIGNS FOR LOSS OR DAMAGE TO PROPERTY OF CITY OR OHPD, EVEN IF CAUSED BY THE NEGLIGENCE OR FAULT OF THE RELEASED PARTY OR ITS PARTNERS, DIRECTORS, OFFICERS, EMPLOYEES, AGENTS OR REPRESENTATIVES, TO THE EXTENT THAT THE LOSSES OR DAMAGES ARE COVERED BY THE INSURANCE POLICIES ACTUALLY MAINTAINED PURSUANT TO SECTION 8.1, 8.2, 8.3 OR 8.4 OF THIS SUBLEASE. CITY AND OHPD EACH SHALL CAUSE THEIR RESPECTIVE INSURANCE CARRIERS TO ENDORSE, IF REQUIRED TO MAKE THIS WAIVER EFFECTIVE, ALL APPLICABLE POLICIES WAIVING THE CARRIER'S RIGHTS OF RECOVERY UNDER SUBROGATION OR OTHERWISE AGAINST THE OTHER PARTY.**

8.6 Adjustment of Losses. Any loss under any such insurance policy required under Section 8.3 hereof shall be made payable to City for the benefit of OHPD and City, to the end that City shall be entitled to collect all money due under such insurance policies payable in the event of and by reason of the loss of or damage to the Subleased Premises, to be applied pursuant to Section 8.7 below. Any accumulation of interest on the insurance proceeds collected by OHPD shall be added to, and become a part of, the fund being held by City for the benefit of City and OHPD. The adjustment of losses with the insurer shall be made by City.

8.7 Application of Proceeds of Property Insurance. All proceeds payable pursuant to the provision of any policies of property insurance required to be carried under the terms of Section 8.3 of this Sublease (net of reasonable expenses of collection) shall be applied for the following purposes:

(a) All such net proceeds shall first be used, subject to any other terms and conditions contained in this Sublease, to fund the rebuilding, restoration and repair of the portion of the Subleased Premises, the City Facilities FF&E and/or the OHPH FF&E which have become destroyed or damaged for which such proceeds are payable, such funds to be released by City on such terms and conditions as City may reasonably require; and

(b) Following completion of all work under subsection (a) above, any proceeds not disbursed pursuant to subsection (a) above shall be applied to offset OHPD's obligations to pay the Base Rent, or if no Base Rent is payable, to upgrade or repair the Subleased Premises.

8.8 Environmental Investigation, Remediation and Indemnity.

(a) OHPD represents and warrants that it has undertaken a reasonable investigation of the environmental condition of the Subleased Premises, and the results of OHPD's environmental investigation did not identify any condition relating to the environment that could reasonably be expected to materially and adversely impact OHPD's ability to conduct its operations at the Subleased Premises. City makes no representation or warranty concerning the condition of the Subleased Premises. OHPD shall provide to City all reports and assessments obtained by OHPD with respect to its environmental investigation of the Subleased Premises.

(b) OHPD shall be responsible, at its sole expenses, for performing any environmental investigation and remediation work which may be required in connection with the use and occupancy of the Subleased Premises and which is caused by the presence of Hazardous Materials on the Subleased Premises, except and to the extent the presence thereof results solely from the act of City or its officers, employees, agents or representatives or was present on the Subleased Premises before the execution of this Sublease. Such environmental investigation and remediation work shall be conducted in accordance with all Applicable Laws including applicable Environmental Laws. OHPD shall notify and advise City of the remediation OHPD will undertake and the procedures to be used. OHPD shall complete the remediation with due diligence and shall comply with, and shall cause its agents and contractors to comply with, all Applicable Laws including applicable Environmental Laws regarding the use, removal, storage, transportation, disposal and remediation of Hazardous Materials. OHPD's obligation as provided herein to undertake environmental investigation and remediation of the Subleased Premises shall

be a continuing obligation of OHPD which shall survive throughout the Term and after the expiration or termination of this Sublease.

(c) The term “Hazardous Materials” shall exclude any such items that are necessary for the ordinary performance of OHPD’s business activities, provided that such items are used, stored or disposed of in compliance with all Environmental Laws. If OHPD breaches its obligations under this Section 8.8 and such breach is not cured following notice an within the applicable cure period specified in Article 12 below, City may take any and all action reasonably appropriate to remedy such breach, and OHPD shall promptly pay all reasonable costs incurred by City in connection therewith.

(d) Indemnity. IN ADDITION TO ANY OTHER INDEMNITIES IN THIS SUBLEASE AGREEMENT, OHPD SHALL DEFEND, INDEMNIFY THE CITY AND HOLD HARMLESS CITY FROM ANY AND ALL ENVIRONMENTAL CLAIMS (INCLUDING REASONABLE ATTORNEY’S FEES, LITIGATION AND INVESTIGATION EXPENSES, AND COURT COSTS) ARISING OUT OF OR RESULTING IN WHOLE OR IN PART FROM OHPD’S USE, HANDLING, TREATMENT, STORAGE, DISPOSAL, DISCHARGE, OR TRANSPORTATION OF HAZARDOUS MATERIALS ON OR AT THE SUBLEASED PREMISES, THE VIOLATION OF ANY ENVIRONMENTAL LAW BY OHPD, OR THE FAILURE OF OHPD TO COMPLY WITH THE TERMS, CONDITIONS AND COVENANTS OF THIS ARTICLE.

(e) The provision of this Section 8.8 shall survive the expiration or termination of this Sublease and are solely for the benefit of City and OHPD and shall not be deemed for the benefit of any other person or entity.

## **ARTICLE 9** **CASUALTY**

9.1 Damage or Destruction. Subject to the terms of the City-UNT Land Lease and provided that City receives the proceeds of the commercial property insurance which City is required to maintain pursuant to Section 8.1 hereof, if, at any time during the Term, the Subleased Premises or any part thereof, or the City Facilities FF&E shall be damaged or destroyed by fire or other casualty of any kind or nature, ordinary or extraordinary, foreseen or unforeseen, City shall (a) as soon as reasonably practicable, but in no event later than ninety (90) days after the date of a casualty, commence the preparation of the plans for and work of repair, reconstruction or replacement and thereafter proceed with all due diligence until completion of the repair, reconstruction or replacement of the damaged Subleased Premises or part thereof to a condition similar to that existing prior to such damage or destruction in order that the Subleased Premises may continue to be operated in a manner comparable to or better than Comparable Convention Centers; and (b) as soon as reasonably practicable (provided that City has received the proceeds of the commercial property insurance policy), replace any damaged or destroyed City Facilities FF&E with furniture, fixtures and equipment of comparable quality to that existing prior to the damage or destruction in order that the Subleased Premises may continue to be operated in a manner comparable to or better than Comparable Convention Centers. Notwithstanding the foregoing, if the casualty occurs during the last five (5) years of the Term and the extent of damage to the Subleased Premises is greater than fifty percent (50%) (in City’s

reasonable business judgment based on objective information and criteria) of the then replacement value thereof (exclusive of the value of the Convention Center Site), City shall have the option, within ninety (90) days from the date of the occurrence of such casualty damage, to terminate this Sublease by giving written notice of such termination to OHPD within said 90-day period, in which event (i) this Sublease shall terminate as of the termination date specified in such notice to OHPD which shall not be less than thirty (30) days after the date of such notice; (ii) OHPD shall no longer be required to pay Base Rent for any period subsequent to such termination date; (iii) City shall not be required to repair the damage; (iv) all insurance proceeds available as a result of such damage shall be paid to and be the property of City, subject to OHPD's right to the FF&E Reimbursement, if applicable; and (v) the Parties shall have no further liability of obligations one to the other except for liabilities incurred or accruing prior to such termination date, that survive the expiration or termination of this Sublease or as may be expressly provided for herein.

9.2 Notice and Cooperation. OHPD shall immediately notify City of any event which results in damage to or destruction of the Subleased Premises, the City Facilities FF&E or any part thereof. With respect to any damage to or destruction of the Subleased Premises and the City Facilities FF&E, City and OHPD covenant and agree to fully cooperate in processing claims with any insurance carriers in order to maximize the total proceeds paid pursuant to insurance policies.

## **ARTICLE 10**

### **ASSIGNMENT AND SUBLETTING**

10.1 Assignment and Subletting. OHPD shall not grant, sell, convey, assign, mortgage, encumber, sublease or otherwise transfer this Sublease or its leasehold interest in the Subleased Premises, or any portion thereof, without the express written consent of City and UNT and in accordance with terms and provisions of Section 7.1 of the Master Agreement, not to be unreasonably withheld.

10.2 Permitted Assignments. A permitted assignment by OHPD of its interests in this Sublease or any portion thereof shall not relieve OHPD from its obligations under this Sublease unless the City shall expressly consent in writing to any such release. Any permitted assignee of any of OHPD's rights under this Sublease, as a condition of such assignment, shall execute an assumption of OHPD's duties and obligations under this Sublease, such assumption to be in form reasonably acceptable to City. No permitted assignee of OHPD's interests in this Sublease, or any portion thereof, permitted in accordance with the terms and provisions of Section 7.1 of the Master Agreement, shall have any right to grant, sell, convey, assign, mortgage, encumber, sublease or otherwise transfer this Sublease or its leasehold interest in the Subleased Premises, or any portion thereof without the express written consent of OHPD, City and UNT.

## **ARTICLE 11**

### **SURRENDER**

11.1 Surrender. OHPD shall on the last day of the Term, or upon any earlier termination of this Sublease, or upon any re-entry by City upon the Subleased Premises pursuant to Article 12 hereof, surrender and deliver the Subleased Premises and, except as otherwise

provided in Section 5.7, the City Facilities FF&E and all other fixtures, equipment and other personal property then located upon the Subleased Premises into the possession and use of City in the condition required to operate the Subleased Premises in a manner comparable to or better than Comparable Convention Centers, reasonable wear and tear and obsolescence excepted and free and clear of any liens created by OHPD or resulting from the acts or omissions of OHPD. OHPD shall at no time during the Term remove any fixtures, equipment or other personal property from the Subleased Premises, except any equipment or other personal property which is obsolete or unfit for use or which is no longer useful in the operation of the Subleased Premises so long as such equipment and/or other personal property are promptly replaced with equipment and/or other personal property, as the case may be, which are fit for use and useful in the operation of the Subleased Premises and OHPD complies with any applicable provisions of this Sublease with respect thereto. Nothing in this Article 11 shall in any way be deemed to affect any of OHPD's obligations as to the Permitted Use for the Subleased Premises.

11.2 Holding Over. If the Subleased Premises are not surrendered when required under Section 11.1, OHPD shall be a tenant at sufferance and shall pay to City holdover rent as provided in Section 2.5 and otherwise comply with the provisions of Section 2.5. The provisions of Section 2.5 and this Section 11.2 shall not be deemed to limit or constitute a waiver of any other rights or remedies of City provided herein, at law or at equity.

11.3 Validity of Surrender. Except for surrender upon the expiration or earlier termination of the Term, no surrender to City of this Sublease or of the Subleased Premises shall be valid or effective unless agreed to and accepted in writing by City.

## **ARTICLE 12**

### **EVENTS OF DEFAULT**

12.1 Events of Default. Each of the following events shall be an “Event of Default” hereunder:

(a) Failure by OHPD in paying when due any Base Rent or any other payment required pursuant to this Sublease and such default continues for a period of fifteen (15) days following written notice thereof from City to OHPD;

(b) If the Subleased Premises is used for other than the Permitted Use or if OHPD breaches the continuous use covenant in Section 4.2 hereof and either of such defaults continues for a period of thirty (30) days following written notice thereof from City to OHPD;

(c) If OHPD fails to timely maintain, or cause to be maintained, any insurance required to be maintained under this Sublease and such failure continues for ten (10) days after written notice thereof City to OHPD;

(d) If OHPD sells, conveys, assigns, mortgages, encumbers or sublets the Sublease or all or any portion of the leasehold estate created by this Sublease other than as permitted in Section 10.1 hereof and Section 7.1 of the Master Agreement;

(e) If OHPD fails to discharge any liens or encumbrances against the Subleased Premises as required by Section 5.11 hereof.

- (f) If an Event of Default occurs under the Master Agreement;
- (g) If an Event of Default (as defined in the OHM Management Agreement or any Replacement Management Agreement) occurs under the OHM Management Agreement or any Replacement Management Agreement and such default constitutes or causes an Event of Default to occur under this Sublease or the City-UNT Land Lease;
- (h) If an Event of Default occurs under this Sublease or the City-UNT Land Lease due to acts of or the failure to act by OHM or any Replacement Manager;
- (i) If an Event of Default (as defined in the Approved Franchise) occurs under the Franchise Agreement or the Franchise Agreement is terminated between the Operational Date and the eighteenth (18<sup>th</sup>) year of the Franchise Agreement, for any reason except the action of City or its employees, agents or other contractors or consultants.
- (j) If OHPD fails to maintain and operate the Hotel in an Upscale Manner comparable to or better than Comparable Hotel Properties and in accordance with the requirements of the Franchise Agreement.
- (k) If the leasehold interest in the Hotel is transferred to a tax-exempt entity.
- (l) Default by OHPD in observing or performing one or more of the other terms, conditions, covenants or agreements of this Sublease and the continuance of such default for a period of thirty (30) days after written notice by City specifying such default (unless such default requires work to be performed, acts to be done, or conditions to be removed which cannot by their nature reasonably be performed, done or removed, as the case may be, within such 30-day period, in which case no such Event of Default shall be deemed to exist so long as OHPD shall have commenced curing such default within such 30-day period and shall diligently and continuously prosecute the same to completion; provided however, such default must be cured within ninety (90) days after such notice.
- (m) If OHPD files a voluntary proceeding under present or future bankruptcy, insolvency or other laws respecting debtors' rights or if OHM or any Replacement Manager files a voluntary proceeding under present or future bankruptcy, insolvency or other laws respecting debtors' right and such action constitutes or causes an Event of Default to occur under this Sublease or the City-UNT Land Lease;
- (n) If OHPD consents to an involuntary proceeding under present or future bankruptcy, insolvency or other laws respecting debtors' rights or if OHM or any Replacement Manager consents to an involuntary proceeding under present or future bankruptcy, insolvency or other laws respecting debtors' rights and such action constitutes or causes an Event of Default to occur under this Sublease or the City-UNT Land Lease;
- (o) If an order for relief against OHPD or the appointment of a receiver, trustee or custodian for all or a substantial part of the property or assets of OHPD in any involuntary proceeding is entered and such order, judgment or degree continues unstayed for any period of ninety (90) consecutive days or if an order for relief against OHM or any Replacement Manager or the appointment of a receiver, trustee or custodian for all or a substantial part of the

property or assets of OHM or any Replacement Manager in any involuntary proceeding is entered and such order, judgment or decree continues unstayed for any period of ninety (90) consecutive days and such action constitutes or causes an Event of Default to occur under this Sublease or the City-UNT Land Lease;

(p) If OHPD makes a general assignment for the benefit of creditors or if OHM or any Replacement Manager makes a general assignment for the benefit of creditors and such action constitutes or causes an Event of Default to occur under this Sublease or the City-UNT Land Lease;

(q) If a final judgment, order or decree of a court of competent jurisdiction adjudicates OHPD to be bankrupt, and the period for any appeal thereof has expired or if a final judgment, order or decree of a court of competent jurisdiction adjudicates OHM or any Replacement Manager to be bankrupt, and the period for any appeal thereof has expired and such action constitutes or causes an Event of Default to occur under this Sublease or the City-UNT Land Lease.

12.2 Remedies. Upon any Event of Default, City may, in addition to all other rights and remedies afforded City hereunder or by law or equity, take any one or more of the following actions:

(a) Terminate this Sublease by giving OHPD written notice thereof followed by a second notice of termination in accordance with Section 12.5.1 of the Master Agreement, in which event OHPD shall pay to City the sum of (1) all Base Rent accrued hereunder through the date of termination, (2) all amounts due under Section 12.3, and (3) an amount equal to (A) the total Base Rent that OHPD would have been required to pay for the remainder of the Term discounted to present value at a per annum rate equal to the "Prime-Rate" as-published on the date this Sublease is terminated in the *The Wall Street Journal*, Southwest Edition, in its listing of "Money Rates", minus (B) the then present fair rental value of the Subleased Premises for such period, similarly discounted;

(b) Terminate OHPD's right to possess the Subleased Premises without terminating this Sublease by giving written notice thereof to OHPD, in which event OHPD shall pay to City (1) all Base Rent accrued hereunder to the date of termination of possession, (2) all amounts due from time to time under Section 12.3, and (3) all Base Rent required hereunder to be paid by OHPD during the remainder of the Term, diminished by any net sums thereafter received by City through reletting the Subleased Premises during such period, after deducting all costs incurred by City in reletting the Subleased Premises. If City elects to proceed under this Section 12.2(b), City may remove all of OHPD's property from the Subleased Premises and store the same in a public warehouse or elsewhere at the cost of, and for the account of, OHPD, without becoming liable for any loss or damage which may be occasioned thereby. City shall not be liable for, nor shall OHPD's obligations hereunder be diminished because of, City's failure to relet the Subleased Premises or to collect rent due for such reletting. OHPD shall not be entitled to the excess of any consideration obtained by reletting over Base Rent due hereunder. Reentry by City in the Subleased Premises shall not affect OHPD's obligations hereunder for the unexpired Term; rather, City may, from time to time, bring an action against OHPD to collect amounts due by OHPD, without the necessity of City's waiting until the expiration of the Term.



Unless City delivers written notice to OHPD expressly stating that it has elected to terminate this Sublease, all actions taken by City to dispossess or exclude OHPD from the Subleased Premises shall be deemed to be taken under this Section 12.2(b). If City elects to proceed under this Section 12.2(b), it may at any time elect to terminate this Sublease under Section 12.2(a); or

(c) Perform any act OHPD is obligated to perform under the terms of this Sublease (and enter upon the Subleased Premises in connection therewith if necessary) in OHPD's name and on OHPD's behalf, without being liable for any claim for damages therefor, and OHPD shall reimburse City promptly following written notice for any expenses which City may incur in thus effecting compliance with OHPD's obligations under this Sublease (including, but not limited to, collection of costs and reasonable legal expenses), plus interest thereon at the lesser of eighteen percent (18%) per annum or the maximum rate permitted by Applicable Law.

12.3 Payment by OHPD. Upon any Event of Default, OHPD shall pay to City all reasonable costs incurred by City (including court costs and reasonable attorneys' fees and expenses) in (a) obtaining possession of the Subleased Premises, (b) removing and storing OHPD's or any other occupant's property, (c) repairing, restoring, altering, remodeling, or otherwise putting the Subleased Premises into condition required hereunder upon surrender, (d) if OHPD is dispossessed of the Subleased Premises and this Sublease is not terminated, reletting all or any part of the Subleased Premises (including brokerage commissions and other costs incidental to such reletting), (e) performing OHPD's obligations which OHPD failed to perform, and (f) enforcing, or advising City of, its rights, remedies, and recourses arising out of the Event of Default.

12.4 Reentry by City. If any Event of Default shall occur, or if this Sublease or OHPD's right to possession shall be terminated as provided in Section 12.2 hereof or by summary proceedings or otherwise, then, and in any of such events, City may re-enter the Subleased Premises and dispossess OHPD and the legal representative of OHPD or other occupant of the Subleased Premises by summary proceedings or otherwise, and remove their effects and hold the Subleased Premises as if this Sublease had not been made. The terms "enter," "re-enter," "entry," or "re-entry," as used in this Sublease, are not restricted to their technical legal meaning.

12.5 Injunction. In the event of a breach or a threatened breach by OHPD of any of its obligations under this Sublease, the City shall also have the right of injunction. The special remedies to which City may resort in this Article are cumulative and not intended to be exclusive of any other remedies or means of redress to which City may lawfully be entitled at any time and City may invoke any remedy allowed at law or in equity as if specific remedies were not provided for herein.

12.6 Retention of Monies. Subject to applicable law, if this Sublease or OHPD's right to possession shall terminate under the provisions of Section 12.2, or if City shall re-enter the Subleased Premises as provided herein or in the event of the termination of this Sublease or OHPD's right to possession, or re-entry, by or under any summary dispossess or other proceeding or action or any provision of law by reason of default hereunder on the part of OHPD, City shall be entitled to retain all monies, if any, paid by OHPD to City, whether as advance rent, security or otherwise, but such monies shall be credited by City against any Base

Rent due from OHPD at the time of such termination or re-entry or, at City's option, against any damages payable by OHPD under this Article or pursuant to law or equity.

12.7 Recovery of Damages or Deficiencies. Following an Event of Default, suit or suits for the recovery of damages or deficiencies, or any installments thereof, may be brought by City from time to time at its election, and nothing contained herein shall be deemed to require City to postpone suit until the date when the Term would have expired if it had not been so terminated hereunder, or under any provision of law, or had City not reentered the Subleased Premises. Nothing herein contained shall be construed to limit or preclude recovery by City against OHPD of any sums or damages to which, in addition to the damages particularly provided above, City may lawfully be entitled by reason of any default hereunder on the part of OHPD.

12.8 Mitigation of Damages. Upon termination of OHPD's right to possess the Subleased Premises, City shall, notwithstanding Section 12.2(b) or any other provision or condition of this Sublease, to the extent required by law (and no further), use commercially reasonable efforts to mitigate damages by reletting the Subleased Premises. City shall not be deemed to have failed to do so if City refuses to lease the Subleased Premises to a prospective new tenant with respect to whom City would be entitled to withhold its consent pursuant to Article 10, or who (a) is an Affiliate of OHPD; (b) not qualified to operate, manage and maintain the Convention Center or financially solvent; (c) requires improvements to the Subleased Premises to be made at City's expense; or (d) is unwilling to accept commercially reasonable sublease terms then proposed by City in good faith, including: (1) subleasing for a shorter term than remains under this Sublease ; (2) re-configuring or combining the Subleased Premises with other space, (3) taking only a part of the Subleased Premises; and/or (4) changing the use of the Subleased Premises.

12.9 No Waiver of Obligations. The failure of City or OHPD to insist upon enforcement of the other party's obligations of strict performance with the terms of this Sublease or payment of Base Rent, shall not be deemed to be a waiver of those obligations.

12.10 Payments on Account. No receipt of moneys by City from OHPD after termination of this Sublease , or after the giving of any notice of termination of this Sublease, shall reinstate, continue or extend the Term or affect any notice theretofore given OHPD, or operate as a waiver of the right of City to enforce the payment of Base Rent payable by OHPD hereunder or thereafter falling due, or operate as a waiver of the right of City to recover possession of the Subleased Premises, it being agreed that after the service of notice to terminate this Sublease or the commencement of suit or summary proceedings, or after final order or judgment for the possession of the Subleased Premises, or after possession of the Subleased Premises by re-entry by summary proceedings or otherwise, City may demand, receive and collect any moneys due or thereafter falling due without in any manner affecting such notice, proceeding, order, suit or judgment, all such moneys collected being deemed payments on account of the use and occupation of the Subleased Premises or, at the election of City, on account of OHPD's liability hereunder.

12.11 No Waiver. No failure of City to exercise any right or remedy consequent upon a default in any covenant, agreement, term or condition of this Sublease, and no acceptance of full

or partial Base Rent by City during the continuance of any such default, shall constitute a waiver of any such default or of such covenant, agreement, term or condition. No covenant, agreement, term or condition of this Sublease to be performed or complied with by either party, and no default thereof, shall be waived, altered or modified except by a written instrument executed by that party. No waiver of any default shall affect or alter this Sublease, but each and every covenant, agreement, term and condition of this Sublease shall continue in full force and effect with respect to any other then existing or subsequent default thereof.

12.12 Cumulative Rights and Remedies. Except as may be specifically provided otherwise herein, each right and remedy of City or OHPD provided for in this Sublease shall be cumulative and shall be in addition to every other right or remedy provided for in this Sublease or now or hereafter existing at law or in equity or otherwise, and the exercise or beginning of the exercise by City or OHPD of any one or more of the rights or remedies provided for in this Sublease or now or hereafter existing at law or in equity or otherwise shall not preclude the simultaneous or later exercise by City or OHPD of any or all other rights or remedies provided for in this Sublease or now or hereafter existing at law or in equity or otherwise.

12.13 Attorneys' Fees and Disbursements. In the event of any legal action or proceeding brought by either party against the other arising out of this Sublease, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs incurred in such action (including, without limitation, all costs of appeal) and such amount shall be included in any judgment rendered in such proceeding.

12.14 Sublease Valid until Terminated by City. Except as may be specifically provided otherwise herein, even though OHPD may have breached this Sublease, this Sublease shall continue in effect for so long as City does not terminate OHPD's right to possession, and City shall have the right to enforce all its rights and remedies under this Sublease, including, without limitation, the right to recover all Base Rent as it becomes due under this Sublease. Acts of maintenance or preservation or efforts to relet the Subleased Premises or the appointment of a receiver upon initiative of City to protect City's interest under this Sublease shall not constitute a termination of OHPD's right to possession unless written notice of termination is given by City to OHPD.

12.15 OHPD's Expenses. All agreements and covenants to be performed or observed by OHPD under this Sublease shall be at OHPD's sole cost and expense and without any abatement of Base Rent.

12.16 Hotel Lender Notice and Right to Cure. If required by Hotel Lender and if contact information for Hotel Lender has been provided in Section 16.3, City agrees to give Hotel Lender written notice of any Event of Default hereunder concurrently with any required notice to OHPD. City further agrees that Hotel Lender shall have the right to cure any Event of Default, on behalf of OHPD, in accordance with the terms of this Article 12 provided that the Franchise Agreement, or a substitute franchise agreement with an Approved Franchisor remains in full force and effect during any applicable cure period.

12.17 Third-Party Consultant. In addition to all other rights and remedies of City set forth in this Article 12, in the event of any dispute between City and OHPD as to whether OHPD

is fulfilling its obligations to operate and manage the Subleased Premises and the Hotel in a manner comparable to or better than Comparable Convention Centers or Comparable Hotel Properties, as applicable, in accordance with the terms of Sections 5.1 & 5.2 hereof, City shall be entitled to engage a third-party management consultant, at the expense of OHPD and City to be shared equally, to mediate any such disputes, and OHPD shall be required to participate in any such mediation.

### **ARTICLE 13** **DEFAULT OF CITY**

13.1 Defaults and Remedies. In the event of any breach by City of any covenant of City under this Sublease, OHPD shall have the right to deliver to City a written notice specifying such breach, and unless within ninety (90) days from and after the date of delivery of such notice City shall have commenced to remove or to cure such breach or occurrence and shall be proceeding with reasonable diligence to completely remove or cure such breach or occurrence (provided such breach or occurrence must be cured within one hundred twenty (120) days after such notice), then OHPD shall have all remedies available at law or in equity; provided however, OHPD shall have no right to terminate this Sublease unless OHPD delivers to City a written notice of intent to terminate no less than sixty (60) days prior to the date of termination. OHPD's remedies pursuant to this Section 13.1 are cumulative and not intended to be exclusive of any other remedies to which OHPD may lawfully be entitled.

### **ARTICLE 14** **CONDEMNATION**

14.1 Definitions. Whenever used in this Article 14, the following words shall have the definitions and meanings hereinafter set forth:

(a) “Condemnation Proceeding.” Any action brought for the purpose of any taking of the Subleased Premises, or any part thereof or of any property interest therein (including, without limitation, the right to the temporary use of all or any portion of the Subleased Premises), by competent authority as a result of the exercise of the power of eminent domain, including a voluntary sale to such authority either under threat of condemnation or while such action or proceeding is pending.

(b) “Taking” or “Taken.” The event and date of vesting of title to the Subleased Premises or any part thereof or any property interest therein (including, without limitation, the right to the temporary use of all or any portion of the Subleased Premises), pursuant to a Condemnation Proceeding.

14.2 Entire Taking. If all or substantially all of the Subleased Premises shall be Taken in Condemnation Proceedings, this Sublease shall be cease and terminate, Base Rent shall be fully abated from and after the date of such Taking and from and after such date OHPD and City shall not have any other obligations under this Sublease with respect to the Subleased Premises, except for those obligations which expressly survive the termination hereof or that accrued prior to the date of the Taking.

14.3 Partial Taking.

(a) If less than all of the Subleased Premises shall be Taken in any Condemnation Proceeding, a fair and equitable portion of the Base Rent (as determined by City) attributable to the portion of the Subleased Premises Taken shall be abated from and after the date of such partial Taking, and from and after such date OHPD and City shall not have any other obligations under this Sublease with respect to the portion of the Subleased Premises that has been Taken, except for those obligations which expressly survive the termination hereof or that accrued prior to the date of the Taking.

(b) If, following such Taking, the remaining Subleased Premises are not sufficient to operate a convention center as intended by the Parties hereto (in OHPD's and City's reasonable business judgment based on objective information and criteria), then OHPD or City, at their election, may terminate this Sublease, whereupon the Base Rent shall be fully abated from and after the date of such partial Taking, and from and after such date OHPD and City shall not have any further obligations under this Sublease with respect to the Subleased Premises, except for those obligations which expressly survive the termination hereof or that accrued prior to the date of the Taking. Such election to terminate must be exercised no later than sixty (60) days after the date of such Taking.

(c) If neither OHPD nor City elect, or have the right, to terminate this Sublease upon any Partial Taking, then the Subleased Premises shall be reduced by the portion thereof Taken, and the Base Rent payable hereunder shall be equitably reduced during the unexpired portion of the Term as provided above and this Sublease shall remain in full force and effect.

14.4 Temporary Taking. If any right of temporary (hereinafter defined) possession or occupancy of all or any portion of the Subleased Premises shall be Taken, the Base Rent shall be reduced during the duration of such Taking in a fair and equitable manner that reflects the inability of OHPD to use the affected portion of the Subleased Premises. A Taking shall be considered "temporary" only if the period of time during which OHPD is deprived of usage of all or part of the Subleased Premises as the result of such Taking does not materially interfere with the ability of OHPD to use and operate the Subleased Premises as a convention center in the manner contemplated by the Parties hereto. Any other "Taking" that is not "temporary" as described above shall be treated as an entire Taking under Section 14.2 above or as partial Taking under Section 14.3 above.

14.5 Condemnation Award. Subject to the terms of the City-UNT Land Lease, City shall receive the entire condemnation award or other compensation for its interest in the Subleased Premises; however, OHPD may separately pursue a claim against the condemning authority for the value of its leasehold estate. Subject to the terms of the City-UNT Land Lease, OHPD and City shall each have the right, at its own expense, to appear in any condemnation proceeding and to participate in any and all hearings, trials and appeals therein.

14.6 Notice of Taking Cooperation. City and OHPD shall each immediately notify the other of the commencement of any condemnation, eminent domain, or other similar proceedings with regard to the Subleased Premises. With respect to any condemnation, eminent domain or similar proceeding involving all or substantially all of the Subleased Premises, City and OHPD

covenant and agree to fully cooperate in such proceedings in order to maximize the total award receivable in respect thereof.

**ARTICLE 15**  
**REPRESENTATIONS, WARRANTIES AND SPECIAL COVENANTS**

15.1 City's Representations, Warranties and Special Covenants. The City hereby represents and warrants to OHPD that the following statement is true as of the date hereof.

(a) Due Authority; No Conflict. The City has all requisite power and authority to execute this Sublease and to carry out its obligations hereunder and the transactions contemplated hereby. This Sublease has been, and the documents contemplated hereby will be, duly executed and delivered by the City and constitute legal, valid and binding obligations enforceable against the City in accordance with the terms subject to principles of governmental immunity and the enforcement of equitable rights. The consummation by the City of the transactions contemplated hereby is not in violation of or in conflict with, nor does it constitute a default under, any of the terms of any agreement or instrument to which the City is a party, or by which the City is bound, or of any provision of any applicable law, ordinance, rule or regulation of any governmental authority or of any provision of any applicable order, judgment or decree of any court, arbitrator or governmental authority.

15.2 OHPD's Representations and Warranties. OHPD represents and warrants to the City that the following representations and warranties are true as of the date hereof.

(a) Due Organization and Ownership. OHPD is a limited liability company validly existing under the laws of the State of Missouri and is duly qualified to do business in the State of Texas; and that the person executing this Sublease on behalf of it authorized to enter into this Sublease.

(b) Due Authority; No Conflict. OHPD has all requisite power and authority to execute and deliver this Sublease and to carry out its obligations hereunder and the transactions contemplated hereby. This Sublease has been, and the documents contemplated hereby will be, duly executed and delivered by OHPD and constitute OHPD's legal, valid and binding obligations enforceable against OHPD in accordance with their terms. The consummation by OHPD of the transactions contemplated hereby is not in violation of or in conflict with, nor does it constitute a default under, any term or provision of the organizational documents of OHPD, or any of the terms of any agreement or instrument to which OHPD is a party, or by which OHPD is bound, or of any provision of any applicable law, ordinance, rule or regulation of any governmental authority or of any provision of any applicable order, judgment or decree of any court, arbitrator or governmental authority.

(c) Consents. No consent, approval, order or authorization of, or declaration or filing with any governmental authority is required on the part of OHPD in connection with the execution and delivery of this Sublease or for the performance of the transactions herein contemplated by the respective Parties hereto.

(d) Litigation. To the best knowledge of OHPD, after reasonable inquiry, there are no pending or, to the best knowledge of OHPD, threatened, judicial, municipal or

administrative proceedings, consent decree or, judgments which might affect OHPD's ability to consummate the transaction contemplated hereby.

(e) Legal Proceedings. To the best knowledge of OHPD, after reasonable inquiry, no preliminary or permanent injunction or other order, decree, or ruling issued by a governmental entity, and no statute, rule, regulation, or executive order promulgated to enacted by a governmental entity, shall be in effect which restrains, enjoins, prohibits, or otherwise makes illegal the consummation of the transactions contemplated by this Sublease.

## **ARTICLE 16** **MISCELLANEOUS**

16.1 Estoppel Certificates. OHPD and City shall, at any time and from time to time (but not more frequently than once per Sublease Year) upon not less than ten (10) days prior written request by the other Party, execute, acknowledge and deliver to City or OHPD, as the case may be, a statement in writing certifying (a) the interest of City or OHPD hereunder, as the case may be, (b) that this Sublease is unmodified and in full force and effect (or if there have been any modifications, that the same is in full force and effect as modified and stating the modifications), (c) the dates to which the Base Rent and any other charges have been paid, and (d) that, to the then current actual knowledge, without independent investigation of City or OHPD, as the case may be, no default hereunder on the part of the other Party exists (except that if any such default does exist, the certifying Party shall specify such default).

16.2 Release. If requested by City, OHPD shall, upon termination of this Sublease, execute and deliver to City an appropriate release, in form proper for recording, of all OHPD's interest in the Subleased Premises, and City is hereby granted an irrevocable power of attorney, which is coupled with an interest, to execute such release if OHPD fails to do so within ten (10) days of City's request. Upon request of OHPD, City will execute and deliver a written cancellation and termination of this Sublease and release of all claims (if none are then outstanding) in proper form for recording to the extent such release is appropriate under the provisions hereof.

16.3 Notices. All notices or other communications required or desired to be given with respect to this Agreement shall be in writing and shall be delivered by hand or by courier service, sent by registered or certified mail, return receipt requested, bearing adequate postage, or sent by nationally recognized overnight delivery service (such as Federal Express or UPS), or sent by facsimile, and properly addressed as provided below. Each notice given by mail shall be deemed to be given by the sender when received or refused by the Party intended to receive such notice; each notice delivered by hand or by courier service shall be deemed to have been given and received when actually received by the Party intended to receive such notice or when such Party refuses to accept delivery of such notice; each notice given by overnight delivery service shall be deemed to have been given and received on the next business day following deposit thereof with the overnight delivery company; and each notice given by facsimile shall be deemed to have been given and received upon transmission, provided confirmation of receipt is received back by the sending facsimile prior to 5:00 p.m. local time at the sending location, or on the next business day if after 5:00 p.m. local time at the sending location. Upon a change of address by either Party, such Party shall give written notice of such change to the other parties in accordance with

the foregoing. Inability to deliver because of changed address or status of which no notice was given shall be deemed to be receipt of the notice sent, effective as of the date such notice would otherwise have been received.

If intended for the City:

Attn: City Manager  
City of Denton, Texas  
Address  
Denton, Texas zip  
Telephone: (xxx) xxx-xxxx  
Facsimile: (xxx) xxx-xxxx

With Copies to:

Attn: City Attorney  
City of Denton  
Address  
Denton, Texas xxxxx  
Telephone: (xxx) xxx-xxxx  
Facsimile: (xxx) xxx-xxxx

If intended for OHPD:

OHPD  
Tim O'Reilly  
2808 S. Ingram Mill, Bldg. A-104  
Springfield, MO 65804  
Telephone: (417) 851-8700  
Facsimile: (417) 890-1778

With Copies to:

Craig Preston, Esq.  
O'Reilly, Jensen & Preston, LLC  
2808 S. Ingram Mill Road, Bldg A-104  
Springfield, MO 65804  
Telephone: (417) 890-1555  
Facsimile: (417) 890-1778

If intended for UNT:

University of North Texas  
c/o:  
2808 S. Ingram Mill, Bldg. A-104  
Denton, Tx xxxxx  
Telephone: (xxx) xxx-xxxx  
Facsimile: (417) xxx-xxxx

With Copies to:

If required by and intended for Hotel Lender:

\_\_\_\_\_  
\_\_\_\_\_

If required for OHPD's manager pursuant to Section 4.7:

\_\_\_\_\_

16.4 Successors and Assigns. Subject to the terms and provisions of Article 10 hereof, this Sublease shall be binding upon and shall inure to the benefit of the Parties and their permitted successors and assigns.



16.5 Amendment. Except as expressly provided herein, neither this Sublease nor any term hereof may be amended, waived, discharged or terminated, except by a written instrument signed by the Parties hereto.

16.6 Headings and Subheadings. The headings of the articles, sections, paragraphs and subparagraphs of this Sublease are for convenience or reference only and in no way define, limit, extend or describe the scope of this Sublease or the intent of any provisions hereof.

16.7 Severability. In the event one or more of the terms or provisions of this Sublease or the application thereof to any Party or circumstances shall, to any extent, be held invalid, illegal or unenforceable, the remainder of this Sublease, or the application of such term or provision to persons or circumstances other than those to whom or which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Sublease shall be valid and enforceable to the fullest extent permitted by law.

16.8 Governing Law. THIS SUBLEASE SHALL BE GOVERNED BY, AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE UNITED STATES APPLICABLE THERETO AND THE LAWS OF THE STATE OF TEXAS APPLICABLE TO A SUBLEASE EXECUTED, DELIVERED AND PERFORMED IN SUCH STATE, WITHOUT REGARD TO ANY OTHERWISE APPLICABLE PRINCIPLES OF CONFLICTS OF LAW.

16.9 Venue for Actions. The venue for any legal action arising out of this Sublease shall lie exclusively in Denton County, Texas.

16.10 Relationship of Parties. Nothing contained herein shall be deemed or construed by the Parties hereto or by any third party as creating the relationship of principal and agent, partnership, joint venture or any association between the Parties hereto, it being understood and agreed that none of the provisions contained herein or any acts of the Parties in the performance of their respective obligations hereunder shall be deemed to create any relationship between the Parties hereto other than the relationship of landlord and tenant. It is understood and agreed that this Sublease does not create a joint enterprise, nor does it appoint either Party as an agent of the other for any purpose whatsoever. Neither Party shall in any way assume any of the liability of the other for acts of the other or obligations of the other. Each Party shall be responsible for any and all suits, demands, costs or actions proximately resulting from its own individual acts or omissions.

16.11 Net Sublease. It is the intention of the City and OHPD that the Base Rent payable under this Sublease after the Effective Date and all Impositions and other costs related to OHPD's use or operation of the Subleased Premises under this Sublease, shall be absolutely net to City, meaning that during the Sublease Term, City shall not be required to expend any money or do any acts or take any steps affecting or with respect to the operation, maintenance, preservation, repair, restoration or protection of the Subleased Premises, except as otherwise expressly provided in this Sublease. OHPD shall pay during the Term, without any offset or deduction whatsoever, all such Impositions and other costs due by OHPD under this Sublease. OHPD's covenant to pay Base Rent and additional rent is independent of every other covenant in this Sublease.

16.12 Quiet Enjoyment. City covenants and agrees with OHPD that upon OHPD paying Base Rent and observing and performing all terms, covenants and conditions on OHPD's part to be observed and performed hereunder, OHPD may peaceably and quietly enjoy the Subleased Premises hereby demised, subject however, to the terms and conditions of this Sublease.

16.13 Non-Waiver. No Party shall have or be deemed to have waived any Event of Default under this Sublease by the other Party unless such waiver is embodied in a document signed by the waiving Party that describes the Event of Default that is being waived. Further, no Party shall be deemed to have waived its rights to pursue any remedies under this Sublease, unless such waiver is embodied in a document signed by such Party that describes any such remedy that is being waived.

16.14 Obligations to Defend Validity of Sublease. If litigation is filed by a third party against OHPD or City in an effort to enjoin either Party's performance of this Sublease, the Parties hereto who are named as parties in such action shall take all commercially reasonable steps to support and defend the validity and enforceability of this Sublease. Either Party may intervene in any such matter in which the other Party hereto has been named as a defendant. Each Party shall be responsible for its attorneys' fees and costs of litigation.

16.15 Survival. All indemnities provided in this Sublease shall survive the expiration or any earlier termination of this Sublease. Additionally, all provisions which are expressly stated to survive or covenants providing for performance after termination of this Sublease shall survive the termination or expiration of this Sublease.

16.16 Entire Agreement. This Sublease (including the Exhibits attached hereto and incorporated herein, if any) and the other documents delivered pursuant to this Sublease or referenced herein constitute the full and entire understanding and agreement between the Parties with regard to the subject matter hereof. There are no representations, promises or agreements of City or OHPD regarding the subject matter of this Sublease not contained in this Sublease, the Exhibits attached hereto or the other documents delivered pursuant to this Sublease or referenced herein.

16.17 Counterparts. This Sublease may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument.

16.18 Brokers. Each party represents to the other party that it has not employed or retained any broker or finder in connection with this Sublease and/or transaction contemplated hereby.

16.19 Conflicts. In the event any one or more of the provisions contained in this Sublease conflict with any one or more of the provisions contained in the Related Document(s), the provisions of this Sublease shall control.

16.20 City Liability. This Sublease is not intended to and does not create or constitute a debt or financial obligation of the City except from the sources herein expressly provided. Any

and all amounts payable by City hereunder are payable solely and exclusively from amounts provided in the City Financing Contribution and from the sources of such funds.

16.21 Time. Time is of the essence for the performance of any obligation under this Sublease. If any date or period for performance provided for herein ends on a Saturday, Sunday, or legal holiday of the City of Denton, Texas, then the applicable date or period will be extended to the first day following such Saturday, Sunday, or legal holiday.

16.22 Legal Interest. Notwithstanding any provision of this Sublease to the contrary, it is the intent of City and OHPD that City shall not be entitled to receive, collect, reserve or apply, as interest, any amount in excess of the maximum amount of interest permitted to be charged by Applicable Law. In the event this Sublease requires a payment of interest that exceeds the maximum amount of interest permitted under Applicable Law, such interest shall not be received, collected, charged or reserved until such time as that interest, together with all other interest then payable, falls within the maximum amount of interest permitted to be charged under Applicable Law. In the event City receives any such interest in excess of the maximum amount of interest permitted to be charged under Applicable Law, the amount that would be excessive interest shall be deemed a partial prepayment of Base Rent and treated under this Sublease as such, or, if this Sublease has expired or terminated, any remaining excess funds shall immediately be paid to OHPD.

16.23 Memorandum of Lease Agreement. If allowed by the City-UNT Land lease, upon either Party's request, the other Party shall execute and allow such party to record in Denton County, Texas, a Memorandum of Lease Agreements with respect to this Sublease. In the event such a Memorandum is recorded, the parties agree that upon a termination of this Sublease, the Parties shall execute and record a termination of such Memorandum of Lease Agreement.

16.24 Termination of Master Agreement. In the event the Master Agreement is terminated prior to construction of the Hotel, it is expressly agreed that this Sublease shall terminate as well and neither Party shall have any rights or obligations one unto the other hereunder. Furthermore, it is expressly agreed that City shall have no obligation to construct the Convention Center, and hence no liability hereunder, in the event OHPD fails to construct the Hotel pursuant to the terms of the Master Agreement.

16.25 Indemnification of City. OHPD WILL INDEMNIFY AND SAVE HARMLESS CITY AND ANY AGENT, EMPLOYEE OR REPRESENTATIVE OF CITY AGAINST AND FROM ALL LIABILITIES, SUITS, OBLIGATIONS, FINES, DAMAGES, PENALTIES, CLAIMS, COSTS, CHARGES AND EXPENSES, JUDGMENTS AND CAUSES OF ACTION INCLUDING, WITHOUT LIMITATION, REASONABLE ATTORNEYS' FEES AND DISBURSEMENTS, WHICH MAY BE IMPOSED UPON OR INCURRED BY OR ASSERTED AGAINST CITY AND/OR ANY SUCH AGENT, EMPLOYEE OR REPRESENTATIVE BY REASON OF ANY OF THE FOLLOWING OCCURRING DURING THE TERM, EXCEPT TO THE EXTENT CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF CITY OR ITS AGENTS ESTABLISHED BY A COURT OF COMPETENT JURISDICTION: (A) ANY WORK OR THING DONE IN, ON OR ABOUT THE SUBLEASED PREMISES OR ANY PART THEREOF; (B) ANY USE, NONUSE, POSSESSION, OCCUPATION, RESTORATION, ALTERATION, REPAIR, CONDITION

(INCLUDING, WITHOUT LIMITATION, ANY ENVIRONMENTAL CONDITION), OPERATION, MAINTENANCE OR MANAGEMENT OF THE SUBLEASED PREMISES OR ANY PART THEREOF; (C) ANY NEGLIGENCE ON THE PART OF OHPD OR ANY OF ITS AGENTS, CONTRACTORS, SERVANTS, EMPLOYEES, SUBLESSEES, LICENSEES OR INVITEES; (D) ANY ACCIDENT, INJURY (INCLUDING, WITHOUT LIMITATION, DEATH) OR DAMAGE TO ANY PERSON OR ENTITY OR PROPERTY OCCURRING IN, ON OR ABOUT THE SUBLEASED PREMISES OR ANY PART THEREOF (EXCEPT AS OTHERWISE PROVIDED IN SECTION 8.5); (E) ANY FAILURE ON THE PART OF OHPD TO PERFORM OR COMPLY WITH ANY OF THE COVENANTS, AGREEMENTS, TERMS, PROVISIONS, CONDITIONS OR LIMITATIONS CONTAINED IN THIS SUBLEASE ON ITS PART TO BE PERFORMED OR COMPLIED WITH; (F) ANY LIEN OR CLAIM WHICH MAY BE ALLEGED TO HAVE ARISEN AGAINST OR ON THE SUBLEASED PREMISES, UNDER ANY LAW, ORDINANCE, ORDER, RULE, REGULATION OR REQUIREMENT OF ANY GOVERNMENTAL AUTHORITY INCLUDING, WITHOUT LIMITATION, ENVIRONMENTAL LAWS AND ANY RESTRICTIVE COVENANTS OF RECORD ON OR PRIOR TO THE EFFECTIVE DATE OR THEREAFTER APPROVED BY OHPD THAT ARE APPLICABLE TO THE SUBLEASED PREMISES OR ANY PART THEREOF; (G) ANY FAILURE ON THE PART OF OHPD TO KEEP, OBSERVE AND PERFORM ANY OF THE TERMS, COVENANTS, AGREEMENTS, PROVISIONS, CONDITIONS OR LIMITATIONS CONTAINED IN ANY OCCUPANCY AGREEMENTS, CONCESSION AGREEMENTS OR OTHER CONTRACTS AND AGREEMENTS AFFECTING THE SUBLEASED PREMISES ON OHPD'S PART TO BE KEPT, OBSERVED OR PERFORMED; (H) OTHER THAN LATENT DEFECTS IN THE CITY FACILITIES AS DELIVERED TO OHPD, THE CONDITION OF THE SUBLEASED PREMISES OR OF ANY BUILDINGS OR OTHER STRUCTURES NOW OR HEREAFTER SITUATED THEREON OR THE FIXTURES OR PERSONAL PROPERTY THEREON OR THEREIN; OR (I) ANY TAX OR FEE ATTRIBUTABLE TO THE EXECUTION OR RECORDING OF THIS SUBLEASE OR ANY MEMORANDUM THEREOF CHARGED BY ANY GOVERNMENTAL AUTHORITY. The obligations of OHPD under this Section 16.25 shall not in any way be affected by the absence or presence in any case of covering insurance or by the failure or refusal of any insurance carrier to perform any obligation on its part under insurance policies affecting the Subleased Premises. In case any claim, action or proceeding is made or brought against City by reason of any of the foregoing events described in this Section 16.25, then OHPD, upon written notice from City will, at OHPD's sole cost and expense, resist or defend such claim, action or proceeding, in City's name, if necessary, by counsel approved, in writing, by City, such approval not to be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, City may engage its own counsel, at City's expense, to defend it or to assist in its defense. The provisions of this Section 16.25 shall survive the termination or expiration of this Sublease.

## **ARTICLE 17**

### **CITY-UNT LAND LEASE**

17.1 City-UNT Land Lease Inclusions and Exclusions. This Sublease is subordinate and subject to all of the terms of the City-UNT Land Lease with the same force and effect as if fully set forth herein at length, excepting only as otherwise specifically provided herein. It is the intention of the parties that, except as otherwise provided in this Sublease, the relationship

between City and OHPD shall be governed by the various articles of the City-UNT Land Lease as if they were set forth in this Sublease in full, and the words “Landlord,” “Tenant,” “Lease,” and “Leased Premises” as used in the City-UNT Land Lease shall read, respectively, “City,” “OHPD,” “Sublease,” and “Subleased Premises.”

Anything in this Sublease to the contrary notwithstanding, the following provisions of the City-UNT Land Lease are not incorporated into this Sublease and are deleted for purposes of this Sublease:

- (a) Section 2.2 – Term - Right of City to terminate Extended Terms.
- (b) Section 3.1 – City-UNT Base Rent.
- (c) Section 3.4 – Holding Over.
- (d) Section 5.1 – Convention Center and Related Infrastructure – Construction
- (e) Section 13.21 – Right of First Refusal of City
- (f) Section 13.22 – Right of First Refusal of OHPH

Notwithstanding the foregoing, to the extent any of the above provisions of the City-UNT Land Lease place an obligation on UNT under the City-UNT Land Lease with respect to the Subleased Premises, OHPD will receive the benefit of the performance of such obligations by UNT under the City-UNT Land Lease without any obligation of performance by City.

17.2 OHPD Assumption of City-UNT Land Lease Obligations. Except for those provisions of the City-UNT Land Lease expressly excluded and deleted from the Sublease pursuant to Section 17.1(a) above, from and after the Operational Date and during the Term, OHPD will assume, perform and comply with City’s obligations as “Tenant” under the City-UNT Land Lease with respect to the Subleased Premises. OHPD shall not commit any act or omission that will violate any of the provisions of the City-UNT Land Lease.

17.3 No Assumption by City. Anything in this Sublease to the contrary notwithstanding, City does not assume the obligations of UNT under the City-UNT Land Lease. Further, with respect to the performance by UNT of its obligations under the City-UNT Land Lease, City’s sole obligation with respect thereto will be to request the same, on request in writing by OHPD, and to use reasonable commercial efforts to obtain the same from UNT; provided, however, City will have no obligation to institute legal action against UNT.

17.4 UNT Defaults: Consents. Any provision of this Sublease to the contrary notwithstanding, (i) City will not be liable or responsible in any way for any loss, damage, cost, expense, obligation or liability suffered by OHPD by reason of or as the result of any breach, default or failure to perform by UNT under the City-UNT Land Lease, and (ii) whenever the consent or approval of City and UNT is required for a particular act, event or transaction (A) any such consent or approval by City will be subject to the consent or approval of UNT, and (B) should UNT refuse to grant such consent or approval, under all circumstances, City will be

released from any obligation to grant its consent or approval. Notwithstanding the foregoing, City will not unreasonably withhold, delay or condition their consent or approval.

17.5 Termination of City-UNT Land Lease. If the City-UNT Land Lease is terminated for any reason whatsoever, this Sublease will terminate simultaneously with the termination of the City-UNT Land Lease. City will not agree with UNT to the voluntary termination of the City-UNT Land Lease prior to the expiration of the term of the City-UNT Land Lease. Except for any amendment or waiver required by the terms of the City-UNT Land Lease, City will not agree to any amendment of the City-UNT Land Lease that (i) increases OHPD's Base Rent in any manner, (ii) imposes upon OHPD additional obligations under this Sublease, (iii) materially decreases OHPD's rights under this Sublease, or (iv) waives any of City's rights or remedies under the City-UNT Land Lease respecting the Subleased Premises, without the consent of the OHPD. Without limitation upon the foregoing, City will not agree to amend the City-UNT Land Lease to shorten the term of the City-UNT Land Lease without the consent of OHPD.

**IN WITNESS WHEREOF**, the Parties hereto have executed and delivered this Sublease as of the Effective Date.

**OHPD:**

O'REILLY HOTEL PARTNERS – DENTON,  
LLC, a Missouri limited liability company

By: \_\_\_\_\_  
Tim O'Reilly, Manager

**CITY:**

CITY OF DENTON, TEXAS

\_\_\_\_\_  
\_\_\_\_\_, City Manager

**ATTEST:**

\_\_\_\_\_  
\_\_\_\_\_, City Clerk

**CITY'S ACKNOWLEDGMENT**

**STATE OF TEXAS** §

§

**COUNTY OF DENTON** §

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2013, by \_\_\_\_\_, City Manager of the City of Denton, Texas, a Texas municipal corporation, on behalf of said corporation duly sworn that he/she is the City Manager of the corporation, and acknowledged that he/she executed the foregoing instrument as the free act and deed of the corporation in his/her capacity as City Manager.

\_\_\_\_\_  
Notary Public, State of Texas

My Commission Expires:  
\_\_\_\_\_



**OHPD'S ACKNOWLEDGMENT**

**STATE OF MISSOURI** §

§

**COUNTY OF** \_\_\_\_\_ §

Before me \_\_\_\_\_, Notary Public of the State of Missouri, on this day personally appeared Tim O'Reilly known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he is the Manager of the limited liability company, and acknowledged that he executed the foregoing instrument as the free act and deed of the Company in his capacity as Manager.

Given under my hand and seal of office this \_\_\_\_\_ day of \_\_\_\_\_, A.D., 2013.

[Seal]

\_\_\_\_\_  
Notary Public, State of Missouri

My Commission Expires:  
\_\_\_\_\_

**EXHIBIT "E"**

OHPD-UNT LAND LEASE

THIS OHPD-UNT LAND LEASE (the "Lease") is made as of the \_\_\_ day of \_\_\_\_\_, 2013 ("Commencement Date"), by and between University of North Texas, an institution of higher education of the State of Texas ("UNT") and O'Reilly Hotel Partners Denton, LLC, a Missouri limited liability company ("OHPD"). UNT and OHPD sometimes are referred to herein collectively as the "Parties" or singularly as a "Party".

RECITALS

A. UNT, OHPD, City of Denton, Texas, a municipal corporation including its permitted successors and assigns ("City"), and O'Reilly Hospitality Management, LLC, a Missouri limited liability company ("OHM") have entered into that certain Master Development Agreement (the "Master Agreement"), dated effective \_\_\_\_\_, 2013, providing for, among other things, the construction and operation by OHPD of a full-service Upscale Hotel and Restaurant, as well as the construction by City and its Construction Manager Agent and Architect OHM, of an Upscale conference center facility and related improvements, including parking areas, constructed on the Convention Center Site (as defined in the Master Agreement) adjacent to the Hotel Site, containing meeting rooms and a two-story exposition and conference center, with one (1) large ballroom sufficient to lawfully accommodate at least one thousand two hundred (1,200) people for a banquet-style event.

B. Pursuant to the terms of the Master Agreement, UNT has agreed to lease the Convention Center Site to City, pursuant to the terms and conditions of the "City-UNT Land Lease," which document has been executed by UNT and City of even date herewith.

C. Pursuant to the terms of the Master Agreement, UNT has agreed to lease the Hotel Site to OHPD, and OHPD has agreed to take and lease the same in accordance with the terms and conditions set forth in this Lease.

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, UNT and OHPD agree as follows:

ARTICLE I  
DEFINITIONS

1.1 Certain Definitions. Any capitalized terms used in this Lease which are not defined in this Article or otherwise in this Lease shall have the meanings assigned to the same in the Master Agreement.

1.2 Affiliate shall mean, with respect to any Person, (a) each Person that, directly or indirectly, owns or controls, whether beneficially, or as a trustee, guardian or other fiduciary, ten percent (10%) or more of the capital stock having ordinary voting power in the election of directors of such Person, (b) each Person that controls, is controlled by or is under common control with such Person, and (c) in the case of individuals, the immediate family members, spouses and lineal descendants of individuals who are Affiliates of the Person. For purpose of this definition, "control" of a Person shall mean the possession, directly or indirectly, of the power to direct or cause the direction of its management or policies, whether through the ownership of voting shares or interests, by contract, by virtue of being an executive officer or a director or otherwise.

- 1.3 Base Rent shall mean the lease payments for the Hotel Site provided in Article III below.
- 1.4 City shall mean in all instances the City of Denton, Texas, a municipal corporation and political subdivision of the State of Texas.
- 1.5 Commencement Date shall mean the date first set forth above in the introductory paragraph of this Lease.
- 1.6 Convention Center shall mean an approximately one hundred and twenty thousand (120,000) square foot building to be constructed on the Convention Center Site adjacent to and connected with the Hotel, containing meeting rooms, and one (1) large ballroom sufficient to lawfully accommodate at least one thousand two hundred (1,200) people for a banquet-style event.
- 1.7 Event of Default shall have the meaning set forth in Section 9.1 below.
- 1.8 Force Majeure shall mean any unforeseeable causes beyond a Party's control and without such Party's fault or negligence, including, but not limited to, acts of god, acts of the public enemy, acts of the United States government, acts of the other party, fires, floods, epidemics, quarantine restrictions, strikes, lockouts, freight embargoes, and unusually severe weather or unforeseen environmental or archaeological conditions requiring investigation/mitigation by federal, state or local laws.
- 1.9 Gross Revenues shall mean all revenue and income of any kind derived directly or indirectly from operations at the Project Site that are properly attributable to the Term of the Lease, including the gross receipts of any licensees, lessees, or concessionaires, determined in accordance with generally accepted accounting principles, except that the following shall not be included in determining Gross Revenues: (1) applicable excise, sales occupancy and use taxes collected directly from patrons or guests; (2) receipts from the financing, refinancing, sale, or other disposition of assets comprising all or any part of the Project Site; (3) proceeds of any insurance; and (4) gratuities or service charges collected for payment to and paid to employees of the Project Site. Gross Revenues shall also include the total gross sales of OHPD for cash, check, barter or on credit terms without deduction for credit card discounts or commissions, from all sales of food, merchandise, services, entertainment, and alcoholic and non-alcoholic beverages, including, without limitation, sales from all sources, orders received and serviced at the Project Site, and orders received at the Project Site but served elsewhere, and the gross proceeds of all coin, card or similarly operated devices located in the Project Site, including, without limitation, such devices as vending machines, telephones and similar devices, if any, located at the Project Site.
- 1.10 Hazardous Materials shall have the meaning set forth in Subsection 7.8.2 below.
- 1.11 Hotel shall mean the Embassy Suites hotel (or other like or higher quality, Upscale full-service hotel approved in advance in writing by UNT) that will be constructed or operated on the Hotel Site.
- 1.12 Hotel Site shall mean the tract of land situated in Denton, Texas, as described in Exhibit "A" attached hereto and made a part hereof for all purposes.
- 1.13 Impositions shall mean all taxes and assessments against either the Leased Premises, or OHPD's interest therein that accrue during and are applicable to the Term.
- 1.14 Improvements shall mean all buildings, structures, equipment, improvements, fixtures and Related Infrastructure from time to time connected, installed or situated on the Hotel Site, including the Hotel, Restaurant, all landscaping and parking.

1.15 Lease shall mean this Lease by and between UNT, as lessor, and OHPD, as lessee, covering the Leased Premises.

1.16 Lease Year shall mean for the first Lease Year the period of time commencing on the Operational Date and ending on the last day of the 12th full calendar month thereafter and for each successive Lease Year, other than the last year, the twelve full calendar month period commencing on the day following the expiration of the preceding Lease Year. The final Lease Year shall commence on the day following the expiration of the immediately preceding Lease Year and shall continue until the expiration of the Term.

1.17 Leased Premises. shall mean the Hotel Site with all Improvements thereto.

1.18 OHPD shall mean O'Reilly Hotel Partners Denton, LLC, a Missouri limited liability company, or any approved assignee thereof as provided in Article VIII below.

1.19 Master Agreement shall have the meaning set forth in the Recitals.

1.20 OHPD shall mean in all instances O'Reilly Hotel Partners Denton, LLC, a Missouri limited liability company, and shall not include any assignee of its rights and obligations under this Lease.

1.21 Operational Date shall mean the date when the Hotel and Restaurant are substantially complete and a full Certificate of Occupancy has been issued by City and received by OHPD.

1.22 Project Site shall mean the Hotel Site and the Convention Center Site as defined in the Master Agreement.

1.23 Person shall mean any person or entity.

1.24 Plans shall mean the architectural and engineering drawings and plans relating to the Leased Premises as developed in accordance with the Professional Services Agreement entered into between City and OHM in accordance with the Master Agreement.

1.25 Related Infrastructure shall mean any automobile parking areas, water or sewer facilities, plazas, landscaped areas, pedestrian circulation areas or other construction on the Hotel Site in connection with the use or operation of the Hotel and Restaurant.

1.26 Restaurant shall mean the Houlihan's Restaurant & Bar or other like or higher quality or kind of restaurant approved in advance in writing by UNT or any other restaurant constructed on the Hotel Site.

1.27 Upscale. shall mean comparable to or better than the quality mandated by the Approved Franchisor of the Hotel, and if at any time the Hotel is not covered by an Approved Franchise, then the applicable standards will be those for the development, construction, operation, maintenance, and service standards for a full-service hotel at least equal in all material respects to those necessary to be designated with no less than the American Automobile Association "Four Diamond" rating (or comparable rating if such standards are no longer used), as the character and quality of that rating is recognized as of the Operational Date.

1.28 Term shall mean the Primary Term and any Extended Term(s) of this Lease as provided in Section 2.2 below.

1.29 UNT shall mean the University of North Texas, an institution of higher education of the State of Texas.

## ARTICLE II GRANT AND TERM OF LEASE

2.1 Leasing Clause. Upon and subject to the terms and provisions contained herein, UNT does hereby lease, demise and let unto OHPD, and OHPD does hereby take and lease from UNT, the Hotel Site, to have and to hold the Hotel Site for the term and subject to the provisions and conditions of this Lease and the Master Agreement.

2.2 Term. This Lease shall commence on the Commencement Date and shall continue for a term of fifty (50) years, with two (2) ten (10)-year options thereafter, that will serve to extend this Lease for such additional time periods without any act of the Parties, unless such options to extend the Term are rescinded by OHPD in writing at least three hundred (300) days before the expiration of the fifty (50)-year or ten (10)-year option time periods as set forth herein (the "Term"), or unless earlier terminated in accordance with the terms hereof.

2.3 Possession. UNT shall deliver possession of the Hotel Site to OHPD promptly upon the execution of this Lease.

## ARTICLE III LEASE PAYMENT

3.1 Base Rent. Subject to adjustment pursuant to Subsection 4.1.1 and 4.1.2 below, Base Rent ("Base Rent") shall be payable by OHPD, quarterly on each January 15th, April 15th, July 15th and October 15th of every year of the Term, commencing thirty-six (36) months after the Operational Date, with subsequent payments being due on the same day of each calendar quarter during the Term thereafter. Through Lease Year 25, Base Rent will be calculated as an amount equal to one and one half percent (1.5%) of all Gross Revenues attributable to the Project Site during the preceding quarter; thereafter Base Rent will be calculated as an amount equal to one and one half percent (1.5%) of all Gross Revenues attributable to the Project Site during the preceding quarter. Base Rent shall be paid without notice, demand, set-off or abatement.

3.2 UNT's Audit Right. Upon request, UNT shall have the right to audit the books and records of the Project at UNT's cost; and in the event such audit discloses that Gross Revenues have been incorrectly calculated, appropriate adjustments shall be made by UNT and OHPD. OHPD shall allow UNT and UNT's authorized auditors reasonable access to the records of the Project for the purpose of performing such audits; provided, however, that UNT agrees that any information disclosed to it or its agents in connection therewith shall not be disclosed to any other person or entity (except in connection with any litigation or arbitration proceedings against OHPD with respect to the computation of Gross Revenues hereunder) and shall be used solely for the purposes stated in this Section; and further provided that UNT's access to such records is subject to UNT's giving OHPD reasonable prior notice of its intent to audit such records and to OHPD's right to restrict such access to reasonable business hours and such periods of time as use of such records is not necessary for OHPD's own purposes. In the event any audit performed by UNT discloses that OHPD has understated Gross Revenues for any Lease Year by an amount of \$10,000 or more of the correct amount of Gross Revenues for such Rental Year, OHPD shall reimburse UNT for the reasonable cost of such audit, upon presentation of appropriate vouchers therefor.

3.3 Late Payment Charge. Other remedies for nonpayment notwithstanding, if any installment of Base Rent or additional rent, as the case may be, is not received by UNT on or before the

fifth (5th) day after the date on which such payment is due, OHPD agrees to pay UNT a late payment charge in the amount of five percent (5%) of such past due amount in addition to all other amounts owed under this Lease.

3.4 Holding Over. If OHPD fails to surrender the Leased Premises at the expiration or termination of the Term, occupancy of the Leased Premises after the termination or expiration of this shall be that of a tenancy at sufferance. OHPD's occupancy of the Leased Premised during the holdover shall be subject to all the terms and provisions of the Lease and OHPD shall pay to UNT an amount (on a per month basis without reduction for partial months during the holdover) equal to one hundred fifty percent (150%) of the sum of the highest annual Base Rent that was payable pursuant to this Lease for the five (5) year period immediately preceding the holdover. No holdover by OHPD or payment by OHPD after the expiration or termination of this Lease shall be construed to extend the Term or prevent UNT from immediate recovery of possession of the Leased Premises by summary proceedings or otherwise. In addition to the payment of the amounts provided above, if UNT is unable to deliver possession of the Leased Premises to a new tenant, or to perform improvements for a new tenant, as a result of OHPD's holdover and OHPD fails to vacate the Leased Premises immediately after UNT notifies OHPD in writing of UNT's inability to deliver possession, or perform improvements, OHPD shall be liable to UNT for all damages, including, without limitation, consequential damages, that UNT suffers from any holdover.

#### ARTICLE IV IMPOSITION AND UTILITIES

4.1 Payment of Impositions. OHPD shall pay all Impositions before the same become delinquent, and OHPD shall furnish to UNT receipts or copies thereof showing timely payment of such Impositions. OHPD shall be entitled to pay any Impositions in installments as and to the extent the same may be permitted by the applicable taxing authority or claimant without additional penalty or interest. UNT agrees to cooperate with OHPD in seeking the delivery of all notices and Impositions to OHPD directly from the applicable taxing authorities. UNT shall promptly deliver all notices of Impositions to OHPD that are delivered to UNT. UNT shall retain the right to pay any and all Impositions related to the Leased Premises that are not paid at least three (3) days prior to such Impositions becoming delinquent or subject to interest or penalties. If UNT pays any Impositions, OHPD shall reimburse UNT within five (5) days after written notice thereof from UNT.

4.1.1 Beginning thirty-six (36) months after the Operational Date and continuing through the first twenty-five (25) Lease Years, UNT agrees, within thirty (30) days after receipt of OHPD's written request along with written evidence of ad valorem taxes payable with respect to the Project relating to Denton Independent School District, to contribute one-third (1/3) of DISD taxes up to and not to exceed One Hundred Thousand and 00/100 Dollars (\$100,000.00) toward OHPD's obligations with respect to the Impositions due pursuant to this Lease. Before the Operational Date, UNT shall have no obligation to contribute any amount.

4.1.2 Upon the expiration of each Lease Year, UNT and OHPD shall reconcile any amounts contributed by UNT so that UNT's contribution shall be diminished on a dollar-for-dollar basis, payable as additional Base Rent within thirty (30) days after the reconciliation, for any "Gross Revenue" produced from the Project Site in excess of OHPD's projected "Gross Revenue" as shown on the Pro Forma attached to this Lease as Exhibit "\_\_\_" and made a part hereof for all purposes.

4.2 Contest of Impositions. If the levy of any of the Impositions shall be deemed by OHPD to be improper, illegal or excessive, or if OHPD desires in good faith to contest the Impositions for any other reason, OHPD may after first notifying UNT in writing, at least three (3) days before the date of

delinquency, at OHPD's sole cost and expense, dispute and contest the same and file all such protests or other instruments and institute or prosecute all such proceedings for the purpose of contest as OHPD shall deem necessary and appropriate. Subject to the foregoing, any item of contested Impositions need not be paid until the earlier of: (a) the time it is finally adjudged to be valid; or (b) such time as the entity assessing the Impositions could commence foreclosure proceedings or similar action against the Leased Premises or UNT's interest therein, it being agreed that OHPD may not take any action or fail to pay any Impositions if such action or failure could result in the commencement of any such foreclosure procedures or similar action. OHPD shall be entitled to any refund of any Impositions (and the penalties or interest thereon) refunded by the levying authority pursuant to any such proceeding or contest, if such Impositions shall have been either (a) paid directly by OHPD, or (b) paid directly by UNT, and UNT was reimbursed therefor by OHPD.

4.3 Standing. If OHPD determines that it lacks standing to contest any Impositions imposed by a governmental authority or to obtain an extended payment period for any Impositions, UNT (to the maximum extent allowed by law) and at OHPD's sole cost and expense shall join in such contest or otherwise provide OHPD with sufficient authority to obtain such standing.

4.4 Utilities. OHPD shall pay all bills for utility service provided to the Leased Premises after the Commencement Date.

## ARTICLE V IMPROVEMENTS

OHPD shall not make or allow to be made any alterations, physical additions or improvements (collectively referred to herein as "OHPD Alterations") in or to the Leased Premises without complying with all local, state and federal ordinances, laws, statutes and without first obtaining the written consent of UNT, which consent shall not be unreasonably withheld; provided, however, that consent shall not be required for OHPD Alterations to the Hotel and Restaurant that will not affect the exterior appearance, the systems or the structural elements thereof. OHPD shall not interfere with or disrupt the structural integrity of the Hotel or Restaurant during the construction of any OHPD Alterations. In any event prior to commencing any OHPD Alteration, OHPD shall provide UNT with a copy of the plans and specifications for any OHPD Alterations. Any alterations, physical additions or improvements to the Leased Premises made by UNT or OHPD shall become the property of UNT and must be surrendered to UNT upon the termination of this Lease without credit to OHPD.

## ARTICLE VI USE OF PREMISES

6.1 Use.

6.1.1 OHPD shall use the Hotel Site during the Term solely for the construction and operation of an Upscale Hotel and Restaurant facility, to be connected to the Convention Center that will be constructed by City. OHPD must, throughout the Term of this Lease, continuously operate and maintain the Hotel and Restaurant that will be built on the Hotel Site as an Upscale facility, and without limiting the foregoing, in compliance with the current standards established by Hilton Worldwide and Houlihan's Restaurants, Inc., or other franchise partners approved in advance in writing by OHPD that OHPD may have from time to time as described below, for operating and maintaining equivalent or higher Upscale hotels and restaurants franchised by such organizations.

6.1.2 OHPD shall have the right, upon advance written approval by UNT, to change franchises of the Hotel and Restaurant from time to time. Any franchise associated with the Hotel and Restaurant

must be Upscale and of equal or greater reputation for service, quality and guest experience in the hotel and restaurant industry.

6.2 Compliance with Laws. OHPD agrees not to use the Leased Premises for any use or purpose in violation of any valid and applicable law, regulation or ordinance of the United States, the State of Texas, City of Denton or other lawful governmental authority having jurisdiction over the Leased Premises, including, without limitation, the Americans with Disabilities Act of 1990, as amended; provided, however, there shall be no violation by OHPD of this provision: (a) so long as OHPD shall, in good faith within a reasonable time after OHPD acquires actual knowledge thereof, by appropriate proceedings and with due diligence, contest the alleged violation or the validity or applicability of the law, regulation or ordinance; (b) until OHPD has had a reasonable time after a final adjudication that such law, regulation or ordinance, in fact, has been violated; and (c) so long as neither UNT nor any portion of the Leased Premises, during the period of such contest, will be subject to any possible liability, loss, penalty or forfeiture.

6.3 Maintenance; Casualty.

6.3.1 UNT is not required to make any improvements, replacements or repairs of any kind or character to the Leased Premises during the Term.

6.3.2 If the Leased Premises fall into a state of disrepair that has a substantial, detrimental effect to the business activity, aesthetic appeal, functionality, or long term structural or mechanical viability of the Leased Premises, and same has not been remedied within thirty (30) days after UNT providing OHPD with written notice thereof, UNT shall have the right to make such reasonable repairs as it deems necessary, and shall provide all receipts, plans and documents associated with such repairs to OHPD who shall reimburse and indemnify UNT for the reasonable costs of such repairs, within a reasonable timeframe not to exceed thirty (30) days. UNT shall have the right to periodically inspect the Leased Premises in accordance with Section 13.1 below.

6.3.3 OHPD shall, at its sole cost and expense, maintain the entirety of the Leased Premises, including but not limited to the Hotel and Restaurant, in an Upscale condition at all times throughout the Term, reasonable wear and tear, obsolescence, loss by casualty (except to the extent OHPD is required under this Lease to repair casualty damage) excepted. Without limiting the foregoing, OHPD must make all repairs and replacements necessary to keep the Leased Premises (including, without limitation, all Improvements constructed thereon) in the required condition. Upon termination of this Lease, OHPD shall deliver up the Leased Premises then situated or required to be situated thereon in the condition existing at the Operational Date reasonable wear and tear, obsolescence, and loss by casualty (except to the extent OHPD is required under this Lease to repair casualty damage) excepted.

6.3.4 To the extent any of the components of the Leased Premises that OHPD is obligated to maintain and repair hereunder are covered by a warranty provided by the manufacturer thereof, OHPD agrees to take all such actions, including the manufacturer's required and recommended scheduled maintenance, necessary to maintain the warranty without impairment. Furthermore, regardless of whether any such component is covered by a manufacturer's warranty, to the extent the manufacturer of any component of the Leased Premises that OHPD is obligated to repair under this Lease recommends regularly scheduled maintenance for the component, OHPD shall be obligated to comply with the manufacturer's recommendations. Specifically included in the foregoing obligation is the obligation of OHPD to perform all scheduled maintenance



recommended by the manufacturers of the HVAC system servicing any aspect of the Leased Premises at the times recommended by such manufacturer.

6.3.5 With regard to casualty damage to the Leased Premises, OHPD shall, as soon as reasonably practicable but in no event later than ninety (90) days after the date of a casualty, commence the work of repair, reconstruction or replacement of the damaged Improvement and proceed with all due diligence until completion. Notwithstanding the foregoing sentence, if the casualty occurs during the last twelve (12) calendar months of the Term and the extent of damage to the Leased Premises is greater than fifty percent (50%) of the then replacement value thereof (exclusive of the land value of the Leased Premises), OHPD shall have the option, within ninety (90) days from the date of the occurrence of such casualty damage, to terminate this Lease by giving written notice of such termination to UNT within said 90-day period, in which event: (a) this Lease shall terminate as of the termination date specified in such notice to UNT, which shall not be less than thirty (30) days after the date of such notice; (b) OHPD shall not be required to repair the damage; (c) all insurance proceeds available as a result of such damage shall be paid to and be the property of UNT; and (d) the Parties shall have no further liability of obligations one to the other except for liabilities incurred or accruing prior to such termination date or as may be expressly provided for herein.

6.4 Operational Rights and Restrictions; Revenue. Subject to the terms and provisions of this Lease, OHPD shall have full and exclusive control of the development, design, construction, management and operation of the Hotel and Restaurant, including all booking, room rental, food and beverage and catering rights; provided, however, that OHPD shall not, without UNT's advance written consent, assign such rights or grant or enter into any licenses, subleases, management agreements, operating agreements or any other agreements of any nature transferring such rights.

6.5 Signs. No signs, advertisements logos or notices of any type may be erected, painted or placed in, on or about the Leased Premises, except those of such color, size, style and in such places as are first approved in the Approved Hotel and Restaurant Plans according to the process set forth in the Master Agreement. OHPD shall include and shall cause Approved Franchisor to approve a reference in any prominent Hotel signage, in form and design reasonably acceptable to UNT, indicating "University of North Texas" or any future name of UNT. OHPD shall not remove any existing signage on the Project Site without the prior written consent of UNT, which consent shall not be unreasonably withheld.

6.6 Off-Site Parking. UNT agrees to allow OHPD, at no additional cost to OHPD, non-exclusive use of the ancillary parking facility as shown on the Site Plan on an overflow basis (provided that the parking on the Project Site has already been fully utilized). UNT shall not be responsible for any liability related to such use of the ancillary parking facility by OHPD or its patrons. UNT shall, at UNT's sole cost and expense, construct and maintain a connector road between the Project Site and the ancillary parking facility in a location and using materials in UNT's sole discretion. UNT shall retain exclusive use and OHPD shall not be entitled to utilize any portion of the ancillary parking facility during any portion of any day: (a) on which there is a UNT home football game; or (b) in UNT's sole discretion any other event utilizing the football stadium for which the ancillary parking facility is required.

6.7 Preferred Pricing. UNT shall be entitled to the lowest rates available to any group or governmental entity for any rooms or other portions of the Project made available by OHPD, including rental or use fees for all portions of the Hotel, Convention Center or other portions of the Project Site.

6.8 College of Merchandising, Hospitality, and Tourism. In accordance with the Master Agreement, OHM and OHPD will coordinate and facilitate with Hilton Worldwide and other brands on the Project Site for hospitality sponsorship programs for the benefit of UNT College of Merchandising,

Hospitality, and Tourism students, and shall allow such University programs "hands on" participation in hospitality management of the Project. OHPD shall provide designated areas of approximately 4,000 square feet for seminar rooms and a faculty suite as further set forth on Exhibit "\_\_\_\_" attached hereto and made a part hereof for all purposes. OHM will provide \_\_\_\_ internships (number to be negotiated) per semester for the College.

## ARTICLE VII INSURANCE AND INDEMNITY

7.1 Liability Insurance. OHPD agrees, at its sole expense, to obtain and maintain commercial general liability insurance at all times during the Term hereof with reputable insurance companies authorized to transact business in the State of Texas for bodily injury (including death) and property damage with minimum limits from time to time of the greater of: (a) \$5,000,000 with respect to any one occurrence and the aggregate of all occurrences during a given policy period; and (b) those customarily held by owners/operators of similar projects in the State of Texas, protecting UNT and OHPD against any liability, damage, claim or demand arising out of or connected with the condition or use of the Leased Premises. Such insurance shall include contractual liability, personal injury and advertising liability, business automobile (including owned, non-owned and hired) and independent contractor liability as well as products and completed operations coverage. Such insurance coverage must be written on an "occurrence" basis. The insurance required to be maintained by OHPD, may be maintained by any combination of single policies and/or umbrella or blanket policies, so long as the level of coverage is not impaired or reduced by the use thereof. UNT shall be named as an additional insured, as its interests appear, on all insurance policies required by this Section. If OHPD's liability insurance policies do not contain the standard ISO Separation of Insureds Provision, or a substantially similar clause, such liability insurance policies shall be endorsed to provide cross-liability coverage at OHPD's expense.

7.2 Workers' Compensation Insurance. OHPD agrees, at its sole expense, to obtain and maintain workers' compensation insurance, as required by applicable law, during the Term. The policy will be endorsed to provide a waiver of subrogation as to UNT.

7.3 Property Insurance. At all times during the Term of this Lease, OHPD shall, at its sole expense, maintain a policy or policies of special form commercial property insurance, with all premiums paid in advance, issued by and binding upon an insurance company reasonably acceptable to UNT and authorized to transact business in the State of Texas, insuring all buildings and structures included in the Leased Premises, and covering all trade fixtures, equipment, furniture and other personal property located in the Leased Premises, for the amount of the full replacement cost thereof as of the date of the loss (exclusive of foundation and excavation cost and costs of underground flues, pipes, drains and other uninsurable items) with a deductible amount no greater than that retained by owners of similar properties in the State of Texas at the time the policy in question is obtained. UNT shall be named as the loss payee, on all such policies. Furthermore, no policy of insurance required under this Section shall be written such that the proceeds thereof will produce less than the minimum of coverage required hereunder by reason of co-insurance provisions or otherwise.

7.4 Builder's Risk. OHPD shall obtain adequate Builder's Risk insurance during any period of construction, or cause others to maintain, builder's risk insurance (non-reporting form) with completed operations coverage of the type customarily carried in the case of similar construction for one hundred percent (100%) of the full replacement cost of work in place and materials, supplies and equipment that are intended to be installed in the construction regardless of whether same are stored at or upon the property or off of the property in question, except that the OHPD agrees to reasonable deductibles necessary to obtain reasonable insurance rates.

7.5 Additional Coverage/Requirements of Policies.

- 7.5.1 In addition to the insurance required in Sections 7.1, 7.2, 7.3, and 7.4 above, OHPD must also maintain such other insurance, both in terms of: (a) risks insured and scope of coverage; and (b) amounts of coverage, as may from time to time during the Term be customarily carried by owners/operators of properties similar to the Leased Premises in the State of Texas with the effect that at any given time during the Term, OHPD shall maintain such additional insurance coverage on the Lease Premises and its operations thereon equal to that carried by the owners/operators of other similar hotel and conference center facilities in the State of Texas.
- 7.5.2 All insurance required of OHPD under this Article shall be primary and non-contributing with any insurance that may be carried by UNT. Also, each policy of insurance required under this Article shall: (a) be issued by one or more insurance companies each of which must have an A.M. Best Company financial and performance rating of A-IX or better and be qualified or authorized by the laws of the State of Texas to assume the risk covered by such policy; (b) provide that such policy shall not be canceled or modified without at least thirty (30) days prior written notice to UNT; and (c) provide that any loss otherwise payable thereunder shall be payable notwithstanding any act or negligence of the named insureds which might, absent such agreement, result in a forfeiture of all or a part of such insurance payment. On the Commencement Date and thereafter as UNT may require, OHPD shall provide UNT with certificates of insurance, or other evidence and documentation, acceptable to UNT evidencing OHPD's full compliance with the insurance requirements of this Lease. If requested by UNT, OHPD shall provide UNT with certified copies of any of the required policies. OHPD shall promptly pay all premiums when due on such insurance and not less than fifteen (15) days prior to the expiration date of each such policy, deliver to UNT acceptable evidence of insurance, such as a renewal policy or policies marked "Premium Paid", or other evidence satisfactory to UNT, reflecting that all required insurance is current and in force. OHPD will immediately give written notice to UNT of any cancellation of, or change in, any insurance policy required to be maintained hereunder. OHPD may satisfy any insurance requirement hereunder by providing one or more "blanket" insurance policies provided same is reasonably acceptable to UNT.

7.6 Waiver. LESSOR AND LESSEE HEREBY WAIVE ALL CLAIMS, RIGHTS OF RECOVERY AND CAUSES OF ACTION THAT EITHER PARTY OR ANY PARTY CLAIMING BY, THROUGH OR UNDER SUCH PARTY BY SUBROGATION OR OTHERWISE MAY NOW OR HEREAFTER HAVE AGAINST THE OTHER PARTY OR ANY OF THE OTHER PARTY'S PRESENT AND FUTURE SUBSIDIARIES, AFFILIATES, MEMBERS, PARTNERS, OFFICERS, DIRECTORS, EMPLOYEES, DIRECT OR INDIRECT STOCKHOLDERS, AGENTS, OTHER REPRESENTATIVES, SUCCESSOR AND ASSIGNS FOR LOSS OR DAMAGE TO PROPERTY OF LESSOR AND LESSEE, EVEN IF CAUSED BY THE NEGLIGENCE OR FAULT OF THE RELEASED PARTY OR ITS PARTNERS, DIRECTORS, OFFICERS, EMPLOYEES, AGENTS OR REPRESENTATIVES, TO THE EXTENT THAT THE LOSSES OR DAMAGES ARE COVERED BY THE INSURANCE POLICIES ACTUALLY MAINTAINED PURSUANT TO ARTICLE VI OF THIS LEASE.

7.7 Payment of Losses. Subject to Subsection 6.3.5 above and OHPD's obligation to pay UNT in the event of termination of this Lease by reason of a casualty loss, any loss under any such insurance policy required under Section 7.3 above shall be made payable to OHPD and UNT and shall be used for the rebuilding, restoration and repair of that portion of the Leased Premises that has become destroyed or damaged for which such proceeds are payable for the benefit of OHPD and UNT. Following completion of all work on the restoration and repair of the Leased Premises, any proceeds not disbursed above shall be applied as directed by UNT for the benefit of the Leased Premises.

7.8 Environmental Investigation and Remediation.

- 7.8.1 OHPD shall be responsible, at its sole cost and expense, for performing any environmental investigation and remediation work that may be required in connection with the use the occupancy of the Leased Premises and that is caused by the presence of Hazardous Materials on the Leased Premises, except and to the extent the presence thereof results solely from the act of UNT. Such environmental investigation and remediation work shall be conducted in accordance with all applicable laws. OHPD shall notify in advance and advise, before performing any work, UNT of the remediation OHPD desires to undertake and the procedures to be used. OHPD shall complete the remediation with due diligence and shall comply with, and shall cause its agents and contractors to comply with, all applicable laws regarding the use, removal, storage, transportation, disposal and remediation of Hazardous Materials. OHPD's obligation as provided herein to undertake environmental investigation and remediation of the Leased Premises shall be a continuing obligation of OHPD that shall survive the expiration or termination of the Term.
- 7.8.2 The term "Hazardous Materials" means any substance, material or waste which is now or hereafter classified or considered to be hazardous, toxic or dangerous under any federal, state, or local laws, rules and regulations (collectively, "Laws") affecting the Leased Premises relating to pollution or the protection of human health, natural resources or the environment, but shall exclude any such items that are necessary for the ordinary performance of OHPD' or any sublessee's business activities, provided that such are used, stored or disposed of in compliance with all Laws. If OHPD breached its obligations under this Section and such breach is not cured following notice and within the applicable cure period specified in Article IX below, UNT may take any and all action reasonably appropriate to remedy such breach and OHPD shall promptly pay all reasonable costs incurred by UNT in connection therewith.
- 7.8.3 The provision of this Section shall survive the termination of this Lease and are solely for the benefit of UNT and OHPD and shall not be deemed for the benefit of any other person or entity.

7.9 Indemnification. UNT shall not be liable to OHPD or to OHPD's agents, servants, employees, customers, or invitees for any damage to person or property caused by any act, omission, or neglect of OHPD, its agents, servants, or employees, nor shall UNT be liable for any loss, cost, expense, or claim arising out of the ownership or operation of the Project, except to the extent such claims are based upon the willful acts or gross negligence of UNT, and OHPD agrees to indemnify, defend and hold UNT harmless from and against any such losses, costs, expenses, claims or other liabilities.

ARTICLE VIII  
ASSIGNMENT AND SUBLETTING

OHPD shall not sell, convey, assign or sublet this Lease or all or any portion of the leasehold estate created hereby without the express prior written consent of UNT, which consent shall not be unreasonably withheld; provided, however, that in no event shall UNT be obligated to consent to any assignment or subletting if same is to any Person who, in UNT's sole and absolute discretion, does not have a suitable level of experience and reputation for quality in operating hotels and restaurants such as the Hotel and Restaurant. OHPD shall, in connection with any proposed assignment or sublease, provide at least thirty (30) days advanced written notice to UNT of the name, address, financial condition and business references of any proposed assignee or sublessee, together with a complete copy of the proposed assignment agreement or sublease. Upon any such assignment, OHPD shall execute and deliver to UNT a written assignment or sublease, in form and substance satisfactory to UNT, whereby such assignee or sublease shall assume all applicable obligations of OHPD pertaining to the Leased Premises and accruing under this Lease after such assignment. No assignment or subletting by OHPD shall release, or be

deemed or construed as releasing, OHPD from its obligations and liabilities hereunder. Any Change of Control (as defined herein) with respect to OHPD during the term of this Lease shall be deemed an assignment by OHPD and therefore subject to the terms of this Section. For purposes of this Section, a "Change of Control" means a direct change of the power to direct or cause the direction in the management or policies of OHPD through a change in ownership of the membership interests in OHPD, either directly or indirectly.

ARTICLE IX  
DEFAULT OF OHPD

9.1 Default. OHPD shall be in default if any of the following events (each an "Event of Default") shall occur: (a) the failure on the part of OHPD to pay, when due, Base Rent or any other payment required pursuant to this Lease (a "Monetary Default") and the continuation of such failure for ten (10) days after UNT has provided to OHPD a written notice of such failure; (b) the sale, conveyance, assignment or subletting of this Lease or all or any portion of the leasehold estate created hereby other than as permitted under Article VIII above (an "Assignment Default"); (c) the failure on the part of OHPD to comply with any term, provision or covenant of this Lease (other than a Monetary Default, an Insurance Default, or an Assignment Default), and the continuation of such failure for a period of thirty (30) days from and after the date notice of such failure is given by UNT to OHPD; provided, however, no Event of Default shall exist if OHPD shall have commenced to cure such failure and shall be proceeding with reasonable diligence to completely cure such failure (provided such failure must be cured within ninety (90) days after such notice); (d) the occurrence of an Event of Default (as defined in the Master Agreement) under the Master Agreement; (e) the making of any general assignment for the benefit of creditors by OHPD or any guarantor of OHPD's obligations under this Lease; (f) the filing of a voluntary petition in bankruptcy or a voluntary petition for an arrangement or reorganization under the United States Federal Bankruptcy Act (or similar statute or law of any foreign jurisdiction) by OHPD or any guarantor of OHPD's obligations hereunder; or (g) the appointment of a receiver or trustee for all or substantially all of OHPD's interest in the Leased Premises or its leasehold estate hereunder if not removed within sixty (60) days.

9.2 Remedies.

9.2.1 Upon the occurrence of any Event of Default set forth in this Lease, UNT is entitled to pursue any one or more of the remedies set forth herein without any notice or demand:

9.2.2 Without declaring this Lease terminated, UNT may enter upon and take possession of the Leased Premises, without judicial process, and, in compliance with applicable law, lock out, expel or remove OHPD and any other Person who may be occupying all or any part of the Leased Premises without being liable for any claim for damages, in which event UNT shall be entitled to receive: (a) all Base Rent and other amounts accrued hereunder as of the date of termination of possession; (b) reimbursement of any reasonable expenditures made by UNT in order to relet the Leased Premises, including, but not limited to, leasing commissions, lease incentives, remodeling and repair costs; and (c) all Base Rent and other net sums required hereunder to be paid by the OHPD during the remainder of the Term, diminished by any net sums thereafter received by UNT through reletting the Leased Premises during such period, after deducting all costs incurred by UNT in reletting the Leased Premises. UNT shall not be liable for, nor shall OHPD's obligations hereunder be diminished because of, UNT's failure to relet the Leased Premises or to collect rent due for such reletting. OHPD shall not be entitled to the excess of any consideration retained by reletting over the Base Rent due hereunder. Reentry by UNT in the Leased Premises shall not affect OHPD's obligations hereunder for the unexpired Term. Unless UNT delivers written notice to OHPD expressly stating that it has elected to terminate this Lease, all actions taken to

dispossess or exclude OHPD from the Leased Premises shall be deemed to be taken under this Section. If UNT elects to proceed under this Section, it may at any time elect to terminate this Lease under Subsection 9.2.3 below.

- 9.2.3 Without declaring this Lease terminated, UNT may enter upon the Leased Premises, without judicial process and without being liable for any claim for damages, and whatever OHPD is obligated to do under the terms of this Lease. OHPD agrees to reimburse UNT on demand for any reasonable expenses UNT may incur in effecting compliance with OHPD's obligations under this Lease; further, OHPD agrees that UNT will not be liable for any damages resulting to OHPD from effecting compliance with OHPD's obligations under this Lease.
- 9.2.4 UNT may terminate this Lease, in which event OHPD shall immediately surrender the Leased Premises to UNT, and if OHPD fails to surrender the Leased Premises, UNT may, without prejudice to any other remedy that it may have for possession or arrearages in rent, enter upon and take possession of the Leased Premises, without judicial process, and, in compliance with applicable law, lock out, expel or remove OHPD and any other person who may be occupying all or any part of the Leased Premises without being liable for any claim for damages. OHPD agrees to pay on demand the amount of all loss and damage that UNT may suffer by reason of the termination of this Lease under this Section, including without limitation, loss and damage due to the failure of OHPD to maintain and or repair the Leased Premises as required in this Lease. In addition, upon termination UNT may collect from OHPD an amount equal to the difference between the amount of all future rentals required to be paid under this Lease from the date UNT terminates this Lease until the original termination date, less the fair market rental value of the Leased Premises during such period, both calculated using a discount rate of five percent (5%) per annum. Notwithstanding anything contained in this Lease to the contrary, this Lease may be terminated by UNT only by delivering written notice of such termination to OHPD, and no other act or omission of UNT constitutes a termination of this Lease.
- 9.2.5 OHPD hereby expressly waives any and all rights of redemption granted by or under any present or future laws in the event of OHPD being evicted or dispossessed for any cause, or in the event of UNT obtaining possession of the Leased Premises by reason of the violation by OHPD of any of the covenants and conditions of this Lease or otherwise. The rights given to UNT herein are in addition to any rights that may be given to UNT by any statute or otherwise.
- 9.2.6 UNT's pursuit of any remedy specified in this Lease will not constitute an election to pursue that remedy only, nor preclude UNT from pursuing any other remedy available at law or in equity, nor constitute a forfeiture or waiver of any Base Rent or other amount due to UNT as described in this Lease.

## ARTICLE X DEFAULT OF UNT

10.1 Defaults and Remedies. In the event of any default by UNT, OHPD's exclusive remedy shall be an action for damages (OHPD hereby waiving the benefit of any laws granting it a lien upon the property of UNT and/or upon rent due UNT and/or any right to terminate the Lease), but prior to any such action OHPD will give UNT written notice specifying such default with particularity, and UNT shall thereupon have a reasonable period of time in which to cure any such default. If OHPD shall fail to give UNT written notice of any default by UNT within five (5) business days of the commencement of any such default, OHPD shall be conclusively deemed to have waived the default. Unless and until UNT fails to so cure any default after such notice, OHPD shall not have any remedy or cause of action by reason thereof. In the event such default is not remedied by UNT or the holder of any mortgage or deed of trust,

then the sole remedy of OHPD with respect to such default shall be to institute proceedings to recover from UNT (subject to the other provisions of this Lease) any actual damages incurred by OHPD as a result of such default, it being agreed and understood that OHPD shall have no (and hereby expressly waives any) right to terminate this Lease, to offset against rent, or to recover from UNT any punitive, exemplary, treble and speculative damages as a result of any default by UNT under this Lease. However, at the option of UNT, any controversy or claim arising out of or relating to UNT's alleged breach or other alleged failure to perform or comply with UNT's obligations or duties under this Lease shall be settled by binding arbitration in accordance with the commercial arbitration rules of the American Arbitration Association and judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction thereof, and the costs of such proceeding shall be allocated to the losing party as determined by the arbitrators. OHPD waives trial by jury in any action or proceeding brought by or against UNT arising out of this Lease or the use and occupancy of the Leased Premises. If UNT commences any proceeding for nonpayment of rent, OHPD will not interpose (and waives the right to interpose) any counterclaim in any such proceeding. All obligations of UNT hereunder will be construed as covenants, not conditions; and all such obligations will be binding upon UNT only during the period of its ownership and possession of the Project and not thereafter.

## ARTICLE XI CONDEMNATION

11.1 Definitions. Whenever used in this Article, the following words shall have the definitions and meanings hereinafter set forth:

11.1.1 "Condemnation Proceeding" means any action brought for the purpose of any taking of the Hotel Site, or any part thereof or of any property interest therein (including, without limitation, the right to the temporary use of all or any portion of the Hotel Site), by competent authority as a result of the exercise of the power of eminent domain, including a voluntary sale to such authority either under threat of condemnation or while such action or proceeding is pending.

11.1.2 "Taking" or "Taken" means the event and date of vesting of title to the Hotel Site or any part thereof or any property interest therein (including, without limitation, the right to the temporary use of all or any portion of the Hotel Site), pursuant to a Condemnation Proceeding.

11.1.3 "Entire Taking" means if all or substantially all of the Hotel Site shall be Taken in Condemnation Proceedings, Base Rent shall be fully abated from and after the date of such Taking and from and after such date OHPD and UNT shall not have any other obligations under this Lease with respect to the Hotel Site, except for those obligations that expressly survive the termination hereof.

11.1.4 "Partial Taking" means if less than all of the Hotel Site shall be Taken in any Condemnation Proceeding and the remaining Hotel Site is sufficient to operate the Hotel as reasonably contemplated by the Parties hereto.

11.1.5 "Temporary Taking" means a Taking for only a period of time during which OHPD is deprived of usage of all or part of the Hotel Site and the result of such Taking does not materially interfere with the ability of OHPD to use and operate the Hotel Site as a Hotel and Restaurant in the manner reasonably contemplated by the Parties hereto. Any other "Taking" that is not "temporary" as described above shall be treated as an Entire Taking or as a Partial Taking.

11.2 Notice of Condemnation & Settlement with Condemning Authority. UNT and OHPD shall each promptly notify the other of the commencement of any condemnation, eminent domain or other similar proceedings with regard to the Hotel Site. UNT shall not make any settlement with the

condemning authority in any Condemnation proceedings nor convey or agree to convey the whole or any portion of the Hotel Site to such authority in lieu of condemnation without first obtaining the written consent of OHPD, which consent will not be unreasonably withheld, conditioned or delayed.

11.3 Effect of Condemnation on Lease.

11.3.1 In the event of an Entire Taking, the Base Rent shall be fully abated from and after the date of such Taking and from and after such date OHPD and UNT shall not have any other obligations under this Lease with respect to the Hotel Site, except for those obligations that expressly survive the termination hereof.

11.3.2 In the event of a Partial Taking, this Lease shall terminate as to the portion of the Hotel Site Taken and a fair and equitable portion of Base Rent attributable to the portion of the Hotel Site Taken shall be abated from and after the date of such partial Taking and from and after such date OHPD and UNT shall not have any other obligations under this Lease with respect to the portion of the Hotel Site that has been Taken, except for those obligations that expressly survive the termination hereof.

(1) If, following a Partial Taking, the remaining Hotel Site is not sufficient to operate the Hotel as reasonably contemplated by the Parties hereto, then OHPD, at its election by delivering written notice to UNT, may terminate this Lease, whereupon the Base Rent shall be fully abated from and after such date of such partial Taking, and from and after such date, OHPD and UNT shall not have any further obligations under this Lease with respect to the Leased Premises, except for those obligations that expressly survive the termination hereof. Such election to terminate the Lease must be exercised no later than ninety (90) days after the date of such Taking.

(2) If OHPD does not elect, or does not have the right, to terminate this Lease upon any Partial Taking, then: (a) the Hotel Site shall be reduced by the portion thereof Taken, the Base Rent payable hereunder shall be equitably reduced during the unexpired portion of the Term as provided above and this Lease shall remain in full force and effect; and (b) OHPD shall commence and proceed with reasonable diligence to repair or reconstruct the remaining Improvements on the Hotel Site, but only to the extent that repairs or reconstruction are necessary to operate the Hotel as reasonably contemplated by the Parties and provided that OHPD receives a sufficient portion of the Condemnation award to pay for such repairs or reconstruction.

11.4 Settlement of Condemnation Proceeds. Any condemnation award for a Taking of the Hotel Site shall belong solely to UNT.

ARTICLE XII  
REPRESENTATIONS AND SPECIAL COVENANTS

12.1 UNT's Representations. UNT hereby represents and covenants as follows:

12.1.1 Authority. The University of North Texas System and UNT have all requisite power and authority to own the Hotel Site, to execute, deliver and perform its obligations under this Lease and to consummate the transactions herein contemplated and any proper action in accordance with all applicable law, has duly authorized the execution and delivery of this Lease, the performance of its obligations under this Lease and the consummation of the transactions herein contemplated.



- 12.1.2 Binding, Obligation. This Lease is a valid and binding obligation of UNT and is enforceable against UNT in accordance with its terms subject to (a) applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, rearrangement, moratorium, receivership, liquidation and similar laws affecting creditor's rights or (b) general principles of equity.
- 12.1.3 Consents. No permission, approval or consent by third parties or any other governmental authorities is required in order for UNT to enter into this Lease, make the agreements herein contained or perform the obligations of UNT hereunder other than those which have been obtained.
- 12.1.4 Quiet Enjoyment. During the Term of this Lease and subject to the terms of this Lease, OHPD shall have the quiet enjoyment and peaceable possession of the Leased Premises.
- 12.1.5 Limitations. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED HEREIN, THIS LEASE IS MADE BY LESSOR WITHOUT REPRESENTATION OR WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, AS TO THE CONDITION OF THE HOTEL SITE, ITS MERCHANTABILITY, ITS CONDITION OR ITS FITNESS FOR LESSEE'S INTENDED USE OR FOR ANY PARTICULAR PURPOSE.

12.2 OHPD's Representations, Warranties and Special Covenants. OHPD hereby represents, warrants, and covenants as follows:

- 12.2.1 Existence. OHPD is duly organized and validly existing under the laws of the state of its organization and is authorized to do business in the State of Texas.
- 12.2.2 Authority. OHPD has all requisite power and authority to own its property, operate its business, enter into this Lease and consummate the transactions herein contemplated, and by proper action have duly authorized the execution and delivery of this Lease and the consummation of the transactions herein contemplated.
- 12.2.3 Binding Obligation. This Lease is a valid and binding obligation of OHPD and is enforceable against OHPD in accordance with its terms, subject to (a) applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, rearrangement, moratorium, receivership, liquidation and similar laws affecting creditors rights or (b) general principles of equity.
- 12.2.4 No Default. The execution by OHPD of this Lease and the consummation by OHPD of the transactions contemplated hereby do not, as of the Commencement Date, result in a breach of any of the terms or provisions of, or constitute a default or condition which upon notice or the lapse of time or both would ripen into default under, the organizational documents of OHPD or under any indenture, agreement, instrument or obligation to which OHPD is a party or is bound.
- 12.2.5 Consents. No permission, approval or consent by third parties or any other governmental authorities is required in order for OHPD to enter into this Lease, make the agreements herein contained or perform the obligations of OHPD hereunder other than those which have been obtained.
- 12.2.6 Proceedings. There are no actions, suits or proceedings pending or, to the actual knowledge of OHPD, without independent investigation, threatened or asserted against OHPD, affecting OHPD at law or at equity or before or by any federal, state, municipal or other governmental department, commission, board, bureau, agency, or instrumentality, domestic or foreign.

ARTICLE XIII  
MISCELLANEOUS

13.1 Inspection. OHPD shall permit UNT and its agents, upon no less than twenty-four (24) hours prior written notice (except in cases where UNT reasonably believes that a bona fide emergency exists, in which event no prior notice will be needed and no limitation on such entry shall apply), to enter into and upon the Leased Premises during normal business hours for the purpose of inspecting the same on the condition that any such inspection does not unreasonably interfere with OHPD's operations at the Leased Premises.

13.2 Estoppel Certificates. OHPD and UNT shall, at any time and from time to time upon not less than ten (10) days prior written request by the other Party, execute, acknowledge and deliver to UNT or OHPD, as the case may be, a statement in writing certifying (a) its ownership of the interest of UNT or OHPD hereunder, as the case may be, (b) that this Lease is unmodified and in full force and effect (or if there have been any modifications, that the same is in full force and effect as modified and stating the modifications), (c) the dates to which the Base Rent and any other charges have been paid, and (d) that, to the then current actual knowledge, without independent investigation of UNT or OHPD, as the case may be, no default hereunder on the part of the other Party exists (except that if any such default does exist, the certifying Party shall specify such default).

13.3 Release. If requested by UNT, OHPD shall, upon termination of this Lease, execute and deliver to UNT an appropriate release, in form proper for recording, of all OHPD's interest in the Leased Premises, and UNT is hereby granted an irrevocable power of attorney, which is coupled with an interest, to execute such release if OHPD fails to do so within ten (10) days after UNT's written request.

13.4 Interest on Past Due Amount. If OHPD fails to pay any amounts due to the UNT hereunder when due, same shall bear interest from the date due until the date of payment at the lesser of twelve percent (12%) per annum or the maximum rate under applicable law.

13.5 Notices. All payments required to be made by OHPD must be paid to UNT at the address set forth below. All notices, demands, and other communications required to be given or made hereunder shall be in writing and shall be duly given if delivered by hand, messenger, facsimile or reputable overnight courier or if mailed by certified or registered mail, first class postage prepaid, to the respective parties hereto at the addresses set forth below, or to such other address furnished in writing to the other party hereto, and shall be deemed received upon the earlier of: (a) actual receipt; and (b) (whether or not actually received) four (4) days after such mailing or upon receipt of confirmation of successful transmission of facsimile by the transmitting facsimile.

If to OHPD:

Tim O'Reilly, Esq.  
O'Reilly Hotel Partners – Denton, LLC  
2808 S. Ingram Mill Road, Bldg. A104  
Springfield, MO 65804  
Fax: (417) 890-1778

with copy to:

Craig Preston, Esq.  
O'Reilly, Jensen & Preston, LLC  
2808 S. Ingram Road, Gldg. A104  
Springfield, MO 65804  
Fax: (417) 890-1778

If to UNT:

Vice President for Finance  
University of North Texas  
1155 Union Circle #310500  
Denton, TX 76203  
Fax: (940) 565-4779

with copy to:

Vice Chancellor & General Counsel  
University of North Texas System  
1901 Main Street  
Dallas, TX 75201  
Fax: (214) 752-5980

13.6 Successors and Assigns. This Lease shall be binding upon and shall inure to the benefit of the Parties and their permitted successors and assigns, but nothing herein shall affect the provisions of Article VIII above with respect to transfers.

13.7 Amendment. Except as expressly provided herein, neither this Lease nor any term hereof may be amended, waived, discharged or terminated, except by a written instrument signed by the Parties hereto.

13.8 Headings and Subheadings. The headings of the articles, sections, paragraphs and subparagraphs of this Lease are for convenience or reference only and in no way define, limit, extend or describe the scope of this Lease or the intent of any provisions hereof.

13.9 Unavoidable Default and Delays. After the Commencement Date, the time within which any Party to this Lease shall be required to perform any act under this Lease, other than the payment, when due, of Base Rent or any other payment by OHPD, shall be extended by a period of time equal to the number of days during which performance of such act is delayed by casualty, damage, strikes or lockouts, acts of God, governmental restrictions, failure or inability to secure materials or labor, reason of priority or similar regulations or order of any governmental or regulatory body, enemy action, civil disturbance, fire, unavoidable casualties or any other cause beyond the reasonable control of the Party seeking the extensions (except for financial circumstances or events or matters that may be resolved by the payment of money).

13.10 Severability. In the event one or more of the terms or provisions of this Lease or the application thereof to any Party or circumstances shall, to any extent, be held invalid, illegal or unenforceable, the remainder of this Lease, and each term and provision of this Lease shall be valid and enforceable to the fullest extent permitted by law.

13.11 Governing Law. THIS LEASE SHALL BE GOVERNED BY, AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE UNITED STATES APPLICABLE THERETO AND THE LAWS OF THE STATE OF TEXAS APPLICABLE TO A LEASE EXECUTED, DELIVERED AND PERFORMED IN SUCH STATE, WITHOUT REGARD TO ANY OTHERWISE APPLICABLE PRINCIPLES OF CONFLICTS OF LAW.

13.12 Venue for Actions. The venue for any legal action or dispute arising out of this Lease shall lie exclusively in Denton County, Texas.

13.13 Attorneys' Fees. Should either Party to this Lease engage the services of attorneys or institute legal proceedings to enforce its rights or remedies under this Lease, the prevailing party to such dispute or proceedings shall be entitled to recover its reasonable attorneys' fees, court costs and similar costs incurred in connection with the resolution of such dispute or the institution, prosecution or defense in such proceedings from the other Party.

13.14 Relationship of Parties. Nothing contained in this Lease shall be deemed or construed by the Parties hereto or by any third party as creating the relationship of principal and agent, partnership, joint venture or any association between the Parties hereto, it being understood and agreed that none of the provisions contained herein or any acts of the Parties in the performance of their respective obligations hereunder shall be deemed to create any relationship between the Parties hereto other than the relationship of UNT and OHPD. It is understood and agreed that this Lease does not create a joint enterprise, nor does it appoint either Party as an agent of the other for any purpose whatsoever. Neither Party shall in any way assume any of the liability of the other for acts of the other or obligations of the

other. Each Party shall be responsible for any and all suits, demands, costs or actions proximately resulting from its own individual acts or omissions.

13.15 Net Lease. It is the intention of the UNT and OHPD that the Base Rent payable under this Lease after the Commencement Date and all Impositions and other costs related to OHPD's use or operation of the Leased Premises under this Lease, shall be absolutely net to UNT, and the OHPD shall pay during the Term, without any offset or deduction whatsoever, all such Impositions and other costs due by OHPD under this Lease. OHPD's covenant to pay Base Rent and additional rent is independent of every other covenant in this Lease.

13.16 Non-Waiver. No Party shall have or be deemed to have waived any Event of Default under this Lease by the other Party unless such waiver is embodied in a document signed by the waiving Party that describes the Event of Default that is being waived. Further, no Party shall be deemed to have waived its rights to pursue any remedies under this Lease, unless such waiver is embodied in a document signed by such Party that describes any such remedy that is being waived.

13.17 Obligations to Defend Validity of Lease. If litigation is filed by a third party against OHPD or UNT in an effort to enjoin either Party's performance of this Lease, the Parties hereto who are named as parties in such action shall take all commercially reasonable steps to support and defend the validity and enforceability of this Lease. Either Party may intervene in any such matter in which the other Party hereto has been named as a defendant. Each Party shall be responsible for its attorneys' fees and costs of litigation.

13.18 Survival. Covenants in this Lease providing for performance after termination of this Lease shall survive the termination of this Lease.

13.19 Entire Agreement. This Lease (including the Exhibits attached hereto and incorporated herein, if any) and the other documents delivered pursuant to this Lease or referenced herein constitute the full and entire understanding and agreement between the Parties with regard to the subject matter hereof. There are no representations, promises or agreements of UNT or OHPD regarding the subject matter of this Lease not contained in this Lease, the Exhibits attached hereto or the other documents delivered pursuant to this Lease or referenced herein.

13.20 Counterparts. This Lease may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument.

13.21 Memorandum of Lease Agreement. Upon either Party's written request, the other Party shall execute and allow such party to record in Denton County, Texas, a Memorandum of Lease Agreement with respect to this Lease. In the event such a Memorandum of Lease Agreement is recorded, the parties agree that upon a termination of this Lease, the Parties shall execute and record a termination of such Memorandum of Lease Agreement.

13.22 Limitation of Liability. Notwithstanding any contrary provision of this Lease, UNT's liability for any breach of this Lease shall be limited to UNT's interest in the Hotel Site as of the date of the event or circumstance giving rise to the liability or obligation to OHPD in question and OHPD shall not seek satisfaction of any award of damages or otherwise from any assets of UNT.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREFOF, the Parties hereto have executed and delivered this Lease as of the date first set forth above.

**PROFESSIONAL SERVICES AGREEMENT  
FOR CONSTRUCTION MANAGER-AGENT  
Exhibit H of Contract # \_\_\_\_\_**

STATE OF TEXAS           §

COUNTY OF DENTON       §

THIS AGREEMENT is made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, by and between the City of Denton, Texas, a Texas municipal corporation, with its principal office at 215 East McKinney Street, Denton, Denton County, Texas 76201, hereinafter called "Owner" and O'Reilly Hospitality Management with its corporate office at \_\_\_\_\_ hereinafter called "Construction Manager-Agent (CMA)," acting herein, by and through their duly authorized representatives.

In consideration of the covenants and agreements herein contained, the parties hereto do mutually agree as follows:

**SECTION I  
EMPLOYMENT OF CONSTRUCTION MANAGER-AGENT (CMA)**

The Owner hereby contracts with the CMA, which construction manager-agent services are defined within Texas Government Code 2267.201, and 2267.202. The service shall include the following, but not limited to the following: 1) provide consultation and administration services during the design and construction phase, 2) manage multiple contracts with various construction prime contractor(s). The CMA hereby agrees to perform all services as described within this document and within Article III and Article IV of the Master Development Agreement entered into as of \_\_\_\_\_, 2013 by and between the City of Denton, Texas, the University of North Texas, O'Reilly Hotel Partners Denton, and O'Reilly Hospitality Management herein defined as the "Master Development Agreement." This agreement shall also serve as Exhibit H of the Master Development Agreement.

The Construction Manager-Agent represents the Owner in a fiduciary capacity, as stipulated within Texas Government Code 2267.204.

**SECTION II  
SCOPE OF SERVICES**

The CMA shall perform the following services in a professional manner:

- A. The CMA shall perform all those services as necessary and as described in the Master Development Agreement.

- B. If there is any conflict between the terms of this Agreement and the exhibits attached to this Agreement, the terms and conditions of the Master Development Agreement will control over the terms and conditions of the any attached exhibits.

**SECTION III**  
**ADDITIONAL SERVICES**

Additional services to be performed by the CMA, if authorized by the Owner, which are not included in the above-described Basic Services, are described as follows:

- A. During the course of the Project, as requested by Owner, the CMA will be available to accompany Owner's personnel and contractors when meeting with the Texas Commission on Environmental Quality, U.S. Environmental Protection Agency, or other regulatory agencies. The CMA will assist Owner's personnel and contractors on an as-needed basis in preparing compliance schedules, progress reports, and providing general technical support for the Owner's compliance efforts.
- B. Assisting Owner or contractor in the defense or prosecution of litigation in connection with or in addition to those services contemplated by this Agreement. Such services, if any, shall be furnished by CMA on a fee basis negotiated by the respective parties outside of and in addition to this Agreement, and stipulated in Section VI of this agreement.
- C. Assist Owner in obtaining and reviewing sampling, testing, or analysis services beyond that specifically included in Basic Services.
- D. Assist Owner in obtaining and reviewing copies of computer aided drafting (CAD) electronic data bases, drawings, or files for the OWNER's use in a future CAD system.
- E. Assist Owner in preparing applications and supporting documents for government grants, loans, or planning advances and providing data for detailed applications.
- F. Assist Owner is appearances before regulatory agencies or courts as an expert witness in any litigation with third parties or condemnation proceedings arising from the development or construction of the Project, including the review of engineering data and reports for assistance to the Owner.
- G. Assist the Owner in obtaining and reviewing geotechnical investigations for the site, including soil borings, related analyses, and recommendations.
- H. The CMA shall assist the Owner in ensuring compliance with Attachment I to the Master Development Agreement # \_\_\_\_\_ (Payment Applications and Payments to Contractors).
- I. The CMA shall assist the Owner with the evaluation of the respondents (General Contractors) to the solicitation for the construction of the Convention Center, in an advisory capacity. The Owner shall procure the construction services of a general contractor or trade contractor in accordance with the provisions of Texas Government Code 2267.206.

- J. Other services within the scope of this project as requested by the Owner.

**SECTION IV**  
**LIMITATIONS ON CONSTRUCTION MANAGER-AGENT**

The CMA may not:

- 1) self-perform any aspect of the construction, rehabilitation, alteration, or repair of the facility;
- 2) be a party to a construction subcontract for the construction, rehabilitation, alteration, or repair of the facility; or
- 3) provide or be required to provide performance and payment bonds for the construction, rehabilitation, alteration, or repair of the facility. However, the CMA **shall assist** the Owner in requiring all construction contractors to comply with Chapter 2253 of the Texas Government Code (Public Works Performance and Payment Bonds).

**SECTION V**  
**PERIOD OF SERVICE**

This Agreement shall become effective upon execution of this Agreement by the Owner and the CMA and upon issue of a notice to proceed or issuance of a Purchase Order by the Owner, and shall remain in force for the period which may reasonably be required for the completion of the Project, including Additional Services, if any, and any required extensions approved by the Owner. This Agreement may be sooner terminated in accordance with the provisions hereof. Time is of the essence in this Agreement. The CMA shall make all reasonable efforts to complete the services set forth herein as expeditiously as possible and to meet the schedule established by the Owner, acting through its City Manager or his designee.

**SECTION VI**  
**COMPENSATION**

A. COMPENSATION TERMS:

1. "Subcontract Expense" is defined as expenses incurred by the CMA in employment of others in outside firms for services under the Master Development Agreement.
2. "Direct Non-Labor Expense" is defined as that expense for any assignment incurred by the CMA for supplies, transportation and equipment, travel, communications, subsistence, and lodging away from home, and similar incidental expenses in connection with that assignment.

- B. BILLING AND PAYMENT: For and in consideration of the professional services to be performed by the CMA herein, the Owner agrees to pay for the CMA Services as defined in the Master Development Agreement, a maximum fee not to exceed 3% of the final negotiated cost of construction for the Convention Center. This not-to-exceed fee shall be inclusive of the final cost of the design for the Convention Center project, as defined within Exhibit G to the Master



Development Agreement for the Project. After expiration of the Feasibility Deadline and Financing Viability Deadline, and upon election of all Parties to proceed with the project as defined in the Master Development Agreement, the Design Professional shall continue with the final design of the project, completing the remaining 65% of the design for the project, and the CMA shall assist the owner for construction management services as described herein as required in the Master Development Agreement.

The Owner shall compensate the CMA for all services during Design Development and thru Construction completion as follows:

### **BASIC SERVICES**

As stipulated in Exhibit G of the Master Development Agreement, the fee for Phase I of the Design Project 35% Completion of Design shall not exceed: **\$200,000.**

Upon election of both parties to proceed with Phase(s) II-IV of the Design project, the fees shall be negotiated and defined as indicated Exhibit G of the Master Development Agreement.

The fee for the Construction Manager /Agent Services shall not exceed **3%** of the total Convention Center cost. The not-to-exceed fee for the CMA services shall be inclusive of the final cost of the design of the Convention Center project. The not-to-exceed CMA fee will be fully determined upon final design of the project, and award of the construction contract for the Convention Center.

### **ADDITIONAL SERVICES**

For additional services authorized in writing by the Owner in Section III, the CMA shall be paid based on the Schedule of Charges at an hourly rate as stated below. Payments for additional services shall be due and payable upon submission by the CMA, and shall be in accordance with Article V hereof. Statements shall not be submitted more frequently than monthly.

Compensation for Additional Services is as follows:

**Rate for Additional Services shall not exceed: \$\_\_\_\_\_ per hour**

### **REIMBURSABLE EXPENSES**

Reimbursable Expenses shall be compensated for expenses (travel, copies, etc.) related to the Convention Center design project, and shall not exceed a total of **\$5,000.** Invoices for reimbursable expenses shall be submitted to the Owner in a timely manner.

Partial payments to the CMA will be made on the basis of detailed monthly statements rendered to and approved by the Owner through its City Manager or his designee; however, under no circumstances shall any monthly statement for services exceed the value of the work performed at the time a statement is rendered. The Owner may withhold the final five percent (5%) of the contract amount until completion of the Project.

Nothing contained in this Article shall require the Owner to pay for any work which is unsatisfactory, as reasonably determined by the City Manager or his designee, or which is not submitted in compliance with the terms of this Agreement. The Owner shall not be required to make any payments to the CMA when the CMA is in default under this Agreement.

It is specifically understood and agreed that the CMA shall not be authorized to undertake any work pursuant to this Agreement which would require additional payments by the Owner for any charge, expense, or reimbursement above the maximum not to exceed fee as stated, without first having obtained written authorization from the Owner. The CMA shall not proceed to perform the services listed in Section III "Additional Services," without obtaining prior written authorization from the Owner.

- C. PAYMENT: If the Owner fails to make payments due the CMA for services and expenses within thirty (30) days after receipt of the CMA's undisputed statement thereof, the amounts due the CMA will be increased by the rate of one percent (1%) per month from the said thirtieth (30<sup>th</sup>) day or the rate established within Texas Government Code 2251 (Prompt Payment Act), and, in addition, the CMA may, after giving seven (7) days' written notice to the Owner, suspend services under this Agreement until the CMA has been paid in full all amounts due for services, expenses, and charges, provided, however, nothing herein shall require the Owner to pay any late charges set forth herein if the Owner reasonably determines that the work is unsatisfactory, in accordance with this Section V, "Compensation."

**SECTION VII**  
**OBSERVATION AND REVIEW OF THE WORK**

The CMA will exercise reasonable care and due diligence in discovering and promptly reporting to the Owner any defects or deficiencies in the work of the CMA or any subcontractors or sub-CMAs.

**SECTION VIII**  
**OWNERSHIP OF DOCUMENTS**

All documents prepared or furnished by the CMA (and CMA's subcontractors or sub-CMAs) pursuant to this Agreement are instruments of service, and shall become the property of the Owner upon the termination of this Agreement. The CMA is entitled to retain copies of all such documents. The documents prepared and furnished by the CMA are intended only to be applicable to this Project, and Owner's use of these documents in other projects shall be at Owner's sole risk and expense. In the event the Owner uses any of the information or materials developed pursuant to this Agreement in another project or for other purposes than specified herein, CMA is released from any and all liability relating to their use in that project.

**SECTION IX**  
**INDEPENDENT CONTRACTOR**

CMA shall provide services to Owner as an independent contractor, not as an employee of the Owner. CMA shall not have or claim any right arising from employee status.

**SECTION X**  
**INSURANCE**

During the performance of the services under this Agreement, CMA shall maintain the insurance with an insurance company licensed to do business in the State of Texas by the State Insurance Commission or any successor agency that has a rating with Best Rate Carriers of at least an A or above, and in accordance with Article 10 of the City of Denton General Conditions for Agreement for Architectural and Engineering Services.

**SECTION XI**  
**ARBITRATION AND ALTERNATE DISPUTE RESOLUTION**

The parties may agree to settle any disputes under this Agreement by submitting the dispute to arbitration or other means of alternate dispute resolution, such as mediation. No arbitration or alternate dispute resolution arising out of or relating to this Agreement, involving one party's disagreement may include the other party to the disagreement without the other's approval.

**SECTION XII**  
**RESPONSIBILITY FOR CLAIMS AND LIABILITIES**

Approval by the Owner shall not constitute, nor be deemed a release of the responsibility and liability of the CMA, its employees, associates, agents, subcontractors, and sub-CMAs for the accuracy and competency of their designs or other work; nor shall such approval be deemed to be an assumption of such responsibility by the Owner for any defect in the design or other work prepared by the CMA, its employees, subcontractors, agents, and CMAs.

**SECTION XIII**  
**NOTICES**

All notices, communications, and reports required or permitted under this Agreement shall be personally delivered or mailed to the respective parties by depositing same in the United States mail to the address shown below, certified mail, return receipt requested, unless otherwise specified herein. Mailed notices shall be deemed communicated as of three (3) days' mailing:

To CMA:


To Owner:

City of Denton  
George Campbell, City Manager  
215 East McKinney  
Denton, Texas 76201  
[purchasing@cityofdenton.com](mailto:purchasing@cityofdenton.com)

All notices shall be deemed effective upon receipt by the party to whom such notice is given, or within three (3) days' mailing.

**SECTION XIV**  
**SEVERABILITY**

If any provision of this Agreement is found or deemed by a court of competent jurisdiction to be invalid or unenforceable, it shall be considered severable from the remainder of this Agreement and shall not cause the remainder to be invalid or unenforceable. In such event, the parties shall reform this Agreement to replace such stricken provision with a valid and enforceable provision which comes as close as possible to expressing the intention of the stricken provision.

**SECTION XV**  
**PERSONNEL**

- A. The CMA represents that it has or will secure, at its own expense, all personnel required to perform all the services required under this Agreement. Such personnel shall not be employees or officers of, nor have any contractual relations with the Owner. CMA shall inform the Owner of any conflict of interest or potential conflict of interest that may arise during the term of this Agreement.
- B. All services required hereunder will be performed by the CMA or under its supervision. All personnel engaged in work shall be qualified, and shall be authorized and permitted under state and local laws to perform such services.

**SECTION XVI**  
**ASSIGNABILITY**

This agreement shall be binding upon and ensure to the benefit of the City and the CMA and their respective successors and assigns, provided however, that no right or interest in the agreement shall be assigned and no obligation shall be delegated or transfer of any interest by the CMA (whether by assignment, novation, or otherwise) without the prior written consent of the Owner.

Any attempted assignment or delegation by the CMA shall be void unless made in conformity with this Section. The Agreement is not intended to confer rights or benefits on any person, firm or entity not a party hereto; it being the intention of the parties that there are no third party beneficiaries to the Contract.

**SECTION XVII**  
**MODIFICATION**

No waiver or modification of this Agreement or of any covenant, condition, or limitation herein contained shall be valid unless in writing and duly executed by the party to be charged therewith, and no evidence of any waiver or modification shall be offered or received in evidence in any proceeding arising between the parties hereto out of or affecting this Agreement, or the rights or obligations of the parties hereunder, and unless such waiver or modification is in writing and duly executed; and the parties further agree that the provisions of this section will not be waived unless as set forth herein.

**SECTION XVIII**  
**MISCELLANEOUS**

- A. The following exhibits are attached to and made a part of this Agreement: **None**
- B. The Owner shall have the right to audit and make copies of the books, records and computations pertaining to this agreement. The CMA shall retain such books, records, documents and other evidence pertaining to this agreement during the contract period and five years thereafter, except if an audit is in progress or audit findings are yet unresolved, in which case records shall be kept until all audit tasks are completed and resolved. These books, records, documents and other evidence shall be available, within 10 business days of written request. Further, the CMA shall also require all Subcontractors, material suppliers, and other payees to retain all books, records, documents and other evidence pertaining to this agreement, and to allow the Owner similar access to those documents. All books and records will be made available within a 50 mile radius of the City of Denton. The cost of the audit will be borne by the Owner unless the audit reveals an overpayment of 1% or greater. If an overpayment of 1% or greater occurs, the reasonable cost of the audit, including any travel costs, must be borne by the CMA which must be payable within five business days of receipt of an invoice. Failure to comply with the provisions of this section shall be a material breach of this contract and shall constitute, in the Owner's sole discretion, grounds for termination thereof. Each of the terms "books", "records", "documents" and "other evidence", as used above, shall be construed to include drafts and electronic files, even if such drafts or electronic files are subsequently used to generate or prepare a final printed document.
- C. For the purpose of this Agreement, the key persons who will perform most of the work hereunder shall be \_\_\_\_\_. However, nothing herein shall limit CMA from using other qualified and competent members of its firm to perform the services required herein.
- D. CMA shall commence, carry on, and complete any and all projects with all applicable dispatch, in a sound, economical, and efficient manner and in accordance with the provisions hereof. In accomplishing the projects, CMA shall take such steps as are appropriate to ensure that the work involved is properly coordinated with related work being carried on by the Owner.
- E. The Owner shall assist the CMA by placing at the CMA's disposal all available information pertinent to the Project, including previous reports, any other data relative to the Project, and arranging for the access thereto, and make all provisions for the CMA to enter in or upon public and private property as required for the CMA to perform services under this Agreement.

**SECTION XIX**  
**ENTIRE AGREEMENT**

This Agreement, including the City of Denton General Conditions to Agreement for Construction-Manager Agent services, constitutes the complete and final expression of the agreement of the parties, and is intended as a complete and exclusive statement of the terms of their agreements, and supersedes all prior contemporaneous offers, promises, representations, negotiations, discussions, communications, and agreements which may have been made in connection with the subject matter

hereof. This Agreement, consisting of \_\_\_\_\_ pages includes this executed agreement and the following documents all of which are attached hereto and made a part hereof by reference as if fully set forth herein:

1. City of Denton General Conditions to Agreement for Construction Manager Agent Services.
2. Attachments A through B. Attachment A – City of Denton Conflict of Interest Form, Attachment B – City of Denton Substitute W-9 Form.

CITY OF DENTON

BY: \_\_\_\_\_  
GEORGE C. CAMPBELL  
CITY MANAGER

ATTEST:  
JENNIFER WALTERS, CITY SECRETARY

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

APPROVED AS TO LEGAL FORM:  
ANITA BURGESS, CITY ATTORNEY

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

DESIGN FIRM

BY: \_\_\_\_\_  
Firm's Officer/Representative  
(Signature)

WITNESS:

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

**CITY OF DENTON  
GENERAL CONDITIONS  
TO  
AGREEMENT FOR CONSTRUCTION MANAGER-AGENT**

**ARTICLE 1. CONSTRUCTION MANAGER-AGENT RESPONSIBILITIES**

**1.1** The services consist of those services for the Project (as defined in the agreement (the "Agreement") and proposal (the "Proposal") to which these General Conditions are attached) performed by the Architect or Engineer (hereinafter called the "CMA") or CMA's employees and CMAs as enumerated in Articles 2 and 3 of these General Conditions as modified by the Agreement and Proposal (the "Services").

**1.2** The CMA will perform all Services as an independent contractor to the prevailing professional standards consistent with the level of care and skill ordinarily exercised by members of the same profession currently practicing in the same locality under similar conditions, including reasonable, informed judgments and prompt timely actions (the "Degree of Care"). The Services shall be performed as expeditiously as is consistent with the Degree of Care necessary for the orderly progress of the Project. Upon request of the Owner, the CMA shall submit for the Owner's approval a schedule for the performance of the Services which may be adjusted as the Project proceeds, and shall include allowances for periods of time required for the Owner's review and for approval of submissions by authorities having jurisdiction over the Project. Time limits established by this schedule and approved by the Owner shall not, except for reasonable cause, be exceeded by the CMA or Owner, and any adjustments to this schedule shall be mutually acceptable to both parties.

**ARTICLE 2 SCOPE OF BASIC SERVICES**

**2.1 BASIC SERVICES DEFINED** The CMA's Basic Services consist of those described in Sections II-IV of the Contract and shall include without limitation normal services necessary to ensure complete construction management services as defined, as described by and required in Texas Government Code 2267.201, and 2267.202. The Basic Services may be modified by the Agreement.

**2.3 DESIGN PHASE**

**2.3.1** The CMA shall assist the Owner with review of approved Schematic Design Documents and any adjustments authorized by the Owner in the program, schedule or construction budget, the CMA shall coordinate for approval by the Owner, Design Development Documents consisting of drawings and other documents to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, materials and such other elements as may be appropriate, which shall comply with all applicable laws, statutes, ordinances, codes and regulations. Notwithstanding Owner's approval of the documents, CMA represents that the Documents and specifications will be sufficient and adequate to fulfill the purposes of the Project.

**2.3.2** The CMA shall advise and assist the Owner of any adjustments to the preliminary estimate of Construction Cost.

**2.4 CONSTRUCTION DOCUMENTS PHASE**

**2.4.1** Based on the approved Design Development Documents and any further adjustments in the scope or quality of the Project or in the construction budget authorized by the Owner, the CMA shall review, and submit for approval by the Owner, Construction Documents consisting of Drawings and Specifications setting forth in detail requirements for the construction of the Project, which shall comply with all applicable laws, statutes, ordinances, codes and regulations. The CMA shall provide the Owner with any recommendations or suggested modifications to the Construction Documents.

**2.4.2** The CMA shall provide assistance to the Owner in the preparation of the necessary bidding or procurement information, bidding or procurement forms, the Conditions of the contract, and the form of Agreement between the Owner and construction contractor, as requested by the Owner.

**2.4.3** The CMA shall review and advise the Owner of any adjustments to previous preliminary estimates of Construction Cost indicated by changes in requirements or general market conditions.

**2.4.4** The CMA shall review and assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

**2.5 CONSTRUCTION CONTRACT PROCUREMENT**

**2.5.1** The CMA, following the Owner's approval of the Construction Documents and of the latest preliminary detailed estimate of Construction Cost, shall assist the Owner (as an advisor) in procuring a construction contract for the Project through any procurement method that is legally applicable to the Project including without limitation, the competitive sealed bidding process. Although the Owner will consider the advice of the CMA, the award of the construction contract is in the sole discretion of the Owner.

**2.5.2** If the construction contract amount for the Project exceeds the total construction cost of the Project as set forth in the approved Detailed Statement of Probable Construction Costs of the Project submitted by the Design Professional, then the CMA, will review and provide assistance as may be required by the Owner to reduce or modify the quantity or quality of the work so that the total construction cost of the Project will not exceed the total construction cost set forth in the approved Detailed Statement of Probable Construction Costs.

**2.6 CONSTRUCTION PHASE - ADMINISTRATION OF THE CONSTRUCTION CONTRACT**

**2.6.1** The CMA's responsibility to provide Services for the oversight of the Construction Phase under this Agreement commences with the award of the Contract for Construction and terminates at the issuance to the Owner of the final Certificate for Payment by the Construction Contractor, unless extended under the terms of Subsection 8.3.2.

**2.6.2** The CMA shall review and submit for approval by the Owner, a detailed administration of the Contract for Construction as set forth below. For CMAs the administration shall also be in accordance with AIA document A201, General Conditions of the Contract for Construction, current as of the date of the Agreement as may be amended by the City of Denton special conditions, unless otherwise provided in the Agreement.

**2.6.3** Construction Phase duties, responsibilities and limitations of authority of the CMA shall not be restricted, modified or extended without written agreement of the Owner and CMA, and as defined within Texas Government Code.

**2.6.4** The CMA shall be a representative of and shall advise and consult with the Owner (1) during construction, and (2) at the Owner's direction from time to time during the correction, or warranty period described in the Contract for Construction. The CMA shall have authority to act on behalf of the Owner only to the extent provided in the Agreement and these General Conditions, unless otherwise modified by written instrument.

**2.6.5** The CMA shall observe the construction site *daily*, while construction is in progress, and as reasonably necessary while construction is not in progress, to become familiar with the progress and quality of the work completed and to determine if the work is being performed in a manner indicating that the work when completed will be in accordance with the Contract Documents. CMA shall provide Owner a weekly written report of construction activity. On the basis of on-site observations the CMA shall keep the Owner informed of the progress and quality of the work, and shall exercise the Degree of Care and diligence in discovering and promptly reporting to the Owner any observable defects or deficiencies in the work of Contractor or any subcontractors. The CMA represents that he/she will follow Degree of Care in performing all Services under the Agreement. The CMA shall ensure promptly corrective action is taken to any defective designs or specifications furnished by the Design Professional, with immediate notification to the Owner. The Owner's approval, acceptance, use of or payment for all or any part of the CMA's Services hereunder or of the Project itself shall in no way alter the CMA's obligations or the Owner's rights hereunder.

**2.6.6** The CMA shall not have control over or charge of and shall not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the work. The CMA shall not be responsible for the Contractor's schedules or failure to carry out the work in accordance with the Contract Documents except insofar as such failure may result from CMA's negligent acts or omissions. The CMA shall not have control over or charge of acts or omissions of the Contractor, Subcontractors, or their agents or employees, or of any other persons performing portions of the work. The CMA shall ensure prompt notification to the Owner of any non-conforming construction means, methods, techniques, sequences or procedures, or unsafe conditions in connection with the work performance of the General Contractor. The CMA shall immediately notify the Owner of any non-compliance issues with scheduled completion of the project by the General Contractor.

**2.6.7** The CMA shall at all times have access to the work wherever it is in preparation or progress.

**2.6.8** Except as may otherwise be provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall communicate through the CMA. Communications by and with the CMA's staff shall be through the CMA.

**2.6.9** Based on the CMA's observations at the site of the work and evaluations of the Contractor's Applications for Payment, the CMA shall review and assist the Owner with certification of the amounts due the Contractor.

**2.6.10** The CMA's assistance to the Owner with certification for payment shall constitute a representation to the Owner, based on the CMA's observations at the site as provided in Subsection 2.6.5 and on the data comprising the Contractor's Application for Payment, that the work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to minor deviations from the Contract Documents correctable prior to completion and to specific qualifications expressed by the CMA. The issuance of a Certificate for Payment shall further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment shall not be a representation that the CMA has (1) reviewed construction means, methods, techniques, sequences or procedures, or (2) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

**2.6.11** The CMA shall have the responsibility and authority to reject work which does not conform to the Contract Documents. Whenever the CMA considers it necessary or advisable for implementation of the intent of the Contract Documents, the CMA will have authority to require additional inspection or testing of the work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed. However, neither this authority of the CMA nor a decision made in good faith either to exercise or not exercise such authority shall give rise to a duty or responsibility of the CMA to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees or other persons performing portions of the work.

**2.6.12** The CMA shall review and submit for approval or take other appropriate action upon Contractor's submittals such as Shop Drawings, Product Data and Samples for the purpose of (1) determining compliance with applicable laws, statutes, ordinances and codes; and (2) determining whether or not the work, when completed, will be in compliance with the requirements of the Contract Documents. The CMA shall act with such reasonable promptness to cause no delay in the work or in the construction of the Owner or of separate contractors, while allowing sufficient time in the CMA's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities or for substantiating instructions for installation or performance of equipment or systems designed by the Contractor, all of which remain the responsibility of the Contractor to the extent required by the Contract Documents. The CMA's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the CMA, of construction means, methods, techniques, sequences or procedures. The CMA's approval of a specific item shall not indicate approval of an assembly of which the item is a component. When professional certification of performance characteristics of materials, systems or equipment is required by the Contract Documents, the CMA shall coordinate with the Design Professional and rely upon such certification to establish that the materials, systems or equipment will meet the performance criteria required by the Contract Documents.

**2.6.13** The CMA shall assist in preparation of Change Orders and Construction Change Directives, with supporting documentation and data if deemed necessary by the CMA as provided in Subsections 3.1.1 and 3.3.3, for the Owner's approval and execution in accordance with the Contract Documents, and may authorize minor changes in the work not involving an adjustment in the Contract Sum or an extension of the Contract Time which are not inconsistent with the intent of the Contract Documents.

**2.6.14** On behalf of the Owner, the CMA shall conduct inspections to determine the dates of Substantial Completion and Final Completion, and if requested by the Owner shall assist in obtaining issuance of Certificates of Substantial and Final Completion. The CMA will receive and review written guarantees and related documents required by the Contract for Construction to be assembled by the Contractor and shall issue a final certificate for Payment upon compliance with the requirements of the Contract Documents.

**2.6.15** The CMA shall interpret and provide recommendations on matters concerning performance of the Owner and Contractor under the requirements of the Contract Documents on written request of either the Owner or Contractor. The CMA's response to such requests shall be made with reasonable promptness and within any time limits agreed upon.

**2.6.16** Interpretations and decisions of the CMA shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and initial decisions, the CMA shall endeavor to secure faithful performance by both Owner and



Contractor, and shall not be liable for results or interpretations or decisions so rendered in good faith in accordance with all the provisions of this Agreement and in the absence of negligence.

**2.6.17** The CMA shall assist in rendering written decisions within a reasonable time on all claims, disputes or other matters in question between the Owner and Contractor relating to the execution or progress of the work as provided in the Contract Documents.

**2.6.18** The CMA (1) shall render services under the Agreement in accordance with the Degree of Care; (2) will assist the Owner in seeking reimbursement for all damages caused by the defective designs the Design Professional prepares; and (3) by acknowledging payment by the Owner of any fees due, shall not be released from any rights the Owner may have under the Agreement or diminish any of the CMA's obligations thereunder.

**2.6.19** The CMA shall ensure that the Owner is provided with four sets of reproducible prints showing all significant changes to the Construction Documents during the Construction Phase.

## **ARTICLE 3 ADDITIONAL SERVICES**

### **3.1 GENERAL**

**3.1.1** The services described in this Article 3 are not included in Basic Services unless so identified in the Agreement or Proposal, and they shall be paid for by the Owner as provided in the Agreement, in addition to the compensation for Basic Services. The services described under Sections 3.2 and 3.4 shall only be provided if authorized or confirmed in writing by the Owner. If services described under Contingent Additional Services in Section 3.3 are required due to circumstances beyond the CMA's control, the CMA shall notify the Owner in writing and shall not commence such additional services until it receives written approval from the Owner to proceed. If the Owner indicates in writing that all or part of such Contingent Additional Services is not required, the CMA shall have no obligation to provide those services. Owner will be responsible for compensating the CMA for Contingent Additional Services only if they are not required due to the negligence or fault of CMA.

### **3.2 PROJECT REPRESENTATION BEYOND BASIC SERVICES**

**3.2.1** If more extensive representation at the site than is described in Subsection 2.6.5 is required, the CMA shall provide one or more Project Representatives to assist in carrying out such additional on-site responsibilities.

**3.2.2** Project Representatives shall be selected, employed and directed by the CMA, and the CMA shall be compensated therefor as agreed by the Owner and CMA.

### **3.3 CONTINGENT ADDITIONAL SERVICES**

**3.3.1** Assisting in submission of material revisions in Drawings, Specifications or other documents when such revisions are:

1. inconsistent with approvals or instructions previously given by the Owner, including revisions made necessary by adjustments in the Owner's program or Project budget;
2. required by the enactment or revision of codes, laws or regulations subsequent to the preparation of such documents, or
3. due to changes required as a result of the Owner's failure to render decision in a timely manner.

**3.3.2** Providing services required because of significant changes in the Project including, but not limited to, size, quality, complexity, or the Owner's schedule, except for services required under Subsection 2.5.2.

**3.3.3** Assisting with submission of Drawings, Specifications and other documentation and supporting data, and providing other services in connection with Change Orders and Construction Change Directives.

**3.3.4** Providing consultation concerning replacement of work damaged by fire or other cause during construction, and furnishing services required in connection with the replacement of such work.

**3.3.5** Providing services made necessary by the default of the Contractor, by major defects or deficiencies in the work of the Contractor, or by failure of performance of either the Owner or Contractor under the Contract for Construction.

**3.3.6** Providing services in evaluating an extensive number of claims submitted by the Contractor or others in connection with the work.

**3.3.7** Providing services in connection with a public hearing, arbitration proceeding or legal proceeding except where the CMA is party thereto.

**3.3.8** Providing services in addition to those required by Article 2 for preparing documents for alternate, separate or sequential bids or providing services in connection with bidding or construction prior to the completion of the Construction Documents Phase.

**3.3.9** Notwithstanding anything contained in the Agreement, Proposal or these General Conditions to the contrary, all services described in this Article 3 that are caused or necessitated in whole or in part due to the negligent act or omission of the CMA shall be performed by the CMA as a part of the Basic Services under the Agreement with no additional compensation above and beyond the compensation due the CMA for the Basic Services. The intervening or concurrent negligence of the Owner shall not limit the CMA's obligations under this Subsection 3.3.9.

### **3.4 OPTIONAL ADDITIONAL SERVICES**

**3.4.1** Providing assistance with obtaining financial feasibility or other special studies.

**3.4.2** Providing assistance in obtaining planning surveys, site evaluations or comparative studies of prospective sites.

- 3.4.3** Providing assistance in obtaining special surveys, environmental studies and submissions required for approvals of governmental authorities or others having jurisdiction over the Project.
- 3.4.4** Providing assistance in obtaining services relative to future facilities, systems and equipment.
- 3.4.5** Providing assistance in obtaining services to investigate existing conditions or facilities or to make measured drawings thereof.
- 3.4.6** Providing assistance in obtaining services to verify the accuracy of drawings or other information furnished by the Owner.
- 3.4.7** Providing coordination of construction performed by separate contractors or by the Owner's own forces and coordination of services required in connection with construction performed and equipment supplied by the Owner.
- 3.4.8** Providing detailed quantity surveys or inventories of material, equipment and labor.
- 3.4.9** Providing analyses of operating and maintenance costs.
- 3.4.10** Making investigations, inventories of materials or equipment, or valuations and detailed appraisals of existing facilities.
- 3.4.12** Providing assistance in the utilization of equipment or systems such as testing, adjusting and balancing, preparation of operation and maintenance manuals, training personnel for operation and maintenance and consultation during operation.
- 3.4.13** Providing assistance in obtaining interior design and similar services required for or in connection with the selection, procurement or installation of furniture, furnishings and related equipment.
- 3.4.14** Providing services other than as provided in Section 2.6.4, after issuance to the Owner of the final Certificate for Payment and expiration of the Warranty period of the Contract for Construction.
- 3.4.15** Providing assistance in obtaining services of Design Professional's for other than architectural, civil, structural, mechanical and electrical engineering portions of the Project provided as a part of Basic Services.
- 3.4.16** Providing assistance in obtaining any other services not otherwise included in this Agreement or not customarily furnished in accordance with generally accepted architectural practice.
- 3.4.17** Providing assistance in obtaining a set of reproducible record drawings in addition to those required by Subsection 2.6.19, showing significant changes in the work made during construction based on marked-up prints, drawings and other data furnished by the Contractor to the CMA.
- 3.4.18** Notwithstanding anything contained in the Agreement, Proposal or these General Conditions to the contrary, all services described in this Article 3 that are caused or necessitated in whole or in part due to the negligent act or omission of the CMA shall be performed by the CMA as a part of the Basic Services under the Agreement with no additional compensation above and beyond the compensation due the CMA for the Basic Services. The intervening or concurrent negligence of the Owner shall not limit the CMA's obligations under this Subsection 3.4.18.

#### **ARTICLE 4 OWNER'S RESPONSIBILITIES**

- 4.1** The Owner shall consult with the CMA regarding requirements for the Project, including (1) the Owner's objectives, (2) schedule and design constraints and criteria, including space requirements and relationships, flexibility, expendability, special equipment, systems and site requirements, as more specifically described in Subsection 2.2.1.
- 4.2** The Owner shall establish and update an overall budget for the Project, including the Construction Cost, the Owner's other costs and reasonable contingencies related to all of these costs.
- 4.3** If requested by the CMA, the Owner shall furnish evidence that financial arrangements have been made to fulfill the Owner's obligations under this Agreement.
- 4.4** The Owner shall designate a representative authorized to act on the Owner's behalf with respect to the Project. The Owner or such authorized representative shall render decisions in a timely manner pertaining to documents submitted by the CMA in order to avoid unreasonable delay in the orderly and sequential progress of the CMA's services.
- 4.5** Where applicable, the Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data pertaining to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a project benchmark.
- 4.6** Where applicable, the Owner shall furnish the services of geotechnical engineers when such services are requested by the CMA. Such services may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion and resistivity tests, including necessary operations for anticipating sub-soil conditions, with reports and appropriate professional recommendations.
- 4.6.1** The Owner shall furnish the services of other CMAs when such services are reasonably required by the scope of the Project and are requested by the CMA and are not retained by the CMA as part of its Basic Services or Additional Services.
- 4.7** When not a part of the Additional Services, the Owner shall furnish structural, mechanical, chemical, air and water pollution tests, tests of hazardous materials, and other laboratory and environmental tests, inspections and reports required by law or the Contract Documents.

**4.8** The Owner shall furnish all legal, accounting and insurance counseling services as may be necessary at any time for the Project, including auditing services the Owner may require to verify the Contractor's Applications for Payment or to ascertain how or for what purposes the Contractor has used the money paid by or on behalf of the Owner.

**4.9** The services, information, surveys and reports required by Owner under Sections 4.5 through 4.8 shall be furnished at the Owner's expense, and the CMA shall be entitled to rely upon the accuracy and completeness thereof in the absence of any negligence on the part of the CMA.

**4.10** The Owner shall give prompt written notice to the CMA if the Owner becomes aware of any fault or defect in the Project or nonconformance with the Contract Documents.

**4.11** CMA shall propose language for certificates or certifications to be requested of the CMA or CMA's CMAs and shall submit such to the Owner for review and approval at least fourteen (14) days prior to execution. The Owner agrees not to request certifications that would require knowledge or services beyond the scope of the Agreement.

## **ARTICLE 5 CONSTRUCTION COST**

### **5.1 CONSTRUCTION COST DEFINED**

**5.1.1** The Construction Cost shall be the total cost or estimated cost to the Owner of all elements of the Project designed or specified by the Design Professional.

**5.1.2** The Construction Cost shall include the cost at current market rates of labor and materials furnished by the Owner and equipment designed, specified, selected or specially provided for by the Design Professional, plus a reasonable allowance for the Contractor's overhead and profit. In addition, a reasonable allowance for contingencies shall be included for market conditions at the time of bidding and for changes in the work during construction.

**5.1.3** Construction Cost does not include the compensation of the CMA and staff, the costs of the land, rights-of-way, financing or other costs which are the responsibility of the Owner as provided in Article 4.

### **5.2 RESPONSIBILITY FOR CONSTRUCTION COST**

**5.2.1** Evaluations of the Owner's Project budget, preliminary estimates of Construction Cost and detailed estimates of Construction Cost prepared by the Design Professional represent the Design Professional's best judgment as a Design Professional familiar with the construction industry. It is recognized, however, that neither the Design Professional nor the Owner has control over the cost of labor, materials or equipment, over the Contractor's methods of determining bid prices, or over competitive bidding or market conditions. Accordingly, the Design Professional cannot and does not warrant or represent that bids or cost proposals will not vary from the Owner's Project budget or from any estimate of Construction Cost or evaluation prepared or agreed to by the Design Professional. The CMA, as the Owner's Representative shall review the Owner's Project budget, preliminary estimates of Construction Cost and detailed estimates of Construction Cost submitted by the Design Professional and submit to Owner, and recommendations.

**5.2.2** No fixed limit of Construction Cost shall be established as a condition of the Agreement by the furnishing, proposal or establishment of a Project budget, unless such fixed limit has been agreed upon in writing and signed by the parties thereto. If such a fixed limit has been established, the Design Professional shall be permitted to include contingencies for design, bidding and price escalation, to determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents, to make reasonable adjustments in the scope of the Project and to include in the Contract Documents alternate bids to adjust the Construction Cost to the fixed limit. Fixed limits, if any, shall be increased in the amount of an increase in the Contract Sum occurring after execution of the Contract for Construction. The CMA, as the Owner's Representative shall review any agreed upon fixed limits and submit to Owner, and recommendations.

**5.2.3** If the Procurement Phase has not commenced within 90 days after the Design Professional submits the Construction Documents to the Owner, any Project budget or fixed limit of Construction Cost shall be adjusted to reflect changes in the general level of prices in the construction industry between the date of submission of the Construction Documents to the Owner and the date on which proposals are sought. The CMA, as the Owner's Representative shall review the Owner's revised Project budget, preliminary estimates of Construction Cost and detailed estimates of Construction Cost submitted by the Design Professional and submit to Owner, and recommendations.

## **ARTICLE 6 OWNERSHIP AND USE OF DOCUMENTS**

**6.1** The documents prepared by the CMA for this Project are instruments of the CMA's service and shall become the property of the Owner upon termination or completion of the Agreement. The CMA is entitled to retain copies of all such documents. Such documents are intended only be applicable to this Project, and Owner's use of such documents in other projects shall be at Owner's sole risk and expense. In the event the Owner uses any of the information or materials developed pursuant to the Agreement in another project or for other purposes than are specified in the Agreement, the CMA is released from any and all liability relating to their use in that project

**6.2** Submission or distribution of documents to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the CMA's reserved rights.

## **ARTICLE 7 TERMINATION, SUSPENSION OR ABANDONMENT**

**7.1** The CMA may terminate the Agreement upon not less than thirty days written notice should the Owner fail substantially to perform in accordance with the terms of the Agreement through no fault of the CMA. Owner may terminate the Agreement or any phase thereof with or without cause upon thirty (30) days prior written notice to the CMA. All work and labor being performed under the Agreement shall cease immediately upon CMA's receipt of such notice. Before the end of the thirty (30) day period, CMA shall invoice the Owner for all work it satisfactorily performed prior to the receipt of such notice. No amount shall be due for lost or anticipated profits. All plans, field surveys, and other data related to the Project shall become property of the Owner upon termination of the Agreement and shall be promptly delivered to the Owner in a reasonably organized form. Should Owner subsequently contract with a new CMA for continuation of services on the Project, CMA shall cooperate in providing information.

**7.2** If the Project is suspended by the Owner for more than 30 consecutive days, the CMA shall be compensated for services satisfactorily performed prior to notice of such suspension. When the Project is resumed, the CMA's compensation shall be equitably adjusted to provide for expenses incurred in the interruption and resumption of the CMA's services.

**7.3** The Agreement may be terminated by the Owner upon not less than seven days written notice to the CMA in the event that the Project is permanently abandoned. If the Project is abandoned by the Owner for more than 90 consecutive days, the CMA or the Owner may terminate the Agreement by giving written notice.

**7.4** Failure of the Owner to make payments to the CMA for work satisfactorily completed in accordance with the Agreement shall be considered substantial nonperformance and cause for termination.

**7.5** If the Owner fails to make payment to CMA within thirty (30) days of receipt of a statement for services properly and satisfactorily performed, the CMA may, upon seven days written notice to the Owner, suspend performance of services under the Agreement.

**7.6** In the event of termination not the fault of the CMA, the CMA shall be compensated for services properly and satisfactorily performed prior to termination.

## **ARTICLE 8 PAYMENTS TO THE CMA**

### **8.1 DIRECT PERSONNEL EXPENSE**

**8.1.1** Direct Personnel Expense is defined as the direct salaries of the CMA's personnel engaged on the Project and the portion of the cost of their mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, pensions and similar contributions and benefits.

### **8.2 REIMBURSABLE EXPENSES**

**8.2.1** Reimbursable Expenses are in addition to compensation for Basic and Additional Services and include expenses incurred by the CMA and CMA's employees and CMAs in the interest of the Project, as identified in the following Clauses.

**8.2.1.1** Expense of transportation in connection with the Project; expenses in connection with authorized out-of-town travel; long-distance communications; and fees paid for securing approval of authorities having jurisdiction over the Project.

**8.2.1.2** Expense of reproductions (except the reproduction of the sets of documents referenced in Subsection 2.6.19), postage and handling of documents.

**8.2.1.3** If authorized in advance by the Owner, expense of overtime work requiring higher than regular rates.

**8.2.1.4** Other expenses that are approved in advance in writing by the Owner.

### **8.3 PAYMENTS ON ACCOUNT OF BASIC SERVICES**

**8.3.1** Payments for Basic Services shall be made monthly and, where applicable, shall be in proportion to services performed within each phase of service, on the basis set forth in Section 2 of the Agreement and the schedule of work.

**8.3.2** If and to the extent that the time initially established in the Agreement is exceeded or extended through no fault of the CMA, compensation for any services rendered during the additional period of time shall be computed in the manner set forth in Section 2 of the Agreement.

**8.3.3** When compensation is based on a percentage of Construction Cost and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions, in accordance with the schedule set forth in Section 2 of the Agreement based on (1) the lowest bona fide bid or (2) if no such bid or proposal is received, the most recent preliminary estimate of Construction Cost or detailed estimate of Construction Cost for such portions of the Project.

### **8.4 PAYMENTS ON ACCOUNT OF ADDITIONAL SERVICES**

**8.4.1** Payments on account of the CMA's Additional Services and for Reimbursable Expenses shall be made monthly within 30 days after the presentation to the Owner of the CMA's statement of services rendered or expenses incurred.

**8.5 PAYMENTS WITHHELD** No deductions shall be made from the CMA's compensation on account of penalty, liquidated damages or other sums withheld from payments to contractors, or on account of the cost of changes in the work other than those for which the CMA is responsible.

**8.6 CMA'S ACCOUNTING RECORDS** CMA shall make available to Owner or Owner's authorized representative records of Reimbursable Expenses and expenses pertaining to Additional Services and services performed on the basis of a multiple of Direct Personnel Expense for inspection and copying during regular business hours for three years after the date of the final Certificate of Payment, or until any litigation related to the Project is final, whichever date is later.

## **ARTICLE 9 INDEMNITY**

**9.1** The CMA shall indemnify and save and hold harmless the Owner and its officers, agents, and employees from and against any and all liability, claims, demands, damages, losses, and expenses, including, but not limited to court costs and reasonable attorney fees incurred by the Owner, and including, without limitation, damages for bodily and personal injury, death and property damage, resulting from the negligent acts or omissions of the CMA or its officers, shareholders, agents, or employees in the performance of the Agreement.

**9.2** Nothing herein shall be construed to create a liability to any person who is not a party to the Agreement, and nothing herein shall waive any of the parties' defenses, both at law or equity, to any claim, cause of action, or litigation filed by anyone not a party to the Agreement, including the defense of governmental immunity, which defenses are hereby expressly reserved.

**ARTICLE 10 INSURANCE** During the performance of the Services under the Agreement, CMA shall maintain the following insurance with an insurance company licensed or authorized to do business in the State of Texas by the State Insurance Commission or any successor agency that has a rating with Best Rate Carriers of at least an A or above:

**10.1** Comprehensive General Liability Insurance with bodily injury limits of not less than \$1,000,000 for each occurrence and not less than \$2,000,000 in the aggregate, and with property damage limits of not less than \$100,000 for each occurrence and not less than \$250,000 in the aggregate.

**10.2** Automobile Liability Insurance with bodily injury limits of not less than \$500,000 for each person and not less than \$500,000 for each accident, and with property damage limits of not less than \$100,000 for each accident.

**10.3** Worker's Compensation Insurance in accordance with statutory requirements, and Employers' Liability Insurance with limits of not less than \$100,000 for each accident including occupational disease.

**10.4** Professional Liability Insurance with limits of not less than \$1,000,000 annual aggregate.

**10.5** The CMA shall furnish insurance certificates or insurance policies to the Owner evidencing insurance in compliance with this Article 10 at the time of the execution of the Agreement. The General Liability and Automobile Liability insurance policies shall name the Owner as an additional insured, the Workers' Compensation policy shall contain a waiver of subrogation in favor of the Owner, and each policy shall contain a provision that such insurance shall not be canceled or modified without thirty (30) days' prior written notice to Owner and CMA. In such event, the CMA shall, prior to the effective date of the change or cancellation, furnish Owner with substitute certificates of insurance meeting the requirements of this Article 10.

## **ARTICLE 11 MISCELLANEOUS PROVISIONS**

**11.1** The Agreement shall be governed by the laws of the State of Texas. Venue of any suit or cause of action under the Agreement shall lie exclusively in Denton County, Texas.

**11.2** The Owner and CMA, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement. The CMA shall not assign its interests in the Agreement without the written consent of the Owner.

**11.3** The term Agreement as used herein includes the executed Agreement, the Proposal, these General Conditions and other attachments referenced in Section 3 of the Agreement which together represent the entire and integrated agreement between the Owner and CMA and supersedes all prior negotiations, representations or agreements, either written or oral. The Agreement may be amended only by written instrument signed by both Owner and CMA. When interpreting the Agreement the executed Agreement, Proposal, these General Conditions and the other attachments referenced in Section 3 of the Agreement shall to the extent that is reasonably possible be read so as to harmonize the provisions. However, should the provisions of these documents be in conflict so that they cannot be reasonably harmonized, such documents shall be given priority in the following order:

1. The executed Agreement
2. Attachments referenced in Section 3 of the Agreement other than the Proposal
3. These General Provisions
4. The Proposal

**11.4** Nothing contained in the Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or CMA.

**11.5** Upon receipt of prior written approval of Owner, the CMA shall have the right to include representations of the design of the Project, including photographs of the exterior and interior, among the CMA's promotional and professional materials. The CMA's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the CMA in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the CMA on the construction sign and in the promotional materials for the Project.

**11.6** Approval by the Owner shall not constitute, nor be deemed a release of the responsibility and liability of the CMA, its employees, associates, agents, subcontractors, and subCMAs for the accuracy and competency of their designs or other work; nor shall such approval be deemed to be an assumption of such responsibility by the Owner for any defect in the design or other work prepared by the CMA, its employees, subcontractors, agents, and CMAs.

**11.7** All notices, communications, and reports required or permitted under the Agreement shall be personally delivered or mailed to the respective parties by depositing same in the United States mail to the address shown below signature block on the Agreement, certified mail, return receipt requested, unless otherwise specified herein. All notices shall be deemed effective upon receipt by the party to whom such notice is given, or within three (3) days after mailing.

**11.8** If any provision of the Agreement is found or deemed by a court of competent jurisdiction to be invalid or unenforceable, it shall be considered severable from the remainder of the Agreement and shall not cause the remainder to be invalid or unenforceable. In such event, the parties shall reform the Agreement to replace such stricken provision with a valid and enforceable provision which comes as close as possible to expressing the intention of the stricken provision.

**11.9** The CMA shall comply with all federal, state, and local laws, rules, regulations, and ordinances applicable to the work covered hereunder as they may now read or hereinafter be amended during the term of this Agreement.

**11.10** In performing the Services required hereunder, the CMA shall not discriminate against any person on the basis of race, color, religion, sex, national origin or ancestry, age, or physical handicap.

**11.11** The captions of the Agreement are for informational purposes only, and shall not in any way affect the substantive terms or conditions of the Agreement.

**CONFLICT OF INTEREST QUESTIONNAIRE**

**FORM CIQ**

**For vendor or other person doing business with local governmental entity**

**This questionnaire reflects changes made to the law by H.B. 1491, 80th Leg., Regular Session.**

OFFICE USE ONLY

This questionnaire is being filed in accordance with chapter 176 of the Local Government Code by a person who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the person meets requirements under Section 176.006(a).

Date Received

By law this questionnaire must be filed with the records administrator of the local government entity not later than the 7th business day after the date the person becomes aware of facts that require the statement to be filed. See Section 176.006, Local Government Code.

A person commits an offense if the person knowingly violates Section 176.006, Local Government Code. An offense under this section is a Class C misdemeanor.

**1 Name of person who has a business relationship with local governmental entity.**

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

(The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7<sup>th</sup> business day after the date the originally filed questionnaire becomes incomplete or inaccurate.)

**3 Name of local government officer with whom filer has an employment or business relationship.**

\_\_\_\_\_  
Name of Officer

This section, (item 3 including subparts A, B, C & D), must be completed for each officer with whom the filer has an employment or other business relationship as defined by Section 176.001(1-a), Local Government Code. Attach additional pages to this Form CIQ as necessary.

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

Yes       No

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

Yes       No

C. Is the filer of this questionnaire employed by a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an Ownership of 10 percent or more?

Yes       No

D. Describe each affiliation or business relationship.

**4**

\_\_\_\_\_  
Signature of person doing business with the governmental entity

\_\_\_\_\_  
Date

Adopted 06/29/2007

**PROFESSIONAL SERVICES AGREEMENT  
FOR ARCHITECT OR ENGINEER  
Exhibit G of Contract # \_\_\_\_\_**

STATE OF TEXAS           §

COUNTY OF DENTON       §

THIS AGREEMENT is made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the City of Denton, Texas, a Texas municipal corporation, with its principal office at 215 East McKinney Street, Denton, Denton County, Texas 76201, hereinafter called "Owner" and O'Reilly Hospitality Management with its corporate office at \_\_\_\_\_ hereinafter called "Design Professional," acting herein, by and through their duly authorized representatives.

In consideration of the covenants and agreements herein contained, the parties hereto do mutually agree as follows:

**SECTION I  
EMPLOYMENT OF DESIGN PROFESSIONAL**

The Owner hereby contracts with the Design Professional, in accordance with the provisions of Texas Government Code 2267.205, and Chapter 1051 and 1001 of the Texas Occupations Code to prepare the construction documents for the project. Additionally, the Design services shall be under the supervision of a licensed Texas architect or engineer, as an independent contractor. The Design Professional hereby agrees to perform all services as described under Article III Design Development Activities of the Master Development Agreement entered into as of \_\_\_\_\_, 2013 by and between the City of Denton, Texas, the University of North Texas, O'Reilly Hotel Partners Denton, and O'Reilly Hospitality Management herein defined as the "Master Development Agreement." This agreement shall also serve as Exhibit G of the Master Development Agreement.

**SECTION II  
SCOPE OF SERVICES**

The Design Professional shall perform the following services in a professional manner:

- A. The Design Professional shall perform all those services as necessary and as described in the Master Development Agreement.

**Phase I - Initial 35% Progress Set for Design Development** – Design Professional will conduct a series of meetings with the owner as required by the Master Development Agreement. The meetings will begin with reviewing the owner's project goals and

requirements. Then the program will be refined and a preliminary floor plan and site plan will be produced. Design Professional will meet with the City of Denton to understand the constraints and parameters, such as city codes, zoning and platting, affecting the proposed sites. During this phase the Schematic documents are developed to facilitate the construction procurement phase. In this phase the mechanical, electrical, plumbing, and structural systems are refined. Additionally, architectural details are produced. Design Professional will produce an approximate 35% completed Design Development Package for the Owner's review and approval, which shall be sufficient in obtaining construction services for the project. After approval from the Owner, the 35% Construction Documents will be produced and provide to Owner to facilitate procurement of the construction services. Services in this phase are defined in *AIA Document B101, 3.3.1 and 3.3.3*. The Design Professional will also complete a construction cost estimate as part of this phase of the Design. Upon approval of the Owner, the Design Professional will submit the construction set for permit.

**Note:** After expiration of the Feasibility Deadline and Financing Viability Deadline, and upon election of all Parties to proceed with the project as defined in the Master Development Agreement, the Design Professional shall continue with the final design of the project, completing the remaining 65% of the design for the project, as required in the Master Development Agreement, and defined further as Phase II of Design project.

**Phase II – Final 100% Progress Set for Design Development** - During this phase the Schematic documents are fully developed to facilitate construction of the project. In this phase the mechanical, electrical, plumbing, and structural systems are 100% refined. Additionally, architectural details are produced. Design Professional will produce a 100% completed Design Development Package for the Owner's review and approval. Design Professional shall submit a completed coding and zoning research report to the Owner. After approval from the Owner, the 100% Progress Set Documents for Design will be produced and provide to Owner to facilitate the construction services. Services in this phase are defined in *AIA Document B101, 3.3.1 and 3.3.3*. Upon approval of the Owner, the Design Professional will submit the construction set for final permitting.

**Phase III – Construction Procurement Phase** – During this phase the Design Professional shall provide assistance to the Owner in providing potential respondents for the construction services, attendance at any pre-solicitation meetings, answering any questions from potential respondents, assistance in preparing addenda for potential changes to the project, and provide assistance with the evaluation process of the respondents.

**Phase IV – Construction Administration Phase** – During this phase the Design Professional will attend weekly meetings during construction, produce Field Observation reports, review submittals, produce responses to Request for Information's, and respond in a professional manner as needed during the construction process. Services in this phase are defined in *AIA Document B101, 3.6* and in *AIA Document A201-2007*.

- B. If there is any conflict between the terms of this Agreement and the exhibits attached to this Agreement, the terms and conditions of the Master Development Agreement will control over the terms and conditions of the any attached exhibits.



**SECTION III**  
**ADDITIONAL SERVICES**

Additional services to be performed by the Design Professional, if authorized by the Owner, which are not included in the above-described Basic Services, are described as follows:

- A. During the course of the Project, as requested by Owner, the Design Professional will be available to accompany Owner's personnel when meeting with the Texas Commission on Environmental Quality, U.S. Environmental Protection Agency, or other regulatory agencies. The Design Professional will assist Owner's personnel on an as-needed basis in preparing compliance schedules, progress reports, and providing general technical support for the Owner's compliance efforts.
- B. Assisting Owner or contractor in the defense or prosecution of litigation in connection with or in addition to those services contemplated by this Agreement. Such services, if any, shall be furnished by Design Professional on a fee basis negotiated by the respective parties outside of and in addition to this Agreement.
- C. Sampling, testing, or analysis beyond that specifically included in Basic Services.
- D. Preparing copies of computer aided drafting (CAD) electronic data bases, drawings, or files for the OWNER's use in a future CAD system.
- E. Preparing applications and supporting documents for government grants, loans, or planning advances and providing data for detailed applications.
- F. Appearing before regulatory agencies or courts as an expert witness in any litigation with third parties or condemnation proceedings arising from the development or construction of the Project, including the preparation of engineering data and reports for assistance to the Owner.
- G. Providing geotechnical investigations for the site, including soil borings, related analyses, and recommendations.
- H. The Design Professional shall assist the Owner in reviewing proposed construction changes to the original design, denying or approving of proposed changes, communicating with the Owner of such approvals or denials, and ensuring compliance with Attachment I to the Master Development Agreement # \_\_\_\_\_ (Payment Applications and Payments to Contractors).
- I. The Design Professional shall assist the Owner with the evaluation of the respondents (General Contractors) to the solicitation for the construction of the Convention Center, in an advisory capacity. The Owner shall procure the construction services of a general contractor or trade contractor in accordance with the provisions of Texas Government Code 2267.206.
- J. Other services within the scope of this project as requested by the Owner.

**SECTION IV**  
**PERIOD OF SERVICE**

This Agreement shall become effective upon execution of this Agreement by the Owner and the Design Professional and upon issue of a notice to proceed by the Owner, and shall remain in force for the period which may reasonably be required for the completion of the Project, including Additional Services, if any, and any required extensions approved by the Owner. This Agreement may be sooner terminated in accordance with the provisions hereof. Time is of the essence in this Agreement. The Design Professional shall make all reasonable efforts to complete the services set forth herein as expeditiously as possible and to meet the schedule established by the Owner, acting through its City Manager or his designee.

**SECTION V**  
**COMPENSATION**

A. COMPENSATION TERMS:

1. "Subcontract Expense" is defined as expenses incurred by the Design Professional in employment of others in outside firms for services of Design Development Activities under the Master Development Agreement.
2. "Direct Non-Labor Expense" is defined as that expense for any assignment incurred by the Design Professional for supplies, transportation and equipment, travel, communications, subsistence, and lodging away from home, and similar incidental expenses in connection with that assignment.

B. BILLING AND PAYMENT: For and in consideration of the professional services to be performed by the Design Professional herein, the Owner agrees to pay for the completion of the **35%** Design Development Phase as defined in the Master Development Agreement for maximum fee not to exceed **\$200,000**. After expiration of the Feasibility Deadline and Financing Viability Deadline, and upon election of all Parties to proceed with the project as defined in the Master Development Agreement, the Design Professional shall continue with the final design of the project, completing the remaining 65% of the design for the project, as required in the Master Development Agreement.

The Owner shall compensate the Design Professional for all services during the Design Development Phase as follows:

**BASIC SERVICES**

Phase I - Fee for Initial 35% Completion of Design work shall not exceed: **\$200,000**.

Phase II - Fee for Final 100% Completion of Design work (determined upon election to proceed).

Phase III - Fee for Construction Procurement assistance (determined upon election to proceed).

Phase IV - Fee for Construction Administration (determined upon election to proceed).

As stipulated in Exhibit H to the Master Development Agreement, the Construction Manager /Agent Services shall not exceed 3% of the final negotiated costs for the construction of the Owner's Convention Center. The not-to-exceed fee for the CMA services shall be inclusive of the final cost of the design of the Convention Center project. The not-to-exceed CMA fee will be fully determined upon final design of the project, and award of the construction contract for the Convention Center.

### **ADDITIONAL SERVICES**

For additional services authorized in writing by the Owner in Section III, the Design Professional shall be paid based on the Schedule of Charges at an hourly rate as stated below. Payments for additional services shall be due and payable upon submission by the Design Professional, and shall be in accordance with Article V hereof. Statements shall not be submitted more frequently than monthly.

Compensation for Additional Services is as follows:

**Rate for Additional Services shall not exceed: \$\_\_\_\_\_ per hour**

### **REIMBURSABLE EXPENSES**

Reimbursable Expenses shall be compensated for expenses (travel, copies, etc.) related to the Convention Center design project, and shall not exceed a total of \$5,000. Invoices for reimbursable expenses shall be submitted to the Owner in a timely manner.

Partial payments to the Design Professional will be made on the basis of detailed monthly statements rendered to and approved by the Owner through its City Manager or his designee; however, under no circumstances shall any monthly statement for services exceed the value of the work performed at the time a statement is rendered. The Owner may withhold the final five percent (5%) of the contract amount until completion of the Project.

Nothing contained in this Article shall require the Owner to pay for any work which is unsatisfactory, as reasonably determined by the City Manager or his designee, or which is not submitted in compliance with the terms of this Agreement. The Owner shall not be required to make any payments to the Design Professional when the Design Professional is in default under this Agreement.

It is specifically understood and agreed that the Design Professional shall not be authorized to undertake any work pursuant to this Agreement which would require additional payments by the Owner for any charge, expense, or reimbursement above the maximum not to exceed fee as stated, without first having obtained written authorization from the Owner. The Design Professional shall not proceed to perform the services listed in Section III "Additional Services," without obtaining prior written authorization from the Owner.

- C. **PAYMENT:** If the Owner fails to make payments due the Design Professional for services and expenses within thirty (30) days after receipt of the Design Professional's undisputed statement thereof, the amounts due the Design Professional will be increased by the rate of one percent (1%) per month from the said thirtieth (30<sup>th</sup>) day or the rate established within Texas Government Code 2251 (Prompt Payment Act), and, in addition, the Design Professional may, after giving seven (7) days' written notice to the Owner, suspend services under this Agreement until the Design Professional has been paid in full all amounts due for services, expenses, and charges, provided, however, nothing herein shall require the Owner to pay any late charges set forth herein if the Owner reasonably determines that the work is unsatisfactory, in accordance with this Section V, "Compensation."

**Invoices** shall be sent directly to the City of Denton Accounts Payable Department, 215 E McKinney St, Denton, TX, 76201-4299. A pro-forma invoice shall also be sent to the Project Manager. It is the intention of the City of Denton to make payment on completed orders within thirty days after receipt of invoice or items; whichever is later, unless unusual circumstances arise. **Invoices must be fully documented as to labor, materials, and equipment provided, if applicable, and must reference the City of Denton Purchase Order Number in order to be processed. No payments shall be made on invoices not listing a Purchase Order Number.**

Upon contract award, suppliers are encouraged to receive payments through **direct deposit**.

## **SECTION VI** **OBSERVATION AND REVIEW OF THE WORK**

The Design Professional will exercise reasonable care and due diligence in discovering and promptly reporting to the Owner any defects or deficiencies in the work of the Design Professional or any subcontractors or sub-Design Professionals.

## **SECTION VII** **OWNERSHIP OF DOCUMENTS**

All documents prepared or furnished by the Design Professional (and Design Professional's subcontractors or sub-Design Professionals) pursuant to this Agreement are instruments of service, and shall become the property of the Owner upon the termination of this Agreement. The Design Professional is entitled to retain copies of all such documents. The documents prepared and furnished by the Design Professional are intended only to be applicable to this Project, and Owner's use of these documents in other projects shall be at Owner's sole risk and expense. In the event the Owner uses any of the information or materials developed pursuant to this Agreement in another project or for other purposes than specified herein, Design Professional is released from any and all liability relating to their use in that project.

## **SECTION VIII** **INDEPENDENT CONTRACTOR**

Design Professional shall provide services to Owner as an independent contractor, not as an employee of the Owner. Design Professional shall not have or claim any right arising from employee status.

**SECTION IX**  
**INSURANCE**

During the performance of the services under this Agreement, Design Professional shall maintain the insurance with an insurance company licensed to do business in the State of Texas by the State Insurance Commission or any successor agency that has a rating with Best Rate Carriers of at least an A or above, and in accordance with Article 10 of the City of Denton General Conditions for Agreement for Architectural and Engineering Services.

**SECTION X**  
**ARBITRATION AND ALTERNATE DISPUTE RESOLUTION**

The parties may agree to settle any disputes under this Agreement by submitting the dispute to arbitration or other means of alternate dispute resolution, such as mediation. No arbitration or alternate dispute resolution arising out of or relating to this Agreement, involving one party's disagreement may include the other party to the disagreement without the other's approval.

**SECTION XI**  
**RESPONSIBILITY FOR CLAIMS AND LIABILITIES**

Approval by the Owner shall not constitute, nor be deemed a release of the responsibility and liability of the Design Professional, its employees, associates, agents, subcontractors, and sub-Design Professionals for the accuracy and competency of their designs or other work; nor shall such approval be deemed to be an assumption of such responsibility by the Owner for any defect in the design or other work prepared by the Design Professional, its employees, subcontractors, agents, and Design Professionals.

**SECTION XII**  
**NOTICES**

All notices, communications, and reports required or permitted under this Agreement shall be personally delivered or mailed to the respective parties by depositing same in the United States mail to the address shown below, certified mail, return receipt requested, unless otherwise specified herein. Mailed notices shall be deemed communicated as of three (3) days' mailing:

To Design Professional:


To Owner:

City of Denton  
George Campbell, City Manager  
215 East McKinney  
Denton, Texas 76201  
[purchasing@cityofdenton.com](mailto:purchasing@cityofdenton.com)

All notices shall be deemed effective upon receipt by the party to whom such notice is given, or within three (3) days' mailing.

### **SECTION XIII** **SEVERABILITY**

If any provision of this Agreement is found or deemed by a court of competent jurisdiction to be invalid or unenforceable, it shall be considered severable from the remainder of this Agreement and shall not cause the remainder to be invalid or unenforceable. In such event, the parties shall reform this Agreement to replace such stricken provision with a valid and enforceable provision which comes as close as possible to expressing the intention of the stricken provision.

### **SECTION XIV** **PERSONNEL**

- A. The Design Professional represents that it has or will secure, at its own expense, all personnel required to perform all the services required under this Agreement. Such personnel shall not be employees or officers of, nor have any contractual relations with the Owner. Design Professional shall inform the Owner of any conflict of interest or potential conflict of interest that may arise during the term of this Agreement.
- B. All services required hereunder will be performed by the Design Professional or under its supervision. All personnel engaged in work shall be qualified, and shall be authorized and permitted under state and local laws to perform such services.

### **SECTION XV** **ASSIGNABILITY**

This agreement shall be binding upon and ensure to the benefit of the City and the Design Professional and their respective successors and assigns, provided however, that no right or interest in the agreement shall be assigned and no obligation shall be delegated or transfer of any interest by the Design Professional (whether by assignment, novation, or otherwise) without the prior written consent of the Owner.

Any attempted assignment or delegation by the Design Professional shall be void unless made in conformity with this Section. The Agreement is not intended to confer rights or benefits on any person, firm or entity not a party hereto; it being the intention of the parties that there are no third party beneficiaries to the Contract.

### **SECTION XVI** **MODIFICATION**

No waiver or modification of this Agreement or of any covenant, condition, or limitation herein contained shall be valid unless in writing and duly executed by the party to be charged therewith, and no evidence of any waiver or modification shall be offered or received in evidence in any proceeding

arising between the parties hereto out of or affecting this Agreement, or the rights or obligations of the parties hereunder, and unless such waiver or modification is in writing and duly executed; and the parties further agree that the provisions of this section will not be waived unless as set forth herein.

**SECTION XVII**  
**MISCELLANEOUS**

- A. The following exhibits are attached to and made a part of this Agreement: **None**
  
- B. The Owner shall have the right to audit and make copies of the books, records and computations pertaining to this agreement. The Design Professional shall retain such books, records, documents and other evidence pertaining to this agreement during the contract period and five years thereafter, except if an audit is in progress or audit findings are yet unresolved, in which case records shall be kept until all audit tasks are completed and resolved. These books, records, documents and other evidence shall be available, within 10 business days of written request. Further, the Design Professional shall also require all Subcontractors, material suppliers, and other payees to retain all books, records, documents and other evidence pertaining to this agreement, and to allow the Owner similar access to those documents. All books and records will be made available within a 50 mile radius of the City of Denton. The cost of the audit will be borne by the Owner unless the audit reveals an overpayment of 1% or greater. If an overpayment of 1% or greater occurs, the reasonable cost of the audit, including any travel costs, must be borne by the Design Professional which must be payable within five business days of receipt of an invoice. Failure to comply with the provisions of this section shall be a material breach of this contract and shall constitute, in the Owner's sole discretion, grounds for termination thereof. Each of the terms "books", "records", "documents" and "other evidence", as used above, shall be construed to include drafts and electronic files, even if such drafts or electronic files are subsequently used to generate or prepare a final printed document.
  
- C. For the purpose of this Agreement, the key persons who will perform most of the work hereunder shall be \_\_\_\_\_. However, nothing herein shall limit Design Professional from using other qualified and competent members of its firm to perform the services required herein.
  
- D. Design Professional shall commence, carry on, and complete any and all projects with all applicable dispatch, in a sound, economical, and efficient manner and in accordance with the provisions hereof. In accomplishing the projects, Design Professional shall take such steps as are appropriate to ensure that the work involved is properly coordinated with related work being carried on by the Owner.
  
- E. The Owner shall assist the Design Professional by placing at the Design Professional's disposal all available information pertinent to the Project, including previous reports, any other data relative to the Project, and arranging for the access thereto, and make all provisions for the Design Professional to enter in or upon public and private property as required for the Design Professional to perform services under this Agreement.

**SECTION XVIII**  
**ENTIRE AGREEMENT**

This Agreement, including the City of Denton General Conditions to Agreement for Architectural or Engineering Services, constitutes the complete and final expression of the agreement of the parties, and is intended as a complete and exclusive statement of the terms of their agreements, and supersedes all prior contemporaneous offers, promises, representations, negotiations, discussions, communications, and agreements which may have been made in connection with the subject matter hereof. This Agreement, consisting of \_\_\_\_\_ pages includes this executed agreement and the following documents all of which are attached hereto and made a part hereof by reference as if fully set forth herein:

- 1. City of Denton General Conditions to Agreement for Architectural or Engineering Services.
- 2. Attachments A through B. Attachment A – City of Denton Conflict of Interest Form, Attachment B – City of Denton Substitute W-9 Form.

CITY OF DENTON

BY: \_\_\_\_\_  
GEORGE C. CAMPBELL  
CITY MANAGER

ATTEST:  
JENNIFER WALTERS, CITY SECRETARY

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

APPROVED AS TO LEGAL FORM:  
ANITA BURGESS, CITY ATTORNEY

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

DESIGN FIRM

BY: \_\_\_\_\_  
Firm’s Officer/Representative  
(Signature)

WITNESS:

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



**CITY OF DENTON  
GENERAL CONDITIONS  
TO  
AGREEMENT FOR ARCHITECTURAL OR ENGINEERING SERVICES**

**ARTICLE 1. ARCHITECT OR ENGINEER'S RESPONSIBILITIES**

**1.1** The Architect or Engineer's services consist of those services for the Project (as defined in the agreement (the "Agreement") and proposal (the "Proposal") to which these General Conditions are attached) performed by the Architect or Engineer (hereinafter called the "Design Professional") or Design Professional's employees and Design Professionals as enumerated in Articles 2 and 3 of these General Conditions as modified by the Agreement and Proposal (the "Services").

**1.2** The Design Professional will perform all Services as an independent contractor to the prevailing professional standards consistent with the level of care and skill ordinarily exercised by members of the same profession currently practicing in the same locality under similar conditions, including reasonable, informed judgments and prompt timely actions (the "Degree of Care"). The Services shall be performed as expeditiously as is consistent with the Degree of Care necessary for the orderly progress of the Project. Upon request of the Owner, the Design Professional shall submit for the Owner's approval a schedule for the performance of the Services which may be adjusted as the Project proceeds, and shall include allowances for periods of time required for the Owner's review and for approval of submissions by authorities having jurisdiction over the Project. Time limits established by this schedule and approved by the Owner shall not, except for reasonable cause, be exceeded by the Design Professional or Owner, and any adjustments to this schedule shall be mutually acceptable to both parties.

**ARTICLE 2 SCOPE OF BASIC SERVICES**

**2.1 BASIC SERVICES DEFINED** The Design Professional's Basic Services consist of those described in Sections 2.2 through 2.6 of these General Conditions and include without limitation normal structural, civil, mechanical and electrical engineering services and any other engineering services necessary to produce a complete and accurate set of Construction Documents, as described by and required in Section 2.4. The Basic Services may be modified by the Agreement.

**2.2 SCHEMATIC DESIGN PHASE**

**2.2.1** The Design Professional, in consultation with the Owner, shall develop a written program for the Project to ascertain Owner's needs and to establish the requirements for the Project.

**2.2.2** The Design Professional shall provide a preliminary evaluation of the Owner's program, construction schedule and construction budget requirements, each in terms of the other, subject to the limitations set forth in Subsection 5.2.1.

**2.2.3** The Design Professional shall review with the Owner alternative approaches to design and construction of the Project.

**2.2.4** Based on the mutually agreed-upon program, schedule and construction budget requirements, the Design Professional shall prepare, for approval by the Owner, Schematic Design Documents consisting of drawings and other documents illustrating the scale and relationship of Project components. The Schematic Design shall contemplate compliance with all applicable laws, statutes, ordinances, codes and regulations.

**2.2.5** The Design Professional shall submit to the Owner a preliminary detailed estimate of Construction Cost based on current area, volume or other unit costs and which indicates the cost of each category of work involved in constructing the Project and establishes an elapsed time factor for the period of time from the commencement to the completion of construction.

**2.3 DESIGN DEVELOPMENT PHASE**

**2.3.1** Based on the approved Schematic Design Documents and any adjustments authorized by the Owner in the program, schedule or construction budget, the Design Professional shall prepare for approval by the Owner, Design Development Documents consisting of drawings and other documents to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, materials and such other elements as may be appropriate, which shall comply with all applicable laws, statutes, ordinances, codes and regulations. Notwithstanding Owner's approval of the documents, Design Professional represents that the Documents and specifications will be sufficient and adequate to fulfill the purposes of the Project.

**2.3.2** The Design Professional shall advise the Owner of any adjustments to the preliminary estimate of Construction Cost in a further Detailed Statement as described in Section 2.2.5.

**2.4 CONSTRUCTION DOCUMENTS PHASE**

**2.4.1** Based on the approved Design Development Documents and any further adjustments in the scope or quality of the Project or in the construction budget authorized by the Owner, the Design Professional shall prepare, for approval by the Owner, Construction Documents consisting of Drawings and Specifications setting forth in detail requirements for the construction of the Project, which shall comply with all applicable laws, statutes, ordinances, codes and regulations.

**2.4.2** The Design Professional shall assist the Owner in the preparation of the necessary bidding or procurement information, bidding or procurement forms, the Conditions of the contract, and the form of Agreement between the Owner and contractor.

**2.4.3** The Design Professional shall advise the Owner of any adjustments to previous preliminary estimates of Construction Cost indicated by changes in requirements or general market conditions.

**2.4.4** The Design Professional shall assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

**2.5 CONSTRUCTION CONTRACT PROCUREMENT**

**2.5.1** The Design Professional, following the Owner's approval of the Construction Documents and of the latest preliminary detailed estimate of Construction Cost, shall assist the Owner in procuring a construction contract for the Project through any procurement method that is legally applicable to the Project including without

limitation, the competitive sealed bidding process. Although the Owner will consider the advice of the Design Professional, the award of the construction contract is in the sole discretion of the Owner.

**2.5.2** If the construction contract amount for the Project exceeds the total construction cost of the Project as set forth in the approved Detailed Statement of Probable Construction Costs of the Project submitted by the Design Professional, then the Design Professional, at its sole cost and expense, will revise the Construction Documents as may be required by the Owner to reduce or modify the quantity or quality of the work so that the total construction cost of the Project will not exceed the total construction cost set forth in the approved Detailed Statement of Probable Construction Costs.

## **2.6 CONSTRUCTION PHASE - ADMINISTRATION OF THE CONSTRUCTION CONTRACT**

**2.6.1** The Design Professional's responsibility to provide Basic Services for the Construction Phase under this Agreement commences with the award of the Contract for Construction and terminates at the issuance to the Owner of the final Certificate for Payment, unless extended under the terms of Subsection 8.3.2.

**2.6.2** The Design Professional shall provide detailed administration of the Contract for Construction as set forth below. For design professionals the administration shall also be in accordance with AIA document A201, General Conditions of the Contract for Construction, current as of the date of the Agreement as may be amended by the City of Denton special conditions, unless otherwise provided in the Agreement. For engineers the administration shall also be in accordance with the Standard Specifications for Public Works Construction by the North Central Texas Council of Governments, current as of the date of the Agreement, unless otherwise provided in the Agreement.

**2.6.3** Construction Phase duties, responsibilities and limitations of authority of the Design Professional shall not be restricted, modified or extended without written agreement of the Owner and Design Professional.

**2.6.4** The Design Professional shall be a representative of and shall advise and consult with the Owner (1) during construction, and (2) at the Owner's direction from time to time during the correction, or warranty period described in the Contract for Construction. The Design Professional shall have authority to act on behalf of the Owner only to the extent provided in the Agreement and these General Conditions, unless otherwise modified by written instrument.

**2.6.5** The Design Professional shall observe the construction site at least one time a week, while construction is in progress, and as reasonably necessary while construction is not in progress, to become familiar with the progress and quality of the work completed and to determine if the work is being performed in a manner indicating that the work when completed will be in accordance with the Contract Documents. Design Professional shall provide Owner a written report subsequent to each on-site visit. On the basis of on-site observations the Design Professional shall keep the Owner informed of the progress and quality of the work, and shall exercise the Degree of Care and diligence in discovering and promptly reporting to the Owner any observable defects or deficiencies in the work of Contractor or any subcontractors. The Design Professional represents that he will follow Degree of Care in performing all Services under the Agreement. The Design Professional shall promptly correct any defective designs or specifications furnished by the Design Professional at no cost to the Owner. The Owner's approval, acceptance, use of or payment for all or any part of the Design Professional's Services hereunder or of the Project itself shall in no way alter the Design Professional's obligations or the Owner's rights hereunder.

**2.6.6** The Design Professional shall not have control over or charge of and shall not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the work. The Design Professional shall not be responsible for the Contractor's schedules or failure to carry out the work in accordance with the Contract Documents except insofar as such failure may result from Design Professional's negligent acts or omissions. The Design Professional shall not have control over or charge of acts or omissions of the Contractor, Subcontractors, or their agents or employees, or of any other persons performing portions of the work.

**2.6.7** The Design Professional shall at all times have access to the work wherever it is in preparation or progress.

**2.6.8** Except as may otherwise be provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall communicate through the Design Professional. Communications by and with the Design Professional's Design Professionals shall be through the Design Professional.

**2.6.9** Based on the Design Professional's observations at the site of the work and evaluations of the Contractor's Applications for Payment, the Design Professional shall review and certify the amounts due the Contractor.

**2.6.10** The Design Professional's certification for payment shall constitute a representation to the Owner, based on the Design Professional's observations at the site as provided in Subsection 2.6.5 and on the data comprising the Contractor's Application for Payment, that the work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to minor deviations from the Contract Documents correctable prior to completion and to specific qualifications expressed by the Design Professional. The issuance of a Certificate for Payment shall further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment shall not be a representation that the Design Professional has (1) reviewed construction means, methods, techniques, sequences or procedures, or (2) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

**2.6.11** The Design Professional shall have the responsibility and authority to reject work which does not conform to the Contract Documents. Whenever the Design Professional considers it necessary or advisable for implementation of the intent of the Contract Documents, the Design Professional will have authority to require additional inspection or testing of the work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Design Professional nor a decision made in good faith either to exercise or not exercise such authority shall give rise to a duty or responsibility of the Design Professional to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees or other persons performing portions of the work.

**2.6.12** The Design Professional shall review and approve or take other appropriate action upon Contractor's submittals such as Shop Drawings, Product Data and Samples for the purpose of (1) determining compliance with applicable laws, statutes, ordinances and codes; and (2) determining whether or not the work, when completed, will be in compliance with the requirements of the Contract Documents. The Design Professional shall act with such reasonable promptness to cause no delay in the work or in the construction of the Owner or of separate contractors, while allowing sufficient time in the Design Professional's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities or for substantiating instructions for installation or performance of equipment or systems designed by the Contractor, all of which remain the responsibility of the Contractor to the extent required by the Contract Documents. The Design Professional's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Design Professional, of construction means, methods, techniques, sequences or procedures. The Design Professional's

approval of a specific item shall not indicate approval of an assembly of which the item is a component. When professional certification of performance characteristics of materials, systems or equipment is required by the Contract Documents, the Design Professional shall be entitled to rely upon such certification to establish that the materials, systems or equipment will meet the performance criteria required by the Contract Documents.

**2.6.13** The Design Professional shall prepare Change Orders and Construction Change Directives, with supporting documentation and data if deemed necessary by the Design Professional as provided in Subsections 3.1.1 and 3.3.3, for the Owner's approval and execution in accordance with the Contract Documents, and may authorize minor changes in the work not involving an adjustment in the Contract Sum or an extension of the Contract Time which are not inconsistent with the intent of the Contract Documents.

**2.6.14** On behalf of the Owner, the Design Professional shall conduct inspections to determine the dates of Substantial Completion and Final Completion, and if requested by the Owner shall issue Certificates of Substantial and Final Completion. The Design Professional will receive and review written guarantees and related documents required by the Contract for Construction to be assembled by the Contractor and shall issue a final certificate for Payment upon compliance with the requirements of the Contract Documents.

**2.6.15** The Design Professional shall interpret and provide recommendations on matters concerning performance of the Owner and Contractor under the requirements of the Contract Documents on written request of either the Owner or Contractor. The Design Professional's response to such requests shall be made with reasonable promptness and within any time limits agreed upon.

**2.6.16** Interpretations and decisions of the Design Professional shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and initial decisions, the Design Professional shall endeavor to secure faithful performance by both Owner and Contractor, and shall not be liable for results or interpretations or decisions so rendered in good faith in accordance with all the provisions of this Agreement and in the absence of negligence.

**2.6.17** The Design Professional shall render written decisions within a reasonable time on all claims, disputes or other matters in question between the Owner and Contractor relating to the execution or progress of the work as provided in the Contract Documents.

**2.6.18** The Design Professional (1) shall render services under the Agreement in accordance with the Degree of Care; (2) will reimburse the Owner for all damages caused by the defective designs the Design Professional prepares; and (3) by acknowledging payment by the Owner of any fees due, shall not be released from any rights the Owner may have under the Agreement or diminish any of the Design Professional's obligations thereunder.

**2.6.19** The Design Professional shall provide the Owner with four sets of reproducible prints showing all significant changes to the Construction Documents during the Construction Phase.

## **ARTICLE 3 ADDITIONAL SERVICES**

### **3.1 GENERAL**

**3.1.1** The services described in this Article 3 are not included in Basic Services unless so identified in the Agreement or Proposal, and they shall be paid for by the Owner as provided in the Agreement, in addition to the compensation for Basic Services. The services described under Sections 3.2 and 3.4 shall only be provided if authorized or confirmed in writing by the Owner. If services described under Contingent Additional Services in Section 3.3 are required due to circumstances beyond the Design Professional's control, the Design Professional shall notify the Owner in writing and shall not commence such additional services until it receives written approval from the Owner to proceed. If the Owner indicates in writing that all or part of such Contingent Additional Services are not required, the Design Professional shall have no obligation to provide those services. Owner will be responsible for compensating the Design Professional for Contingent Additional Services only if they are not required due to the negligence or fault of Design Professional.

### **3.2 PROJECT REPRESENTATION BEYOND BASIC SERVICES**

**3.2.1** If more extensive representation at the site than is described in Subsection 2.6.5 is required, the Design Professional shall provide one or more Project Representatives to assist in carrying out such additional on-site responsibilities.

**3.2.2** Project Representatives shall be selected, employed and directed by the Design Professional, and the Design Professional shall be compensated therefor as agreed by the Owner and Design Professional.

### **3.3 CONTINGENT ADDITIONAL SERVICES**

**3.3.1** Making material revisions in Drawings, Specifications or other documents when such revisions are:

1. inconsistent with approvals or instructions previously given by the Owner, including revisions made necessary by adjustments in the Owner's program or Project budget;
2. required by the enactment or revision of codes, laws or regulations subsequent to the preparation of such documents, or
3. due to changes required as a result of the Owner's failure to render decision in a timely manner.

**3.3.2** Providing services required because of significant changes in the Project including, but not limited to, size, quality, complexity, or the Owner's schedule, except for services required under Subsection 2.5.2.

**3.3.3** Preparing Drawings, Specifications and other documentation and supporting data, and providing other services in connection with Change Orders and Construction Change Directives.

**3.3.4** Providing consultation concerning replacement of work damaged by fire or other cause during construction, and furnishing services required in connection with the replacement of such work.

**3.3.5** Providing services made necessary by the default of the Contractor, by major defects or deficiencies in the work of the Contractor, or by failure of performance of either the Owner or Contractor under the Contract for Construction.

**3.3.6** Providing services in evaluating an extensive number of claims submitted by the Contractor or others in connection with the work.

**3.3.7** Providing services in connection with a public hearing, arbitration proceeding or legal proceeding except where the Design Professional is party thereto.

**3.3.8** Providing services in addition to those required by Article 2 for preparing documents for alternate, separate or sequential bids or providing services in connection with bidding or construction prior to the completion of the Construction Documents Phase.

**3.3.9** Notwithstanding anything contained in the Agreement, Proposal or these General Conditions to the contrary, all services described in this Article 3 that are caused or necessitated in whole or in part due to the negligent act or omission of the Design Professional shall be performed by the Design Professional as a part of the Basic Services under the Agreement with no additional compensation above and beyond the compensation due the Design Professional for the Basic Services. The intervening or concurrent negligence of the Owner shall not limit the Design Professional's obligations under this Subsection 3.3.9.

#### **3.4 OPTIONAL ADDITIONAL SERVICES**

**3.4.1** Providing financial feasibility or other special studies.

**3.4.2** Providing planning surveys, site evaluations or comparative studies of prospective sites.

**3.4.3** Providing special surveys, environmental studies and submissions required for approvals of governmental authorities or others having jurisdiction over the Project.

**3.4.4** Providing services relative to future facilities, systems and equipment.

**3.4.5** Providing services to investigate existing conditions or facilities or to make measured drawings thereof.

**3.4.6** Providing services to verify the accuracy of drawings or other information furnished by the Owner.

**3.4.7** Providing coordination of construction performed by separate contractors or by the Owner's own forces and coordination of services required in connection with construction performed and equipment supplied by the Owner.

**3.4.8** Providing detailed quantity surveys or inventories of material, equipment and labor.

**3.4.9** Providing analyses of operating and maintenance costs.

**3.4.10** Making investigations, inventories of materials or equipment, or valuations and detailed appraisals of existing facilities.

**3.4.12** Providing assistance in the utilization of equipment or systems such as testing, adjusting and balancing, preparation of operation and maintenance manuals, training personnel for operation and maintenance and consultation during operation.

**3.4.13** Providing interior design and similar services required for or in connection with the selection, procurement or installation of furniture, furnishings and related equipment.

**3.4.14** Providing services other than as provided in Section 2.6.4, after issuance to the Owner of the final Certificate for Payment and expiration of the Warranty period of the Contract for Construction.

**3.4.15** Providing services of Design Professionals for other than architectural, civil, structural, mechanical and electrical engineering portions of the Project provided as a part of Basic Services.

**3.4.16** Providing any other services not otherwise included in this Agreement or not customarily furnished in accordance with generally accepted architectural practice.

**3.4.17** Preparing a set of reproducible record drawings in addition to those required by Subsection 2.6.19, showing significant changes in the work made during construction based on marked-up prints, drawings and other data furnished by the Contractor to the Design Professional.

**3.4.18** Notwithstanding anything contained in the Agreement, Proposal or these General Conditions to the contrary, all services described in this Article 3 that are caused or necessitated in whole or in part due to the negligent act or omission of the Design Professional shall be performed by the Design Professional as a part of the Basic Services under the Agreement with no additional compensation above and beyond the compensation due the Design Professional for the Basic Services. The intervening or concurrent negligence of the Owner shall not limit the Design Professional's obligations under this Subsection 3.4.18.

#### **ARTICLE 4 OWNER'S RESPONSIBILITIES**

**4.1** The Owner shall consult with the Design Professional regarding requirements for the Project, including (1) the Owner's objectives, (2) schedule and design constraints and criteria, including space requirements and relationships, flexibility, expendability, special equipment, systems and site requirements, as more specifically described in Subsection 2.2.1.

**4.2** The Owner shall establish and update an overall budget for the Project, including the Construction Cost, the Owner's other costs and reasonable contingencies related to all of these costs.

**4.3** If requested by the Design Professional, the Owner shall furnish evidence that financial arrangements have been made to fulfill the Owner's obligations under this Agreement.

4.4 The Owner shall designate a representative authorized to act on the Owner's behalf with respect to the Project. The Owner or such authorized representative shall render decisions in a timely manner pertaining to documents submitted by the Design Professional in order to avoid unreasonable delay in the orderly and sequential progress of the Design Professional's services.

4.5 Where applicable, the Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data pertaining to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a project benchmark.

4.6 Where applicable, the Owner shall furnish the services of geotechnical engineers when such services are requested by the Design Professional. Such services may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion and resistivity tests, including necessary operations for anticipating sub-soil conditions, with reports and appropriate professional recommendations.

4.6.1 The Owner shall furnish the services of other Design Professionals when such services are reasonably required by the scope of the Project and are requested by the Design Professional and are not retained by the Design Professional as part of its Basic Services or Additional Services.

4.7 When not a part of the Additional Services, the Owner shall furnish structural, mechanical, chemical, air and water pollution tests, tests of hazardous materials, and other laboratory and environmental tests, inspections and reports required by law or the Contract Documents.

4.8 The Owner shall furnish all legal, accounting and insurance counseling services as may be necessary at any time for the Project, including auditing services the Owner may require to verify the Contractor's Applications for Payment or to ascertain how or for what purposes the Contractor has used the money paid by or on behalf of the Owner.

4.9 The services, information, surveys and reports required by Owner under Sections 4.5 through 4.8 shall be furnished at the Owner's expense, and the Design Professional shall be entitled to rely upon the accuracy and completeness thereof in the absence of any negligence on the part of the Design Professional.

4.10 The Owner shall give prompt written notice to the Design Professional if the Owner becomes aware of any fault or defect in the Project or nonconformance with the Contract Documents.

4.11 Design Professional shall propose language for certificates or certifications to be requested of the Design Professional or Design Professional's Design Professionals and shall submit such to the Owner for review and approval at least fourteen (14) days prior to execution. The Owner agrees not to request certifications that would require knowledge or services beyond the scope of the Agreement.

## **ARTICLE 5 CONSTRUCTION COST**

### **5.1 CONSTRUCTION COST DEFINED**

5.1.1 The Construction Cost shall be the total cost or estimated cost to the Owner of all elements of the Project designed or specified by the Design Professional.

5.1.2 The Construction Cost shall include the cost at current market rates of labor and materials furnished by the Owner and equipment designed, specified, selected or specially provided for by the Design Professional, plus a reasonable allowance for the Contractor's overhead and profit. In addition, a reasonable allowance for contingencies shall be included for market conditions at the time of bidding and for changes in the work during construction.

5.1.3 Construction Cost does not include the compensation of the Design Professional and Design Professional's Design Professionals, the costs of the land, rights-of-way, financing or other costs which are the responsibility of the Owner as provided in Article 4.

### **5.2 RESPONSIBILITY FOR CONSTRUCTION COST**

5.2.1 Evaluations of the Owner's Project budget, preliminary estimates of Construction Cost and detailed estimates of Construction Cost prepared by the Design Professional represent the Design Professional's best judgment as a design professional familiar with the construction industry. It is recognized, however, that neither the Design Professional nor the Owner has control over the cost of labor, materials or equipment, over the Contractor's methods of determining bid prices, or over competitive bidding or market conditions. Accordingly, the Design Professional cannot and does not warrant or represent that bids or cost proposals will not vary from the Owner's Project budget or from any estimate of Construction Cost or evaluation prepared or agreed to by the Design Professional.

5.2.2 No fixed limit of Construction Cost shall be established as a condition of the Agreement by the furnishing, proposal or establishment of a Project budget, unless such fixed limit has been agreed upon in writing and signed by the parties thereto. If such a fixed limit has been established, the Design Professional shall be permitted to include contingencies for design, bidding and price escalation, to determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents, to make reasonable adjustments in the scope of the Project and to include in the Contract Documents alternate bids to adjust the Construction Cost to the fixed limit. Fixed limits, if any, shall be increased in the amount of an increase in the Contract Sum occurring after execution of the Contract for Construction.

5.2.3 If the Procurement Phase has not commenced within 90 days after the Design Professional submits the Construction Documents to the Owner, any Project budget or fixed limit of Construction Cost shall be adjusted to reflect changes in the general level of prices in the construction industry between the date of submission of the Construction Documents to the Owner and the date on which proposals are sought.

## **ARTICLE 6 OWNERSHIP AND USE OF DOCUMENTS**

6.1 The Drawings, Specifications and other documents prepared by the Design Professional for this Project are instruments of the Design Professional's service and shall become the property of the Owner upon termination or completion of the Agreement. The Design Professional is entitled to retain copies of all such documents. Such documents are intended only be applicable to this Project, and Owner's use of such documents in other projects shall be at Owner's sole risk and expense. In the event the

Owner uses any of the information or materials developed pursuant to the Agreement in another project or for other purposes than are specified in the Agreement, the Design Professional is released from any and all liability relating to their use in that project

6.2 Submission or distribution of documents to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the Design Professional's reserved rights.

## **ARTICLE 7 TERMINATION, SUSPENSION OR ABANDONMENT**

7.1 The Design Professional may terminate the Agreement upon not less than thirty days written notice should the Owner fail substantially to perform in accordance with the terms of the Agreement through no fault of the Design Professional. Owner may terminate the Agreement or any phase thereof with or without cause upon thirty (30) days prior written notice to the Design Professional. All work and labor being performed under the Agreement shall cease immediately upon Design Professional's receipt of such notice. Before the end of the thirty (30) day period, Design Professional shall invoice the Owner for all work it satisfactorily performed prior to the receipt of such notice. No amount shall be due for lost or anticipated profits. All plans, field surveys, and other data related to the Project shall become property of the Owner upon termination of the Agreement and shall be promptly delivered to the Owner in a reasonably organized form. Should Owner subsequently contract with a new Design Professional for continuation of services on the Project, Design Professional shall cooperate in providing information.

7.2 If the Project is suspended by the Owner for more than 30 consecutive days, the Design Professional shall be compensated for services satisfactorily performed prior to notice of such suspension. When the Project is resumed, the Design Professional's compensation shall be equitably adjusted to provide for expenses incurred in the interruption and resumption of the Design Professional's services.

7.3 The Agreement may be terminated by the Owner upon not less than seven days written notice to the Design Professional in the event that the Project is permanently abandoned. If the Project is abandoned by the Owner for more than 90 consecutive days, the Design Professional or the Owner may terminate the Agreement by giving written notice.

7.4 Failure of the Owner to make payments to the Design Professional for work satisfactorily completed in accordance with the Agreement shall be considered substantial non-performance and cause for termination.

7.5 If the Owner fails to make payment to Design Professional within thirty (30) days of receipt of a statement for services properly and satisfactorily performed, the Design Professional may, upon seven days written notice to the Owner, suspend performance of services under the Agreement.

7.6 In the event of termination not the fault of the Design Professional, the Design Professional shall be compensated for services properly and satisfactorily performed prior to termination.

## **ARTICLE 8 PAYMENTS TO THE DESIGN PROFESSIONAL**

### **8.1 DIRECT PERSONNEL EXPENSE**

8.1.1 Direct Personnel Expense is defined as the direct salaries of the Design Professional's personnel engaged on the Project and the portion of the cost of their mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, pensions and similar contributions and benefits.

### **8.2 REIMBURSABLE EXPENSES**

8.2.1 Reimbursable Expenses are in addition to compensation for Basic and Additional Services and include expenses incurred by the Design Professional and Design Professional's employees and Design Professionals in the interest of the Project, as identified in the following Clauses.

8.2.1.1 Expense of transportation in connection with the Project; expenses in connection with authorized out-of-town travel; long-distance communications; and fees paid for securing approval of authorities having jurisdiction over the Project.

8.2.1.2 Expense of reproductions (except the reproduction of the sets of documents referenced in Subsection 2.6.19), postage and handling of Drawings, Specifications and other documents.

8.2.1.3 If authorized in advance by the Owner, expense of overtime work requiring higher than regular rates.

8.2.1.4 Expense of renderings, models and mock-ups requested by the Owner.

8.2.1.5 Expense of computer-aided design and drafting equipment time when used in connection with the Project.

8.2.1.6 Other expenses that are approved in advance in writing by the Owner.

### **8.3 PAYMENTS ON ACCOUNT OF BASIC SERVICES**

8.3.1 Payments for Basic Services shall be made monthly and, where applicable, shall be in proportion to services performed within each phase of service, on the basis set forth in Section 2 of the Agreement and the schedule of work.

8.3.2 If and to the extent that the time initially established in the Agreement is exceeded or extended through no fault of the Design Professional, compensation for any services rendered during the additional period of time shall be computed in the manner set forth in Section 2 of the Agreement.

8.3.3 When compensation is based on a percentage of Construction Cost and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions, in accordance with the schedule set forth in Section 2 of the Agreement based on (1) the lowest bona fide bid or (2) if no such bid or proposal is received, the most recent preliminary estimate of Construction Cost or detailed estimate of Construction Cost for such portions of the Project.

### **8.4 PAYMENTS ON ACCOUNT OF ADDITIONAL SERVICES**

**8.4.1** Payments on account of the Design Professional's Additional Services and for Reimbursable Expenses shall be made monthly within 30 days after the presentation to the Owner of the Design Professional's statement of services rendered or expenses incurred.

**8.5 PAYMENTS WITHHELD** No deductions shall be made from the Design Professional's compensation on account of penalty, liquidated damages or other sums withheld from payments to contractors, or on account of the cost of changes in the work other than those for which the Design Professional is responsible.

**8.6 DESIGN PROFESSIONAL'S ACCOUNTING RECORDS** Design Professional shall make available to Owner or Owner's authorized representative records of Reimbursable Expenses and expenses pertaining to Additional Services and services performed on the basis of a multiple of Direct Personnel Expense for inspection and copying during regular business hours for three years after the date of the final Certificate of Payment, or until any litigation related to the Project is final, whichever date is later.

## **ARTICLE 9 INDEMNITY**

**9.1** The Design Professional shall indemnify and save and hold harmless the Owner and its officers, agents, and employees from and against any and all liability, claims, demands, damages, losses, and expenses, including, but not limited to court costs and reasonable attorney fees incurred by the Owner, and including, without limitation, damages for bodily and personal injury, death and property damage, resulting from the negligent acts or omissions of the Design Professional or its officers, shareholders, agents, or employees in the performance of the Agreement.

**9.2** Nothing herein shall be construed to create a liability to any person who is not a party to the Agreement, and nothing herein shall waive any of the parties' defenses, both at law or equity, to any claim, cause of action, or litigation filed by anyone not a party to the Agreement, including the defense of governmental immunity, which defenses are hereby expressly reserved.

**ARTICLE 10 INSURANCE** During the performance of the Services under the Agreement, Design Professional shall maintain the following insurance with an insurance company licensed or authorized to do business in the State of Texas by the State Insurance Commission or any successor agency that has a rating with Best Rate Carriers of at least an A- or above:

**10.1** Comprehensive General Liability Insurance with bodily injury limits of not less than \$1,000,000 for each occurrence and not less than \$2,000,000 in the aggregate, and with property damage limits of not less than \$100,000 for each occurrence and not less than \$250,000 in the aggregate.

**10.2** Automobile Liability Insurance with bodily injury limits of not less than \$500,000 for each person and not less than \$500,000 for each accident, and with property damage limits of not less than \$100,000 for each accident.

**10.3** Worker's Compensation Insurance in accordance with statutory requirements, and Employers' Liability Insurance with limits of not less than \$100,000 for each accident including occupational disease.

**10.4** Professional Liability Insurance with limits of not less than \$1,000,000 annual aggregate.

**10.5** The Design Professional shall furnish insurance certificates or insurance policies to the Owner evidencing insurance in compliance with this Article 10 at the time of the execution of the Agreement. The General Liability and Automobile Liability insurance policies shall name the Owner as an additional insured, the Workers' Compensation policy shall contain a waiver of subrogation in favor of the Owner, and each policy shall contain a provision that such insurance shall not be canceled or modified without thirty (30) days' prior written notice to Owner and Design Professional. In such event, the Design Professional shall, prior to the effective date of the change or cancellation, furnish Owner with substitute certificates of insurance meeting the requirements of this Article 10.

## **ARTICLE 11 MISCELLANEOUS PROVISIONS**

**11.1** The Agreement shall be governed by the laws of the State of Texas. Venue of any suit or cause of action under the Agreement shall lie exclusively in Denton County, Texas.

**11.2** The Owner and Design Professional, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement. The Design Professional shall not assign its interests in the Agreement without the written consent of the Owner.

**11.3** The term Agreement as used herein includes the executed Agreement, the Proposal, these General Conditions and other attachments referenced in Section 3 of the Agreement which together represent the entire and integrated agreement between the Owner and Design Professional and supersedes all prior negotiations, representations or agreements, either written or oral. The Agreement may be amended only by written instrument signed by both Owner and Design Professional. When interpreting the Agreement the executed Agreement, Proposal, these General Conditions and the other attachments referenced in Section 3 of the Agreement shall to the extent that is reasonably possible be read so as to harmonize the provisions. However, should the provisions of these documents be in conflict so that they cannot be reasonably harmonized, such documents shall be given priority in the following order:

1. The executed Agreement
2. Attachments referenced in Section 3 of the Agreement other than the Proposal
3. These General Provisions
4. The Proposal

**11.4** Nothing contained in the Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or Design Professional.

**11.5** Upon receipt of prior written approval of Owner, the Design Professional shall have the right to include representations of the design of the Project, including photographs of the exterior and interior, among the Design Professional's promotional and professional materials. The Design Professional's materials shall not include the Owner's

confidential or proprietary information if the Owner has previously advised the Design Professional in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Design Professional on the construction sign and in the promotional materials for the Project.

**11.6** Approval by the Owner shall not constitute, nor be deemed a release of the responsibility and liability of the Design Professional, its employees, associates, agents, subcontractors, and subDesign Professionals for the accuracy and competency of their designs or other work; nor shall such approval be deemed to be an assumption of such responsibility by the Owner for any defect in the design or other work prepared by the Design Professional, its employees, subcontractors, agents, and Design Professionals.

**11.7** All notices, communications, and reports required or permitted under the Agreement shall be personally delivered or mailed to the respective parties by depositing same in the United States mail to the address shown below signature block on the Agreement, certified mail, return receipt requested, unless otherwise specified herein. All notices shall be deemed effective upon receipt by the party to whom such notice is given, or within three (3) days after mailing.

**11.8** If any provision of the Agreement is found or deemed by a court of competent jurisdiction to be invalid or unenforceable, it shall be considered severable from the remainder of the Agreement and shall not cause the remainder to be invalid or unenforceable. In such event, the parties shall reform the Agreement to replace such stricken provision with a valid and enforceable provision which comes as close as possible to expressing the intention of the stricken provision.

**11.9** The Design Professional shall comply with all federal, state, and local laws, rules, regulations, and ordinances applicable to the work covered hereunder as they may now read or hereinafter be amended during the term of this Agreement.

**11.10** In performing the Services required hereunder, the Design Professional shall not discriminate against any person on the basis of race, color, religion, sex, national origin or ancestry, age, or physical handicap.

**11.11** The captions of the Agreement are for informational purposes only, and shall not in any way affect the substantive terms or conditions of the Agreement.



# CONFLICT OF INTEREST QUESTIONNAIRE

**FORM CIQ**

**For vendor or other person doing business with local governmental entity**

**This questionnaire reflects changes made to the law by H.B. 1491, 80th Leg., Regular Session.**

OFFICE USE ONLY

This questionnaire is being filed in accordance with chapter 176 of the Local Government Code by a person who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the person meets requirements under Section 176.006(a).

Date Received

By law this questionnaire must be filed with the records administrator of the local government entity not later than the 7th business day after the date the person becomes aware of facts that require the statement to be filed. See Section 176.006, Local Government Code.

A person commits an offense if the person knowingly violates Section 176.006, Local Government Code. An offense under this section is a Class C misdemeanor.

**1 Name of person who has a business relationship with local governmental entity.**

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

(The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7<sup>th</sup> business day after the date the originally filed questionnaire becomes incomplete or inaccurate.)

**3 Name of local government officer with whom filer has an employment or business relationship.**

\_\_\_\_\_  
Name of Officer

This section, (item 3 including subparts A, B, C & D), must be completed for each officer with whom the filer has an employment or other business relationship as defined by Section 176.001(1-a), Local Government Code. Attach additional pages to this Form CIQ as necessary.

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

Yes       No

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

Yes       No

C. Is the filer of this questionnaire employed by a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an Ownership of 10 percent or more?

Yes       No

D. Describe each affiliation or business relationship.

**4**

\_\_\_\_\_  
Signature of person doing business with the governmental entity

\_\_\_\_\_  
Date



**AGENDA INFORMATION SHEET**

**AGENDA DATE:** November 19, 2013

**DEPARTMENT:** Airport

**ACM:** Jon Fortune



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**SUBJECT**

Receive a report, hold a discussion and give staff direction regarding a proposed Taxilane Quebec Hangar Development at Denton Enterprise Airport.

**BACKGROUND**

Airport staff was approached in September 2012 by an engineering firm interested in developing hangars at Denton Enterprise Airport (DTO). Airport staff subsequently determined through surveying current DTO hangar management firms that there is a waiting list of aircraft owners prepared to lease new hangar space if it is made available (Exhibit 1). Design, construction, and operation of new hangar facilities would accommodate market demand for aircraft storage and generate positive revenues for DTO.

The City of Denton Purchasing Department issued a Request for Proposals (RFP) on behalf of Denton Enterprise Airport (DTO) on April 5, 2013 to solicit proposals for the development of aircraft hangars on approximately ten (10) acres of property at the Airport (Exhibits 2 and 3). The RFP Scope of Work/Technical Specifications solicited development of new hangar facilities using some combination of City and private resources. The Purchasing Department received three (3) responses from the RFP which were each build-to-suit for the City of Denton at DTO. The three proposals were recommended by Airport staff to be rejected in favor of a build-to-suit hangar development using professional engineering services to prepare construction specifications that can be publically bid through a construction procurement procedure.

Aguirre-Roden Engineers has worked with Airport staff to develop a Conceptual Design (Exhibit 4) and Financial Analysis to determine the economic feasibility of funding construction of aircraft hangars at DTO. Hangar space is proposed to be constructed through a competitive public bidding procedure. The hangars thus constructed are proposed to be leased to a professional management company for sub-lease to individual aircraft owners.

Aguirre-Roden Engineers will develop construction specifications, support the City of Denton Purchasing Department to solicit competitive construction bids and provide Construction Management services for the project. The budget for this full range of services would be established as not-to-exceed Two Hundred Seventy Two Thousand Eight Hundred Four Dollars (\$272,804). Exhibit 5 is a copy of the Aguirre-Roden scope of service which will be presented to the City Council as a part of a proposed Professional Services Agreement at a future date.

The proposed Taxilane Quebec Hangar Development is Phase I of a planned development of approximately twenty-two (22) acres of taxilane access property in the southeast area of the Airport. Phase I will be constructed in five (5) units of nested T-hangars and four (4) small box hangars. The construction schedule will be scoped to allow discontinuation of development if each unit is not substantially leased prior to completion. The schedule for completing Phase I of this project is mid-July 2014.

### **FISCAL INFORMATION**

Exhibit 6 shows a financial pro forma for Phase I of the Taxilane Quebec Hangar Development. Revenue from hangar leases is anticipated to cover the cost of capital for constructing the project, the management fee for ongoing administration of hangar leases and to produce net operating revenue of \$36,716 annually. The gross annual revenue is projected at \$163,590, with additional fuel flowage revenue of \$11,344. After the projected 20-year debt is retired, the annual debt service of \$130,039 will become unencumbered operating revenue. If leased as individual lots by aircraft owners in the future, the fully developed property could generate \$15,057 annually through forty (40) year ground leases.

The budget for professional design services is Two Hundred Seventy Two Thousand Eight Hundred Four Dollars (\$272,804). Construction is estimated to be One Million Four Hundred Seventy Seven Thousand One Hundred Ninety Six Dollars (\$1,477,196).

The total cost of One Million Seven Hundred Fifty Thousand Dollars (\$1,750,000) would be funded using the Airport Fund to pay debt service of City proceeds to be authorized by the City Council. A separate Council action will be presented to consider a Fiscal 2013/2014 Budget Amendment and a Reimbursement Ordinance for current project funding from planned General Obligation Bond proceeds available in mid-2014.

### **PRIOR ACTION/REVIEW (COUNCIL, BOARDS, COMMISSIONS)**

The Council Airport Committee reviewed the Taxilane Quebec Hangar Development proposal at their meeting on November 11, 2013 and directed Airport Staff to move forward with the project proposal, including a presentation of the project to the full City Council in Work Session.

### **RECOMMENDATION**

The option to fund construction of aircraft hangars to be owned by the City at DTO and managed by a third party is recommended by staff to be in the best interest of the Airport.

### **EXHIBITS**

1. Market survey conducted by Airport staff to identify a waiting list of aircraft owners interested in leasing hangar space at Denton Enterprise Airport;
2. Location map showing area to be developed with new hangars at Denton Enterprise Airport;

3. Development map for southeast Airport taxilane access property;
4. Phase I Concept Development Plan;
5. Proposed scope of work for Aguirre-Roden Engineers to provide professional engineering services for the Taxilane Quebec Hangar Development;
6. Financial Pro Forma.

Respectfully submitted:



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Quentin Hix, Director of Aviation

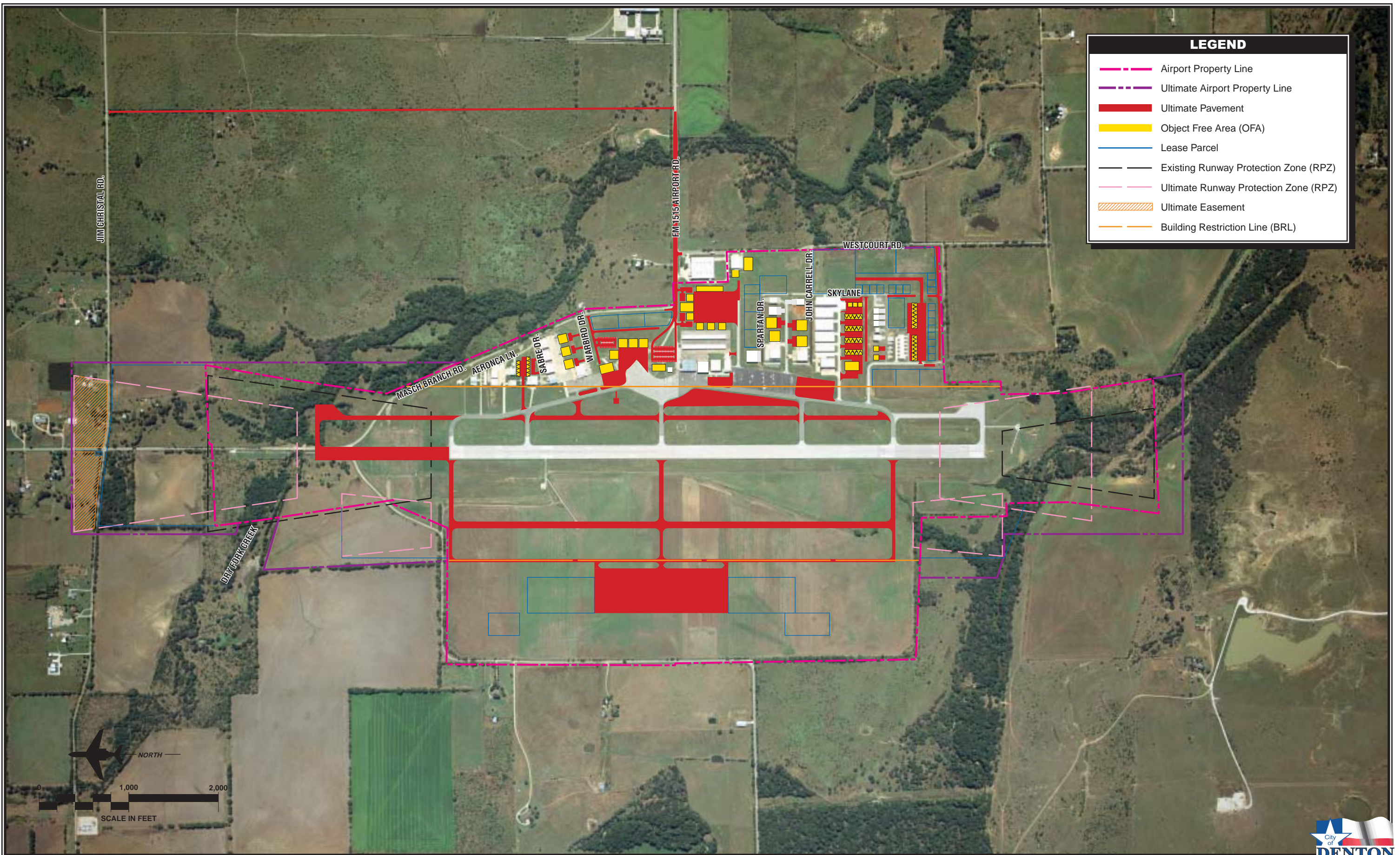
## Denton Enterprise Airport Hangar Lease Waiting List November 2013

Denton Enterprise Airport hangar space is owned and managed by private developers or individuals and the contact information is considered proprietary. There is potential duplication of some aircraft on alternate waiting lists; however, a staff analysis in past months indicated the majority of aircraft listed on each individual list are unique. A recent update of the major hangar owners is summarized as follows:

<u>Hangar Owner</u>	<u>Aircraft Listed As Waiting For Hangar Space</u>
Business Air Management .....	20 total aircraft
Nebrig Associates .....	42 single engine 20 twin engine 5 corporate
	<hr style="width: 10%; margin-left: auto; margin-right: 0;"/> <b><u>67</u></b> total aircraft
Doug Weyer .....	20 total aircraft
<b>Total Aircraft     <u>107</u></b>	

In addition to aircraft listed on private hangar ownership waiting lists, the Airport administrative office receives an average of two (2) calls per week from individual aircraft owners seeking hangar lease information for Denton Enterprise Airport.

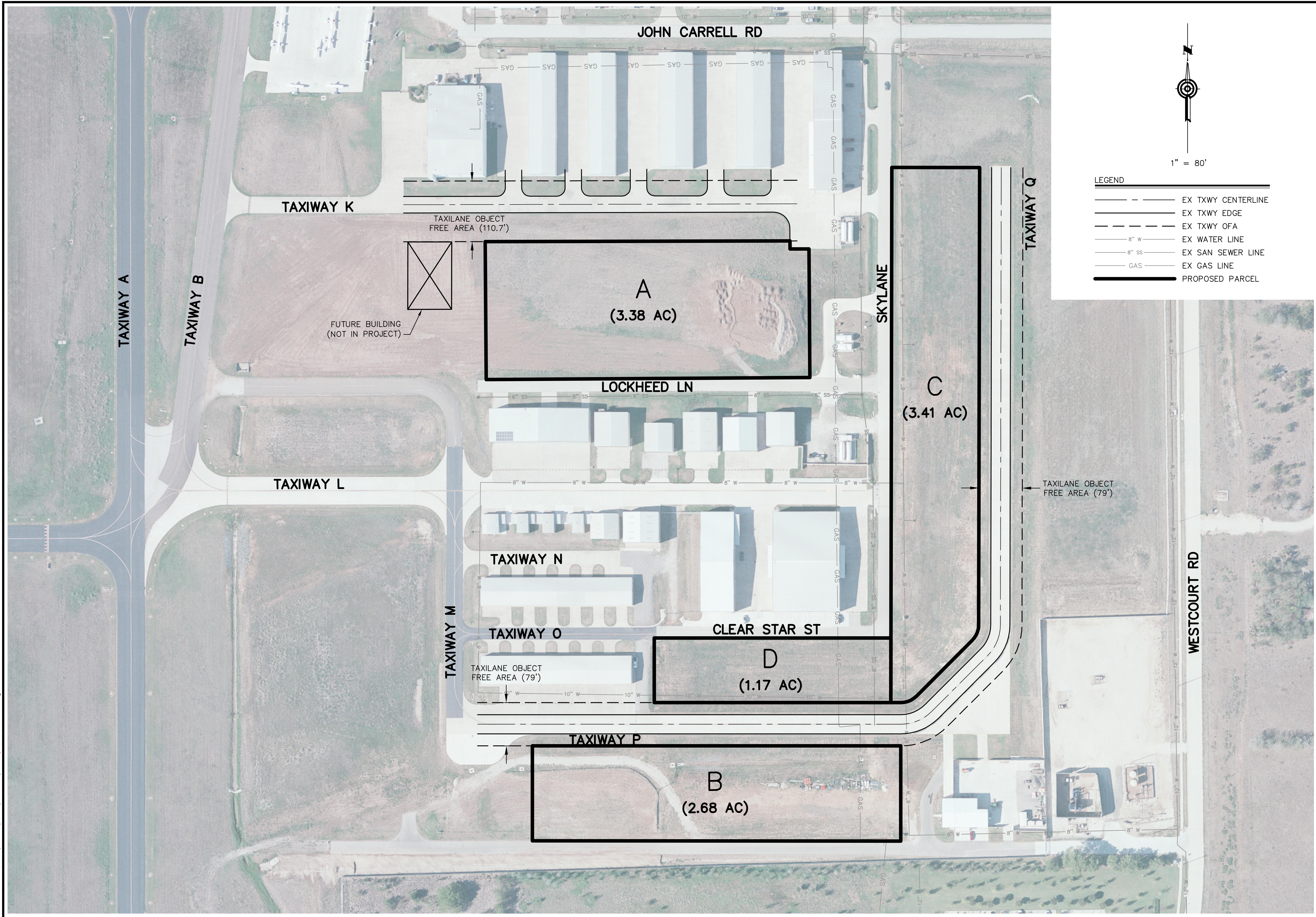
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**LEGEND**

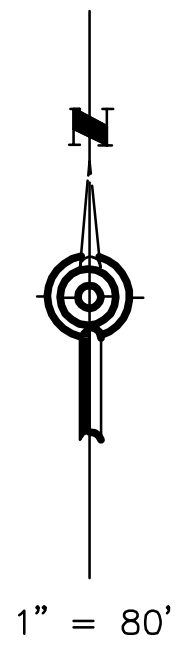
- Airport Property Line
- Ultimate Airport Property Line
- █ Ultimate Pavement
- █ Object Free Area (OFA)
- █ Lease Parcel
- Existing Runway Protection Zone (RPZ)
- Ultimate Runway Protection Zone (RPZ)
- ▨ Ultimate Easement
- Building Restriction Line (BRL)







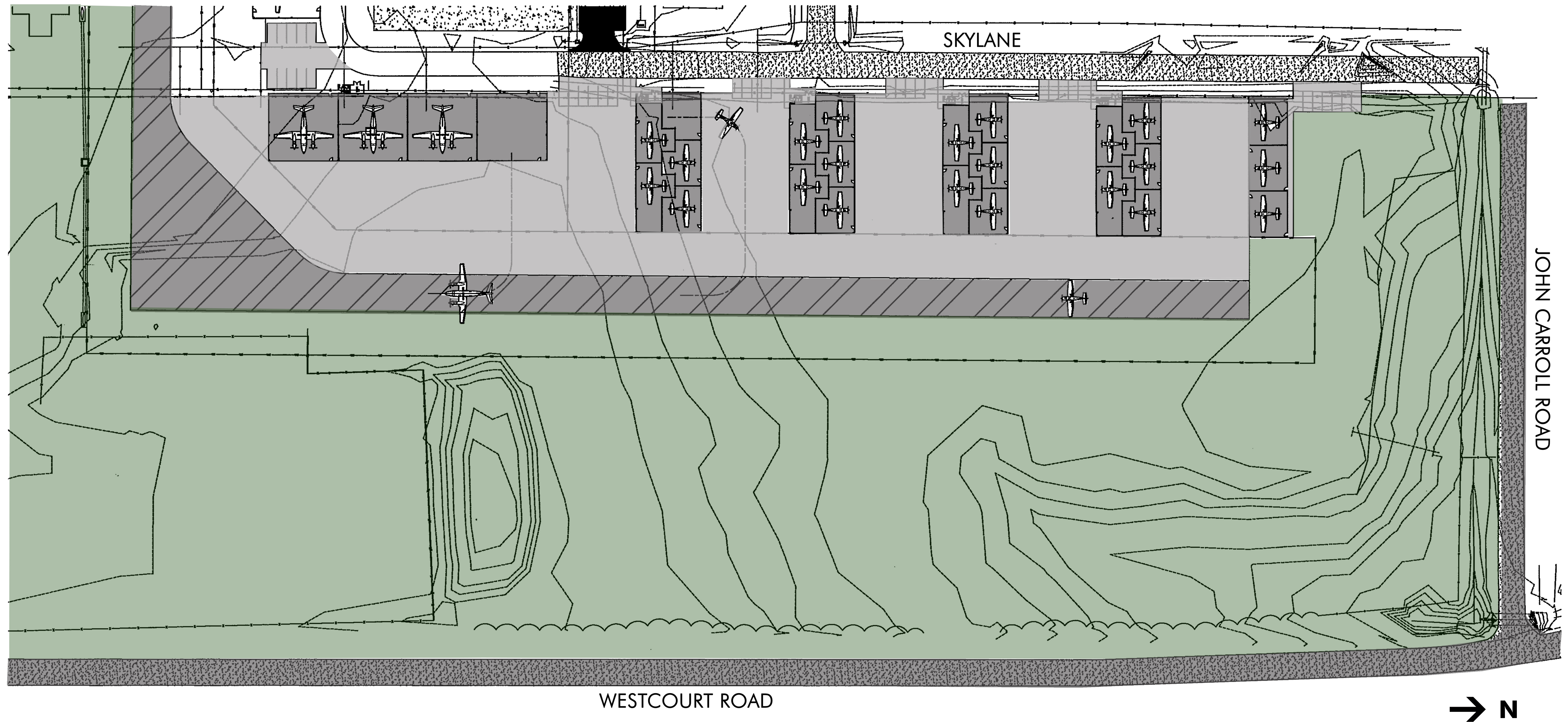
**LEGEND**

- EX TXWY CENTERLINE
- EX TXWY EDGE
- - - EX TXWY OFA
- 8" W EX WATER LINE
- 8" SS EX SAN SEWER LINE
- GAS EX GAS LINE
- PROPOSED PARCEL



 Kimley-Horn and Associates, Inc. <small>2201 West Regal Lane, Suite 275, Irving, TX 75063, (214) 262-5600                  Registration Number F-328</small>	<b>DENTON AIRPORT</b>	<b>HANGAR                  DEVELOPMENT                  EXHIBIT</b>	 <b>DTO</b> Denton Airport <small>The North Texas Airport of Choice</small>	DATE: DECEMBER 2012 DESIGN: XXX DRAWN: XXX CHECKED: XXX KHA NO.: XXXXXXXXX
No. _____ Revision _____ By _____ Date _____	SHEET NUMBER <h1 style="margin: 0;">EX 1</h1>			

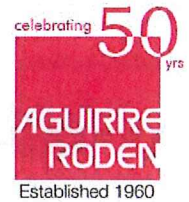




CITY OF DENTON  
DENTON MUNICIPAL AIRPORT  
HANGAR DEVELOPMENT PROJECT - PHASE I  
OCTOBER 11, 2013



**AGUIRRE RODEN**  
 10670 N. CENTRAL EXPWY, 6<sup>th</sup> FL.  
 DALLAS, TEXAS 75231  
 TEL 972.788.1508  
 FAX 972.788.1583  
 WWW.AGUIRRERODEN.COM



**THE CAN-DO SPIRIT THAT GETS THE JOB DONE®**

September 19, 2013 (Revised)

Mr. Quentin Hix  
 Director of Aviation  
 Denton Municipal Airport  
 5000 Airport Road  
 Denton, Texas 76207

**RE: PROPOSAL FOR PROFESSIONAL DESIGN SERVICES**

Dear Quentin:

Aguirre Roden is pleased to submit this proposal for professional design services. These services include:

- Project Management
- Topographic and Utility Surveying,
- Civil Engineering,
- Architectural Hangar Design,
- Structural Engineering,
- Mechanical Engineering,
- Plumbing Design,
- Electrical Engineering, and
- Construction Cost Estimating.

These services are initially focused on the first phase of your five-year plan for the development of general aviation hangars on approximately 10 acres of undeveloped land at the Denton Airport, and may also include other design services during that period as the City of Denton may direct.

**Phase One - General**

The first phase of your five-year plan for the development of the Denton Airport includes approximately thirty (30) general aviation hangars consisting of 24 "nested T" hangars and six (6) larger "jet pods" which can accommodate larger aircraft. The site is located at the northwest corner of Taxiway P and Taxiway Q, and is approximately 3.41 acres in size.

Working closely with the Denton Airport staff, Aguirre Roden will provide design and engineering services necessary to produce construction documents suitable for open public bidding and construction. We will adhere to the City of Denton's General Conditions as listed in the Professional Services Agreement regarding the schematic design phase, design development phase, construction documents phase, construction contract procurement phase and the administration of the construction contract during the construction phase.

**Phase One – Specific Services**

Project Management and Architecture

Aguirre Roden's Project Manager, David Powyszynski, AIA, LEED AP, will manage this project from inception through completion during the five year plan. He will ensure that the City of Denton and the Denton Airport staff are continually informed of project scope, schedule and costs.

#### Topographic and Utility Surveying

An electronic map will be developed with 1 foot contour intervals on a nominal 50' grid system tied to existing control points and project benchmark system. Manhole flowline and rim elevations, perimeter roadways and taxiways to the opposite side of the pavement will be captured. Detention pond topographic surveying is not included in this proposal, but is available as an additional service.

#### Civil Engineering

Our civil engineering consultant, Kimley-Horn and Associates, will prepare grading plans, paving and striping plans, earthwork calculations, drainage area map and calculations, storm drainage plans and profiles, utility plans, water and wastewater plans, erosion control plans, dimensional control plans, details and opinions of probable construction cost. Offsite detention plans are not included in this proposal, but are available as an additional service.

#### Architectural Hangar Design

Working closely with the Denton Airport staff a prototype "nested T and jet pod" hangar design will be developed and refined. Emphasis will be focused on functionality, energy efficiency, cost effectiveness and ease of maintenance. Although the design of larger hangars to accommodate larger aircraft such as Challenger or Lear jets is not anticipated in the first phase, these services are available as an additional service.

#### Structural Engineering

Aguirre Roden's structural engineering staff will develop foundation design and work with the hangar designers to confirm structural integrity and details.

#### Mechanical Engineering

The hangars are intended to be ventilated, but not air-conditioned. Heating and air-conditioning can be provided to specific hangars at additional cost if desired.

#### Plumbing Design

Each "nested T and jet pod" hangar will include a small restroom and exterior hose bibs for maintenance purposes. Aguirre Roden's plumbing designers will work with the civil engineers to ensure that rainwater is directed to the stormwater system.

#### Electrical Engineering

Interior and exterior hangar lighting and convenience power receptacles will be provided. Emphasis will be placed on energy efficiency and ease of maintenance. Low voltage systems such as security systems, fire alarm systems or audio/visual systems are not included in this proposal, but are available as an additional service.

#### Construction Cost Estimating

Aguirre Roden's sister construction company, Aguirre Roden Building Systems, shall provide cost estimating services at each phase of the hangar development. Historically, their estimates have proven to be within 5% to 10% accuracy when compared to independent bids. This accuracy will give comfort to the City of Denton and the Denton Airport staff in their planning and budgeting process.

Aguirre Roden will exercise its professional judgment within the prevailing standard of care to design the project within the Owner's budget. However, there are numerous contributing factors which are outside of the design professional's control which contribute to the construction cost such as existing unforeseen conditions, availability of specialty suppliers and installers, Owner requirements and general market instability of material costs.

### Compensation

Compensation for the design of Phase One of this project shall be a stipulated lump-sum fee of \$272,804.00. This includes the following:

• Project Management	\$ 85,656.00
• Topographic and Utility Surveying,	\$ 6,000.00
• Civil Engineering,	\$ 60,100.00
• Architectural Hangar Design,	\$ 31,816.00
• Structural Engineering,	\$ 15,588.00
• Mechanical Engineering,	\$ 5,500.00
• Plumbing Design,	\$ 14,764.00
• Electrical Engineering, and	\$ 14,880.00
• Construction Cost Estimating.	<u>\$ 38,500.00</u>
	\$272,804.00

We shall invoice monthly based upon the percentage of the work completed. Reimbursable expenses will be listed separately, with receipt back-up if requested. Payment is expected to be net 30 days.

### Compensation for Conceptual Design

Before the full design effort for construction documents is started, the City of Denton desires Aguirre Roden to complete conceptual design of the hangar configuration, develop a conceptual cost estimate and determine if the return on investment to the City can be realized. This conceptual design effort shall be limited to \$38,500.00 of the overall design fee plus \$1,500.00 of reimbursable expenses.

### Reimbursable Expenses

Reimbursable expenses such as reproduction of drawings and specifications, courier expenses, travel, lodging, rental car, meals and incidental expenses such as the State-required accessibility review and inspection are in addition to the proposed fees. They will be invoiced at 1.10 times the expense and will not exceed \$10,000.00 without your written approval.

### Owner's Responsibilities

Soil borings and geotechnical reports are not included in the proposed design and engineering fees. Aguirre Roden can assist the City of Denton in procuring these services if desired, as a reimbursable expense.

### Owner Shall Provide

- A geotechnical investigation to establish foundation and paving recommendations.

### **Schedule**

- Conceptual Design and Analysis - 4 Weeks from written Notice to Proceed.
- Preliminary Design - 3 Weeks
- Design Development - 9 Weeks
- Construction Documents - 9 Weeks
- Issue for Bidding - 1 Week
- Addenda & Pre-bid - 3 Weeks
- Bid Evaluation and Award - 1 Week
- Construction Administration - Throughout the construction period.

### **Extension of Services**

We anticipate that the design and construction of Phase One of the Denton Airport development plan will take approximately one year. The City of Denton may extend the Professional Services Agreement at any time to address the following phases of the 5 year development plan.

### **Indemnification**

The Client shall indemnify and hold harmless Aguirre Roden, Inc. and all of its personnel from and against any and all claims, damages, losses, and expenses (including reasonable attorney's fees) arising out of or resulting from the performance of the services, provided that any such claim, damage, loss, or expense is caused in whole or in part by the negligent act, omission, and/or strict liability of the Client, anyone directly or indirectly employed by the Client (except Aguirre Roden), or anyone for whose acts any of them may be liable.

### **Risk Allocation**

Aguirre Roden will use the currently accepted industry standard of care in developing the design and engineering of the project. In recognition of the relative risks, rewards, and benefits of the project to both the Client and Aguirre Roden, the risks have been allocated such that the Client agrees that to the fullest extent permitted by law, Aguirre Roden's total liability to the Client for any and all claims, losses, expenses, damages, or claim expenses arising out of this agreement from any cause or causes, shall not exceed Aguirre Roden's fee. Such causes include Aguirre Roden's negligence, errors and omissions, strict liability, or breach of contract or breach of warranty.

### **Statutory Statement of Jurisdiction** (Required by State Law - Art.249a Texas Revised Civil Statutes and Art. 249e, Texas Civil Statutes)

Individuals licensed under the Texas Architectural Registration Act and the Texas Interior Designers Registration Law are subject to the jurisdiction of the Texas Board of Architectural Examiners, 333 Guadalupe, Suite 2-350, Austin, Texas 78701-3942, 512-305-9000.



**Summary**

We are excited about the first phase of your airport development plans and we look forward to being a part of your team. Your consideration of our proposal is appreciated. Please call me if you desire any clarification to this proposal. My direct line and cell phone are provided below for your use.

Sincerely,  
Aguirre Roden, Inc.

David B. Rowyszynski, AIA, LEED AP  
Senior Vice President

Direct Line: 972-789-2610  
Cell Phone: 214-477-1274

**Authorization**

To authorize this proposal dated September 19, 2013, please sign in the space provided below and return one signed copy of this proposal to us for our files. We can begin work upon receipt of an emailed copy of this signature page. This proposal will be the agreement between us for this project. *(It is assumed that a formal Professional Services Agreement will be prepared using the City of Denton's standard document as a base, modified and agreed upon by both parties)*

Authorized by: \_\_\_\_\_ date

Name: \_\_\_\_\_  
(typed or printed)

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

## Taxilane Quebec Hangar Development Debt Service Summary

Exhibit 6

### Assumptions:

1. Funding for construction at a maximum of \$1,750,000 will be provided from City Certificate of Obligation revenue;

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2. The City (Airport) will seek a management company to administer the hangar leasing for a 5% fee based upon gross revenue;

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3. Based upon a 95% occupancy rate, the fully developed annual revenue from hangar rental is projected to be \$163,590;

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4. Management Fee is calculated as \$163,590 X 0.05 = \$8,180 annually;

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5. Fuel Flowage Revenue is estimated using consumption profiles for new based aircraft;

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6. Hangar lease and wholesale fuel revenue is projected to increase 1.0% annually;

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7. Debt Service is projected using a 4.25% cost of capital.

### Financial Performance:

#### 20 Year Amortization

Year	Annual Lease Revenue	Annual Fuel Flowage Revenue	Total Annual Revenue	Annual Debt Service	Annual Mgt Fee	Net Annual Revenue
1	\$163,590	\$11,344	\$174,934	\$130,039	\$8,180	\$36,715
2	\$165,226	\$11,457	\$176,683	\$130,039	\$8,261	\$38,383
3	\$166,878	\$11,572	\$178,450	\$130,039	\$8,344	\$40,067
4	\$168,547	\$11,688	\$180,235	\$130,039	\$8,427	\$41,769
5	\$170,232	\$11,805	\$182,037	\$130,039	\$8,512	\$43,486
6	\$171,935	\$11,923	\$183,858	\$130,039	\$8,597	\$45,222
7	\$173,654	\$12,042	\$185,696	\$130,039	\$8,682	\$46,975
8	\$175,391	\$12,162	\$187,553	\$130,039	\$8,770	\$48,744
9	\$177,145	\$12,283	\$189,428	\$130,039	\$8,857	\$50,532
10	\$178,916	\$12,407	\$191,323	\$130,039	\$8,946	\$52,338
11	\$180,705	\$12,531	\$193,236	\$130,039	\$9,035	\$54,162
12	\$182,512	\$12,656	\$195,168	\$130,039	\$9,126	\$56,003
13	\$184,337	\$12,783	\$197,120	\$130,039	\$9,217	\$57,864
14	\$186,181	\$12,911	\$199,092	\$130,039	\$9,309	\$59,744
15	\$188,042	\$13,040	\$201,082	\$130,039	\$9,402	\$61,641
16	\$189,923	\$13,170	\$203,093	\$130,039	\$9,496	\$63,558
17	\$191,822	\$13,302	\$205,124	\$130,039	\$9,591	\$65,494
18	\$193,741	\$13,435	\$207,176	\$130,039	\$9,687	\$67,450
19	\$195,678	\$13,569	\$209,247	\$130,039	\$9,784	\$69,424
20	<u>\$197,635</u>	<u>\$13,705</u>	<u>\$211,340</u>	<u>\$130,039</u>	<u>\$9,882</u>	<u>\$71,419</u>
TOTAL	<u>\$3,602,090</u>	<u>\$249,785</u>	<u>\$3,851,875</u>	<u>\$2,600,780</u>	<u>\$180,105</u>	<u>\$1,070,990</u>

## AGENDA INFORMATION SHEET

**AGENDA DATE:** November 19, 2013

**DEPARTMENT:** Planning and Development

**ACM:** John Cabrales, Jr.



### **SUBJECT**

Receive a report, hold a discussion, and give staff direction regarding proposed changes to the current Permit and Fee Schedule.

### **BACKGROUND**

Since 1998, City Council has adopted four (4) amendments to the Building Permit Fee Schedule for various building permit types and associated fees for residential and commercial construction. The latest amendment occurred in 2008 for new permit fees for one and two-family dwellings. The Building and Inspections Division recently performed a review of the existing building permit fees to determine how competitive Denton is with other comparison cities and if there are fee adjustments warranted. As part of this review, Staff surveyed several north Texas municipalities (i.e., Flower Mound, Lewisville, Frisco, Allen, McKinney, and Fort Worth). Following the completion of this review, staff is prepared to make recommendations for Council's consideration on amendments to the fee structure.

### **RECOMMENDATION**

Staff members met recently to discuss the current Building Permit and Fee Schedule and to see if any fees needed to be adjusted or added. As each fee was discussed, staff was asked to consider these questions before making any suggestions about changing or adjusting a fee.

- Does this fee cover the cost of our service to process, review, and inspect this item?
- How does this fee compare with similar fees from other comparable cities?
- Is this fee onerous for the person who is required to obtain the permit?
- Do we keep this fee low because the value of the work being performed is also low?

After considering these questions, staff recommends the following changes to our Fee Schedule (there are other less-significant changes recommended and those will not be listed below – please refer to Exhibit 1 for all suggested changes):

1. One and Two-Family Dwellings – Staff compared our fees to Allen, Frisco, McKinney, and others, and determined that their fees are approximately double Denton's fees, staff is recommending that the City adopt the same fee table as Allen, Frisco, and McKinney. The existing fee (Exhibit 1, Table 1), is a permit fee that is based on square footage



\$0.40/sf that provides for a maximum fee amount of \$1400 for a 3,500 square foot home. As larger homes have been constructed, the City has missed the additional revenue. Staff proposes a home valuation based fee that is priced based on the total value of the proposed home within specific value ranges (i.e., \$1 to \$100,000.00). This would result in an overall increase in this revenue and capture more of the housing sizes that may be constructed. This valuation fee structure is consistent with the commercial fee structure currently implemented.

2. Fence and Retaining Walls – Denton’s fee for fences and retaining walls is \$35.00. The concern is when the fence or retaining wall is several hundred feet long; \$35.00 does not cover the plan review and the associated inspections. Staff is recommending that the \$35.00 fee remain with this caveat, that \$35.00 remains a minimum fee and that an extra \$35.00 will be charged for each additional 100 linear feet of fence or retaining wall.
3. Multi-Family Dwellings – after comparing our permit fees with other comparable cities (as mentioned above), Staff found that Denton’s permit fees are less than half the average fees of some other similar cities. Staff is recommending that the City use the current New Commercial Building Permit Fee table for multi-family dwelling permit fees. If we use this existing table, which has been used for many years for all other new commercial permits, the fees for multi-family permits would be similar to the average of other comparable cities. Presently, because of their construction type and overall site development, Multi-family dwellings are viewed as commercial structures. The existing fee (Exhibit 1, Table 2), is a permit fee that is based on square footage \$0.18/sf. Staff proposes a valuation based fee (Exhibit 1, Table 3) that is priced based on the total value of the proposed Multi-Family structure within specific value ranges (i.e., \$1 to \$100,000.00) with no maximum. This would result in an overall increase in this revenue and align the fee structure with the actual construction type and site development of the property.
4. Temporary Certificates of Occupancy – This is a new fee. The development community is familiar with a Certificate of Occupancy (every new commercial structure or business is required to have one); however, there are many instances when a contractor is close to the end of a project and he asks the City for a Temporary Certificate of Occupancy (T.C.O.). This T.C.O. is a permit that the Building Official may issue, if he chooses, to allow access to the building or facility for a specific purpose and for a specific group of people. An example would be if someone is building a restaurant and the only items left, in order to get a final inspection, are the installation of the parking lot light poles, the installation of the handicapped parking signs, and a few trees that are on backorder. The contractor may request a T.C.O. allowing for the stalking of the kitchen and allowing the kitchen crew to practice cooking on the new equipment. The Building Official is permitted to issue a T.C.O. including stipulations that the structure will only be used for storing food and supplies, and that only kitchen staff is allowed to occupy the building. T.C.O.s are also required to have an expiration date. They are used on almost every commercial building project.

T.C.O.s take staff time, extra inspections, and extra consideration. Staff is recommending that the City charge a nominal fee (Exhibit 1, Table 7, Line 29) of \$.005/sq ft with a minimum \$100 fee. This will cover a percentage of the administration cost for a T.C.O.

These four changes to our Fee Schedule, coupled with the other smaller fee adjustments detailed in exhibit 1 will help to balance all of our current fees. These changes will help to cover our cost of services.

### **PRIOR/ACTION REVIEW**

October 21, 2008 - City Council approved new permit fees for one and two-family dwellings (Ord. 2008-260).

September 23, 2008 - City Council approved a new Building Permit Fee Schedule including several permit and fee changes (2008 – 218).

November 27, 2001 - City Council approved a change in new commercial building permit fees (Ord. 2001-448).

September 8, 1998 - City Council approved a new Permit and Inspection Fee Schedule (Ord. 1998-269).

### **FISCAL INFORMATION**

The changes suggested by Staff to the Building Permit and Fee Schedule could have a significant impact to the General Fund. Currently, the projected revenue for the Building Inspections Division for fiscal year 2013/2014 is \$2,192,140. If all of the suggested fee changes were adopted by Council, the projected revenue for fiscal year 2013/2014 to the General Fund could conservatively be \$2,400,000. This could be an increase of approximately \$200,000 to the General Fund.

### **EXHIBITS**

1. Current Building Permit and Fee Schedule showing proposed changes
2. Spreadsheet showing proposed revenues with and without suggested fee changes

Prepared by:



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Kurt Hansen, CBO, CPM  
Building Official

Respectfully submitted:



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Brian Lockley, AICP, CPM  
Director of Planning and Development



**BUILDING INSPECTIONS**

221 N ELM STREET  
 DENTON, TEXAS 76201  
 940-349-8360 PHONE  
 940-349-7208 FAX



**PERMIT AND FEE SCHEDULE**

(Effective January 1, 2014)

Table of Contents:

Table 1 - Permit Fees for 1 & 2 Family Dwellings	Table 12 - Water Tap & Meter Fees
Table 2 - Permit Fees for 1 & 2 Family Dwellings	Table 13 - Water Tap Fees
Table 3 - New Comm & Multi Family Building Fees	Table 14 - Wastewater Tap Fees
Table 4 - Electrical Permit Fees	Table 15 - Water Impact Fees
Table 5 - Mechanical Permit Fees	(Lots Platted before 1998 & after 2008)
Table 6 - Plumbing Permit Fees	Table 16 - Wastewater Impact Fees
Table 7 - Miscellaneous Fees	(Lots Platted before 1998 & after 2008)
Table 8 - Additions / Alterations / Fire Damage	Table 17 - Water & Wastewater Impact Fees
Table 9 - Sign Permit Fees	(Lots Platted between 1998 - 2003)
Table 10 - Consumer Health Permit Fees	Table 18 - Water & Wastewater Impact Fees
Table 11 - Engineering Inspection & Parking Lot Fees	(Lots Platted between 2003-2008)

<b>Table 1 Permit Fees for 1 &amp; 2 Family Dwellings</b>		
<i>Type</i>	<i>Permit Fee</i>	<i>Proposed Fee</i>
1. Permit Fee	\$0.40 / SF, \$450 Min. & \$1,400 Max.	See Table 2 below
2. Plan Review Fee	\$60.00	
3. Temporary Power Pole	\$15.00	
4. Temporary Utilities Fee	\$35.00	
5. Fence Permit - Residential	\$35.00	
6. Retaining Wall Permit		\$35.00 / 100 LF
7. Retaining Wall Plan Review		\$60.00
8. Park Development Fee	\$291.00	

<b>Table 2 Permit Fees for 1 &amp; 2 Family Dwellings</b>		
<i>Total Valuation*</i>		<i>Proposed Fee</i>
1. \$1 to \$100,000.00		\$643.75 for the first \$50,000.00 plus \$7.00 for each additional \$1000.00 or fraction thereof, to and including \$100,000.00
2. \$100,001.00 to \$500,000.00		\$993.75 for the first \$100,000.00 plus \$5.60 for each additional \$1000.00 or fraction thereof, to and including \$500,000.00
3. \$500,001.00 to \$1,000,000.00		\$3,233.75 for the first \$500,000.00 plus \$4.75 for each additional \$1,000.00 or fraction thereof, to and including \$1,000,000.00

<b>Table 2 Permit Fees for Multi Family Dwellings</b>		
<i>Type</i>	<i>Permit Fee</i>	<i>Proposed Fee</i>
1. Permit Fee	\$0.18 / SF	Included in Table 3 below
2. Plan Review Fee	50% of Permit	Included in Table 3 below

<b>Table 3 New Commercial and Multi Family Building Permit Fees</b>		
<i>Total Valuation*</i>	<i>Fee</i>	<i>Proposed Fee</i>
1. \$1 to \$100,000.00	\$411.00 for the first \$50,000.00 plus \$3.00 for each additional \$1000.00 or fraction thereof, to and including \$100,000.00	
2. \$100,000.00 to \$500,000.00	\$561.00 for the first \$100,000.00 plus \$2.00 for each additional \$1000.00 or fraction thereof, to and including \$500,000.00	
3. \$500,000.01 to \$1,000,000.00	\$1361.00 for the first \$500,000.00 plus \$5.00 for each additional \$1,000.00 or fraction thereof, to and including \$1,000,000.00	\$1361.00 for the first \$500,000.00 plus \$7.56 for each additional \$1,000.00 or fraction thereof, to and including \$1,000,000.00
4. \$1,000,000.01 and up	\$5141.00 for the first \$1,000,000.00 plus \$3.25 for each additional \$1,000.00 or fraction thereof	
5. Inspections outside of normal business hours	\$40.00 per hour/Min. 2 hours (Min. Fee \$80.00)	
6. Plan Review Fee	50% of the Building Permit Fee (Min. fee \$60.00)	
7. Site Plan Review Fee	\$0.03 per Building SF, \$50.00 Min. not to exceed \$1,500.00	
8. For the use of outside consultants for plan checking and inspections or both	Actual Cost	
*Building Valuation Data shall be based on the most current Building Safety Magazine, year-end issue as published by the International Code Council.		

<b>Table 4 Electrical Permit Fees</b>		
<i>Type</i>	<i>Permit Fee</i>	<i>Proposed Fee</i>
1. Minimum Fee	\$0.02 per SF, \$35.00 Min.	\$0.03 per SF, \$35.00 Min.
2. Electrical Service Update		\$35.00

<b>Table 5 Mechanical Permit Fees</b>		
<i>Type</i>	<i>Permit Fee</i>	<i>Proposed Fee</i>
1. Minimum Fee	\$0.02 per SF, \$35.00 Min.	\$0.03 per SF, \$35.00 Min.

<b>Table 6 Plumbing Permit Fees</b>		
<i>Type</i>	<i>Permit Fee</i>	<i>Proposed Fee</i>
1. Minimum Fee	\$0.02 per SF, \$35.00 Min.	\$0.03 per SF, \$35.00 Min.
2. Lawn Sprinkler System	\$95.00	
3. Lawn Sprinkler Plan Review		\$35.00 Residential
4. Lawn Sprinkler Plan Review		\$60.00 Commercial
5. Lawn Sprinkler Alteration		\$35.00

<b>Table 7 Miscellaneous Fees</b>		
<i>Type</i>	<i>Permit Fee</i>	<i>Proposed Fee</i>
1. Curb Cut Permit	\$51.00	
2. Fence Permit - Residential	\$35.00	
3. Fence Permit - Commercial		\$35.00 / 100 LF
4. Retaining Wall Permit		\$35.00 / 100 LF
5. Retaining Wall Plan Review		\$60.00
6. Temporary Gas/Electric	\$35.00	
7. Certificate of Occupancy	\$95.00	
8. Construction Trailer (temporary)	\$50.00	
9. House Moving Permit	\$95.00	
10. Residential Demolition Permit	\$95.00	
11. Residential Alteration Demolition	\$35.00	
12. Commercial Demolition Permit	\$95.00	
13. Spa/Hot Tub/Above Ground Pool	\$75.00	
14. Pool	\$275.00	
15. Re-inspection Fee	\$40.00	
16. Variance Filing Fee	\$150.00	
17. Landscape Fee	\$50.00	
18. Mobile Home Park Annual License	\$205.00 + \$4.10 per stand	
19. Mobile Home Move-in		\$95.00
21. Electrical Contractor Annual License	\$75.00	
22. Plumbing Contractor Annual License	N/A	
23. Irrigation Contractor Annual License	\$75.00	
24. Mechanical Contractor Annual License	\$75.00	
25. General Contractor Annual License**	\$75.00	
26. Working Without a Permit		Double Permit Fee
27. Investigation Fee		\$80.00
28. Administrative Fee		\$35.00
29. Temporary Certificate of Occupancy		.005 per SF, \$100.00 Min
30. Temporary Use Permit – Storage Unit		\$35.00
31. Temporary Batch Plant		\$95.00

\*\* General Contractor includes all of the following:  
**General Contractor, Home Builder, Concrete Contractor, Pool Contractor, Fencing Contractor**  
(During initial registration, the license holder must be present.)

<b>Table 8</b>				
<b>Additions / Alterations / Fire Damage</b>				
<i>Type</i>	<i>Min. Fee</i>	<i>Permit Fee</i>	<i>Plan Review Fee</i>	<i>Proposed Fee</i>
1. 1 & 2 Family Dwellings	\$35.00	\$0.14 per sq ft	\$60.00	\$0.25 / SF, \$35 Min.
2. Triplex & Townhouse	\$35.00	\$0.17 per sq ft	\$60.00	\$0.25 / SF, \$35 Min
3. Multi-Family (4 units & above)	\$35.00	\$0.17 per sq ft	50% of Permit, Min. \$60.00	\$0.25 / SF, \$35 Min
4. Commercial Buildings	\$35.00	\$0.17 per sq ft	50% of Permit, Min. \$60.00	\$0.25 / SF, \$35 Min

<b>Table 9</b>		
<b>Sign Permit Fees</b>		
<i>Type</i>	<i>Permit Fee</i>	<i>Proposed Fee</i>
1. Sign Contractor Annual License	\$75.00	
2. Off Premise signs on State Highways: Annual Review	\$100.00	
<b>All Other Sign Permits</b>		
3. 0-60 sq ft	\$35.00	
4. 60-120 sq ft	\$55.00	
5. 120-250 sq ft	\$75.00	
6. >250 sq ft	\$110.00	
7. Wind Device Permits	\$95.00	
8. Special Exception Petition	\$250.00 per request	
9. Sign Variance Petition	\$250.00 per variance	
10. Sign Appeal Petition	\$250.00 per appeal	
11. Special Sign District	\$225.00	
12. Sign Installed Without Permit	Scheduled Fee Doubled	

<b>Table 10</b>		
<b>Consumer Health Permit Fees</b>		
<i>Permit or Establishment</i>	<i>Fee</i>	<i>Proposed Fee</i>
1. Food Handler Permit – 2 Years	\$25.00	
2. Food Handler Replacement	\$5.00	
3. Food Manager Registration	\$10.00	
4. Beer & Wine Permits	\$25.00 processing Fee (new apps) \$87.50 on-premise \$30.00 off-premise \$125.00 late night permit fee \$75.00 beer only	
5. Bars	\$275.00	
6. Mixed Beverage permit	\$25.00	
<b>Commercial Pools</b>		
7. Pool Operator Certification	\$50.00	
8. Pool Application Fee	\$250.00	
9. Pool Re-inspection Fee	\$80.00	
10. Annual Pool Permit	\$160.00	
11. Spa Application Fee		\$80.00
12. Spa Re-inspection Fee		\$40.00
<b>Restaurant</b>		
13. <2000 sq ft GFA	\$310.00	
14. >2000 sq ft GFA	\$485.00	
15. Class I Mobile Food Unit	\$175.00	
16. Class II Mobile Food Unit	\$310.00	
17. Class III Mobile Food Unit	\$175.00	
18. Class IV Mobile Food Unit	\$75.00	
19. Concession Stand, snow-cone stand or similar structure	\$175.00	
20. School Cafeteria	\$150.00	
<b>Grocery Store</b>		
21. <12,000 sq ft GFA	\$325.00	
22. >12,000 sq ft GFA	\$450.00	
23. Convenience Store without deli	\$250.00	
24. Convenience Store with deli	\$300.00	
<b>Miscellaneous &amp; Temporary</b>		
25. Daycare	\$150.00 + \$1.00 per child	
26. Nursing Homes + all others	\$275.00	
27. Farmers/Community Mkt-Annual	\$240.00	
28. Farmers/Community Mkt-Monthly	\$40.00	
29. Seasonal Permit Fee	\$75.00	
30. Temporary Permit	\$35.00	
31. Application fee for new permits	\$250.00	
32. Administrative Fee	35.00	
33. Damaged DVD Return Fee		\$70.00



<b>Table 11</b>		
<b>Engineering Inspection and Parking Lot Fees</b>		
<i>Inspection Type</i>	<i>Inspection Fees</i>	<i>Proposed Fee</i>
1. Initial Plan Review	\$1,300.00	
2. Fee after 2nd Re-submittal	\$500.00	
3. Clearing & Grading Permit Review	\$350.00	
4. Clearing & Grading Plan Review	\$100.00	
5. Repairs of Construction in Right-of-Way	\$100.00 per hour	
6. Overtime (after 5:00 pm on weekdays & weekends)	\$135.00 per hour	
<b>Parking Lot Permit</b>	<b>Permit Fees</b>	
7. 1-50 spaces	\$540.00	
8. 51-100 spaces	\$720.00	
9. 101-250 spaces	\$900.00	
10. 251-500 spaces	\$1,080.00	
<b>Fees for Appeals and Variances to Traffic Safety Commission</b>		
11. Fee Per Appeal/Variance	\$300.00	

Exhibit 2

FY 13-14 Budget with Proposed Fee Changes Projected

Account No.	RESOURCES	FY 2011-12 ACTUAL	FY 2012-13 BUDGET	FY 2012-13 ESTIMATE	FY 2013-14 Proposed with No Fee Changes	FY 13-14 Proposed Growth with No Fee Changes	FY 13-14 with Proposed Fee Changes	FY 13-14 Growth with Proposed Fee Changes
4138	Temp Gas Permits	\$7,525	\$6,695	\$7,000	\$7,200	7.5%	\$7,200	0.0%
4102	Food Handler Permits	59,655	63,240	64,000	64,000	1.2%	64,000	0.0%
4110	House Moving Permits	937	1,212	500	500	-58.7%	1,000	100.0%
4112	Demolition Permits	8,015	9,364	7,400	7,400	-21.0%	7,400	0.0%
4114	Pool, Spa, Hot Tub Permits	11,780	13,261	12,000	12,500	-5.7%	12,500	0.0%
4116	Building Permits, Cont Fees	896,372	849,750	960,000	1,100,000	29.4%	1,280,000	16.4%
4118	Electrical Contractor Fees	18,600	15,606	19,000	19,500	25.0%	19,500	0.0%
4120	Curb Cut Permits	918	936	1,090	1,090	16.5%	1,090	0.0%
4122	Mobile Home Park Licenses	11,550	11,410	11,550	11,550	1.2%	11,550	0.0%
4124	Sign Permits	\$37,475	\$36,050	\$40,000	\$40,000	11.0%	\$40,000	0.0%
4128	Fence Permits & Cont Fees	16,919	22,889	21,000	21,500	-6.1%	23,500	9.3%
4130	Mech. Permits & Cont Fees	50,197	42,436	50,000	50,000	17.8%	51,500	3.0%
4132	Certificates of Occupancy	77,235	67,600	66,000	68,000	0.6%	69,500	2.2%
4134	Variance Filing Fees	150	796	300	300	-62.3%	300	0.0%
4136	Landscape Fees	1,650	2,122	2,600	2,600	22.5%	2,600	0.0%
4146	Beer & Wine Permits	31,720	4,080	26,000	32,000	684.3%	32,000	0.0%
4414	Food Establishment Fees	209,296	212,180	216,000	218,000	2.7%	218,000	0.0%
4418	Swimming Pool Insp. Fees	26,920	36,414	25,000	25,000	-31.3%	25,500	2.0%
4422	Re-inspection Fees	22,040	18,566	26,000	26,000	40.0%	26,000	0.0%
4424	Electrical Permits & Insp.	53,044	46,350	34,000	35,000	-24.5%	36,700	4.9%
4426	Plumb & Irrigation Permits	\$99,217	\$97,263	\$100,000	\$100,000	2.8%	\$105,000	5.0%
4474	Plans Review Fees	303,444	247,200	275,000	350,000	41.6%	385,000	10.0%
	<b>REVENUE TOTALS</b>	<b>\$1,944,659</b>	<b>\$1,805,420</b>	<b>\$1,964,440</b>	<b>\$2,192,140</b>	21.4%	<b>\$2,419,840</b>	10.4%
	<b>Add to General Resources</b>	142,972	-197,090	5,433	\$112,628		<b>\$340,328</b>	202.2%
	<b>BLDG INSP BUDGET</b>	<b>\$1,801,687</b>	<b>\$2,002,510</b>	<b>\$1,959,007</b>	<b>\$2,079,512</b>	3.8%	<b>\$2,079,512</b>	0.0%

**AGENDA INFORMATION SHEET**

**AGENDA DATE:** November 19, 2013

**DEPARTMENT:** Parks and Recreation Department



**ACM:** John Cabrales, Jr.

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**SUBJECT**

Receive a report, hold a discussion, and give staff direction regarding a sponsorship in an amount not to exceed \$13,000 of in-kind services and supplies for the 25<sup>th</sup> Annual Denton Holiday Lighting Festival to be held on Downtown Square on December 6, 2013; and providing an effective date.

**BACKGROUND**

The Holiday Lighting Festival Association requests the City participate as a sponsor at the same level as previous years. Parks and Recreation has provided in-kind resources including staff to set up and deliver equipment, assist with litter control, provide tables and chairs for vendors and, since 2007, paid for barricades for street closures. The City has provided two police officers during the event with a total in-kind value of \$5,038. The Denton Holiday Lighting Festival Association receives \$7,640 in Hotel/Motel Occupancy Tax (HOT) funds and approximately \$5,038 from the General Fund for a total of \$12,678. On the basis of the total funds provided, the City is recognized as a sponsor at a level equal to the in-kind value.

The Festival is organized by the Denton Holiday Lighting Festival Association and anticipates approximately 10,000 attendees and 25 vendor booths.

**PRIOR ACTION/REVIEW**

This is the 25<sup>th</sup> Annual Denton Holiday Lighting Festival and the City has provided support for each one.

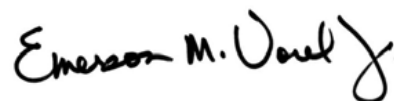
**FISCAL INFORMATION**

Estimated costs to provide in-kind services and resources are \$13,000.

**EXHIBIT**

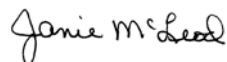
In-Kind Services and Resources 2012 and Proposed 2013.

Respectfully submitted:



Emerson Vorel, Director

Prepared by:



Community Events Coordinator

## HOLIDAY LIGHTING

**In-Kind Services and Resources 2012 and Proposed 2013**

<b>2012</b>	Actual		<b>2013</b>	Proposed
Police – security - overtime	\$1,104		Police – security - overtime	\$1,104
Park staff during event - overtime	\$1,808		Park staff during event - overtime	\$1,808
Rental of tables & chairs, supplies	\$926		Rental of tables & chairs, supplies	\$926
Rental of barricades	\$1,200		Rental of barricades	\$1,200
Total In-Kind Services	\$5,038		Total In-Kind Services	\$5,038
HOT Funds	\$7,640		HOT Funds	\$7,640
<b>Grand Total</b>	<b>\$12,678</b>		<b>Grand Total</b>	<b>\$12,678</b>

**AGENDA INFORMATION SHEET****AGENDA DATE:** November 19, 2013**DEPARTMENT:** Finance**ACM:** Bryan Langley *LBL*

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**SUBJECT**

Consider adoption of an ordinance of the City of Denton, Texas to declare the intent to reimburse capital program expenditures of the Electric Utility (\$34,595,000), Solid Waste (\$2,404,000), Streets (\$4,000,000), and General Government (\$8,500,000) with Tax Preferred Obligations (Certificates of Obligation and General Obligation Bonds) with an aggregate maximum principal amount equal to \$49,499,000; and providing an effective date.

**BACKGROUND**

The purpose of this item is to allow staff to begin these projects prior to the debt sale. Initially, funding for the expenditures will be provided with existing bond proceeds or unreserved fund balance. Once the debt is sold, these expenditures will be reimbursed from the debt proceeds. The debt sale is anticipated to be in early summer of 2014.

The FY 2013-14 Capital Improvement Program (CIP) Budget includes capital projects for Electric, Solid Waste and General Government which include voter approved street reconstruction projects.

Denton Municipal Electric is proposing to utilize \$34,595,000 to fund ongoing capital expansion of the distribution and transmission facilities approved as part of the FY 2013-14 CIP Budget. This amount represents only a portion of the \$85,000,000 in new Certificates of Obligation planned for issuance in FY 2013-14. The total CIP Budget for FY 2013-14, including revenue funded projects, is \$88,003,000.

Solid Waste is proposing to utilize \$2,404,000 to fund ongoing capital expenditures for refuse and recycling collection operations approved as part of the FY 2013-14 CIP Budget. This amount represents only a portion of the \$8,280,000 in new Certificates of Obligations planned for issuance in FY 2013-14. The total CIP Budget for FY 2013-14, including revenue funded projects, is \$8,544,500.

General Government is proposing to utilize \$8,500,000 of Certificates of Obligation to fund new traffic signals, fire station improvements, Civic Center pool improvements, vehicle replacements, and replacement of facility HVAC, roofs and floorings. In addition, General Government is proposing to utilize \$4,000,000 to the second year of street improvements authorized by voters in November 2012. These funds will be reimbursed from the sale of General Obligation Bonds.

**PRIOR ACTION/REVIEW (COUNCIL, BOARDS, COMMISSIONS)**

On October 28, 2013, the Public Utility Board unanimously approved that a reimbursement ordinance for Denton Municipal Electric and Solid Waste be forwarded to the City Council for consideration.

On November 5, 2013, staff informed the Audit Finance Committee that a reimbursement ordinance for Electric, Solid Waste, and General Government would be sent to the City Council on November 19, 2013.

**FISCAL INFORMATION**

This ordinance will allow the Certificates of Obligation to reimburse the respective funds totaling \$45,499,000 and General Obligation Bonds totaling \$4,000,000. These capital projects were included in the FY 2013-14 Adopted CIP Budget.

**EXHIBITS**

1. FY 2013-14 Capital Budget
2. Ordinance

Respectfully submitted:

*Chuck Springer*

Springer, 349-8260  
Director of Finance

## CAPITAL IMPROVEMENT PROGRAM (CIP) PROPOSED BUDGET

The Capital Improvement Program (CIP) represents the City's plan for development. The CIP is reviewed each year to reflect changing priorities, to provide a framework for identifying capital requirements, and to assess the impact of capital projects on operating budgets and the scheduling and coordination of related projects.

The CIP budget appropriates all available programmed funds, planned funding from other sources, and planned issuances of new General Obligation (GOs) Bonds and Certificates of Obligation (COs). Available programmed funds include unspent bond proceeds, internal revenue transfers and outside contributions. Internal revenue transfers and outside contributions comprise the bulk of planned other funding. Provided below is a summary of the total FY 2013-14 CIP proposed budget. Further CIP detail for planned issuances is provided in the following pages for each division.

DIVISION	TOTAL PROGRAMMED AVAILABLE <sup>1</sup>	PLANNED			TOTAL PROPOSED
		OTHER FUNDING	CO ISSUANCES <sup>2</sup>	GO ISSUANCES <sup>3</sup>	
General Government	\$ 120,502,003	\$ -	\$ 8,500,000	\$ 4,000,000	\$ 133,002,003
Electric	25,531,931	3,003,000	85,000,000	-	113,534,931
Water	2,833,195	9,326,678	12,000,000	-	24,159,873
Wastewater	368,311	5,829,346	23,500,000	-	29,697,657
Solid Waste	14,148,023	264,500	8,280,000	-	22,692,523
Airport	570,326	-	-	-	570,326
<b>TOTAL</b>	<b>\$ 163,953,789</b>	<b>\$ 18,423,524</b>	<b>\$ 137,280,000</b>	<b>\$ 4,000,000</b>	<b>\$ 323,657,313</b>

<sup>1</sup>Expected balance as of October 1, 2013 including approximately \$83 million in Regional Toll Revenue (RTR) funds received for the Mayhill Road and Bonnie Brae Street expansion projects (total received was approximately \$91 million).

<sup>2</sup>Certificates of Obligation (COs) sold for the Electric, Water, Wastewater, Solid Waste and Airport divisions are self-supporting from revenues associated with these operations. Utility System Revenue Bonds were previously sold for the Electric, Water and Wastewater utilities, but Certificates of Obligation (COs) are now utilized due to the substantial cost savings associated with this financing method.

<sup>3</sup>Represents the second debt sale associated with the \$20.4 million bond program approved by voters in November 2012.

## ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF DENTON, TEXAS TO DECLARE THE INTENT TO REIMBURSE CAPITAL PROGRAM EXPENDITURES OF THE ELECTRIC UTILITY (\$34,595,000), SOLID WASTE (\$2,404,000), STREETS (\$4,000,000) AND GENERAL GOVERNMENT (\$8,500,000) WITH TAX-PREFERRED OBLIGATIONS (CERTIFICATES OF OBLIGATION AND GENERAL OBLIGATION BONDS) WITH AN AGGREGATE MAXIMUM PRINCIPAL AMOUNT EQUAL TO \$49,499,000; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Denton (the "Issuer") is a municipal corporation/political subdivision of the State of Texas; and

WHEREAS, the Issuer expects to pay, or have paid on its behalf, expenditures in connection with the ongoing capital expansion of the Electric Utility distribution and transmission facilities approved as part of the FY 2013-14 Capital Improvement Program Budget and described in Attachment 1 hereto (the "Electric Utility Projects") prior to the issuance of Certificates of Obligation for which a prior expression of intent to finance or refinance is required by Federal or state law to finance the Electric Utility Projects; and

WHEREAS, the Issuer expects to pay, or have paid on its behalf, expenditures in connection with the ongoing capital expansion of the Solid Waste refuse and recycling activities approved as part of the FY 2013-14 Capital Improvement Program Budget and described in Attachment 2 hereto (the "Solid Waste Projects") prior to the issuance of Certificates of Obligation for which a prior expression of intent to finance or refinance is required by Federal or state law to finance the Solid Waste Projects; and

WHEREAS, the Issuer expects to pay, or have paid on its behalf, expenditures in connection with the ongoing capital expansion of General Government projects approved as part of the FY 2013-14 Capital Improvement Program Budget and described in Attachment 3 hereto (the "General Government Projects") prior to the issuance of Certificates of Obligation for which a prior expression of intent to finance or refinance is required by Federal or state law to finance the General Government Projects; and

WHEREAS, the Issuer expects to pay, or have paid on its behalf, expenditures in connection with the ongoing capital expansion of the Street projects approved as part of the FY 2013-14 Capital Improvement Program Budget and described in Attachment 3 hereto (the "Street Projects" and, together with the Electric Utility Projects, the Solid Waste Projects, the General Government Projects, the "Projects") prior to the issuance of General Obligation Bonds for which a prior expression of intent to finance or refinance is required by Federal or state law to finance the Street Projects; and

WHEREAS, the Issuer finds, considers, and declares that the reimbursement of the Issuer for the payment of such expenditures will be appropriate and consistent with the lawful objectives of the Issuer and, as such, chooses to declare its intention to reimburse itself for such payments at such time as it issues the obligations to finance the Projects; NOW, THEREFORE,



THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The Issuer reasonably expects to incur debt, as one or more series of tax-exempt obligations, tax-credit obligations and/or obligations for which a prior expression of intent to finance or refinance is required by Federal or state law (collectively and individually, the "Tax-Preferred Obligations"), with an aggregate maximum principal amount equal to \$49,499,000 for purpose of paying the costs of the Projects.

SECTION 2. All costs to be reimbursed pursuant hereto will be capital expenditures. No Tax-Preferred Obligations will be issued by the Issuer in furtherance of this ordinance after a date which is later than 18 months after the later of (1) the date the expenditures are paid, or (2) the date on which the property, with respect to which such expenditures were made, is placed in service.

SECTION 3. The foregoing notwithstanding, no Tax-Preferred Obligation will be issued pursuant to this ordinance more than three years after the date any expenditure which is to be reimbursed is paid.

SECTION 4. The foregoing Sections 2 and 3 notwithstanding, all costs to be reimbursed with qualified tax credit obligations shall not be paid prior to the date hereof and no tax credit obligations shall be issued after 18 months of the date the original expenditure is made.

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

PASSED AND APPROVED this the \_\_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
MARK A. BURROUGHS, MAYOR

ATTEST:  
JENNIFER WALTERS, CITY SECRETARY

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

APPROVED AS TO LEGAL FORM:  
ANITA BURGESS, CITY ATTORNEY

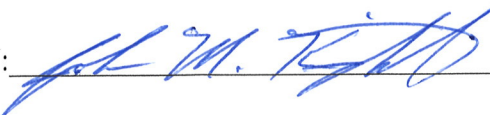
BY:  \_\_\_\_\_

Exhibit 2

Attachment 1

**Denton Municipal Electric  
FY 2013-14 Reimbursement Ordinance  
Projected Capital Expenditures through June 2014**

<b>Projects Categories</b>	<b>2014 Approved Plan</b>	<b>Estimated Exp thru 06/30/2014</b>
<b>Automated Meter Reading Project</b>	<b>\$ 3,056,883</b>	<b>\$ 2,300,000</b>
Major Substation Expenses		
Cooper Creek Substation		800,000
Kings Row Substation		2,000,000
Pockrus Substation		3,500,000
McKinney Substation		3,000,000
TMPA Arco Switch/DME Arco Substation		2,000,000
Fort Worth Substation		900,000
Brinker Substation		1,000,000
Various Other Substation Related Capital Expenditures		3,075,000
<b>Major Substation Planned Expenses</b>	<b>\$ 47,534,000</b>	<b>\$ 16,275,000</b>
Major Transmission Line Expenses		
Woodrow - Kings Row 69kV Transmission Line		6,000,000
Kings Row - Denton North 69kV Transmission Line		4,000,000
North Lakes - Bonnie Brae 69kV Transmission Line		1,200,000
Spencer - Pockrus 138kV Transmission Line		1,500,000
Transmission Line Additions to Support the 138kV Addition to the Pockrus		800,000
Other Various Transmission Line Capital Expenditures		1,820,000
<b>Major Transmission Line Planned Expenses</b>	<b>\$ 38,880,000</b>	<b>\$ 15,320,000</b>
<b>Distribution Transformers</b>	<b>\$ 1,989,178</b>	<b>\$ 1,500,000</b>
<b>Distribution Feeders &amp; Extensions</b>	<b>\$ 14,414,000</b>	<b>\$ 10,700,000</b>
<b>New Residential &amp; Commercial</b>	<b>\$ 3,127,999</b>	<b>\$ 2,350,000</b>
<b>Other*</b>	<b>\$ 1,529,871</b>	<b>\$ 1,150,000</b>
<b>TOTAL</b>	<b>\$ 110,531,931</b>	<b>\$ 49,595,000</b>
<b>Less: Estimated available bond balance at October 31, 2013</b>		<b>\$ 15,000,000</b>
<b>Estimated Additional Funds Needed Through June 2014</b>		<b>\$ 34,595,000</b>

**Note: Distribution Plan excludes vehicles and other revenue funded projects.**

**\*Other:**

Communications Equipment	400,000
Contingency	300,000
Over/Under Conversions	350,000
Power Factor Improvements	372,000
Street Lighting	17,871
Tools & Equipment	90,000
	<u>\$ 1,529,871</u>

Exhibit 2

Attachment 2



FY 2014 Bond Sale Reimbursement Data

<b>FY 2014</b>	<b>Project Title</b>	<b>Project Costs</b>	<b>Term</b>	<b>Project Manager</b>
1	Roll off Truck	\$ 220,000	5YR	Billy Sprabeary
2	Side Load Truck	\$ 275,000	5YR	Billy Sprabeary
3	Compressed Natural Gas Fueling Facility	\$ 800,000	20YR	Scott Lebsack
4	Landfill Engineering	\$ 135,000	20YR	David Dugger
5	Home Chemical Building Improvements	\$ 150,000	5YR	Shirlene Sitton
6	651 Mayhill KDB Finish Out	\$ 374,000	20YR	Vance Kemler
7	651 Mayhill Building Finish Out	\$ 150,000	20YR	Vance Kemler
8	Landfill Improvements	\$ 250,000	10YR	David Dugger
9	Landfill Gas Production Line Construction	\$ 50,000	20YR	David Dugger

<b>Totals</b>			
\$ 645,000	<b>5YR</b>	Bonds Requested	
\$ 250,000	<b>10YR</b>	Bonds Requested	
\$ 1,509,000	<b>20YR</b>	Bonds Requested	
<b>\$ 2,404,000</b>	<b>FY 2014</b>	<b>Reimbursement Ordinance Request</b>	

**ADOPTED FIVE-YEAR CAPITAL IMPROVEMENT PROGRAM  
GENERAL GOVERNMENT\*  
CASH REQUIREMENTS**

<b>DIV./DEPT.</b>	<b>CATEGORY</b>	<b>2013-14</b>
Trans	Streets	\$ 4,000,000
Trans	Public Art	-
Trans	Traffic Signals	1,000,000
Fire	Fire Station Improvements	3,000,000
Parks	Civic Center Pool Improvements	1,000,000
Fleet	Vehicle Replacements	2,000,000
Build/Equip	Facility Maintenance Program**	1,500,000
Trans	Matching Funds for Road Improvements	-
Various	Future GO Bond Program	-
	<b>GRAND TOTAL</b>	<b>\$ 12,500,000</b>
	General Obligation Bonds	\$ 4,000,000
	Certificates of Obligation	8,500,000
	<b>GRAND TOTAL</b>	<b>\$ 12,500,000</b>

\*Does not reflect Available Programmed Funds or ongoing capital projects.

\*\* Facility Maintenance Program is for HVAC, Flooring, Roof Replacements and Facility Improvements.

## AGENDA INFORMATION SHEET

**AGENDA DATE:** November 19, 2013

**DEPARTMENT:** Finance

**ACM:** Bryan Langley *LBL*

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### **SUBJECT**

Consider approval of a resolution revising Administrative Policy No. 403.07 “Debt Service Management” and providing for an effective date. The Audit/Finance Committee recommends approval (3-0).

### **BACKGROUND**

The City’s Debt Service Management Policy was originally developed in 1995 and adopted by the City Council on March 5, 1996. On April 20, 2010, the City Council adopted revisions to the policy, including the requirement that the policy be reviewed at least annually to ensure compliance with statutory and Securities and Exchange Commission (SEC) requirements. The Debt Service Management Policy provides general guidelines by which the City will issue debt and addresses the issues of process, use and limitations.

After reviewing the existing Debt Service Management Policy with the City’s Financial Advisor, Bond Counsel and internal Debt Management Committee, the following revisions are being proposed:

1. Section VI – Clarifying language regarding debt coverage ratios for the Utility System and how those will be calculated.
2. Section XVII, B – Addition of language regarding yield restrictions on the debt service reserve fund.
3. Section XVIII, – Addition of language regarding restrictions on private business use of tax exempt obligations and due diligence requirements by the City and staff.
4. Section XIX – Clarifying language regarding records retention requirements.
5. Glossary – Addition of the definition of “Private Business Use.”

Additionally, other minor changes are recommended to clarify language, reduce redundancy, and improve sentence structure. The changes outlined above represent changes that allow for both flexibility and accountability in meeting the City’s financing needs.

**RECOMMENDATION**

Staff recommends approval of resolution and revised Debt Service Management Policy.

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

On November 5, 2013, the Audit/Finance Committee unanimously approved that the resolution and revised Debt Service Management Policy be forwarded to the City Council for consideration and approval.

**EXHIBITS**

1. Red-line version of Debt Service Management Policy
2. Resolution

Respectfully Submitted By:

*Chuck Springer*

Chuck Springer  
Director of Finance

# CITY OF DENTON

## POLICY/ADMINISTRATIVE PROCEDURE/ADMINISTRATIVE DIRECTIVE

SECTION: FINANCE	REFERENCE NUMBER: 403.07
SUBJECT: DEBT MANAGEMENT	INITIAL EFFECTIVE DATE: 03/05/96
TITLE: DEBT SERVICE MANAGEMENT	LAST REVISION DATE: <del>11/6/12</del> 11/19/13

### POLICY STATEMENT

This policy shall provide general guidelines by which the City of Denton (the “City”) will issue debt. In as much as this policy may be in conflict or inconsistent with state law, state law will prevail. Furthermore, state law will prevail on matters not specifically addressed in this policy. It is the objective of this policy that (1) the City obtain financing only when necessary, (2) the process for identifying the timing and amount of debt or other financing proceed as efficiently as possible, and (3) the City seek the most favorable interest rate and competitive costs in accordance with this policy while maintaining financial flexibility.

This debt management policy applies to the financing activities of the City of Denton, Texas. It also addresses the issues of process, use and limitations. Proceeds from debt issuances will be delivered as closely as possible to the time that contracts are expected to be awarded so that the proceeds are spent in the most efficient manner. The City Council shall review and approve the debt management policy at least annually and be documented by ordinance or resolution, which shall include any changes made.

### ADMINISTRATIVE PROCEDURES

#### I. DEBT MANAGEMENT COMMITTEE

##### A. Members

The Debt Management Committee (the “Committee”) will consist of the City Manager, Assistant City Managers, and the ~~Chief Financial Officer~~ **Director of Finance**. The City’s financial advisor and bond counsel shall act as consultants to the Committee.

##### B. Scope

The Committee shall meet at least annually to review the debt program or as necessary. Topics for discussion should include: the Capital Improvement Program, status of outstanding debt, unspent bond proceeds, and unissued voter authorized debt, timing of additional financing needs and financing options, and the effect of proposed financing activity on the related rates supporting the debt (i.e., property tax rate, utility rates, user fees, etc.).

## II. RESPONSIBILITY AND STANDARD OF CARE

The Finance Department will coordinate all activities required for the issuance of all debt.

### A. Delegation

The ~~Chief Financial Officer~~ **Director of Finance** shall have primary responsibility for developing financing recommendations. The ~~Chief Financial Officer~~ **Director of Finance** shall:

- Meet no less than annually with Department Directors to consider the need for financing, review debt capacity and assess progress on the Capital Improvement Program;
- Review changes in state and federal legislation;
- Review annually the provisions of ordinances authorizing issuance of obligations;
- Periodically review the City's Charter to ensure compliance with state law; and
- Annually review services provided by the financial advisor, bond counsel, paying agent, and other service providers to evaluate the extent and effectiveness of the services being provided.

### B. Conflicts of Interest

All participants in the debt management process shall seek to act responsibly as custodians of public assets. Officers and employees involved in the debt management process shall refrain from personal business activity that could conflict with proper execution of the financing program, or which could impair their ability to make impartial financing decisions.

### C. Reporting

The ~~Chief Financial Officer~~ **Director of Finance** shall include in the Comprehensive Annual Financial Report ("CAFR") a report summarizing all debt outstanding by type (tax-supported and self-supported general obligation debt, and revenue debt), remaining balance of bond proceeds, update of arbitrage liability, and update of pertinent legislative changes.

### D. Investor Relations

The City shall endeavor to maintain a positive relationship with the investment community. The ~~Chief Financial Officer~~ **Director of Finance** and the City's financial advisor shall, as necessary, prepare reports and other forms of communications regarding the City's indebtedness, as well as its future financing plans. This includes information presented to the press and other media. The information includes, but is not limited to, the annual program of services, CAFR, financial plans, capital improvement plans, and comprehensive development plans.



All forms of media deemed appropriate and immediately available to the City will be utilized to disseminate information to all investors. Examples include the Texas Bond Reporter and the Texas Municipal Reports published by the Municipal Advisory Council of Texas (the “MAC”), The Bond Buyer, and the Electronic Municipal Market Access system (“EMMA”) maintained by the Municipal Securities Rulemaking Board (the “MSRB”). Bond counsel will advise on the use of electronic media in connection with the City’s debt program.

E. Financial Advisor

The City shall retain an independent financial advisor for advice on the structuring of new debt, financial analysis of various options, including refunding opportunities, the rating review process, the marketing and marketability of City debt obligations, issuance and post-issuance services, the preparation of offering documents (each, an “Official Statement”) and other services, as necessary. The City will seek the advice of the financial advisor on an ongoing basis. The financial advisor will perform other services as defined by the agreement approved by the City Council. The financial advisor will not bid on nor underwrite any City debt issues in accordance with MSRB rules.

F. Bond Counsel

The City shall retain bond counsel for legal and procedural advice on all debt issues. Bond counsel shall advise the City Council in all matters pertaining to its bond ordinance(s) and/or resolution(s). No action shall be taken with respect to any obligation until a written instrument (e.g., Certificate for Ordinance or other legal instrument) has been prepared by the bond attorneys certifying the legality of the proposal. The bond attorneys shall prepare all ordinances and other legal instruments required for the execution and sale of any bonds issued which shall then be reviewed by the City Attorney and the ~~Chief Financial Officer~~ **Director of Finance**. The City will also seek the advice of bond counsel on all other types of debt and on any other questions involving federal tax or arbitrage law. Special counsel may be retained to protect the City’s interest in complex negotiations.

### III. OFFICIAL STATEMENT

The preparation of the Official Statement is the responsibility of the financial advisor in concert with the ~~Chief Financial Officer~~ **Director of Finance**. Information for the Official Statement is gathered from departments/divisions throughout the City.

The City will take all appropriate steps to comply with federal securities laws, including, but not limited to, Securities and Exchange Commission (“SEC”) Rule 15c2-12 (the “Rule”). The City will make annual and event disclosure filings to the MSRB via EMMA as required by the Rule and its continuing disclosure undertakings.

#### IV. DISCLOSURE

A. With each bond offering, ~~and at least annually,~~ in the preparation of a CAFR, Official Statement or any other offering document, ~~and with the City's annual filings required by its continuing disclosure undertakings pursuant to the Rule,~~ the City will follow a policy of full and complete disclosure of operating, financial and legal conditions of the City, in conformance with the Government Finance Officers Association ~~best practice,~~ "Understanding Your Continuing Disclosure ~~Guideline Responsibilities (2010)~~", and as advised by the City's disclosure counsel or financial advisor.

B. Notice of **Disclosure** Events

The Rule lists certain events that must be reported in a timely fashion to the MSRB via EMMA and, if required by the Rule and the City's continuing disclosure undertakings, to the MAC in its capacity as the State Information Depository ("SID") for the state. On May 26, 2010, the SEC made amendments to the Rule, which only apply to primary offerings that occur on or after December 1, 2010. While not required, the City will make every effort to apply the new requirements to ~~existing bond issuances previously issued bonds~~ since the amendments make the Rule more stringent. The amended Rule requires that events be reported to the MSRB within 10 business days after the occurrence of the event.

1. The events that must be reported, if material, are:

- a. Nonpayment related defaults;
- b. Modifications of rights of security holders;
- c. Bond calls;
- d. Release, substitution, or sale of property securing repayment of the securities;
- e. Mergers, consolidations, acquisitions, the sale of all or substantially all of the assets of the City or other obligated entity or their termination;
- f. Appointment of a successor or additional trustee or paying agent or the change of the name of a trustee or paying agent.

2. The events that must be reported, regardless of materiality, are:

- a. Principal and interest payment delinquencies;
- b. Unscheduled draws on debt service reserves reflecting financial difficulties;
- c. Unscheduled draws on credit enhancements reflecting financial difficulties;
- d. Substitution of credit or liquidity providers, or their failure to perform;
- e. Adverse tax opinions, the issuance by the IRS of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to

- the tax status of the security, or other material events affecting the tax status of the security;
- f. Tender offers;
  - g. Defeasances;
  - h. Rating changes;
  - i. Bankruptcy, insolvency, receivership or similar proceeding.
- C. The Rule also requires the City to report to the MSRB the failure of the City to provide the required annual financial information or operating data on or before the dates specified under a continuing disclosure undertaking. In addition, the following MSRB regulations became effective in May 2011:
- a. Underwriters shall indicate on the EMMA system whether the City has agreed to provide secondary market disclosure information, when it will be provided, and the name of the obligated entity.
  - b. The MSRB shall indicate on the EMMA system the issuers that voluntarily agree to provide the following:
    1. Annual financial information within 120 days (150 days until December 31, 2013) after the fiscal year ends;
    2. An undertaking to prepare audited financial statements in compliance with accounting standards established by the Governmental Accounting Standards Board (“GASB”); and
    3. The website link to the issuer’s financial information.

~~Full disclosure of the City’s operations will be made to the bond rating agencies. The City staff, with the assistance of the financial advisors and bond counsel, will prepare the necessary materials for and presentation to the rating agencies.~~

## V. RATING AGENCY COMMUNICATIONS & CREDIT OBJECTIVES

The City will seek to maintain and improve its current bond ratings so its borrowing costs are reduced to a minimum and its access to credit is preserved.

In conjunction with the financial advisor, the City shall maintain a line of communication with at least two of the rating agencies (Moody’s, Standard & Poor’s, ~~and~~ Fitch), informing them of major financial events in the City as they occur. The CAFR, Annual Program of Services, and Capital Improvement Program shall be distributed to the rating agencies after they have been accepted ~~and~~ adopted by the City Council on an annual basis.

When necessary, a conference call or personal meeting with representatives of the rating agencies will be scheduled when a major capital improvement program is initiated, or to discuss economic~~a~~ and/or financial developments which might impact credit ratings. The following documents may be required by the rating agencies:

- Most recent annual audit reports, including a description of accounting practices. Accounting changes in the past three years and the impact on financial results should be explained;

- Current budget;
- Current Capital Improvement Program;
- Official Statements for new financings;
- Description of projects being financed;
- Sources and uses statement for bond issuance. If additional funds are required to complete specific projects being financed, the source of the funds and any conditional requirements may be discussed;
- Engineering and feasibility report (if applicable);
- Zoning or land-use map (if applicable);
- Cash flow statement, in the case of interim borrowing. Statement of long – and short-term debt with annual and monthly maturity dates as appropriate. Also, a report of any lease obligations, their nature and term;
- Indication of appropriate authority for debt issuance;
- Investment policy (if applicable); and
- Statement concerning remaining borrowing capacity plus tax rate and levy capacity or other revenue capacity.

Full disclosure of the City's operations will be made to the bond rating agencies. The City staff, with the assistance of the financial advisors and bond counsel, will prepare the necessary materials for and presentation to the rating agencies.

## VI. LIMITATIONS OF INDEBTEDNESS AND AFFORDABILITY STATEMENT

City staff, in conjunction with the financial advisor and bond counsel, will present to the City Council, and any City committee, as appropriate, a comprehensive analysis of debt capacity prior to issuing bonds. This analysis should ~~cover a broad range of factors, including~~ include relevant information such as:

- Legal debt limits, tax or expenditure ceilings;
- Coverage requirements or additional bonds tests in accordance with bond covenants;
- Measures of the tax and revenue base, such as projections of relevant economic variables (e.g., assessed property values, employment base, unemployment rates, income levels, and retail sales);
- Population trends;
- Utilization trends for services underlying revenues;
- Factors affecting tax collections, including types of property, goods, or services taxed, assessment practices and collection rates, evaluation of trends relating to the City's financial performance, such as revenues and expenditures, net revenues available after meeting operating requirements;
- Reliability of revenues expected to pay debt service;
- Unreserved fund balance levels;
- Debt service obligations, such as existing debt service requirements;
- Debt service as a percentage of expenditures or tax or system revenues;
- Measures of debt burden on the community, such as debt per capita, debt as a percentage of full or equalized assessed property value, and overlapping or underlying debt; and

- Tax-exempt market factors affecting interest costs, such as interest rates, market receptivity, and credit rating.

Annual debt service on general obligation debt (tax-supported), which excludes self-supported debt, shall be limited to no more than 30% of budgeted expenditures in the City's General Fund.

The City has revenue bonds and other indebtedness of the Electric, Water, and Wastewater Funds, which are collectively known as the City's "Utility System." The City will maintain coverage ratios as dictated by the City's outstanding bond covenants, including any other indebtedness of the ~~Electric, Water and Wastewater Funds~~ Utility System. In addition, the City will follow a policy that the Utility System will maintain a debt service coverage ratio of at least 1.25 on all outstanding revenue bonds and other indebtedness of the Utility System. For this purpose, ~~the debt coverage ratio for the Utility System~~ is defined as the net revenue of the Utility System ~~as of the last audited financial statement (includes~~ gross revenue less operating expenses) for a fiscal year (as set out in the audited financial statements for that fiscal year) divided by the ~~succeeding fiscal year's principal and interest requirements or the~~ maximum annual debt service ~~for all then outstanding revenue bonds and other indebtedness, whichever is greater~~ of the Utility System. ~~The Utility System will maintain a debt coverage ratio equivalent to 1.25 on all outstanding revenue bonds and other indebtedness.~~ The City will strive to further maintain ~~these~~ ~~this~~ debt service coverage ratios for each separate utility.

The Electric, Water, and Wastewater Funds' total long-term debt outstanding shall not exceed the amount of combined fund equity.

## VII. CAPITAL IMPROVEMENT PROGRAM

- A. The City will seek all possible federal and state reimbursement for mandated projects and/or programs. The City will pursue a balanced relationship between issuing debt and pay-as-you-go financing as dictated by prevailing economic factors and as directed by the City Council.
- B. Current operations will not be financed with long-term debt.
- C. Debt incurred to finance capital improvements will be repaid within the useful life of the asset.
- D. High priority will be assigned to the replacement of capital improvements when they have deteriorated to the point there they are hazardous, incur high maintenance costs, negatively affect property values, or no longer serve their intended purposes.
- E. An updated Capital Improvement Program will be presented to the City Council for approval on an annual basis. This plan will be used as a basis for the long-range financial planning process.

## VIII. TYPES OF DEBT

The City's bond counsel and financial advisor will present the different types of debt best suited and legally permissible under state law for each debt issue and assist in analyzing the use of capital lease purchases or the use of lines of credit. These types may include:

- Short-term vs. long-term debt,
- General obligation debt vs. revenue debt,
- Fixed rate debt,
- Lease-backed debt,
- Special obligation debt, such as assessment district debt,
- Certificates of obligation,
- Combination tax and revenue debt,
- Tax increment debt,
- Conduit issues,
- Tax Notes, and
- Taxable debt.

The issuance of long-term variable rate debt and interest rate swaps are expressly prohibited by this policy. The ~~Chief Financial Officer~~ Director of Finance will be responsible for evaluating this type of debt and will present a variable rate debt policy or interest rate swap policy to the City Council for approval as necessary.

## IX. BOND STRUCTURE

Factors that may be considered when structuring debt include the following:

- Final maturity of the debt;
- Setting the final maturity of the debt equal to or less than the useful life of the asset(s) being financed;
- Use of zero coupon bonds, capital appreciation bonds, deep discount bonds or premium bonds;
- Principal and interest payment structure (e.g., level debt service payments, level principal payments, bullet and term maturities, or other payment structures);
- Redemption provisions (e.g., mandatory and optional call features);
- Use of credit enhancement (e.g., bond insurance);
- Use of senior lien and junior lien obligations;
- Capitalized interest; and
- Other factors as deemed appropriate in consultation with the City's financial advisor and bond counsel.

## X. SHORT-TERM DEBT

### A. General

Short-term obligations may be issued to finance projects or portions of projects for which the City ultimately intends to issue long-term debt; (i.e., it will be used,

when appropriate, to provide interim financing which will eventually be refunded with the proceeds of long-term obligations).

Short-term obligations may be backed with a tax and/or revenue pledge or a pledge of other available resources.

Interim financing may be appropriate when long-term interest rates are expected to decline in the future. In addition, some forms of short-term obligations may be obtained more quickly than long-term obligations and, thus, may be used until long-term financing is secured.

B. Commercial Paper

Due to the financing costs associated with the marketing and placement of commercial paper, programs of less than \$25 million may not be cost effective. Should the opportunity to participate in a commercial paper issuance pool present itself or if the establishment of a program becomes cost effective, the advantages and disadvantages shall be evaluated by the ~~Chief Financial Officer~~ **Director of Finance**. The use of a commercial paper program requires approval by the City Council.

C. Anticipation Notes

Anticipation notes do not require giving a notice of intent. Anticipation notes may be secured and repaid by a pledge of revenue, taxes, or the proceeds of a future debt issue **and have a maximum maturity of seven (7) years**. Anticipation notes may be authorized by an ordinance adopted by the City Council.

Anticipation notes may be used to finance projects or acquisitions that could also be financed using certificates of obligation and have the following restrictions:

- 1) Anticipation notes may not be used to repay interfund borrowing or a borrowing that occurred up to/or more than 24-months prior to the date of issuance, and
- 2) The City may not issue anticipation notes that are payable from general obligation bond proceeds unless the proposition authorizing the issuance of the general obligation bonds has already been approved by the voters.

D. Line of Credit

To the extent authorized by state law and with the approval of the City Council, the City may establish a tax-exempt line of credit with a financial institution selected through a competitive process. Draws shall be made on the line of credit when (1) the need for financing is so urgent that time does not permit the issuance of long-term debt, or (2) the need for financing is so small that the total cost of issuance of long-term debt including carrying costs of debt proceeds not needed immediately is significantly higher. Draws will be made on the line of credit to

pay for projects designated for line of credit financing by the City Council. Borrowings under the line of credit shall be repaid from current revenues. The ~~Chief Financial Officer~~ Director of Finance will authorize all draws on the line of credit, as authorized in the agreement approved by the City Council. Under current state law, a line of credit cannot extend past the end of the then current fiscal year.

E. Capital Leasing

Capital leasing is an option for the acquisition of a piece or package of equipment.

Leasing shall not be considered when funds are on hand for the acquisition unless the interest expense associated with the lease is less than the interest that can be earned by investing the funds on hand or when other factors such as budget constraints or vendor responsiveness override the economic consideration.

Whenever a lease is arranged with a private sector entity, a tax-exempt rate shall be sought. Whenever a lease is arranged with a government or other tax-exempt entity, the City shall obtain an explicitly defined taxable rate so that the lease will not be counted in the City's total annual borrowings subject to arbitrage rebate.

The lease agreement shall permit the City to refinance the lease at no more than reasonable cost should the City decide to do so. A lease which may be called at will is preferable to one which may merely be accelerated.

The City shall seek at least three (3) competitive proposals for any lease financing. The net present value of competitive bids shall be compared, taking into account whether payments are in advance or in arrears, and how frequently payments are made. The purchase price of equipment shall be competitively bid, as required by state law, as well as the financing costs.

The ~~Chief Financial Officer~~ Director of Finance will ensure any leasing agreement is compared to other financing options to ensure the lease is cost beneficial. Alternate financing options will include revenue bonds, contractual obligations, certificates of obligation, tax notes, and lines of credit. The ~~Chief Financial Officer~~ Director of Finance will be the person responsible for evaluating this financing source, and will make a recommendation to the City Council for approval.

F. Interfund Loans

As allowed by the City, the ~~Chief Financial Officer~~ Director of Finance will review opportunities whereby interfund loans may be utilized to meet short-term financing needs. Interfund loans will only be utilized if economically beneficial to the lending fund and only if the rate of return is comparable or higher than the rate of return the lending fund would otherwise receive by keeping funds in the City's investment pool. Any interfund loan must be approved by the City Council.



## XI. LONG-TERM DEBT

### A. General

Proceeds from the sale of long-term obligations will not be used for operating purposes, and the final maturity of the obligations will not exceed the estimated useful life of the asset(s) financed. Voter approved general obligation bonds will strive to have a final maturity of twenty (20) years or less. Revenue bonds and certificates of obligation will strive to have a final maturity of thirty (30) years or less. If deemed appropriate, staff may present to the City Council extraordinary circumstances in which longer final maturities may be necessary but never in excess of the useful life of an individual asset.

A level debt service structure will be used unless operational matters and marketing considerations dictate otherwise.

The cost of issuance of private activity bonds is usually higher than for governmental purpose bonds. Consequently, private activity bonds will be issued only when they will economically benefit the City.

The cost of taxable debt is **generally** higher than for tax-exempt debt. However, the issuance of taxable debt may be required or may be more appropriate in some circumstances and may allow valuable flexibility in subsequent contracts with users or managers of the improvements constructed with the bond proceeds. Therefore, the City will usually issue tax-exempt obligations but may occasionally issue taxable obligations.

### B. Bonds

Long-term general obligation debt, including certificates of obligation, or revenue bonds shall be issued to finance significant and desirable capital improvements. Proceeds of general obligation debt will be used only for the purposes approved by voters in bond elections or set forth in the notices of intent for certificates of obligation or to refund previously issued general obligation bonds, certificates of obligation or revenue bonds. All bonds shall be sold in accordance with applicable law.

### C. Certificates of Obligation

Certificates of obligation may be issued to:

- Finance permanent improvements and land acquisition;
- Finance costs associated with capital project overruns;
- Acquire equipment/vehicles;
- Leverage grant funding;
- Renovate, acquire, construct facilities and facility improvements;
- Construct street improvements;

- Provide funding for master plans/studies;
- Address necessary life safety needs; and
- Finance revenue supported projects/assets if determined to be more economical than revenue bonds.

To the extent required by state law, a resolution authorizing publication of notice of intent to issue certificates of obligation shall be presented for the consideration of the City Council. The notice of intent shall be published in a newspaper of general circulation in the City once a week for two consecutive weeks with the first publication to be at least thirty (30) days prior to the sale date.

Certificates of obligation may be backed by a tax pledge under certain circumstances as permitted by law. They may also be backed by a combination tax and revenue pledge as permitted under state law. Some revenues are restricted as to the uses for which they may be pledged. Electric, Water, and Wastewater revenues may be pledged without limit for Electric, Water, and Wastewater purposes but may only be pledged to a limit of \$1,000 for any one series of bonds issued for non-utility system purposes.

The final maturity of certificates of obligation will be in accordance with Section XI (A).

#### D. Public Property Finance Contractual Obligations

Public property finance contractual obligations may be issued to finance the acquisition of personal property.

#### E. Revenue Bonds

In addition to the policies set forth above, when cost-beneficial and when permitted under applicable state law, the City may consider the use of surety bonds, letters of credit, or similar instruments to satisfy debt service reserve fund requirements on outstanding and/or proposed revenue bonds.

#### F. Combination Tax and Revenue Bonds

In addition to the policies set forth above, when cost-beneficial and when permitted under applicable state law, the City may consider the use of combination tax and revenue bonds for refunding obligations of the Electric, Water and Wastewater combined utility system, and Solid Waste or any other self-supporting revenue-producing City enterprise. Combination tax and revenue bonds will comply with applicable state law and are assigned the full faith and credit of the City, thereby enhancing the credit rating otherwise obtained from debt that is strictly supported by non-tax revenues (i.e., revenue bonds).

## **XII. CREDIT ENHANCEMENTS**

Credit enhancements are mechanisms which guarantee principal and interest payments. They include bond insurance, lines of credit, surety bonds and letters of credit. A credit enhancement, while costly, is intended to bring a lower interest rate on debt and a higher rating from the rating agencies, thus lowering overall borrowing costs.

The City's financial advisor will advise the City whether or not a credit enhancement is cost effective under the circumstances and what type of credit enhancement, if any, should be purchased. In a negotiated sale, bids will be taken during the period prior to the pricing of the debt. In a competitive sale, bond insurance may be provided by the purchaser if the purchaser finds it cost effective.

Other credit enhancements may arise in the future, which may be beneficial. The City's financial advisor will present these options for consideration.

### **XIII. REFUNDING AND RESTRUCTURING OPTIONS**

In the case of advance refundings, the City shall consider refunding debt whenever an analysis indicates the potential for present value savings of at least 3% of the par amount being refunded. In the case of current refundings, the City shall consider refunding debt whenever an analysis indicates the potential for present value savings above the costs of refunding the outstanding debt. Refunding for savings should not extend the final maturity of the original obligations, unless specifically approved by the City Council.

### **XIV. REIMBURSEMENT ORDINANCES**

The ~~Chief Financial Officer~~ **Director of Finance** will review and approve all reimbursement ordinances from City departments, including enterprise fund departments, before forwarding to the City Council for consideration. In no event will a reimbursement ordinance exceed the unreserved fund equity of the combined Utility System for Electric, Water or Wastewater requests or the operating fund of any other department making a request.

Reimbursement ordinances must be adopted within sixty (60) days of the date the original expenditures were paid. Debt obligations must be issued and the reimbursement allocation made not later than eighteen (18) months after the later of (1) the date the original expenditures were paid, or (2) the date the project is placed in service or abandoned, but in no event more than three (3) years after the original expenditures were paid.

### **XV. USE OF ANTICIPATED BOND PROCEEDS**

The use of anticipated bond proceeds will be limited to preliminary (soft) costs, which may include engineering fees, architect fees, feasibility studies, etc unless a reimbursement ordinance has been adopted pursuant to Section XIV. The ~~Chief Financial Officer~~ **Director of Finance** may provide additional parameters regarding qualifying uses and will review and approve all requests for the use of anticipated bond

proceeds. Departments may not use anticipated bond proceeds for preliminary costs earlier than 60 days from the date the City Council adopts an ordinance authorizing the sale of said bonds unless a reimbursement ordinance has been adopted pursuant to Section XIV. In no event will the use of anticipated bond proceeds exceed the unreserved fund equity of the combined Utility System for Electric, Water or Wastewater requests or the operating fund of any other department making a request.

## XVI. METHOD OF SALE

### A. Competitive Sale

When feasible and economical, obligations shall be issued by competitive rather than negotiated sale. Favorable conditions for a competitive method of sale include the following:

- The market is familiar with the issuer, and the issuer is a stable and regular borrower in the public market;
- An active secondary market with a broad investor base for the issuer's debt;
- The issue is neither too large to be easily absorbed by the market nor too small to attract investors without a concerted sales effort;
- The issue is not viewed by the market as carrying overly complex features or requiring explanation as to the debt's soundness; and
- Interest rates are relatively stable, market demand is strong, and the market is able to absorb a reasonable amount of buying or selling at reasonable price changes.

#### 1. Bidding Parameters

The notice of sale will be carefully constructed so as to ensure the best possible bid for the City, in light of existing market conditions and other prevailing factors. Parameters to be examined may include:

- Limits between lowest and highest coupons;
- Coupon requirements relative to the yield curve;
- Method of underwriter compensation, discount or premium coupons;
- Use of true interest cost (TIC) ~~versus net interest cost (NIC)~~;
- Use of bond insurance;
- Serial debt versus term debt with mandatory sinking fund redemptions;  
and
- ~~Use of capital appreciation bonds; and~~
- Call provisions

### B. Negotiated Sale

Bonds issued for the purpose of refunding and/or restructuring outstanding debt may appropriately be sold on a negotiated basis when maximum flexibility is required in order for the City to respond to day-to-day nuances in the marketplace

and other complications peculiar to the issuance of refunding debt. Whenever the option exists to sell an issue on a negotiated basis, an analysis of the options shall be performed to aid in the decision-making process.

The City will present the reasons and will actively participate in the selection of the underwriter or direct purchaser.

In negotiated sales, the City attempts to involve qualified and experienced firms which consistently submit financing plans to the City and actively participate in the City's competitive sales. The criteria used to select an underwriter in a negotiated sale may include the following:

- Overall experience;
- Participation in the City's past competitive sales;
- Marketing philosophy;
- Capability;
- Previous experience as managing or co-managing underwriter;
- Financial statement and financing plans that are relevant and appropriate;
- Public finance team and resources; and
- Breakdown of underwriter's discount, which includes management fee, underwriting fee, average takedown and other administrative expenses.

#### C. Private Placement

When cost-beneficial, the City may privately place its debt. Since underwriting and rating agency expenses may be avoided, it may result in a lower cost of borrowing. Private placement is sometimes an option for small issues. The opportunity may be identified by the financial advisor.

## **XVII. INVESTMENT OF BOND PROCEEDS**

#### A. Strategy

The City should actively monitor its investment practices to ensure maximum returns on its invested bond funds while complying with federal arbitrage guidelines. Specific investment strategies for the investment of bond proceeds are provided in the City's Policy No. 403.06 ("Investment Policy").

#### B. Arbitrage Compliance

With respect to the investment and expenditure of the proceeds of tax-exempt obligations, the ~~Chief Financial Officer~~ **Director of Finance** will:

- Instruct the appropriate person or persons that the construction, renovation or acquisition of the facilities financed with tax-exempt obligations must proceed with due diligence and that binding contracts for the expenditure of at least 5% of the proceeds of the tax-exempt obligations must be

entered into within six months of the date of delivery of such obligations (“Issue Date”);

- Monitor that at least 85% of the proceeds of tax-exempt obligations to be used for the construction, renovation or acquisition of any facilities are expended within three years of the Issue Date;
- Monitor investment of proceeds of the tax-exempt obligations and restrict the yield of the investments to the yield on the tax-exempt obligations after three years of the Issue Date;
- Monitor all amounts deposited into a sinking fund or funds, (e.g., the Interest and Sinking Fund established under each ordinance authorizing the issuance of the tax-exempt obligations), to assure that the maximum amount invested at a yield higher than the yield on the obligations does not exceed an amount equal to the debt service on the obligations in the succeeding 12 month period plus a carryover amount equal to one-twelfth of the principal and interest payable on the obligations for the immediately preceding 12-month period;
- **Assure that the maximum amount of any debt service reserve fund for tax-exempt obligations invested at a yield higher than the yield on the related tax-exempt obligations will not exceed the lesser of (1) 10% of the principal amount of the related tax-exempt obligations, (2) 125% of the average annual debt service on the related tax-exempt obligations measured as of the Issue Date for such obligations, or (3) 100% of the maximum annual debt service on the related tax-exempt obligations as of the Issue Date for such obligations;**
- Ensure that no more than 50% of the proceeds of tax-exempt obligations are invested in an investment with a guaranteed yield for four years or more;
- Monitor the actions of the escrow agent (to the extent an escrow is funded with proceeds of tax-exempt obligations) to ensure compliance with the applicable provisions of the escrow agreement, including with respect to reinvestment of cash balances;
- Maintain any official action of the City (such as a reimbursement ordinance) stating its intent to reimburse with the proceeds of tax-exempt obligations any amount expended prior to the Issue Date for the acquisition, renovation or construction of the facilities financed with the obligations;
- Ensure that the applicable information return (e.g., Internal Revenue Service (“IRS”) Form 8038-G, 8038-GC, or any successor forms) is timely filed with the IRS; and
- Assure that, unless excepted from rebate and yield restriction under section 148(f) of the United States Internal Revenue Code of 1986, as amended (the “Code”), excess investment earnings are computed and paid to the U.S. government at such time and in such manner as directed by the IRS (i) at least every five years after the Issue Date and (ii) within 30 days after the date the tax-exempt obligations are retired.

The City will follow a policy of full compliance with all arbitrage rebate requirements of the Code and IRS regulations, and will perform (internally or by

contract consultants) arbitrage rebate calculations for each issue subject to rebate on an annual basis. All necessary rebates will be filed and paid when due.

### C. Arbitrage Liability Management

The ~~Chief Financial Officer~~ Director of Finance will maintain a system for tracking arbitrage rebate liability and ensuring that required calculations are performed on a timely basis. These calculations will be performed annually. Funds should be set aside in anticipation of potential rebate liabilities. Due to the complexity of the arbitrage calculations and regulations, and to the severity of the penalties for noncompliance, the advice of bond counsel and qualified experts will be pursued on an ongoing basis.

## XVIII. RESTRICTIONS ON PRIVATE BUSINESS USE

With respect to the use of the facilities financed or refinanced with the proceeds of tax-exempt obligations the ~~Chief Financial Officer~~ Director of Finance will:

- Develop procedures or a tracking system to identify all property financed with tax-exempt obligations;
- Monitor the date on which the facilities are substantially complete and available to be used for the purpose intended;
- Monitor whether, at any time the tax-exempt obligations are outstanding, any person, other than the City, the employees of the City, the agents of the City or members of the general public has any contractual right (such as a lease, purchase, management or other service agreement) with respect to any portion of the facilities;
- Monitor ~~whether~~, at any time the tax-exempt obligations are outstanding, any person, other than the City, the employees of the City, the agents of the City or members of the general public has a right to use the output of the facilities (e.g., water, gas, electricity);
- Determine whether, at any time the tax-exempt obligations are outstanding, any person, other than the City, has a naming right for the facilities or any other contractual right granting an intangible benefit;
- Determine whether, at any time the tax-exempt obligations are outstanding, the facilities are sold or otherwise disposed of; ~~and~~. Prior to any sale of property owned by the City (real or personal), the Director of Finance must confirm whether such property was financed with tax-exempt obligations, and if so, determine whether the proposed disposition of the property could impact the tax-exempt status of the issue of tax-exempt obligations that financed the acquisition of such property;
- Before entering into any private business use arrangement that involves the use of the facilities financed with tax-exempt obligations, the Director of Finance must obtain a description of the proposed private business use arrangement and determine whether such arrangement, if put into effect, will be consistent with the restrictions on private business use of the facilities. In connection with the evaluation of any proposed private business use arrangement, the Director of Finance should consult with bond counsel to discuss whether such arrangement, if

put into effect, will be consistent with the restrictions on private business use of the facility, and, if not, whether any remedial action permitted under federal guidelines may be taken as a means of enabling such private business use without adversely affecting the tax-exempt status of the tax-exempt obligations which financed such facilities; and

- Take such action as is necessary to remediate any failure to maintain compliance with the covenants contained in the ordinances authorizing tax-exempt obligations related to the public use of the facilities financed by such obligations.

The City shall establish an appropriate record keeping system and designate the appropriate City personnel for purposes of compliance with this section.

## **XIX. RECORD RETENTION**

All proceeds of debt obligations will be separately accounted for in the City's financial accounting system to facilitate arbitrage tracking and reporting. The ~~Chief Financial Officer~~ Director of Finance shall include in the CAFR ~~a report summarizing~~ the City's arbitrage rebate liability in accordance with accounting standards established by GASB.

With respect to each issue of tax-exempt obligations issued by the City, the ~~Chief Financial Officer~~ Director of Finance will maintain or cause to be maintained all records relating to the investment and expenditure of the proceeds of such issue and the use of the facilities financed or refinanced thereby for a period ending ~~threesix~~ years after the complete extinguishment of such issue of tax-exempt obligations. If any portion of an issue of tax-exempt obligations is refunded with the proceeds of another series of tax-exempt obligations, such records shall be maintained until the ~~threesix~~ years after the refunding obligations are completely extinguished. Such records may be maintained in paper or electronic format.

## **XX. TRAINING**

The ~~Chief Financial Officer~~ Director of Finance shall receive appropriate training regarding the City's accounting system, contract intake system, facilities management and other systems necessary to track the investment and expenditure of the proceeds and the use of the facilities financed with the proceeds of debt obligations. The foregoing notwithstanding, the ~~Chief Financial Officer~~ Director of Finance is authorized and instructed to retain such experienced advisors, agents and consultants as may be necessary to carry out the policies and procedures described in Sections XVII, XVIII and XIX.



## GLOSSARY

***Amortization*** – The planned reduction of a debt obligation according to a stated maturity or redemption schedule.

***Arbitrage*** – The gain which may be obtained by borrowing funds at a lower (often tax-exempt) rate and investing the proceeds at higher (often taxable) rates. The ability to earn arbitrage by issuing tax-exempt securities has been severely curtailed by the Tax Reform Act of 1986, as amended.

***Average Life*** – The average length of time debt is expected to be outstanding. Generally, a level debt service structure will limit the average life of a bond issue (i.e., a 20 year final maturity will have an approximate average life of 12 years, and a 30 year final maturity will have an approximate average life of 18 years).

***Basis Point*** – One one-hundredth of one percent (0.0001).

***BBI*** – Bond Buyer Index. Comparison of current rates for various maturities.

***Bid Form*** – The document used by an underwriter to submit his bid at a competitive sale.

***Bond*** – A security that represents an obligation to pay a specified amount of money on a specific date in the future, typically with periodic interest payments.

***Bond Counsel*** – An attorney (or firm of attorneys) retained by the issuer to give a legal opinion concerning the validity of the securities. The bond counsel's opinion usually addresses the subject of tax exemption. Bond counsel may prepare, or review and advise the issuer regarding authorizing resolutions or ordinances, trust indentures, official statements, validation proceedings and litigation.

***Bond Insurance*** – Bond insurance is a type of credit enhancement whereby a monoline insurance company indemnifies an investor against a default by the issuer to pay principal and interest in-full and on-time. Once assigned, the municipal bond insurance policy generally is irrevocable. The insurance company receives an up-front fee, or premium, when the policy is issued.

***Book-Entry-Only*** – Bonds that are issued in fully-registered form but without certificates of ownership. The ownership interest of each actual purchaser is recorded on computer.

***Bond Years*** – \$1,000 of debt outstanding for one year used to compute average life and net interest cost.

***Call Option*** – The right to redeem a bond prior to its stated maturity, either on a given date or continuously. The call option is also referred to as the optional redemption provision.

***Capital Appreciation Bond*** – A bond without current interest coupons that is typically sold at a substantial discount from par. Investors are provided with a return based upon the accretion and compounding of interest on the bond through maturity.

**Capital Lease** – The acquisition of a capital asset over time rather than merely paying a rental fee for temporary use. A lease-purchase agreement, in which provision is made for transfer of ownership of the property for a nominal price at the scheduled termination of the lease, is referred to as a capital lease.

**Certificates of Obligation** – A type of debt authorized to be issued pursuant to the Certificates of Obligation Act of 1971 (Subchapter C of Chapter 271, Texas Government Code).

**Closing** – When bonds are exchanged for money (a/k/a delivery or settlement).

**Commercial Paper (Tax-Exempt)** – By convention, short-term, unsecured, tax-exempt promissory notes issued in either registered or bearer form with a stated maturity of 270 days or less.

**Competitive Sale** – A sale of securities in which the securities are awarded to the bidder who offers to purchase the issue at the best price or lowest cost.

**Coupon Rate** – The interest rate on specific maturities of a bond issue. While the term “coupon” derives from the days when virtually all municipal bonds were in bearer form with coupons attached, the term is still frequently used to refer to the interest rate on different maturities of bonds in registered form.

**Cover Bid** – The runner-up in a competitive bond sale.

**Credit Enhancements** – Credit enhancements are mechanisms which guarantee principal and interest payments. They include bond insurance and a line or letter of credit. A credit enhancement, while costly, will usually bring a lower interest rate on debt and a higher rating from the rating agencies, thus lowering overall costs. Cost effectiveness of credit enhancement will be evaluated for each debt issue.

**CUSIP Number** – The term CUSIP is an acronym for the Committee on Uniform Securities Identification Procedures. An identification number is assigned to each maturity of an issue, and is usually printed on the face of each individual certificate of the issue. The CUSIP numbers are intended to help facilitate the identification and clearance of municipal securities. As the municipal market has evolved, and the new derivative products are devised, the importance of the CUSIP system for identification purposes has increased.

**Dated Date** – A defined date at which interest begins to accrue from.

**Debt Burden** – The ratio of outstanding tax-supported debt to the market value of property within a jurisdiction. The overall debt burden includes a jurisdiction’s proportionate share of overlapping debt as well as the municipality’s direct net debt.

**Debt Limitation** – The maximum amount of debt that is legally permitted by a jurisdiction’s charter, constitution, or statutory requirements.

**Debt Service** – The amount necessary to pay principal and interest requirements on outstanding bonds for a given year or series of years.

**Debt Service Reserve Fund** – The fund into which moneys are placed which may be used to pay debt service if pledged revenues are insufficient to satisfy the debt service requirements. The debt service reserve fund may be entirely funded with bond proceeds, or it may only be partly funded at the time of the issuance and allowed to reach its full funding requirement over time, due to the accumulation of pledged revenues. If the debt service reserve fund is used in whole or part to pay debt service, the issuer usually is required to replenish the funds from the first available funds or revenues. A typical reserve requirement might be the maximum aggregate annual debt service requirement for any year remaining until the bonds reach maturity. The size of the reserve fund, and the manner in which it is invested, may be subject to arbitrage regulations.

**Default** – The failure to pay principal or interest in full or on time. An actual default should be distinguished from technical default. The latter refers to a failure by an issuer to abide by certain covenants but does not necessarily result in a failure to pay principle or interest when due.

**Defeasance** – Providing for payment of principal of premium, if any, and interest on debt through the first call date or scheduled principal maturity in accordance with the terms and requirements of the instrument pursuant to which the debt was issued. A legal defeasance usually involves establishing an irrevocable escrow funded with only cash and U.S. government obligations.

**Depository Trust Company (DTC)** – A limited purpose trust company organized under the New York Banking Law. DTC facilitates the settlement of transactions in municipal securities.

**Downgrade** – A reduction in credit rating.

**Enterprise Activity** – A revenue-generating project or business. The project often provides funds necessary to pay debt service on securities issued to finance the facility. The debts of such projects are self-liquidating when the projects earn sufficient monies to cover all debt service and other requirements imposed under the bond contract. Common examples include water and sewer treatment facilities and utility facilities.

**Electronic Municipal Market Access (EMMA)** – Effective July 1, 2009, the SEC implemented amendments to SEC Rule 15c2-12 which approved the establishment by the MSRB of EMMA, the sole successor to the nationally recognized municipal securities information repositories with respect to filings made in connection with disclosure undertakings. Access to filings are made free of charge to the general public by the MSRB.

**Final Official Statement (FOS)** – A document published by the issuer which generally discloses material information on a new issue of municipal securities including the purposes of the issue, how the securities will be repaid, and the financial, economic and social characteristics of the issuing government. Investors may use this information to evaluate the credit quality of the securities.

**Flow of Funds** – The order in which pledged revenues must be disbursed, as set forth in the trust indenture or bond resolution. In most instances, the pledged revenues are deposited into a general collection account or revenue fund as they are received and subsequently transferred into the other accounts established by the bond resolution or trust indenture. The other accounts provide for payment of the costs of debt service, debt service reserve deposits, operation and maintenance costs, renewal and replacement, and other requirements.

**General Obligation Debt** – Debt that is secured by a pledge of the ad valorem taxing power of the issuer. Also known as a full faith and credit obligation.

**Good Faith Deposit** – A sum of money given by the Underwriter to assure his bid.

**Institutional Buyer** – Banks, financial institutions, insurance companies, and bond funds.

**Issuance Costs** – The costs incurred by the bond issuer during the planning and sale of securities. These costs include but are not limited to financial advisory and bond counsel fees, printing and advertising costs, rating agencies fees, and other expenses incurred in the marketing of an issue.

**Junior Lien Bonds** – Bonds which have a subordinate claim against pledged revenues.

**Letter of Credit** – Bank credit facility whereby a bank will honor the payment of an issuer's debt, in the event that an issuer is unable to do so, thereby providing an additional source of security for bondholders for a predetermined period of time. A letter of credit often is referred to as an L/C or an LOC. Letter of Credit can be issued on a "stand-by" or "direct pay" basis.

**Level Debt Service** – When annual payments are substantially the same each year.

**Line of Credit** – Bank credit facility wherein the bank agrees to lend up to a maximum amount of funds at some date in the future in return for a commitment fee.

**Manager** – The member (or members) of an underwriting syndicate charged with the primary responsibility for conducting the affairs of the syndicate. The managers take the largest underwriting commitment.

Lead Manager or Senior Manager

The underwriter serving as head of the syndicate. The lead manager generally handles negotiations in a negotiated underwriting of a new issue of municipal securities or directs the process by which a bid is determined for a competitive underwriting. The lead manager also is charged with allocating securities among the members of the syndicate in accordance with the terms of the syndicate agreement or agreement among underwriters.

Joint Manager or Co-Manager

Any member of the management group.

***Municipal Advisory Council of Texas (MAC)*** – The designated State of Texas Information Depository as approved by the SEC with respect to filings made in connection with undertakings.

***Municipal Securities Rulemaking Board (MSRB)*** – A self-regulating organization established on September 5, 1975 upon the appointment of a 15-member Board by the Securities and Exchange Commission. The MSRB, comprised of representatives from investment banking firms, dealer bank representatives, and public representatives, is entrusted with the responsibility of writing rules of conduct for the municipal securities market. New Board members are selected by the MSRB pursuant to the method set forth in Board rules.

***Negotiated Sale*** – A sale of securities in which the terms of sale are determined through negotiation between the issuer and the purchaser, typically an underwriter, without competitive bidding.

***Net Interest Cost*** – The average interest cost of a bond issue calculated on the basis of simple interest.

***Paying Agent*** – An agent of the issuer with responsibility for timely payment of principal and interest to bond holders.

***Preliminary Official Statement (POS)*** – The POS is a preliminary version of the official statement which is used by an issuer or underwriters to describe the proposed issue of municipal securities prior to the determination of the interest rate(s) and offering prices(s). The preliminary official statement, also called a “red herring”, often is examined by potential purchasers prior to making an investment decision.

***Present Value*** – The value of a future amount or stream of revenues or expenditures in current dollars.

***Private Business Use*** – Private business use occurs whenever tax-exempt obligation proceeds are used to benefit any entity other than a state or local government, including non-profit corporations and the federal government. In simple terms, an issue of tax-exempt obligations may lose their tax-exempt status if (i) more than 10% of the proceeds of the obligations are to be used for any private business use and the payment of the principal of, or the interest, on more than 10% of the proceeds of the obligations is secured by or payable from property used for a private business use or (ii) the amount of the proceeds of the obligations used to make loans to borrowers other than state and local governments exceeds the lesser of 5% of the proceeds or \$5 million.

***Refunding*** – An advance refunding is a refunding that occurs more than 90 days before the call date of the refunded bonds, and a current refunding is a refunding that occurs 90 days or less before the call date. A refunding is a process of selling a new issue of securities to obtain funds needed to retire existing securities. Debt refunding is done to extend maturity and/or to reduce debt service cost.

**Retail Buyer** – Individual investors.

**Revenue Bond** – A bond which is payable from a specific source of revenue and to which the full faith and credit of an issuer with taxing power is not pledged. Revenue bonds are payable from identified sources of revenue, and do not permit the bondholders to compel a jurisdiction to pay debt service from any other source. Pledged revenues often are derived from the operation of an enterprise activity. Generally, no voter approval is required prior to issuance of such obligations.

**Secondary Market** – The market in which bonds are sold after their initial sale in the new issue market.

**Senior Lien Bonds** – Bonds having a prior or first claim on pledged revenues.

**Serial Bonds** – A bond issue in which the principal is repaid in periodic installments over the issue's life.

**Split ratings** – Different rating levels from different rating agencies.

**Surety Bond** – A bond guaranteeing performance of a contract or obligation.

**Term Bonds** – Term bonds usually refer to a particularly large maturity of a bond issue that is created by aggregating a series of maturities. A provision is often made for the mandatory redemption of specified amounts of principal during several years prior to the stated maturity, which effectively simulates serial bonds.

**True Interest Cost (TIC)** – An expression of the average interest cost in present value terms. The true interest cost is a more accurate measurement of the bond issue's effective interest cost and should be used to ascertain the best bid in a competitive sale.

**Variable Rate Bond** – A bond on which the interest rate is reset periodically, usually no less often than semi-annually. The interest rate is reset either by means of an auction or through an index.

**Upgrade** – An increase in credit rating.

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION REVISING ADMINISTRATIVE POLICY NO. 403.07 "DEBT SERVICE MANAGEMENT"; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, on the 5<sup>th</sup> day of March 1996, the City Council passed Resolution No. 96-013 adopting Administrative Policy No. 403.07 "Debt Service Management"; and

WHEREAS, the policy was most recently amended on the 6<sup>th</sup> day of November 2012, when the City Council passed Resolution No. 2012-037 adopting the current version of the Debt Service Management Policy; and

WHEREAS, the City Manager recommends adoption of the revised policy and the City Council desires to adopt such policy as the official policy regarding Debt Service Management; NOW, THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY RESOLVES:

SECTION 1. Policy No. 403.07 "Debt Service Management," attached hereto and made a part hereof, is hereby adopted as an official policy of the City of Denton, Texas, and shall replace the existing Debt Service Management Policy.

SECTION 2. The attached policy shall be filed in the official records with the City Secretary.

SECTION 3. This Resolution shall become effective immediately upon its passage and approval.

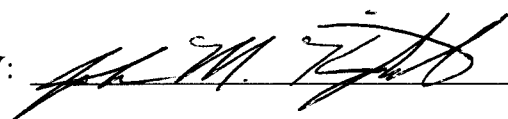
PASSED AND APPROVED this the \_\_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
MARK A. BURROUGHS, MAYOR

ATTEST:  
JENNIFER WALTERS, CITY SECRETARY

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

APPROVED AS TO LEGAL FORM:  
ANITA BURGESS, CITY ATTORNEY

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

***CITY OF DENTON***

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**POLICY/ADMINISTRATIVE PROCEDURE/ADMINISTRATIVE DIRECTIVE**

SECTION: FINANCE	REFERENCE NUMBER: 403.07
SUBJECT: DEBT MANAGEMENT	INITIAL EFFECTIVE DATE: 03/05/96
TITLE: DEBT SERVICE MANAGEMENT	LAST REVISION DATE: 11/19/13

**POLICY STATEMENT**

This policy shall provide general guidelines by which the City of Denton (the "City") will issue debt. In as much as this policy may be in conflict or inconsistent with state law, state law will prevail. Furthermore, state law will prevail on matters not specifically addressed in this policy. It is the objective of this policy that (1) the City obtain financing only when necessary, (2) the process for identifying the timing and amount of debt or other financing proceed as efficiently as possible, and (3) the City seek the most favorable interest rate and competitive costs in accordance with this policy while maintaining financial flexibility.

This debt management policy applies to the financing activities of the City of Denton, Texas. It also addresses the issues of process, use and limitations. Proceeds from debt issuances will be delivered as closely as possible to the time that contracts are expected to be awarded so that the proceeds are spent in the most efficient manner. The City Council shall review and approve the debt management policy at least annually and be documented by ordinance or resolution, which shall include any changes made.

**ADMINISTRATIVE PROCEDURES****I. DEBT MANAGEMENT COMMITTEE****A. Members**

The Debt Management Committee (the "Committee") will consist of the City Manager, Assistant City Managers, and the Director of Finance. The City's financial advisor and bond counsel shall act as consultants to the Committee.

**B. Scope**

The Committee shall meet at least annually to review the debt program or as necessary. Topics for discussion should include: the Capital Improvement Program, status of outstanding debt, unspent bond proceeds, and unissued voter authorized debt, timing of additional financing needs and financing options, and the effect of proposed financing activity on the related rates supporting the debt (i.e., property tax rate, utility rates, user fees, etc.).



## II. RESPONSIBILITY AND STANDARD OF CARE

The Finance Department will coordinate all activities required for the issuance of all debt.

### A. Delegation

The Director of Finance shall have primary responsibility for developing financing recommendations. The Director of Finance shall:

- Meet no less than annually with Department Directors to consider the need for financing, review debt capacity and assess progress on the Capital Improvement Program;
- Review changes in state and federal legislation;
- Review annually the provisions of ordinances authorizing issuance of obligations;
- Periodically review the City's Charter to ensure compliance with state law; and
- Annually review services provided by the financial advisor, bond counsel, paying agent, and other service providers to evaluate the extent and effectiveness of the services being provided.

### B. Conflicts of Interest

All participants in the debt management process shall seek to act responsibly as custodians of public assets. Officers and employees involved in the debt management process shall refrain from personal business activity that could conflict with proper execution of the financing program, or which could impair their ability to make impartial financing decisions.

### C. Reporting

The Director of Finance shall include in the Comprehensive Annual Financial Report ("CAFR") a report summarizing all debt outstanding by type (tax-supported and self-supported general obligation debt, and revenue debt), remaining balance of bond proceeds, update of arbitrage liability, and update of pertinent legislative changes.

### D. Investor Relations

The City shall endeavor to maintain a positive relationship with the investment community. The Director of Finance and the City's financial advisor shall, as necessary, prepare reports and other forms of communications regarding the City's indebtedness, as well as its future financing plans. This includes information presented to the press and other media. The information includes, but is not limited to, the annual program of services, CAFR, financial plans, capital improvement plans, and comprehensive development plans.

All forms of media deemed appropriate and immediately available to the City will be utilized to disseminate information to all investors. Examples include the Texas Bond Reporter and the Texas Municipal Reports published by the Municipal Advisory Council of Texas (the "MAC"), The Bond Buyer, and the Electronic Municipal Market Access system ("EMMA") maintained by the Municipal Securities Rulemaking Board (the "MSRB"). Bond counsel will advise on the use of electronic media in connection with the City's debt program.

E. Financial Advisor

The City shall retain an independent financial advisor for advice on the structuring of new debt, financial analysis of various options, including refunding opportunities, the rating review process, the marketing and marketability of City debt obligations, issuance and post-issuance services, the preparation of offering documents (each, an "Official Statement") and other services, as necessary. The City will seek the advice of the financial advisor on an ongoing basis. The financial advisor will perform other services as defined by the agreement approved by the City Council. The financial advisor will not bid on nor underwrite any City debt issues in accordance with MSRB rules.

F. Bond Counsel

The City shall retain bond counsel for legal and procedural advice on all debt issues. Bond counsel shall advise the City Council in all matters pertaining to its bond ordinance(s) and/or resolution(s). No action shall be taken with respect to any obligation until a written instrument (e.g., Certificate for Ordinance or other legal instrument) has been prepared by the bond attorneys certifying the legality of the proposal. The bond attorneys shall prepare all ordinances and other legal instruments required for the execution and sale of any bonds issued which shall then be reviewed by the City Attorney and the Director of Finance. The City will also seek the advice of bond counsel on all other types of debt and on any other questions involving federal tax or arbitrage law. Special counsel may be retained to protect the City's interest in complex negotiations.

### III. OFFICIAL STATEMENT

The preparation of the Official Statement is the responsibility of the financial advisor in concert with the Director of Finance. Information for the Official Statement is gathered from departments/divisions throughout the City.

The City will take all appropriate steps to comply with federal securities laws, including, but not limited to, Securities and Exchange Commission ("SEC") Rule 15c2-12 (the "Rule"). The City will make annual and event disclosure filings to the MSRB via EMMA as required by the Rule and its continuing disclosure undertakings.

#### IV. DISCLOSURE

- A. With each bond offering, in the preparation of a CAFR, Official Statement or any other offering document, and with the City's annual filings required by its continuing disclosure undertakings pursuant to the Rule, the City will follow a policy of full and complete disclosure of operating, financial and legal conditions of the City, in conformance with the Government Finance Officers Association best practice, "Understanding Your Continuing Disclosure Responsibilities (2010)", and as advised by the City's disclosure counsel or financial advisor.
- B. Notice of Disclosure Events

The Rule lists certain events that must be reported in a timely fashion to the MSRB via EMMA and, if required by the Rule and the City's continuing disclosure undertakings, to the MAC in its capacity as the State Information Depository ("SID") for the state. On May 26, 2010, the SEC made amendments to the Rule, which only apply to primary offerings that occur on or after December 1, 2010. While not required, the City will make every effort to apply the new requirements to previously issued bonds since the amendments make the Rule more stringent. The amended Rule requires that events be reported to the MSRB within 10 business days after the occurrence of the event.

1. The events that must be reported, if material, are:
  - a. Nonpayment related defaults;
  - b. Modifications of rights of security holders;
  - c. Bond calls;
  - d. Release, substitution, or sale of property securing repayment of the securities;
  - e. Mergers, consolidations, acquisitions, the sale of all or substantially all of the assets of the City or other obligated entity or their termination;
  - f. Appointment of a successor or additional trustee or paying agent or the change of the name of a trustee or paying agent.
  
2. The events that must be reported, regardless of materiality, are:
  - a. Principal and interest payment delinquencies;
  - b. Unscheduled draws on debt service reserves reflecting financial difficulties;
  - c. Unscheduled draws on credit enhancements reflecting financial difficulties;
  - d. Substitution of credit or liquidity providers, or their failure to perform;
  - e. Adverse tax opinions, the issuance by the IRS of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the security, or other material events affecting the tax status of the security;
  - f. Tender offers;

- g. Defeasances;
      - h. Rating changes;
      - i. Bankruptcy, insolvency, receivership or similar proceeding.
- C. The Rule also requires the City to report to the MSRB the failure of the City to provide the required annual financial information or operating data on or before the dates specified under a continuing disclosure undertaking. In addition, the following MSRB regulations became effective in May 2011:
  - a. Underwriters shall indicate on the EMMA system whether the City has agreed to provide secondary market disclosure information, when it will be provided, and the name of the obligated entity.
  - b. The MSRB shall indicate on the EMMA system the issuers that voluntarily agree to provide the following:
    1. Annual financial information within 120 days (150 days until December 31, 2013) after the fiscal year ends;
    2. An undertaking to prepare audited financial statements in compliance with accounting standards established by the Governmental Accounting Standards Board ("GASB"); and
    3. The website link to the issuer's financial information.

## V. RATING AGENCY COMMUNICATIONS & CREDIT OBJECTIVES

The City will seek to maintain and improve its current bond ratings so its borrowing costs are reduced to a minimum and its access to credit is preserved.

In conjunction with the financial advisor, the City shall maintain a line of communication with at least two of the rating agencies (Moody's, Standard & Poor's, or Fitch), informing them of major financial events in the City as they occur. The CAFR, Annual Program of Services, and Capital Improvement Program shall be distributed to the rating agencies after they have been accepted and adopted by the City Council on an annual basis.

When necessary, a conference call or personal meeting with representatives of the rating agencies will be scheduled when a major capital improvement program is initiated, or to discuss economic and/or financial developments which might impact credit ratings. The following documents may be required by the rating agencies:

- Most recent annual audit reports, including a description of accounting practices. Accounting changes in the past three years and the impact on financial results should be explained;
- Current budget;
- Current Capital Improvement Program;
- Official Statements for new financings;
- Description of projects being financed;

- Sources and uses statement for bond issuance. If additional funds are required to complete specific projects being financed, the source of the funds and any conditional requirements may be discussed;
- Engineering and feasibility report (if applicable);
- Zoning or land-use map (if applicable);
- Cash flow statement, in the case of interim borrowing. Statement of long – and short-term debt with annual and monthly maturity dates as appropriate. Also, a report of any lease obligations, their nature and term;
- Indication of appropriate authority for debt issuance;
- Investment policy (if applicable); and
- Statement concerning remaining borrowing capacity plus tax rate and levy capacity or other revenue capacity.

Full disclosure of the City's operations will be made to the bond rating agencies. The City staff, with the assistance of the financial advisors and bond counsel, will prepare the necessary materials for and presentation to the rating agencies.

#### **VI. LIMITATIONS OF INDEBTEDNESS AND AFFORDABILITY STATEMENT**

City staff, in conjunction with the financial advisor and bond counsel, will present to the City Council, and any City committee, as appropriate, a comprehensive analysis of debt capacity prior to issuing bonds. This analysis should include relevant information such as:

- Legal debt limits, tax or expenditure ceilings;
- Coverage requirements or additional bonds tests in accordance with bond covenants;
- Measures of the tax and revenue base, such as projections of relevant economic variables (e.g., assessed property values, employment base, unemployment rates, income levels, and retail sales);
- Population trends;
- Utilization trends for services underlying revenues;
- Factors affecting tax collections, including types of property, goods, or services taxed, assessment practices and collection rates, evaluation of trends relating to the City's financial performance, such as revenues and expenditures, net revenues available after meeting operating requirements;
- Reliability of revenues expected to pay debt service;
- Unreserved fund balance levels;
- Debt service obligations, such as existing debt service requirements;
- Debt service as a percentage of expenditures or tax or system revenues;
- Measures of debt burden on the community, such as debt per capita, debt as a percentage of full or equalized assessed property value, and overlapping or underlying debt; and
- Tax-exempt market factors affecting interest costs, such as interest rates, market receptivity, and credit rating.

Annual debt service on general obligation debt (tax-supported), which excludes self-supported debt, shall be limited to no more than 30% of budgeted expenditures in the City's General Fund.

The City has revenue bonds and other indebtedness of the Electric, Water, and Wastewater Funds, which are collectively known as the City's "Utility System." The City will maintain coverage ratios as dictated by the City's outstanding bond covenants, including any other indebtedness of the Utility System. In addition, the City will follow a policy that the Utility System will maintain a debt service coverage ratio of at least 1.25 on all outstanding revenue bonds and other indebtedness of the Utility System. For this purpose, the debt coverage ratio is defined as the net revenue of the Utility System (gross revenue less operating expenses) for a fiscal year (as set out in the audited financial statements for that fiscal year) divided by the maximum annual debt service for all then outstanding revenue bonds and other indebtedness of the Utility System. The City will strive to further maintain this debt service coverage ratio for each separate utility.

The Electric, Water, and Wastewater Funds' total long-term debt outstanding shall not exceed the amount of combined fund equity.

## **VII. CAPITAL IMPROVEMENT PROGRAM**

- A. The City will seek all possible federal and state reimbursement for mandated projects and/or programs. The City will pursue a balanced relationship between issuing debt and pay-as-you-go financing as dictated by prevailing economic factors and as directed by the City Council.
- B. Current operations will not be financed with long-term debt.
- C. Debt incurred to finance capital improvements will be repaid within the useful life of the asset.
- D. High priority will be assigned to the replacement of capital improvements when they have deteriorated to the point there they are hazardous, incur high maintenance costs, negatively affect property values, or no longer serve their intended purposes.
- E. An updated Capital Improvement Program will be presented to the City Council for approval on an annual basis. This plan will be used as a basis for the long-range financial planning process.

## **VIII. TYPES OF DEBT**

The City's bond counsel and financial advisor will present the different types of debt best suited and legally permissible under state law for each debt issue and assist in analyzing the use of capital lease purchases or the use of lines of credit. These types may include:

- Short-term vs. long-term debt,
- General obligation debt vs. revenue debt,

- Fixed rate debt,
- Lease-backed debt,
- Special obligation debt, such as assessment district debt,
- Certificates of obligation,
- Combination tax and revenue debt,
- Tax increment debt,
- Conduit issues,
- Tax Notes, and
- Taxable debt.

The issuance of long-term variable rate debt and interest rate swaps are expressly prohibited by this policy. The Director of Finance will be responsible for evaluating this type of debt and will present a variable rate debt policy or interest rate swap policy to the City Council for approval as necessary.

## **IX. BOND STRUCTURE**

Factors that may be considered when structuring debt include the following:

- Final maturity of the debt;
- Setting the final maturity of the debt equal to or less than the useful life of the asset(s) being financed;
- Use of zero coupon bonds, capital appreciation bonds, deep discount bonds or premium bonds;
- Principal and interest payment structure (e.g., level debt service payments, level principal payments, bullet and term maturities, or other payment structures);
- Redemption provisions (e.g., mandatory and optional call features);
- Use of credit enhancement (e.g., bond insurance);
- Use of senior lien and junior lien obligations;
- Capitalized interest; and
- Other factors as deemed appropriate in consultation with the City's financial advisor and bond counsel.

## **X. SHORT-TERM DEBT**

### **A. General**

Short-term obligations may be issued to finance projects or portions of projects for which the City ultimately intends to issue long-term debt (i.e., it will be used, when appropriate, to provide interim financing which will eventually be refunded with the proceeds of long-term obligations).

Short-term obligations may be backed with a tax and/or revenue pledge or a pledge of other available resources.

Interim financing may be appropriate when long-term interest rates are expected to decline in the future. In addition, some forms of short-term obligations may be

obtained more quickly than long-term obligations and, thus, may be used until long-term financing is secured.

B. Commercial Paper

Due to the financing costs associated with the marketing and placement of commercial paper, programs of less than \$25 million may not be cost effective. Should the opportunity to participate in a commercial paper issuance pool present itself or if the establishment of a program becomes cost effective, the advantages and disadvantages shall be evaluated by the Director of Finance. The use of a commercial paper program requires approval by the City Council.

C. Anticipation Notes

Anticipation notes do not require giving a notice of intent. Anticipation notes may be secured and repaid by a pledge of revenue, taxes, or the proceeds of a future debt issue and have a maximum maturity of seven (7) years. Anticipation notes may be authorized by an ordinance adopted by the City Council.

Anticipation notes may be used to finance projects or acquisitions that could also be financed using certificates of obligation and have the following restrictions:

- 1) Anticipation notes may not be used to repay interfund borrowing or a borrowing that occurred up to/or more than 24-months prior to the date of issuance, and
- 2) The City may not issue anticipation notes that are payable from general obligation bond proceeds unless the proposition authorizing the issuance of the general obligation bonds has already been approved by the voters.

D. Line of Credit

To the extent authorized by state law and with the approval of the City Council, the City may establish a tax-exempt line of credit with a financial institution selected through a competitive process. Draws shall be made on the line of credit when (1) the need for financing is so urgent that time does not permit the issuance of long-term debt, or (2) the need for financing is so small that the total cost of issuance of long-term debt including carrying costs of debt proceeds not needed immediately is significantly higher. Draws will be made on the line of credit to pay for projects designated for line of credit financing by the City Council. Borrowings under the line of credit shall be repaid from current revenues. The Director of Finance will authorize all draws on the line of credit, as authorized in the agreement approved by the City Council. Under current state law, a line of credit cannot extend past the end of the then current fiscal year.

E. Capital Leasing

Capital leasing is an option for the acquisition of a piece or package of equipment.



Leasing shall not be considered when funds are on hand for the acquisition unless the interest expense associated with the lease is less than the interest that can be earned by investing the funds on hand or when other factors such as budget constraints or vendor responsiveness override the economic consideration.

Whenever a lease is arranged with a private sector entity, a tax-exempt rate shall be sought. Whenever a lease is arranged with a government or other tax-exempt entity, the City shall obtain an explicitly defined taxable rate so that the lease will not be counted in the City's total annual borrowings subject to arbitrage rebate.

The lease agreement shall permit the City to refinance the lease at no more than reasonable cost should the City decide to do so. A lease which may be called at will is preferable to one which may merely be accelerated.

The City shall seek at least three (3) competitive proposals for any lease financing. The net present value of competitive bids shall be compared, taking into account whether payments are in advance or in arrears, and how frequently payments are made. The purchase price of equipment shall be competitively bid, as required by state law, as well as the financing costs.

The Director of Finance will ensure any leasing agreement is compared to other financing options to ensure the lease is cost beneficial. Alternate financing options will include revenue bonds, contractual obligations, certificates of obligation, tax notes, and lines of credit. The Director of Finance will be the person responsible for evaluating this financing source, and will make a recommendation to the City Council for approval.

F. Interfund Loans

As allowed by the City, the Director of Finance will review opportunities whereby interfund loans may be utilized to meet short-term financing needs. Interfund loans will only be utilized if economically beneficial to the lending fund and only if the rate of return is comparable or higher than the rate of return the lending fund would otherwise receive by keeping funds in the City's investment pool. Any interfund loan must be approved by the City Council.

**XI. LONG-TERM DEBT**

A. General

Proceeds from the sale of long-term obligations will not be used for operating purposes, and the final maturity of the obligations will not exceed the estimated useful life of the asset(s) financed. Voter approved general obligation bonds will strive to have a final maturity of twenty (20) years or less. Revenue bonds and certificates of obligation will strive to have a final maturity of thirty (30) years or less. If deemed appropriate, staff may present to the City Council extraordinary

circumstances in which longer final maturities may be necessary but never in excess of the useful life of an individual asset.

A level debt service structure will be used unless operational matters and marketing considerations dictate otherwise.

The cost of issuance of private activity bonds is usually higher than for governmental purpose bonds. Consequently, private activity bonds will be issued only when they will economically benefit the City.

The cost of taxable debt is generally higher than for tax-exempt debt. However, the issuance of taxable debt may be required or may be more appropriate in some circumstances and may allow valuable flexibility in subsequent contracts with users or managers of the improvements constructed with the bond proceeds. Therefore, the City will usually issue tax-exempt obligations but may occasionally issue taxable obligations.

#### B. Bonds

Long-term general obligation debt, including certificates of obligation, or revenue bonds shall be issued to finance significant and desirable capital improvements. Proceeds of general obligation debt will be used only for the purposes approved by voters in bond elections or set forth in the notices of intent for certificates of obligation or to refund previously issued general obligation bonds, certificates of obligation or revenue bonds. All bonds shall be sold in accordance with applicable law.

#### C. Certificates of Obligation

Certificates of obligation may be issued to:

- Finance permanent improvements and land acquisition;
- Finance costs associated with capital project overruns;
- Acquire equipment/vehicles;
- Leverage grant funding;
- Renovate, acquire, construct facilities and facility improvements;
- Construct street improvements;
- Provide funding for master plans/studies;
- Address necessary life safety needs; and
- Finance revenue supported projects/assets if determined to be more economical than revenue bonds.

To the extent required by state law, a resolution authorizing publication of notice of intent to issue certificates of obligation shall be presented for the consideration of the City Council. The notice of intent shall be published in a newspaper of general circulation in the City once a week for two consecutive weeks with the first publication to be at least thirty (30) days prior to the sale date.

Certificates of obligation may be backed by a tax pledge under certain circumstances as permitted by law. They may also be backed by a combination tax and revenue pledge as permitted under state law. Some revenues are restricted as to the uses for which they may be pledged. Electric, Water, and Wastewater revenues may be pledged without limit for Electric, Water, and Wastewater purposes but may only be pledged to a limit of \$1,000 for any one series of bonds issued for non-utility system purposes.

The final maturity of certificates of obligation will be in accordance with Section XI (A).

D. Public Property Finance Contractual Obligations

Public property finance contractual obligations may be issued to finance the acquisition of personal property.

E. Revenue Bonds

In addition to the policies set forth above, when cost-beneficial and when permitted under applicable state law, the City may consider the use of surety bonds, letters of credit, or similar instruments to satisfy debt service reserve fund requirements on outstanding and/or proposed revenue bonds.

F. Combination Tax and Revenue Bonds

In addition to the policies set forth above, when cost-beneficial and when permitted under applicable state law, the City may consider the use of combination tax and revenue bonds for refunding obligations of the Electric, Water and Wastewater combined utility system, and Solid Waste or any other self-supporting revenue-producing City enterprise. Combination tax and revenue bonds will comply with applicable state law and are assigned the full faith and credit of the City, thereby enhancing the credit rating otherwise obtained from debt that is strictly supported by non-tax revenues (i.e., revenue bonds).

## **XII. CREDIT ENHANCEMENTS**

Credit enhancements are mechanisms which guarantee principal and interest payments. They include bond insurance, lines of credit, surety bonds and letters of credit. A credit enhancement, while costly, is intended to bring a lower interest rate on debt and a higher rating from the rating agencies, thus lowering overall borrowing costs.

The City's financial advisor will advise the City whether or not a credit enhancement is cost effective under the circumstances and what type of credit enhancement, if any, should be purchased. In a negotiated sale, bids will be taken during the period prior to the pricing of the debt. In a competitive sale, bond insurance may be provided by the purchaser if the purchaser finds it cost effective.

Other credit enhancements may arise in the future, which may be beneficial. The City's financial advisor will present these options for consideration.

### **XIII. REFUNDING AND RESTRUCTURING OPTIONS**

In the case of advance refundings, the City shall consider refunding debt whenever an analysis indicates the potential for present value savings of at least 3% of the par amount being refunded. In the case of current refundings, the City shall consider refunding debt whenever an analysis indicates the potential for present value savings above the costs of refunding the outstanding debt. Refunding for savings should not extend the final maturity of the original obligations, unless specifically approved by the City Council.

### **XIV. REIMBURSEMENT ORDINANCES**

The Director of Finance will review and approve all reimbursement ordinances from City departments, including enterprise fund departments, before forwarding to the City Council for consideration. In no event will a reimbursement ordinance exceed the unreserved fund equity of the combined Utility System for Electric, Water or Wastewater requests or the operating fund of any other department making a request.

Reimbursement ordinances must be adopted within sixty (60) days of the date the original expenditures were paid. Debt obligations must be issued and the reimbursement allocation made not later than eighteen (18) months after the later of (1) the date the original expenditures were paid, or (2) the date the project is placed in service or abandoned, but in no event more than three (3) years after the original expenditures were paid.

### **XV. USE OF ANTICIPATED BOND PROCEEDS**

The use of anticipated bond proceeds will be limited to preliminary (soft) costs, which may include engineering fees, architect fees, feasibility studies, etc unless a reimbursement ordinance has been adopted pursuant to Section XIV. The Director of Finance may provide additional parameters regarding qualifying uses and will review and approve all requests for the use of anticipated bond proceeds. Departments may not use anticipated bond proceeds for preliminary costs earlier than 60 days from the date the City Council adopts an ordinance authorizing the sale of said bonds unless a reimbursement ordinance has been adopted pursuant to Section XIV. In no event will the use of anticipated bond proceeds exceed the unreserved fund equity of the combined Utility System for Electric, Water or Wastewater requests or the operating fund of any other department making a request.

### **XVI. METHOD OF SALE**

#### **A. Competitive Sale**

When feasible and economical, obligations shall be issued by competitive rather than negotiated sale. Favorable conditions for a competitive method of sale include the following:

- The market is familiar with the issuer, and the issuer is a stable and regular borrower in the public market;
- An active secondary market with a broad investor base for the issuer's debt;
- The issue is neither too large to be easily absorbed by the market nor too small to attract investors without a concerted sales effort;
- The issue is not viewed by the market as carrying overly complex features or requiring explanation as to the debt's soundness; and
- Interest rates are relatively stable, market demand is strong, and the market is able to absorb a reasonable amount of buying or selling at reasonable price changes.

#### 1. Bidding Parameters

The notice of sale will be carefully constructed so as to ensure the best possible bid for the City, in light of existing market conditions and other prevailing factors. Parameters to be examined may include:

- Limits between lowest and highest coupons;
- Coupon requirements relative to the yield curve;
- Method of underwriter compensation, discount or premium coupons;
- Use of true interest cost (TIC);
- Use of bond insurance;
- Serial debt versus term debt with mandatory sinking fund redemptions; and
- 
- Call provisions

#### B. Negotiated Sale

Bonds issued for the purpose of refunding and/or restructuring outstanding debt may appropriately be sold on a negotiated basis when maximum flexibility is required in order for the City to respond to day-to-day nuances in the marketplace and other complications peculiar to the issuance of refunding debt. Whenever the option exists to sell an issue on a negotiated basis, an analysis of the options shall be performed to aid in the decision-making process.

The City will present the reasons and will actively participate in the selection of the underwriter or direct purchaser.

In negotiated sales, the City attempts to involve qualified and experienced firms which consistently submit financing plans to the City and actively participate in the City's competitive sales. The criteria used to select an underwriter in a negotiated sale may include the following:

- Overall experience;
- Participation in the City's past competitive sales;
- Marketing philosophy;
- Capability;
- Previous experience as managing or co-managing underwriter;
- Financial statement and financing plans that are relevant and appropriate;
- Public finance team and resources; and
- Breakdown of underwriter's discount, which includes management fee, underwriting fee, average takedown and other administrative expenses.

C. Private Placement

When cost-beneficial, the City may privately place its debt. Since underwriting and rating agency expenses may be avoided, it may result in a lower cost of borrowing. Private placement is sometimes an option for small issues. The opportunity may be identified by the financial advisor.

## **XVII. INVESTMENT OF BOND PROCEEDS**

A. Strategy

The City should actively monitor its investment practices to ensure maximum returns on its invested bond funds while complying with federal arbitrage guidelines. Specific investment strategies for the investment of bond proceeds are provided in the City's Policy No. 403.06 ("Investment Policy").

B. Arbitrage Compliance

With respect to the investment and expenditure of the proceeds of tax-exempt obligations, the Director of Finance will:

- Instruct the appropriate person or persons that the construction, renovation or acquisition of the facilities financed with tax-exempt obligations must proceed with due diligence and that binding contracts for the expenditure of at least 5% of the proceeds of the tax-exempt obligations must be entered into within six months of the date of delivery of such obligations ("Issue Date");
- Monitor that at least 85% of the proceeds of tax-exempt obligations to be used for the construction, renovation or acquisition of any facilities are expended within three years of the Issue Date;
- Monitor investment of proceeds of the tax-exempt obligations and restrict the yield of the investments to the yield on the tax-exempt obligations after three years of the Issue Date;
- Monitor all amounts deposited into a sinking fund or funds, (e.g., the Interest and Sinking Fund established under each ordinance authorizing the issuance of the tax-exempt obligations), to assure that the maximum amount invested at a yield higher than the yield on the obligations does

not exceed an amount equal to the debt service on the obligations in the succeeding 12 month period plus a carryover amount equal to one-twelfth of the principal and interest payable on the obligations for the immediately preceding 12-month period;

- Assure that the maximum amount of any debt service reserve fund for tax-exempt obligations invested at a yield higher than the yield on the related tax-exempt obligations will not exceed the lesser of (1) 10% of the principal amount of the related tax-exempt obligations, (2) 125% of the average annual debt service on the related tax-exempt obligations measured as of the Issue Date for such obligations, or (3) 100% of the maximum annual debt service on the related tax-exempt obligations as of the Issue Date for such obligations;
- Ensure that no more than 50% of the proceeds of tax-exempt obligations are invested in an investment with a guaranteed yield for four years or more;
- Monitor the actions of the escrow agent (to the extent an escrow is funded with proceeds of tax-exempt obligations) to ensure compliance with the applicable provisions of the escrow agreement, including with respect to reinvestment of cash balances;
- Maintain any official action of the City (such as a reimbursement ordinance) stating its intent to reimburse with the proceeds of tax-exempt obligations any amount expended prior to the Issue Date for the acquisition, renovation or construction of the facilities financed with the obligations;
- Ensure that the applicable information return (e.g., Internal Revenue Service ("IRS") Form 8038-G, 8038-GC, or any successor forms) is timely filed with the IRS; and
- Assure that, unless excepted from rebate and yield restriction under section 148(f) of the United States Internal Revenue Code of 1986, as amended (the "Code"), excess investment earnings are computed and paid to the U.S. government at such time and in such manner as directed by the IRS (i) at least every five years after the Issue Date and (ii) within 30 days after the date the tax-exempt obligations are retired.

The City will follow a policy of full compliance with all arbitrage rebate requirements of the Code and IRS regulations, and will perform (internally or by contract consultants) arbitrage rebate calculations for each issue subject to rebate on an annual basis. All necessary rebates will be filed and paid when due.

#### C. Arbitrage Liability Management

The Director of Finance will maintain a system for tracking arbitrage rebate liability and ensuring that required calculations are performed on a timely basis. These calculations will be performed annually. Funds should be set aside in anticipation of potential rebate liabilities. Due to the complexity of the arbitrage calculations and regulations, and to the severity of the penalties for noncompliance, the advice of bond counsel and qualified experts will be pursued on an ongoing basis.

**XVIII. RESTRICTIONS ON PRIVATE BUSINESS USE**

With respect to the use of the facilities financed or refinanced with the proceeds of tax-exempt obligations the Director of Finance will:

- Develop procedures or a tracking system to identify all property financed with tax-exempt obligations;
- Monitor the date on which the facilities are substantially complete and available to be used for the purpose intended;
- Monitor whether, at any time the tax-exempt obligations are outstanding, any person, other than the City, the employees of the City, the agents of the City or members of the general public has any contractual right (such as a lease, purchase, management or other service agreement) with respect to any portion of the facilities;
- Monitor whether, at any time the tax-exempt obligations are outstanding, any person, other than the City, the employees of the City, the agents of the City or members of the general public has a right to use the output of the facilities (e.g., water, gas, electricity);
- Determine whether, at any time the tax-exempt obligations are outstanding, any person, other than the City, has a naming right for the facilities or any other contractual right granting an intangible benefit;
- Determine whether, at any time the tax-exempt obligations are outstanding, the facilities are sold or otherwise disposed of. Prior to any sale of property owned by the City (real or personal), the Director of Finance must confirm whether such property was financed with tax-exempt obligations, and if so, determine whether the proposed disposition of the property could impact the tax-exempt status of the issue of tax-exempt obligations that financed the acquisition of such property;
- Before entering into any private business use arrangement that involves the use of the facilities financed with tax-exempt obligations, the Director of Finance must obtain a description of the proposed private business use arrangement and determine whether such arrangement, if put into effect, will be consistent with the restrictions on private business use of the facilities. In connection with the evaluation of any proposed private business use arrangement, the Director of Finance should consult with bond counsel to discuss whether such arrangement, if put into effect, will be consistent with the restrictions on private business use of the facility, and, if not, whether any remedial action permitted under federal guidelines may be taken as a means of enabling such private business use without adversely affecting the tax-exempt status of the tax-exempt obligations which financed such facilities; and
- Take such action as is necessary to remediate any failure to maintain compliance with the covenants contained in the ordinances authorizing tax-exempt obligations related to the public use of the facilities financed by such obligations.

The City shall establish an appropriate record keeping system and designate the appropriate City personnel for purposes of compliance with this section.



**XIX. RECORD RETENTION**

All proceeds of debt obligations will be separately accounted for in the City's financial accounting system to facilitate arbitrage tracking and reporting. The Director of Finance shall include in the CAFR the City's arbitrage rebate liability in accordance with accounting standards established by GASB.

With respect to each issue of tax-exempt obligations issued by the City, the Director of Finance will maintain or cause to be maintained all records relating to the investment and expenditure of the proceeds of such issue and the use of the facilities financed or refinanced thereby for a period ending six years after the complete extinguishment of such issue of tax-exempt obligations. If any portion of an issue of tax-exempt obligations is refunded with the proceeds of another series of tax-exempt obligations, such records shall be maintained until the six years after the refunding obligations are completely extinguished. Such records may be maintained in paper or electronic format.

**XX. TRAINING**

The Director of Finance shall receive appropriate training regarding the City's accounting system, contract intake system, facilities management and other systems necessary to track the investment and expenditure of the proceeds and the use of the facilities financed with the proceeds of debt obligations. The foregoing notwithstanding, the Director of Finance is authorized and instructed to retain such experienced advisors, agents and consultants as may be necessary to carry out the policies and procedures described in Sections XVII, XVIII and XIX.

## GLOSSARY

**Amortization** – The planned reduction of a debt obligation according to a stated maturity or redemption schedule.

**Arbitrage** – The gain which may be obtained by borrowing funds at a lower (often tax-exempt) rate and investing the proceeds at higher (often taxable) rates. The ability to earn arbitrage by issuing tax-exempt securities has been severely curtailed by the Tax Reform Act of 1986, as amended.

**Average Life** – The average length of time debt is expected to be outstanding. Generally, a level debt service structure will limit the average life of a bond issue (i.e., a 20 year final maturity will have an approximate average life of 12 years, and a 30 year final maturity will have an approximate average life of 18 years).

**Basis Point** – One one-hundredth of one percent (0.0001).

**BBI** – Bond Buyer Index. Comparison of current rates for various maturities.

**Bid Form** – The document used by an underwriter to submit his bid at a competitive sale.

**Bond** – A security that represents an obligation to pay a specified amount of money on a specific date in the future, typically with periodic interest payments.

**Bond Counsel** – An attorney (or firm of attorneys) retained by the issuer to give a legal opinion concerning the validity of the securities. The bond counsel's opinion usually addresses the subject of tax exemption. Bond counsel may prepare, or review and advise the issuer regarding authorizing resolutions or ordinances, trust indentures, official statements, validation proceedings and litigation.

**Bond Insurance** – Bond insurance is a type of credit enhancement whereby a monoline insurance company indemnifies an investor against a default by the issuer to pay principal and interest in-full and on-time. Once assigned, the municipal bond insurance policy generally is irrevocable. The insurance company receives an up-front fee, or premium, when the policy is issued.

**Book-Entry-Only** – Bonds that are issued in fully-registered form but without certificates of ownership. The ownership interest of each actual purchaser is recorded on computer.

**Bond Years** – \$1,000 of debt outstanding for one year used to compute average life and net interest cost.

**Call Option** – The right to redeem a bond prior to its stated maturity, either on a given date or continuously. The call option is also referred to as the optional redemption provision.

**Capital Appreciation Bond** – A bond without current interest coupons that is typically sold at a substantial discount from par. Investors are provided with a return based upon the accretion and compounding of interest on the bond through maturity.

**Capital Lease** – The acquisition of a capital asset over time rather than merely paying a rental fee for temporary use. A lease-purchase agreement, in which provision is made for transfer of ownership of the property for a nominal price at the scheduled termination of the lease, is referred to as a capital lease.

**Certificates of Obligation** – A type of debt authorized to be issued pursuant to the Certificates of Obligation Act of 1971 (Subchapter C of Chapter 271, Texas Government Code).

**Closing** – When bonds are exchanged for money (a/k/a delivery or settlement).

**Commercial Paper (Tax-Exempt)** – By convention, short-term, unsecured, tax-exempt promissory notes issued in either registered or bearer form with a stated maturity of 270 days or less.

**Competitive Sale** – A sale of securities in which the securities are awarded to the bidder who offers to purchase the issue at the best price or lowest cost.

**Coupon Rate** – The interest rate on specific maturities of a bond issue. While the term “coupon” derives from the days when virtually all municipal bonds were in bearer form with coupons attached, the term is still frequently used to refer to the interest rate on different maturities of bonds in registered form.

**Cover Bid** – The runner-up in a competitive bond sale.

**Credit Enhancements** – Credit enhancements are mechanisms which guarantee principal and interest payments. They include bond insurance and a line or letter of credit. A credit enhancement, while costly, will usually bring a lower interest rate on debt and a higher rating from the rating agencies, thus lowering overall costs. Cost effectiveness of credit enhancement will be evaluated for each debt issue.

**CUSIP Number** – The term CUSIP is an acronym for the Committee on Uniform Securities Identification Procedures. An identification number is assigned to each maturity of an issue, and is usually printed on the face of each individual certificate of the issue. The CUSIP numbers are intended to help facilitate the identification and clearance of municipal securities. As the municipal market has evolved, and the new derivative products are devised, the importance of the CUSIP system for identification purposes has increased.

**Dated Date** – A defined date at which interest begins to accrue from.

**Debt Burden** – The ratio of outstanding tax-supported debt to the market value of property within a jurisdiction. The overall debt burden includes a jurisdiction’s proportionate share of overlapping debt as well as the municipality’s direct net debt.

**Debt Limitation** – The maximum amount of debt that is legally permitted by a jurisdiction’s charter, constitution, or statutory requirements.

**Debt Service** – The amount necessary to pay principal and interest requirements on outstanding bonds for a given year or series of years.

**Debt Service Reserve Fund** – The fund into which moneys are placed which may be used to pay debt service if pledged revenues are insufficient to satisfy the debt service requirements. The debt service reserve fund may be entirely funded with bond proceeds, or it may only be partly funded at the time of the issuance and allowed to reach its full funding requirement over time, due to the accumulation of pledged revenues. If the debt service reserve fund is used in whole or part to pay debt service, the issuer usually is required to replenish the funds from the first available funds or revenues. A typical reserve requirement might be the maximum aggregate annual debt service requirement for any year remaining until the bonds reach maturity. The size of the reserve fund, and the manner in which it is invested, may be subject to arbitrage regulations.

**Default** – The failure to pay principal or interest in full or on time. An actual default should be distinguished from technical default. The latter refers to a failure by an issuer to abide by certain covenants but does not necessarily result in a failure to pay principle or interest when due.

**Defeasance** – Providing for payment of principal of premium, if any, and interest on debt through the first call date or scheduled principal maturity in accordance with the terms and requirements of the instrument pursuant to which the debt was issued. A legal defeasance usually involves establishing an irrevocable escrow funded with only cash and U.S. government obligations.

**Depository Trust Company (DTC)** – A limited purpose trust company organized under the New York Banking Law. DTC facilitates the settlement of transactions in municipal securities.

**Downgrade** – A reduction in credit rating.

**Enterprise Activity** – A revenue-generating project or business. The project often provides funds necessary to pay debt service on securities issued to finance the facility. The debts of such projects are self-liquidating when the projects earn sufficient monies to cover all debt service and other requirements imposed under the bond contract. Common examples include water and sewer treatment facilities and utility facilities.

**Electronic Municipal Market Access (EMMA)** – Effective July 1, 2009, the SEC implemented amendments to SEC Rule 15c2-12 which approved the establishment by the MSRB of EMMA, the sole successor to the nationally recognized municipal securities information repositories with respect to filings made in connection with disclosure undertakings. Access to filings are made free of charge to the general public by the MSRB.

**Final Official Statement (FOS)** – A document published by the issuer which generally discloses material information on a new issue of municipal securities including the purposes of the issue, how the securities will be repaid, and the financial, economic and social characteristics of the issuing government. Investors may use this information to evaluate the credit quality of the securities.

**Flow of Funds** – The order in which pledged revenues must be disbursed, as set forth in the trust indenture or bond resolution. In most instances, the pledged revenues are deposited into a general collection account or revenue fund as they are received and subsequently transferred into the other accounts established by the bond resolution or trust indenture. The other accounts provide for payment of the costs of debt service, debt service reserve deposits, operation and maintenance costs, renewal and replacement, and other requirements.

**General Obligation Debt** – Debt that is secured by a pledge of the ad valorem taxing power of the issuer. Also known as a full faith and credit obligation.

**Good Faith Deposit** – A sum of money given by the Underwriter to assure his bid.

**Institutional Buyer** – Banks, financial institutions, insurance companies, and bond funds.

**Issuance Costs** – The costs incurred by the bond issuer during the planning and sale of securities. These costs include but are not limited to financial advisory and bond counsel fees, printing and advertising costs, rating agencies fees, and other expenses incurred in the marketing of an issue.

**Junior Lien Bonds** – Bonds which have a subordinate claim against pledged revenues.

**Letter of Credit** – Bank credit facility whereby a bank will honor the payment of an issuer's debt, in the event that an issuer is unable to do so, thereby providing an additional source of security for bondholders for a predetermined period of time. A letter of credit often is referred to as an L/C or an LOC. Letter of Credit can be issued on a "stand-by" or "direct pay" basis.

**Level Debt Service** – When annual payments are substantially the same each year.

**Line of Credit** – Bank credit facility wherein the bank agrees to lend up to a maximum amount of funds at some date in the future in return for a commitment fee.

**Manager** – The member (or members) of an underwriting syndicate charged with the primary responsibility for conducting the affairs of the syndicate. The managers take the largest underwriting commitment.

Lead Manager or Senior Manager

The underwriter serving as head of the syndicate. The lead manager generally handles negotiations in a negotiated underwriting of a new issue of municipal securities or directs the process by which a bid is determined for a competitive underwriting. The lead manager also is charged with allocating securities among the members of the syndicate in accordance with the terms of the syndicate agreement or agreement among underwriters.

Joint Manager or Co-Manager

Any member of the management group.

***Municipal Advisory Council of Texas (MAC)*** – The designated State of Texas Information Depository as approved by the SEC with respect to filings made in connection with undertakings.

***Municipal Securities Rulemaking Board (MSRB)*** – A self-regulating organization established on September 5, 1975 upon the appointment of a 15-member Board by the Securities and Exchange Agreement. The MSRB, comprised of representatives from investment banking firms, dealer bank representatives, and public representatives, is entrusted with the responsibility of writing rules of conduct for the municipal securities market. New Board members are selected by the MSRB pursuant to the method set forth in Board rules.

***Negotiated Sale*** – A sale of securities in which the terms of sale are determined through negotiation between the issuer and the purchaser, typically an underwriter, without competitive bidding.

***Net Interest Cost*** – The average interest cost of a bond issue calculated on the basis of simple interest.

***Paying Agent*** – An agent of the issuer with responsibility for timely payment of principal and interest to bond holders.

***Preliminary Official Statement (POS)*** – The POS is a preliminary version of the official statement which is used by an issuer or underwriters to describe the proposed issue of municipal securities prior to the determination of the interest rate(s) and offering prices(s). The preliminary official statement, also called a “red herring”, often is examined by potential purchasers prior to making an investment decision.

***Present Value*** – The value of a future amount or stream of revenues or expenditures in current dollars.

***Private Business Use*** – Private business use occurs whenever tax-exempt obligation proceeds are used to benefit any entity other than a state or local government, including non-profit corporations and the federal government. In simple terms, an issue of tax-exempt obligations may lose their tax-exempt status if (i) more than 10% of the proceeds of the obligations are to be used for any private business use and the payment of the principal of, or the interest, on more than 10% of the proceeds of the obligations is secured by or payable from property used for a private business use or (ii) the amount of the proceeds of the obligations used to make loans to borrowers other than state and local governments exceeds the lesser of 5% of the proceeds or \$5 million.

***Refunding*** – An advance refunding is a refunding that occurs more than 90 days before the call date of the refunded bonds, and a current refunding is a refunding that occurs 90 days or less before the call date. A refunding is a process of selling a new issue of securities to obtain funds needed to retire existing securities. Debt refunding is done to extend maturity and/or to reduce debt service cost.

**Retail Buyer** – Individual investors.

**Revenue Bond** – A bond which is payable from a specific source of revenue and to which the full faith and credit of an issuer with taxing power is not pledged. Revenue bonds are payable from identified sources of revenue, and do not permit the bondholders to compel a jurisdiction to pay debt service from any other source. Pledged revenues often are derived from the operation of an enterprise activity. Generally, no voter approval is required prior to issuance of such obligations.

**Secondary Market** – The market in which bonds are sold after their initial sale in the new issue market.

**Senior Lien Bonds** – Bonds having a prior or first claim on pledged revenues.

**Serial Bonds** – A bond issue in which the principal is repaid in periodic installments over the issue's life.

**Split ratings** – Different rating levels from different rating agencies.

**Surety Bond** – A bond guaranteeing performance of a contract or obligation.

**Term Bonds** – Term bonds usually refer to a particularly large maturity of a bond issue that is created by aggregating a series of maturities. A provision is often made for the mandatory redemption of specified amounts of principal during several years prior to the stated maturity, which effectively simulates serial bonds.

**True Interest Cost (TIC)** – An expression of the average interest cost in present value terms. The true interest cost is a more accurate measurement of the bond issue's effective interest cost and should be used to ascertain the best bid in a competitive sale.

**Variable Rate Bond** – A bond on which the interest rate is reset periodically, usually no less often than semi-annually. The interest rate is reset either by means of an auction or through an index.

**Upgrade** – An increase in credit rating.

**AGENDA INFORMATION SHEET**

**AGENDA DATE:** November 19, 2013

**DEPARTMENT:** Finance

**ACM:** Bryan Langley *LBL*

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**SUBJECT**

Consider approval of a resolution reviewing and adopting revisions to the Investment Policy regarding funds for the City of Denton; and providing an effective date. The Audit/Finance Committee recommends approval (3-0).

**BACKGROUND**

The City of Denton has a formal Investment Policy to guide decision making in managing and investing public funds. The City's Investment Policy is modeled after, and in compliance with, the provisions of the Public Funds Investment Act (PFIA) of Texas, Government Code Chapter 2256. In accordance with this Code, and in order of importance, are the following prioritized objectives for managing the portfolio's fixed income investments: safety of principal, liquidity, and yield. It is the City's practice to hold securities until they mature, making any temporary gains and losses unlikely to be realized. The general investment strategy, while taking into account the current interest rate environment, is to ladder out securities to meet cash flow needs.

At least annually, the City Council and the Audit/Finance Committee are requested to review and approve the Investment Policy as required by the PFIA. Aside from small revisions addressing formatting adjustments, staff changes, and general clarifications to the Policy, this year the more substantive modifications are as follows:

1. Included the annual requirement for the staff composed Investment Committee members to sign an ethics statement requiring the notation of any known conflicts of interest with the City's current investment providers. (Page 6)
2. Updated the record retention period from seven to five years for investment funds (other than bond proceeds) as required by the Texas State Library and Archives Commission. (Page 8)
3. Incorporated the section 2256.0201 from the PFIA into the Policy which allows municipal electric utilities to engage in hedging contracts in relation to fuel oil, natural gas, coal, nuclear fuel, and electric energy to protect against loss due to price fluctuations. This was added in recognition of upcoming changes in DME's energy program. (Page 10)



First Southwest Asset Management, Inc. (the City's investment advisor) and the staff composed Investment Committee have reviewed and approved the revised Investment Policy. The Audit/Finance Committee concurred with the proposed changes.

**RECOMMENDATION**

Staff recommends approval of Investment Policy 403.06 with the advised revisions.

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

On November 5, 2013, the Audit/Finance Committee unanimously approved the revised Investment Policy for consideration by the City Council.

**EXHIBITS**

1. Red-lined version of the Investment Policy
2. Resolution

Respectfully submitted:

*Chuck Springer*

Chuck Springer, 349-8260  
Director of Finance

# CITY OF DENTON

## POLICY/ADMINISTRATIVE PROCEDURE/ADMINISTRATIVE DIRECTIVE

SECTION: FINANCE POLICIES	REFERENCE NUMBER: 403.06
SUBJECT: INVESTMENTS	INITIAL EFFECTIVE DATE: 02/17/87
TITLE: INVESTMENT POLICY	REVISION DATE: <del>10-16-12</del> 11-19-13

### I. PURPOSE

It is the objective of the City of Denton to invest public funds in a manner which will provide maximum security and the best commensurate yield while meeting the daily cash flow demands of the City and conforming to all federal, state, and local statutes, rules, and regulations governing the investment of public funds. This Policy serves to satisfy the statutory requirements of defining and adopting a formal investment policy. The Policy and investment strategies shall be reviewed annually by the Audit/Finance Committee and City Council who will formally approve any modifications. This Investment Policy, as approved, is in compliance with the provisions of the Public Funds Investment Act of Tex. Gov't. Code Chapter 2256.

### II. SCOPE

A. This Investment Policy applies to the investment activities of the City of Denton, Texas. The specific funds cited hereafter in Section IID, shall be excluded from this Investment Policy. All financial assets of all funds, including the General Fund and any other accounts of the City not specifically excluded in these policy guidelines are included. These funds are accounted for in the City's Comprehensive Annual Financial Report (CAFR). These funds, as well as others that may be created from time-to-time, shall be administered in accordance with the provisions of this Policy. All funds will be pooled for investment purposes except for those listed under **Section IIC**.

In addition to this Policy, the investment of bond proceeds and other bond funds (including debt service and reserve funds) shall be governed and controlled by their governing ordinance and by the provisions of the Tax Reform Act of 1986, including all regulations and rulings promulgated there under applicable to the issuance of tax-exempt obligations.

B. Funds covered by this Policy and managed as a pooled fund group:

1. General Fund - used to account for resources traditionally associated with government, which are not required to be accounted for in another fund.
2. Special Revenue Funds – used to account for the proceeds from specific revenue sources which are restricted or committed to expenditures for specific purposes other than debt service or capital projects.
3. Debt Service Fund used to account for resources to be used for the payment of principal, interest and related costs on general obligation debt.
4. Capital Project Funds – used to account for resources to enable the acquisition or construction of major capital facilities which are not financed by enterprise funds, internal service funds, or trust funds.

**POLICY/ADMINISTRATIVE PROCEDURE/ADMINISTRATIVE DIRECTIVE**

TITLE: INVESTMENT POLICY	REFERENCE NUMBER: 403.06
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5. Enterprise Funds – used to account for operations that are financed and operated in a manner similar to private business enterprises.
  6. Internal Service Funds – used to account for the cost of providing goods or services between City departments.
  7. Trust and Agency Funds – used to account for assets held by the City in a trustee capacity or as an agent for individuals, private organizations, other governments, and/or other funds.
  8. Bond Reserve Funds – funds set at prescribed levels by certain bond ordinances to pay principal and/or interest if required to prevent default.
  9. New funds available for investment by the City, such as (but not limited to) resources associated with Public Improvement Districts or Tax Increment Financing zones, unless specifically excluded herein.
- C. Funds covered by this Policy and managed as separately invested assets:
1. Bond Funds – funds established with the proceeds from specific bond issues when it is determined that segregating these funds from the pooled funds’ portfolio will result in maximum interest earning retention under the provisions of the Tax Reform Act of 1986.
  2. Endowment Funds – funds given to the City with the instructions that the principal is to remain intact, unless otherwise agreed to, and the income generated by the investments will be used for specified purposes.
  3. Trust, Escrowed Funds & Security Deposits – funds held outside the City by a trust, escrow agent, or other entity but belonging to the City.
- D. This Policy shall not govern funds, which are managed under separate investment programs in accordance with the Tex. Gov’t. Code Sec. 2256.004. Such programs currently include all funds related to employee retirement programs, other funds established by the City for deferred employee compensation, and certain private donations. The City shall and will maintain responsibility for these funds to the extent required by federal and state law, the City Charter, and donor stipulations. This Policy also does not apply to monies held in escrow to retire bonds which are subject to defeasance requirements stated under their respective bond ordinances.

**III. INVESTMENT OBJECTIVES & STRATEGIES**

It is the policy of the City that, giving due regard to the safety and risk of investments, all available funds shall be invested in conformance with state and federal regulations, applicable bond ordinance requirements, adopted Investment Policy and investment strategies.

In accordance with the Public Funds Investment Act, the following prioritized objectives (in order of importance) in accordance with the Tex. Gov’t. Code Sec. 2256.005(d) apply for each of the City’s investment strategies.

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- A. *Suitability* – Understanding the suitability of the investment to the financial requirements of the City is important. Any investment eligible in the Investment Policy is suitable for all City funds.
- B. *Safety* – Preservation and safety of principal are the primary objectives of the Investment Policy. All investments will be in high quality securities with no perceived default risk.
- C. *Liquidity* – The City’s investment portfolio will remain sufficiently liquid to meet operating requirements that might be reasonably anticipated. Liquidity shall be achieved by matching investment maturities with forecasted cash flow requirements and by investing in securities with active secondary markets. Short-term investment pools and money market mutual funds provide daily liquidity and may be utilized as a competitive investment alternative to fixed income instruments.
- D. *Marketability* – Securities with active and efficient secondary markets are necessary in the event of an unanticipated cash requirement. Historical market “spreads” between the bid and offer prices of a particular security type of less than a quarter of a percentage point shall define an efficient secondary market.
- E. *Diversification* – Investment maturities shall be staggered to provide cash flow based on the anticipated needs of the City. Diversifying the appropriate maturity structure will reduce market cycle risk.
- F. *Yield* – Attaining a competitive market yield, commensurate with the City’s investment risk constraints and the cash flow characteristics of the portfolio, is the desired objective. The goal of the City’s investment portfolio is to regularly meet or exceed the average rate of return on U.S. Treasury bills at a maturity level comparable to the portfolio’s weighted average maturity in days. The yield of an equally weighted, rolling twelve month moving average of a one year U.S. Treasury bill portfolio shall be the minimum yield objective or “benchmark”. One year U.S. Treasury bill information is derived from the Federal Reserve Statistical Release H.15 for constant maturities. A secondary objective will be to obtain a yield equal to or in excess of a local government investment pool or money market mutual fund.

The first measure of success in this area will be the attainment of enough income to offset inflationary increases. Although steps will be taken to obtain this goal, the City’s staff will follow the “Prudent Person” statement relating to the standard of care that must be exercised when investing public funds as expressed in the Tex. Gov’t. Code Sec. 2256.006(a-b). The Investment Officers shall avoid any transactions that might impair public confidence in the City’s ability to govern effectively. The governing body recognizes that in adequately diversifying the maturity structure within the portfolio to meet the City’s expenditure needs, occasional measured unrealized losses due to market volatility and rising interest rates are inevitable, and must be considered within the context of the overall portfolio’s investment return. The prudence of the investment decisions shall be measured in accordance with the tests set forth in the Tex. Gov’t. Code Sec. 2256.006(b).

**IV. INVESTMENT STRATEGY FOR SPECIFIC FUND GROUPS**

In order to better diversify, maximize interest earnings and otherwise meet stated objectives, fund groups may be combined into one or more internal investment pools. Although fund monies may be combined into a single asset portfolio, proportional fund ownership will be accounted for

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separately. The City maintains separate portfolios for some individual funds or groups of funds (as listed under Section II) that are managed in accordance with the terms of this Policy and by the corresponding investment strategies listed below.

- A. *Investment Pool Strategy* – The City’s Investment Pool is an aggregation of the majority of City funds which includes tax receipts, enterprise fund revenues, fine and fee revenues, reserve funds for outstanding utility system revenue bonds, as well as some, but not necessarily all, bond proceeds, grants, gifts and endowments. This portfolio is maintained to meet anticipated daily cash needs for the City’s operations, capital projects and debt service. In order to ensure the ability of the City to meet obligations and to minimize potential liquidation losses, the dollar-weighted average stated maturity of the investment pool shall not exceed 1.5 years or 550 days. The objectives of this portfolio are to:
1. Ensure safety of principal by investing in only high quality securities for which a strong secondary market exists.
  2. Ensure that anticipated cash flow needs are matched with adequate investment liquidity.
  3. Limit market and credit risk through diversification.
  4. Attain the best feasible yield commensurate with the objectives and restrictions set forth in this Policy by actively managing the portfolio to meet or exceed the twelve month moving average yield on a one year U.S. Treasury bill as derived from the Federal Reserve Statistical Release H.15 for constant maturities.
- B. *Bond Funds Strategy* - Occasionally, separate non-pooled portfolios are established with the proceeds from bond sales in order to maximize earnings within the constraints of arbitrage regulations. The objectives of the portfolios are to:
1. Ensure safety of principal by investing in only high quality securities for which a strong secondary market exists.
  2. Ensure that anticipated cash flow needs are matched with adequate investment liquidity.
  3. Limit market and credit risk through diversification.
  4. Attain the best feasible yield commensurate with the objectives and restrictions set forth in this Policy and the bond ordinance by actively managing the portfolio to meet or exceed the bond yield.
- C. *Endowment Fund Strategy* - Funds received as gifts to the City with instructions that the income generated by the investment of said funds be used for specified purposes are invested as separate non-pooled portfolios in order to maximize return. The objectives of the portfolios are to:
1. Ensure safety of principal by investing in only high quality securities for which a strong secondary market exists.

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2. Ensure that anticipated cash flow needs are matched with adequate investment liquidity.
3. Limit market and credit risk through diversification.
4. Attain the best feasible yield commensurate with the objectives and restrictions set forth in this Policy.

D. *Trust, Escrowed Funds & Security Deposit Strategy* - Funds that are held outside the City by a trust, escrow agent, or as a security deposit, but belonging to the City are governed by their respective trust, escrow, or security deposit agreement and are subject to the provisions of this Policy. The objectives of the portfolios are to:

1. Ensure safety of principal by investing in only high quality securities for which a strong secondary market exists.
2. Ensure that anticipated cash flow needs are matched with adequate investment liquidity.
3. Limit market and credit risk through diversification.
4. Attain the best feasible yield commensurate with the objectives and restrictions set forth in this Policy and the trust, escrow, or security deposit agreement.

**V. INVESTMENT COMMITTEE**

*Members* – The Investment Committee will consist of the City Manager, Assistant City Manager for Finance, Assistant City Manager for Utilities, ~~Chief Financial Officer~~ Director of Finance, ~~City Controller~~, Assistant Director of Finance, ~~City Controller~~, Treasury Administrator, and the City’s investment advisor. The investment advisor is a non-voting member. When needed, the City Attorney will act as a legal advisor to the Investment Committee.

*Scope* – The Investment Committee shall meet at least quarterly to determine general strategies, investment guidelines and to monitor results. Included in its deliberations will be such topics as: economic outlook, portfolio diversification, maturity structure, potential risk to the City’s funds, authorized broker/dealers (if applicable) and depository institutions, as well as the target rate of return on the investment portfolio.

*Procedures* - The Investment Committee shall provide meeting summations to all members. Any two members of the Investment Committee may request a special meeting, and four members shall constitute a quorum. The Investment Committee shall establish its own rules of procedures.

**VI. RESPONSIBILITY AND STANDARD OF CARE**

A. *Delegation & Training* – The management responsibility for the investment program is delegated to ~~the Chief Financial Officer~~ the Director of Finance. The primary individual who shall be involved in investment activities will be his designee. The designee may delegate the day to day activities to a responsible individual(s) who has received the appropriate training required by state statute. The ~~Chief Financial Officer~~ Director of Finance and department designees will use this Policy as the primary guideline for the City’s investment program, procedures, and internal control issues. The Assistant City Manager

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who oversees financial operations and the ~~Chief Financial Officer~~ Director of Finance are designated as the Investment Officers, pursuant to Tex Gov't. Code Sec. 2256.005(f). Accordingly, the Investment Officers and persons authorized to execute investment transactions shall attend at least one training session relating to their responsibilities under the Public Funds Investment Act within 12 months after assuming duties and receive no less than 10 hours of instruction relating to investment functions every two year period that begins on the first day of the fiscal year and consists of the two consecutive fiscal years after that date. The training must include education in investment controls, security risks, strategy risks, market risks, and compliance with the Public Funds Investment Act. The investment training session shall be provided by an independent source approved by the Investment Committee. For purposes of this policy, an "independent source" from which investment training shall be obtained shall include a professional organization, an institute of higher learning or any other sponsor other than a business organization with whom the City may engage in an investment transaction. Thus, these independent sources will be training sessions sponsored, accredited or endorsed by the Government Treasurers Organization of Texas (GTOT), Center For Public Management at the University of North Texas (UNT), Government Finance Officers Association of Texas (GFOAT), Texas Municipal League (TML), North Central Texas Council of Governments (NCTCOG), Association of Public Treasurers United States & Canada (APT US & C), and Government Finance Officers' Association (GFOA).

No persons may engage in investment transactions except as provided under the terms of this \_\_\_\_\_ Policy. The Assistant City Manager shall require an annual compliance review by an \_\_\_\_\_ external auditor that will consist of an audit of management controls on investments, \_\_\_\_\_ adherence to the City's Investment Policy and a review of the quarterly investment reports. \_\_\_\_\_ The reviews will provide internal control by assuring compliance with policies and \_\_\_\_\_ procedures. The Assistant City Manager, ~~Chief Financial Officer~~ Director of Finance, Mayor, City Council, \_\_\_\_\_ City Manager and other Finance Department employees shall be personally indemnified in \_\_\_\_\_ the event of investment loss provided the Investment Policy has been followed.

- B. *Conflicts of Interest* – All participants in the investment process shall seek to act responsibly as custodians of public assets. Officers and employees involved in the investment process shall refrain from personal business activity that could conflict with proper execution of the investment program, or which could impair their ability to make impartial investment decisions. **Investment Committee members shall be required to complete an annual ethics statement noting any known conflicts of interest as outlined in Section VIC below,**
- C. *Disclosure* – Anyone involved in investing City funds shall file with the Investment Committee a statement disclosing any personal business relationship with a business organization offering to engage in investment transactions with the City or is related within the second degree by affinity or consanguinity as determined under the Tex. Gov't. Code Ch. 573, to an individual seeking to transact investment business with the City. A disclosure statement must also be filed with the Texas Ethics Commission and the City Council. An Investment Officer or other employee has a personal business relationship with a business organization if any one of the following three conditions ~~isare~~ met:
1. The Investment Officer or employee owns 10% or more of the voting stock or shares of the business organization or owns \$5,000 or more of the fair market value of the business organization.

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2. Funds received by the Investment Officer or employee from the business organization exceed 10% of the investment officers gross income for the prior year.
3. The Investment Officer or employee has acquired from the business organization during the prior year investments with a book value of \$2,500 or more for their personal account.

- D. *Prudence* – The standard of prudence to be used by the investment officials shall be the “Prudent Person Rule”, as set forth in Tex. Gov’t. Code Sec. 2256.006, and will be applied in the context of managing an overall portfolio: “Investments shall be made with judgment and care under prevailing circumstances, that a person of prudence, discretion and intelligence would exercise in the management of the person’s own affairs, not for speculation, but for investment, considering the probable safety of their capital as well as the probable income to be derived.”

Investment officials acting in accordance with the Investment Policy and exercising due diligence shall be relieved of personal responsibilities for an individual security’s credit risk or market price change, provided deviations from expectations are reported in a timely fashion and appropriate action is taken to control adverse developments. In determining whether an investment official has exercised prudence with respect to an investment decision, the determination shall be made taking into consideration the investment of all funds over which the official had responsibility rather than consideration as to the prudence of a single investment and whether the investment decision was consistent with the City’s Investment Policy.

- E. *Reporting*

*Quarterly* – Not less than quarterly, the ~~Chief Financial Officer~~ **Director of Finance** shall submit to the City Manager, Mayor and City Council a written report of the City’s investment transactions within one hundred twenty (120) days of the preceding reporting period. The report shall: 1) describe in detail the investment position of the City as of the end of the reporting period, 2) be prepared jointly by all Investment Officers, 3) be signed by each Investment Officer, 4) contain a summary statement, prepared in compliance with generally accepted accounting principles, of each pooled fund group including a) beginning market value for the reporting period; b) additions and changes to the market value during the period; c) ending market value for the period; and d) fully accrued interest for the reporting period, 5) state the book value and market value of each separately invested asset at the beginning and end of the reporting period by type of asset and fund type invested, 6) state the maturity date of each separately invested asset that has a maturity date, 7) state the account or fund or pooled fund group for which each individual investment was acquired, and 8) state the compliance of the investment portfolio as it relates to the investment strategy expressed in the Investment Policy and with relevant provisions of the Tex. Gov’t. Code Ch. 2256.

*Annually* - The City Council shall review and approve the Investment Policy and investment strategies at least annually and be documented by rule, order, ordinance or resolution which shall include any changes made.

*Compliance Audit* – The City’s external independent auditor will conduct an annual review of the quarterly reports in conjunction with the annual financial audit. The results of the



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audit will be reported to City Council. The audit will also review compliance with management controls on investments and adherence to this Policy.

- F. The guidelines, **as recommended by the Texas State Library and Archives Commission**, of retaining records for **seven-five** years **from the applicable fiscal year end as recommended in the ~~Texas State Library Municipal Records Manual~~** should be followed with respect to the investment of funds other than bond proceeds. Since the City manages the majority of its investments, including bond funds, using an internal pool consisting of combined fund groups, records shall be retained in accordance with the Administrative Policy No. 403.07 "Debt Service Management". The **Chief Financial Officer-Director of Finance** shall oversee the filing and/or storing of investment records.
- G. Market prices for all public fund investments will be obtained and monitored through the use of Interactive Data Inc., an on-line data service or a similarly qualified successor agency **or experienced competitor**.

**VII. SUITABLE AND AUTHORIZED INVESTMENT SECURITIES**

- A. *Active Portfolio Management* – The City intends to pursue an active versus a passive investment management philosophy. That is, securities may be sold before they mature if market conditions present an opportunity for the City to benefit from the trade. (Refer to Section VIII of this Policy.) In addition, the Investment Officers may at times restrict or prohibit the purchase of specific types of investments or issuers due to current market conditions.

The City shall take all prudent measures consistent with this Investment Policy to liquidate an investment that no longer meets the required minimum rating standards, as per the Tex. Gov't. Code Sec. 2256.021. However, if it is determined by the Investment Committee that the City would benefit from holding the securities to maturity to recapture its initial investment then the Investment Officers may act accordingly. The City is not required to liquidate investments that were authorized investments at the time of purchase. (Tex. Gov't. Code Sec. 2256.017)

- B. *Authorized Investments* – City funds governed by this Policy may be invested in the instruments described below, all of which are authorized by the Public Funds Investment Act.
1. Direct obligations of the United States of America, its agencies and instrumentalities (maturing in less than five years).
  2. Other obligations, the principal and interest of which are unconditionally guaranteed or insured by, or backed by the full faith and credit of, the United States of America, or any obligation fully guaranteed or insured by the Federal Deposit Insurance Corporation (maturing in less than five years).
  3. Direct obligations of the State of Texas or its agencies thereof, Counties, Cities and other political subdivisions rated as to investment quality by a nationally recognized investment rating firm not less than AA or its equivalent (maturing in less than three years).

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4. Other obligations, the principal and interest of which are unconditionally guaranteed or insured by, or backed by the full faith and credit of, the State of Texas, rated as to investment quality by a nationally recognized investment rating firm not less than AA or its equivalent (maturing in less than three years).
5. Fully insured or collateralized certificates of deposit/share certificates issued by state and national banks or savings bank or a state or federal credit union (having its main or branch office in Texas) guaranteed or insured by the Federal Deposit Insurance Corporation or its successor or the National Credit Union Share Insurance Fund or its successor; and secured by obligations in accordance with Section XII herein (maturing in less than three years).

In addition to the City's authority to invest funds in certificates of deposit and share certificates stated above, an investment in certificates of deposit made in accordance with the following conditions is an authorized investment under Tex. Govt. Code Sec. 2256.010-(b): (1) the funds are invested by the City through a clearing broker registered with the Securities and Exchange Commission (SEC) and operating pursuant to SEC rule 15c3-3 (17 C.F.R. Section 240.15c3-3) with its main office or branch office in Texas and selected from a list adopted by the Investment Committee as required by Section 2256.025; or a depository institution that has its main office or a branch office in this state and that is selected by the Investment Committee; (2) the selected broker or depository institution arranges for the deposit of the funds in certificates of deposit in one or more federally insured depository institutions, wherever located for the account of the City; (3) the full amount of the principal and accrued interest of each of the certificates of deposit is insured by the United States or an instrumentality of the United States; (4) the selected broker or depository institution acts as custodian for the City with respect to the certificates of deposit issued for the account of the City.

6. Fully collateralized repurchase agreements provided the City has on file a signed Master Repurchase Agreement, approved by the City Attorney, which details eligible collateral, collateralizations ratios, standards for collateral custody and control, collateral valuation, and conditions for agreement termination. The repurchase agreement must have a defined termination date and be secured by obligations in accordance with Section XII of this Policy. It is required that the securities purchased by the City be assigned to the City, held in the City's name and deposited at the time the investment is made with the City or with a third party selected and approved by the City. Repurchase agreements must be purchased through a primary government securities dealer, as defined by the Federal Reserve or a financial institution doing business in this State (termination date must be 30 days or less). An exception to the 30 days or less termination date may be made with respect to bond proceeds. The City may specifically authorize in the bond ordinance investments in repurchase agreements, such as a flexible repurchase agreement, with maturities in excess of 30 days subject to any required approvals from bond insurers.
7. Commercial paper that has a stated maturity of 270 days or less from the date of issuance and is rated A-1 or P-1 or an equivalent rating by at least two nationally recognized rating agencies.
8. Public (local) fund investment pools with a dollar weighted average maturity of 60 days or less. The pool must be approved through resolution by the City Council to

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provide services to the City and be continuously rated no lower than Aaa or AAAM or at an equivalent rating by at least one nationally recognized rating service. A public funds investment pool created to function as a money market mutual fund must mark to market daily and stabilize at a \$1 net asset value. The City may not invest an amount that exceeds 10 percent of the total assets of any one local government investment pool.

To be eligible to receive funds from and invest funds on behalf of the City, an investment pool must furnish to the Investment Officer or other authorized representative an offering circular or other similar disclosure instrument that contains information required by the Tex. Gov't. Code Sec. 2256.016. Investments will be made in a local government investment pool only after a thorough investigation of the pool and approval by the Investment Committee which shall at least annually review, revise and adopt the local government investment pool(s).

9. A Securities and Exchange Commission (SEC) registered, no load money market mutual fund which has a dollar weighted average stated maturity of 60 days or less and whose investment objectives includes the maintenance of a stable net asset value of \$1 for each share. Furthermore, it must be rated not less than Aaa, AAAM or an equivalent rating by at least one nationally recognized rating service. A rating will not be required of money market mutual funds that invest exclusively in U.S. government securities or a combination of U.S. government securities and repurchase agreements backed by U.S. government securities. The City must be provided with a prospectus and other information required by the SEC Act of 1934 or the Investment Company Act of 1940. This can be supplied either through website access or in hard copy form. The City may not invest an amount that exceeds 10 percent of the total assets of any one fund. Investments will be made in a money market mutual fund only after a thorough investigation of the fund and approval by the Investment Committee which shall, at least annually, review, revise and adopt the money market mutual fund(s).

- C. *Denton Municipal Electric (DME) Authorized Investments* – DME engages in the distribution and sale of electric energy to the public and, in accordance with Tex. Gov't Code Sec. 2256.0201, may enter into a hedging contract and related security and insurance agreements in relation to fuel oil, natural gas, coal, nuclear fuel, and electric energy to protect against loss due to price fluctuations. "Hedging" is defined by the buying and selling of futures, options or similar contracts and related transportation costs of the aforementioned commodities as a protection against adverse price movements. A hedging transaction must comply with the regulations of the Commodity Futures Trading Commission and the Securities and Exchange Commission.

A payment received under a hedging contract or related agreement in relation to fuel supplies or fuel reserves is a fuel expense, and, thus, DME may credit any amounts received against fuel expenses.

The City Council may set and review policies regarding hedging transactions, as per Tex. Gov't. Code Sec. 2256.0201(c).

- ~~E.D.~~ *Prohibited Investments* – The City's authorized investment options are more restrictive than those allowed by state law. Furthermore, this Policy specifically prohibits investment in the securities listed below:

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1. Obligations, whose payment represents the coupon payments on the outstanding principal balance of the underlying mortgage-backed security collateral and pays no principal.
2. Obligations whose payment represents the principal stream of cash flow from the underlying mortgage-backed security collateral and bears no interest.
3. All collateralized mortgage obligations.
4. Reverse repurchase agreements.

**D.E.** *Diversification* – It is the policy of the City to diversify its investment portfolios. The diversification will protect interest income from the volatility of interest rates and the avoidance of undue concentration of assets in a specific maturity sector; therefore, portfolio maturities shall be staggered. In establishing specific diversification strategies, the following general policies and constraints shall apply:

1. Risk of market price volatility shall be controlled through maturity diversification and by controlling unacceptable maturity extensions and a mismatch of liabilities and assets. The maturity extension will be controlled by limiting the weighted average maturity of the internal investment pool portfolio to 550 days. All long-term maturities will be intended to cover long-term liabilities. In addition, at least 5 percent of the funds in the investment pool portfolio will be liquid at all times. Investment pool liquidity, which consists of immediately available funds, is defined as shares in a local government investment pool and money market mutual fund, as well as bank demand deposit balances. Although there is no maximum defined portfolio liquidity position, it is the intent of this Policy to seek out higher yielding alternative investments in accordance with the prioritized objectives of preservation and safety of principal, meeting liquidity needs and yield enhancement as stated throughout the Public Funds Investment Act.
2. The Investment Committee shall establish strategies and guidelines for the percentage of the total portfolio that may be invested in U.S. Treasury securities, federal agencies/instrumentalities, repurchase agreements, and insured/collateralized certificates of deposit and other securities or obligations. The Investment Committee shall conduct a quarterly review of these guidelines, and shall evaluate the probability of market and default risk in various investment sectors as part of its considerations.
3. Risk of principal loss in the portfolio as a whole shall be minimized by diversifying investment types according to the following limitations based on book values:

<u><i>Investment Type</i></u>	<u><i>% of Portfolio</i></u>
• U.S. Government Treasury Notes/Bills & Obligations	100%
• U.S. Government Agencies & Instrumentalities	100%
• State of Texas Obligations, Agencies & Local Gov't.	15%
• Local Government Investment Pools	50%
• Repurchase Agreements	20%
• Certificates of Deposit (fully insured or collateralized)	35%
• U.S. Money Market Mutual Fund	35%
• Callable U.S. Agencies/Instrumentalities	20%

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- Commercial Paper 5%

By Institution:

Repurchase Agreements	No more than 15%
Collateralized Certificates of Deposit	No more than 15%
All Other (except U.S. Treasuries)	No more than 35%

4. Purchases of securities with stated maturities greater than the maximum authorized under Section VIIB require prior City Council approval.

**VIII. SALE OF SECURITIES**

The City's policy is to hold all securities to maturity. However, securities may be sold to minimize the potential loss of principal on a security whose credit quality has declined, to swap into another security which would improve the quality, yield or target duration of the portfolio or to meet unanticipated liquidity needs. A horizon analysis is required for each swap proving benefit to the City before the trade decision is made, and will be held in the file for record keeping.

**IX. COMPETITIVE BIDDING**

It is the policy of the City to require competitive bidding for all individual security purchases and sales, as well as for certificates of deposit. Exceptions include:

- A. Transactions with money market mutual funds and local government investment pools which are deemed to be made at prevailing market rates.
- B. Treasury and agency securities purchased as new issues through an approved broker/dealer, financial institution or investment advisor.
- C. Automatic overnight "sweep" transactions with the City's depository bank.

At least three bids or offers must be solicited for all other transactions involving individual securities. The City's investment advisor is also required to solicit at least three bids or offers when transacting trades on the City's behalf. In situations where the exact security is not offered by other broker/dealers, offers on the closest comparable investment may be used to establish a fair market price for the security. In the case of a certificate of deposit purchase, at least two other offers should be solicited to provide a comparison. When few, if any, banks wish to participate then staff may use another authorized investment of similar maturity for evaluation purposes. The quotes may be accepted orally, in writing, electronically, or any combination of these methods. The Investment Committee may approve exceptions on a case by case basis or on a general basis in the form of guidelines. These guidelines shall take into consideration the investment type, maturity date, amount and potential disruptiveness to the City's investment strategy.

**X. ARBITRAGE**

The Tax Reform Act of 1986 provided limitations restricting the City's investment of tax-exempt bond proceeds. Revised arbitrage rebate provisions require that the City compute earnings on investment from each issue of bonds on an annual basis to determine if a rebate is required. To determine the City's arbitrage position, the City is required to perform specific calculations relative to the actual yield earned on the investment of the funds and the yield that could have been earned if the

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funds had been invested at a rate equal to the yield on the bonds sold by the City. The rebate provision states that periodically (not less than once every five years, and not later than sixty days after maturity of the bonds), the City is required to pay the U.S. Treasury a rebate of excess earnings based on the City's positive arbitrage position. The Tax Reform restrictions require precision in the monitoring and recording facets of investments as a whole, and particularly as they relate to yields and computations so as to insure compliance. Failure to comply may dictate that the bonds become taxable, retroactively from the date of issuance

The City's investment position, relative to the revised arbitrage restrictions, is the continued pursuit of maximizing yield on applicable investments while ensuring the safety of capital and liquidity. It is fiscally prudent to continue the maximization of yield and rebate excess earnings, if necessary.

**XI. SELECTION OF BANKS, BROKER/DEALERS AND INVESTMENT ADVISORS**

- A. *Depository* – City Council shall, by ordinance, “select and designate one or more banking institutions as the depository for the monies and funds of the City” in accordance with the requirement of Tex. Loc. Gov't. Code Ch. 105. At least every five years a depository shall be selected through the City's banking services procurement process, which shall include a formal request for proposal (RFP). The selection of a depository will be determined by a competitive process and evaluated on the following criteria:
1. Qualified as a depository for public funds in accordance with state and local laws.
  2. Provided requested information or financial statements for the periods specified.
  3. Complied with all requirements in the banking RFP.
  4. Completed responses to all required items on the proposal form.
  5. Offered lowest net banking service cost, consistent with the ability to provide an appropriate level of service.
  6. Met credit worthiness and financial standards.
- B. *Investment Broker/Dealers* – If the City has not retained an investment advisor, then the Investment Committee shall be responsible for adopting the list of qualified brokers/dealers and financial institutions authorized to engage in investment transactions with the City. Authorized firms may include primary dealers or regional broker/dealers that qualify under SEC Rule 15C3-1 (uniform net capital rule) and qualified depositories as established by the Tex. Loc. Gov't. Code Ch. 105. The Investment Committee shall base its evaluation of security broker/dealers and financial institutions upon:
1. Financial condition, strength and capability to fulfill commitments.
  2. Overall reputation with other broker/dealers or investors.
  3. Regulatory status of the broker/dealer.
  4. Background and expertise of the individual representatives.
  5. Ability to provide additional advisory services.

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The Investment Committee must annually review the list of qualified broker/dealers authorized to engage in investment transactions with the City. Investment Officers, or their authorized representatives, shall not conduct business with any firm with whom public entities have sustained realized losses on investments or whose name the Investment Committee has removed from an approved list.

- C. *Investment Advisor* – The City may retain the services of an investment advisory firm registered under the Investment Advisers Act of 1940 (15 U.S.C. Section 80b-1 et seq.) or with the State Securities Board to assist in the review of cash flow requirements, the formulation of investment strategies, and the execution of security purchases, sales and deliveries. The investment advisory contract with the City may not be for a term longer than two years and its renewal or extension must be approved by the City Council by ordinance or resolution as required by the Tex. Gov't. Code Sec.2256.003(b).
- D. *Compliance* – A qualified representative from any firm offering to engage in investment transactions with the City is required to sign a written instrument upon receiving and reviewing a copy of the City's Investment Policy. Investments shall only be made with those business organizations (including money market mutual funds and local government investment pools) which have provided the City with this written instrument executed by a qualified representative of the firm, acknowledging that the business organization has:
1. Received and reviewed the City's Investment Policy.
  2. Implemented reasonable procedures and controls in an effort to preclude investment transactions conducted between the City and the organization that are not authorized by the City's Investment Policy, except to the extent that this authorization is dependent on an analysis of the makeup of the City's entire portfolio or requires an interpretation of subjective investment standards.
  3. If the City has contracted with an investment advisor, the advisor shall be responsible for performing financial due diligence on the City's behalf. On an annual basis, the advisor will provide the City with a list of its authorized broker/dealers, as well as the required written instrument described above.

**XII. COLLATERALIZATION, SAFEKEEPING AND CUSTODY**

- A. *Collateralization* - The City requires that all uninsured collected balances plus accrued interest, if any, in depository accounts be secured in accordance with the requirements of state law. Financial institutions serving as City depositories will be required to sign a depository agreement with the City which details eligible collateral, collateralization ratios, standards for collateral custody and control, collateral valuation, rights of substitution and conditions for agreement termination.

The City requires that all securities purchased under the terms of a repurchase agreement be assigned to the City in accordance with state law. Dealers and financial institutions wishing to transact repurchase agreements with the City will be required to sign a Master Repurchase Agreement which details eligible collateral, collateralization ratios, standards for collateral custody and control, collateral valuation, rights of substitution, and conditions for agreement termination.

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The City requires that all uninsured certificates of deposit plus accrued interest held with a depository be secured in accordance with the requirements of state law. Financial institutions will be required to sign a written depository and security agreement which stipulates eligible collateral, collateralization ratios, standards for collateral custody and control, collateral valuation, rights of substitution, and conditions for agreement termination.

Collateral will always be held by an independent third party with which the City has a current custodial agreement and shall be reviewed at least monthly to ensure that the market value of the pledged securities is adequate. All deposits and investments of City funds, (other than direct security purchases, money market mutual funds and local government investment pools) shall be secured by pledged collateral set at no less than 102 percent of the market value of the principal and accrued interest on the deposits or investments, less an amount insured by FDIC. Eligible collateral to secure the City's deposits include:

1. Direct obligations of the United States government.
2. Other obligations, the principal and interest of which are unconditionally guaranteed or insured by, or backed by the full faith and credit of, the United States government.
3. Direct obligations of agencies or instrumentalities of the United States government, including letters of credit.
4. Cash

The City will reject adjustable rate mortgages (ARMs), collateralized mortgage obligations (CMOs), step-ups, variable rate instruments (except U.S. Treasury inflation protected securities), or securities that are not found on common pricing systems.

- B. *Safekeeping and Custody* – Safekeeping and custody of the City's investment securities shall be in accordance with state law. All security transactions, except local government investment pool and money market mutual fund transactions, shall be conducted on a delivery versus payment (DVP) basis. Investment securities will be held by a third party custodian designated by the City, and be required to issue safekeeping confirmation notices clearly detailing that the securities are owned by the City.

Safekeeping and custody of collateral pledged to the City shall be in accordance with state law. Collateral will be held by a third party custodian designated by the City. The custodian is required to issue safekeeping confirmation notices clearly showing that the securities are pledged to the City.

- C. *Subject to Audit* – All collateral shall be subject to inspection and audit by the ~~Chief Financial Officer~~ Director of Finance, or designee, as well as the City's independent auditors.

**XIII. MANAGEMENT AND INTERNAL CONTROLS**

Controls shall be designed to prevent losses of public funds arising from fraud, employee error, and misrepresentation by third parties, unanticipated changes in financial markets, or imprudent actions by employees or Investment Officers of the City.

Controls and managerial emphasis deemed most important that shall be employed include the following:



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Imperative Controls

- Custodian safekeeping confirmation notices records management
- Avoidance of bearer-form securities
- Documentation of investment bidding events
- Written confirmation of telephone transactions
- Reconcilements and comparisons of security confirmation notices with the investment records
- Compliance with Investment Policy
- Verification of all interest income and security purchase and sell computations

Controls Where Practical

- Control of Collusion
- Separation of duties
- Separation of transaction authority between Accounting and record-keeping
- Clear delegation of authority
- Accurate and timely reports
- Validation of investment maturity decisions with supporting cash flow data
- Adequate training and development of Investment Officers and staff authorized to execute investment transactions
- Review of financial conditions of all brokers/dealers and depository institutions
- Access to information about market conditions, changes and trends that require adjustments to investment strategies.

**XIV. INVESTMENT POLICY ADOPTION**

The Investment Policy shall be formally approved and adopted by resolution of the City Council and reviewed annually in accordance with the provisions of the Public Funds Investment Act of the Texas Government Code Chapter 2256.

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION REVIEWING AND ADOPTING REVISIONS TO THE INVESTMENT POLICY REGARDING FUNDS FOR THE CITY OF DENTON; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council passed Resolution No. R96-061 on October 15, 1996, which adopted an Investment Policy for the City, in compliance with the Public Funds Investment Act, 74<sup>th</sup> Leg., ch. 402, 1995 Tex. Sess. Law Serv. 2958 (Vernon) (TEX. GOV'T CODE Ann. Ch. 2256); and

WHEREAS, the Investment Policy was most recently amended on the 16<sup>th</sup> day of October, 2012, when the City Council passed Resolution No. R2012-035 adopting the current version of the Investment Policy; and

WHEREAS, the City Council desires to revise the Investment Policy in order to reflect changes in the Public Funds Investment Act (PFIA), as well as incorporate needed administrative and procedural modifications which have occurred over time; NOW, THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY RESOLVES:

SECTION 1. The following policy entitled "Policy No. 403.06 "Investment Policy", attached hereto and made a part hereof, is hereby adopted as an official policy of the City of Denton, Texas and shall replace the existing Investment Policy.

SECTION 2. The attached Policy shall be filed in the official records with the City Secretary.

SECTION 3. This resolution shall become effective immediately upon its passage and approval.

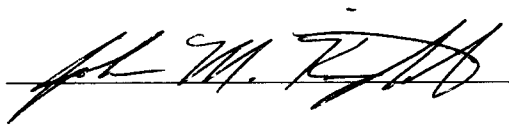
PASSED AND APPROVED this the \_\_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
MARK A. BURROUGHS, MAYOR

ATTEST:  
JENNIFER WALTERS, CITY SECRETARY

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

APPROVED AS TO LEGAL FORM:  
ANITA BURGESS, CITY ATTORNEY

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

**CITY OF DENTON****POLICY/ADMINISTRATIVE PROCEDURE/ADMINISTRATIVE DIRECTIVE**

SECTION: FINANCE POLICIES	REFERENCE NUMBER: 403.06
SUBJECT: INVESTMENTS	INITIAL EFFECTIVE DATE: 02/17/87
TITLE: INVESTMENT POLICY	REVISION DATE: 11-19-13

**I. PURPOSE**

It is the objective of the City of Denton to invest public funds in a manner which will provide maximum security and the best commensurate yield while meeting the daily cash flow demands of the City and conforming to all federal, state, and local statutes, rules, and regulations governing the investment of public funds. This Policy serves to satisfy the statutory requirements of defining and adopting a formal investment policy. The Policy and investment strategies shall be reviewed annually by the Audit/Finance Committee and City Council who will formally approve any modifications. This Investment Policy, as approved, is in compliance with the provisions of the Public Funds Investment Act of Tex. Gov't. Code Chapter 2256.

**II. SCOPE**

- A. This Investment Policy applies to the investment activities of the City of Denton, Texas. The specific funds cited hereafter in Section IID, shall be excluded from this Investment Policy. All financial assets of all funds, including the General Fund and any other accounts of the City not specifically excluded in these policy guidelines are included. These funds are accounted for in the City's Comprehensive Annual Financial Report (CAFR). These funds, as well as others that may be created from time-to-time, shall be administered in accordance with the provisions of this Policy. All funds will be pooled for investment purposes except for those listed under Section IIC.

In addition to this Policy, the investment of bond proceeds and other bond funds (including debt service and reserve funds) shall be governed and controlled by their governing ordinance and by the provisions of the Tax Reform Act of 1986, including all regulations and rulings promulgated there under applicable to the issuance of tax-exempt obligations.

- B. Funds covered by this Policy and managed as a pooled fund group:
1. General Fund - used to account for resources traditionally associated with government, which are not required to be accounted for in another fund.
  2. Special Revenue Funds – used to account for the proceeds from specific revenue sources which are restricted or committed to expenditures for specific purposes other than debt service or capital projects.
  3. Debt Service Fund used to account for resources to be used for the payment of principal, interest and related costs on general obligation debt.
  4. Capital Project Funds – used to account for resources to enable the acquisition or construction of major capital facilities which are not financed by enterprise funds, internal service funds, or trust funds.

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5. Enterprise Funds – used to account for operations that are financed and operated in a manner similar to private business enterprises.
  6. Internal Service Funds – used to account for the cost of providing goods or services between City departments.
  7. Trust and Agency Funds – used to account for assets held by the City in a trustee capacity or as an agent for individuals, private organizations, other governments, and/or other funds.
  8. Bond Reserve Funds – funds set at prescribed levels by certain bond ordinances to pay principal and/or interest if required to prevent default.
  9. New funds available for investment by the City, such as (but not limited to) resources associated with Public Improvement Districts or Tax Increment Financing zones, unless specifically excluded herein.
- C. Funds covered by this Policy and managed as separately invested assets:
1. Bond Funds – funds established with the proceeds from specific bond issues when it is determined that segregating these funds from the pooled funds' portfolio will result in maximum interest earning retention under the provisions of the Tax Reform Act of 1986.
  2. Endowment Funds – funds given to the City with the instructions that the principal is to remain intact, unless otherwise agreed to, and the income generated by the investments will be used for specified purposes.
  3. Trust, Escrowed Funds & Security Deposits – funds held outside the City by a trust, escrow agent, or other entity but belonging to the City.
- D. This Policy shall not govern funds, which are managed under separate investment programs in accordance with the Tex. Gov't. Code Sec. 2256.004. Such programs currently include all funds related to employee retirement programs, other funds established by the City for deferred employee compensation, and certain private donations. The City shall and will maintain responsibility for these funds to the extent required by federal and state law, the City Charter, and donor stipulations. This Policy also does not apply to monies held in escrow to retire bonds which are subject to defeasance requirements stated under their respective bond ordinances.

**III. INVESTMENT OBJECTIVES & STRATEGIES**

It is the policy of the City that, giving due regard to the safety and risk of investments, all available funds shall be invested in conformance with state and federal regulations, applicable bond ordinance requirements, adopted Investment Policy and investment strategies.

In accordance with the Public Funds Investment Act, the following prioritized objectives (in order of importance) in accordance with the Tex. Gov't. Code Sec. 2256.005(d) apply for each of the City's investment strategies.

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- A. *Suitability* – Understanding the suitability of the investment to the financial requirements of the City is important. Any investment eligible in the Investment Policy is suitable for all City funds.
- B. *Safety* – Preservation and safety of principal are the primary objectives of the Investment Policy. All investments will be in high quality securities with no perceived default risk.
- C. *Liquidity* – The City’s investment portfolio will remain sufficiently liquid to meet operating requirements that might be reasonably anticipated. Liquidity shall be achieved by matching investment maturities with forecasted cash flow requirements and by investing in securities with active secondary markets. Short-term investment pools and money market mutual funds provide daily liquidity and may be utilized as a competitive investment alternative to fixed income instruments.
- D. *Marketability* – Securities with active and efficient secondary markets are necessary in the event of an unanticipated cash requirement. Historical market “spreads” between the bid and offer prices of a particular security type of less than a quarter of a percentage point shall define an efficient secondary market.
- E. *Diversification* – Investment maturities shall be staggered to provide cash flow based on the anticipated needs of the City. Diversifying the appropriate maturity structure will reduce market cycle risk.
- F. *Yield* – Attaining a competitive market yield, commensurate with the City’s investment risk constraints and the cash flow characteristics of the portfolio, is the desired objective. The goal of the City’s investment portfolio is to regularly meet or exceed the average rate of return on U.S. Treasury bills at a maturity level comparable to the portfolio’s weighted average maturity in days. The yield of an equally weighted, rolling twelve month moving average of a one year U.S. Treasury bill portfolio shall be the minimum yield objective or “benchmark”. One year U.S. Treasury bill information is derived from the Federal Reserve Statistical Release H.15 for constant maturities. A secondary objective will be to obtain a yield equal to or in excess of a local government investment pool or money market mutual fund.

The first measure of success in this area will be the attainment of enough income to offset inflationary increases. Although steps will be taken to obtain this goal, the City’s staff will follow the “Prudent Person” statement relating to the standard of care that must be exercised when investing public funds as expressed in the Tex. Gov’t. Code Sec. 2256.006(a-b). The Investment Officers shall avoid any transactions that might impair public confidence in the City’s ability to govern effectively. The governing body recognizes that in adequately diversifying the maturity structure within the portfolio to meet the City’s expenditure needs, occasional measured unrealized losses due to market volatility and rising interest rates are inevitable, and must be considered within the context of the overall portfolio’s investment return. The prudence of the investment decisions shall be measured in accordance with the tests set forth in the Tex. Gov’t. Code Sec. 2256.006(b).

**IV. INVESTMENT STRATEGY FOR SPECIFIC FUND GROUPS**

In order to better diversify, maximize interest earnings and otherwise meet stated objectives, fund groups may be combined into one or more internal investment pools. Although fund monies may be combined into a single asset portfolio, proportional fund ownership will be accounted for

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separately. The City maintains separate portfolios for some individual funds or groups of funds (as listed under Section II) that are managed in accordance with the terms of this Policy and by the corresponding investment strategies listed below.

- A. *Investment Pool Strategy* – The City’s Investment Pool is an aggregation of the majority of City funds which includes tax receipts, enterprise fund revenues, fine and fee revenues, reserve funds for outstanding utility system revenue bonds, as well as some, but not necessarily all, bond proceeds, grants, gifts and endowments. This portfolio is maintained to meet anticipated daily cash needs for the City’s operations, capital projects and debt service. In order to ensure the ability of the City to meet obligations and to minimize potential liquidation losses, the dollar-weighted average stated maturity of the investment pool shall not exceed 1.5 years or 550 days. The objectives of this portfolio are to:
1. Ensure safety of principal by investing in only high quality securities for which a strong secondary market exists.
  2. Ensure that anticipated cash flow needs are matched with adequate investment liquidity.
  3. Limit market and credit risk through diversification.
  4. Attain the best feasible yield commensurate with the objectives and restrictions set forth in this Policy by actively managing the portfolio to meet or exceed the twelve month moving average yield on a one year U.S. Treasury bill as derived from the Federal Reserve Statistical Release H.15 for constant maturities.
- B. *Bond Funds Strategy* - Occasionally, separate non-pooled portfolios are established with the proceeds from bond sales in order to maximize earnings within the constraints of arbitrage regulations. The objectives of the portfolios are to:
1. Ensure safety of principal by investing in only high quality securities for which a strong secondary market exists.
  2. Ensure that anticipated cash flow needs are matched with adequate investment liquidity.
  3. Limit market and credit risk through diversification.
  4. Attain the best feasible yield commensurate with the objectives and restrictions set forth in this Policy and the bond ordinance by actively managing the portfolio to meet or exceed the bond yield.
- C. *Endowment Fund Strategy* - Funds received as gifts to the City with instructions that the income generated by the investment of said funds be used for specified purposes are invested as separate non-pooled portfolios in order to maximize return. The objectives of the portfolios are to:
1. Ensure safety of principal by investing in only high quality securities for which a strong secondary market exists.

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2. Ensure that anticipated cash flow needs are matched with adequate investment liquidity.
  3. Limit market and credit risk through diversification.
  4. Attain the best feasible yield commensurate with the objectives and restrictions set forth in this Policy.
- D. *Trust, Escrowed Funds & Security Deposit Strategy* - Funds that are held outside the City by a trust, escrow agent, or as a security deposit, but belonging to the City are governed by their respective trust, escrow, or security deposit agreement and are subject to the provisions of this Policy. The objectives of the portfolios are to:
1. Ensure safety of principal by investing in only high quality securities for which a strong secondary market exists.
  2. Ensure that anticipated cash flow needs are matched with adequate investment liquidity.
  3. Limit market and credit risk through diversification.
  4. Attain the best feasible yield commensurate with the objectives and restrictions set forth in this Policy and the trust, escrow, or security deposit agreement.

**V. INVESTMENT COMMITTEE**

*Members* – The Investment Committee will consist of the City Manager, Assistant City Manager for Finance, Assistant City Manager for Utilities, Director of Finance, Assistant Director of Finance, City Controller, Treasury Administrator, and the City's investment advisor. The investment advisor is a non-voting member. When needed, the City Attorney will act as a legal advisor to the Investment Committee.

*Scope* – The Investment Committee shall meet at least quarterly to determine general strategies, investment guidelines and to monitor results. Included in its deliberations will be such topics as: economic outlook, portfolio diversification, maturity structure, potential risk to the City's funds, authorized broker/dealers (if applicable) and depository institutions, as well as the target rate of return on the investment portfolio.

*Procedures* - The Investment Committee shall provide meeting summations to all members. Any two members of the Investment Committee may request a special meeting, and four members shall constitute a quorum. The Investment Committee shall establish its own rules of procedures.

**VI. RESPONSIBILITY AND STANDARD OF CARE**

- A. *Delegation & Training* – The management responsibility for the investment program is delegated to the Director of Finance. The primary individual who shall be involved in investment activities will be his designee. The designee may delegate the day to day activities to a responsible individual(s) who has received the appropriate training required by state statute. The Director of Finance and department designees will use this Policy as the primary guideline for the City's investment program, procedures, and internal control issues. The Assistant City Manager who oversees financial operations and the Director of Finance

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are designated as the Investment Officers, pursuant to Tex Gov't. Code Sec. 2256.005(f). Accordingly, the Investment Officers and persons authorized to execute investment transactions shall attend at least one training session relating to their responsibilities under the Public Funds Investment Act within 12 months after assuming duties and receive no less than 10 hours of instruction relating to investment functions every two year period that begins on the first day of the fiscal year and consists of the two consecutive fiscal years after that date. The training must include education in investment controls, security risks, strategy risks, market risks, and compliance with the Public Funds Investment Act. The investment training session shall be provided by an independent source approved by the Investment Committee. For purposes of this policy, an "independent source" from which investment training shall be obtained shall include a professional organization, an institute of higher learning or any other sponsor other than a business organization with whom the City may engage in an investment transaction. Thus, these independent sources will be training sessions sponsored, accredited or endorsed by the Government Treasurers Organization of Texas (GTOT), Center For Public Management at the University of North Texas (UNT), Government Finance Officers Association of Texas (GFOAT), Texas Municipal League (TML), North Central Texas Council of Governments (NCTCOG), Association of Public Treasurers United States & Canada (APT US & C), and Government Finance Officers' Association (GFOA).

No persons may engage in investment transactions except as provided under the terms of this Policy. The Assistant City Manager shall require an annual compliance review by an external auditor that will consist of an audit of management controls on investments, adherence to the City's Investment Policy and a review of the quarterly investment reports. The reviews will provide internal control by assuring compliance with policies and procedures. The Assistant City Manager, Director of Finance, Mayor, City Council, City Manager and other Finance Department employees shall be personally indemnified in the event of investment loss provided the Investment Policy has been followed.

- B. *Conflicts of Interest* – All participants in the investment process shall seek to act responsibly as custodians of public assets. Officers and employees involved in the investment process shall refrain from personal business activity that could conflict with proper execution of the investment program, or which could impair their ability to make impartial investment decisions. Investment Committee members shall be required to complete an annual ethics statement noting any known conflicts of interest as outlined in Section VIC below.
- C. *Disclosure* – Anyone involved in investing City funds shall file with the Investment Committee a statement disclosing any personal business relationship with a business organization offering to engage in investment transactions with the City or is related within the second degree by affinity or consanguinity as determined under the Tex. Gov't. Code Ch. 573, to an individual seeking to transact investment business with the City. A disclosure statement must also be filed with the Texas Ethics Commission and the City Council. An Investment Officer or other employee has a personal business relationship with a business organization if any one of the following three conditions is met:
1. The Investment Officer or employee owns 10% or more of the voting stock or shares of the business organization or owns \$5,000 or more of the fair market value of the business organization.
  2. Funds received by the Investment Officer or employee from the business organization exceed 10% of the investment officers gross income for the prior year.



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3. The Investment Officer or employee has acquired from the business organization during the prior year investments with a book value of \$2,500 or more for their personal account.

- D. *Prudence* – The standard of prudence to be used by the investment officials shall be the “Prudent Person Rule”, as set forth in Tex. Gov’t. Code Sec. 2256.006, and will be applied in the context of managing an overall portfolio: “Investments shall be made with judgment and care under prevailing circumstances, that a person of prudence, discretion and intelligence would exercise in the management of the person’s own affairs, not for speculation, but for investment, considering the probable safety of their capital as well as the probable income to be derived.”

Investment officials acting in accordance with the Investment Policy and exercising due diligence shall be relieved of personal responsibilities for an individual security’s credit risk or market price change, provided deviations from expectations are reported in a timely fashion and appropriate action is taken to control adverse developments. In determining whether an investment official has exercised prudence with respect to an investment decision, the determination shall be made taking into consideration the investment of all funds over which the official had responsibility rather than consideration as to the prudence of a single investment and whether the investment decision was consistent with the City’s Investment Policy.

- E. *Reporting*

*Quarterly* – Not less than quarterly, the Director of Finance shall submit to the City Manager, Mayor and City Council a written report of the City’s investment transactions within one hundred twenty (120) days of the preceding reporting period. The report shall: 1) describe in detail the investment position of the City as of the end of the reporting period, 2) be prepared jointly by all Investment Officers, 3) be signed by each Investment Officer, 4) contain a summary statement, prepared in compliance with generally accepted accounting principles, of each pooled fund group including a) beginning market value for the reporting period; b) additions and changes to the market value during the period; c) ending market value for the period; and d) fully accrued interest for the reporting period, 5) state the book value and market value of each separately invested asset at the beginning and end of the reporting period by type of asset and fund type invested, 6) state the maturity date of each separately invested asset that has a maturity date, 7) state the account or fund or pooled fund group for which each individual investment was acquired, and 8) state the compliance of the investment portfolio as it relates to the investment strategy expressed in the Investment Policy and with relevant provisions of the Tex. Gov’t. Code Ch. 2256.

*Annually* - The City Council shall review and approve the Investment Policy and investment strategies at least annually and be documented by rule, order, ordinance or resolution which shall include any changes made.

*Compliance Audit* – The City’s external independent auditor will conduct an annual review of the quarterly reports in conjunction with the annual financial audit. The results of the audit will be reported to City Council. The audit will also review compliance with management controls on investments and adherence to this Policy.

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- F. As recommended by the Texas State Library and Archives Commission, the guidelines of retaining records for five years from the applicable fiscal year end should be followed for investment funds other than bond proceeds. Since the City manages the majority of its investments, including bond funds, using an internal pool consisting of combined fund groups, records shall be retained in accordance with the Administrative Policy No. 403.07 "Debt Service Management". The Director of Finance shall oversee the filing and/or storing of investment records.
- G. Market prices for all public fund investments will be obtained and monitored through the use of Interactive Data Inc., an on-line data service or a similarly qualified successor agency or experienced competitor.

**VII. SUITABLE AND AUTHORIZED INVESTMENT SECURITIES**

- A. *Active Portfolio Management* – The City intends to pursue an active versus a passive investment management philosophy. That is, securities may be sold before they mature if market conditions present an opportunity for the City to benefit from the trade. (Refer to Section VIII of this Policy.) In addition, the Investment Officers may at times restrict or prohibit the purchase of specific types of investments or issuers due to current market conditions.

The City shall take all prudent measures consistent with this Investment Policy to liquidate an investment that no longer meets the required minimum rating standards, as per the Tex. Gov't. Code Sec. 2256.021. However, if it is determined by the Investment Committee that the City would benefit from holding the securities to maturity to recapture its initial investment then the Investment Officers may act accordingly. The City is not required to liquidate investments that were authorized investments at the time of purchase. (Tex. Gov't. Code Sec. 2256.017)

- B. *Authorized Investments* – City funds governed by this Policy may be invested in the instruments described below, all of which are authorized by the Public Funds Investment Act.
1. Direct obligations of the United States of America, its agencies and instrumentalities (maturing in less than five years).
  2. Other obligations, the principal and interest of which are unconditionally guaranteed or insured by, or backed by the full faith and credit of, the United States of America, or any obligation fully guaranteed or insured by the Federal Deposit Insurance Corporation (maturing in less than five years).
  3. Direct obligations of the State of Texas or its agencies thereof, Counties, Cities and other political subdivisions rated as to investment quality by a nationally recognized investment rating firm not less than AA or its equivalent (maturing in less than three years).
  4. Other obligations, the principal and interest of which are unconditionally guaranteed or insured by, or backed by the full faith and credit of, the State of Texas, rated as to investment quality by a nationally recognized investment rating firm not less than AA or its equivalent (maturing in less than three years).

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5. Fully insured or collateralized certificates of deposit/share certificates issued by state and national banks or savings bank or a state or federal credit union (having its main or branch office in Texas) guaranteed or insured by the Federal Deposit Insurance Corporation or its successor or the National Credit Union Share Insurance Fund or its successor; and secured by obligations in accordance with Section XII herein (maturing in less than three years).

In addition to the City's authority to invest funds in certificates of deposit and share certificates stated above, an investment in certificates of deposit made in accordance with the following conditions is an authorized investment under Tex. Govt. Code Sec. 2256.010(b): (1) the funds are invested by the City through a clearing broker registered with the Securities and Exchange Commission (SEC) and operating pursuant to SEC rule 15c3-3 (17 C.F.R. Section 240.15c3-3) with its main office or branch office in Texas and selected from a list adopted by the Investment Committee as required by Section 2256.025; or a depository institution that has its main office or a branch office in this state and that is selected by the Investment Committee; (2) the selected broker or depository institution arranges for the deposit of the funds in certificates of deposit in one or more federally insured depository institutions, wherever located for the account of the City; (3) the full amount of the principal and accrued interest of each of the certificates of deposit is insured by the United States or an instrumentality of the United States; (4) the selected broker or depository institution acts as custodian for the City with respect to the certificates of deposit issued for the account of the City.

6. Fully collateralized repurchase agreements provided the City has on file a signed Master Repurchase Agreement, approved by the City Attorney, which details eligible collateral, collateralizations ratios, standards for collateral custody and control, collateral valuation, and conditions for agreement termination. The repurchase agreement must have a defined termination date and be secured by obligations in accordance with Section XII of this Policy. It is required that the securities purchased by the City be assigned to the City, held in the City's name and deposited at the time the investment is made with the City or with a third party selected and approved by the City. Repurchase agreements must be purchased through a primary government securities dealer, as defined by the Federal Reserve or a financial institution doing business in this State (termination date must be 30 days or less). An exception to the 30 days or less termination date may be made with respect to bond proceeds. The City may specifically authorize in the bond ordinance investments in repurchase agreements, such as a flexible repurchase agreement, with maturities in excess of 30 days subject to any required approvals from bond insurers.
7. Commercial paper that has a stated maturity of 270 days or less from the date of issuance and is rated A-1 or P-1 or an equivalent rating by at least two nationally recognized rating agencies.
8. Public (local) fund investment pools with a dollar weighted average maturity of 60 days or less. The pool must be approved through resolution by the City Council to provide services to the City and be continuously rated no lower than Aaa or AAAM or at an equivalent rating by at least one nationally recognized rating service. A public funds investment pool created to function as a money market mutual fund must mark to market daily and stabilize at a \$1 net asset value. The City may not invest an

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amount that exceeds 10 percent of the total assets of any one local government investment pool.

To be eligible to receive funds from and invest funds on behalf of the City, an investment pool must furnish to the Investment Officer or other authorized representative an offering circular or other similar disclosure instrument that contains information required by the Tex. Gov't. Code Sec. 2256.016. Investments will be made in a local government investment pool only after a thorough investigation of the pool and approval by the Investment Committee which shall at least annually review, revise and adopt the local government investment pool(s).

9. A Securities and Exchange Commission (SEC) registered, no load money market mutual fund which has a dollar weighted average stated maturity of 60 days or less and whose investment objectives includes the maintenance of a stable net asset value of \$1 for each share. Furthermore, it must be rated not less than Aaa, AAAM or an equivalent rating by at least one nationally recognized rating service. A rating will not be required of money market mutual funds that invest exclusively in U.S. government securities or a combination of U.S. government securities and repurchase agreements backed by U.S. government securities. The City must be provided with a prospectus and other information required by the SEC Act of 1934 or the Investment Company Act of 1940. This can be supplied either through website access or in hard copy form. The City may not invest an amount that exceeds 10 percent of the total assets of any one fund. Investments will be made in a money market mutual fund only after a thorough investigation of the fund and approval by the Investment Committee which shall, at least annually, review, revise and adopt the money market mutual fund(s).

- C. *Denton Municipal Electric (DME) Authorized Investments* – DME engages in the distribution and sale of electric energy to the public and, in accordance with Tex. Gov't Code Sec. 2256.0201, may enter into a hedging contract and related security and insurance agreements in relation to fuel oil, natural gas, coal, nuclear fuel, and electric energy to protect against loss due to price fluctuations. "Hedging" is defined by the buying and selling of futures, options or similar contracts and related transportation costs of the aforementioned commodities as a protection against adverse price movements. A hedging transaction must comply with the regulations of the Commodity Futures Trading Commission and the Securities and Exchange Commission.

A payment received under a hedging contract or related agreement in relation to fuel supplies or fuel reserves is a fuel expense, and, thus, DME may credit any amounts received against fuel expenses.

The City Council may set and review policies regarding hedging transactions, as per Tex. Gov't. Code Sec. 2256.0201(c).

- D. *Prohibited Investments* – The City's authorized investment options are more restrictive than those allowed by state law. Furthermore, this Policy specifically prohibits investment in the securities listed below:
  1. Obligations, whose payment represents the coupon payments on the outstanding principal balance of the underlying mortgage-backed security collateral and pays no principal.

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2. Obligations whose payment represents the principal stream of cash flow from the underlying mortgage-backed security collateral and bears no interest.
3. All collateralized mortgage obligations.
4. Reverse repurchase agreements.

E. *Diversification* – It is the policy of the City to diversify its investment portfolios. The diversification will protect interest income from the volatility of interest rates and the avoidance of undue concentration of assets in a specific maturity sector; therefore, portfolio maturities shall be staggered. In establishing specific diversification strategies, the following general policies and constraints shall apply:

1. Risk of market price volatility shall be controlled through maturity diversification and by controlling unacceptable maturity extensions and a mismatch of liabilities and assets. The maturity extension will be controlled by limiting the weighted average maturity of the internal investment pool portfolio to 550 days. All long-term maturities will be intended to cover long-term liabilities. In addition, at least 5 percent of the funds in the investment pool portfolio will be liquid at all times. Investment pool liquidity, which consists of immediately available funds, is defined as shares in a local government investment pool and money market mutual fund, as well as bank demand deposit balances. Although there is no maximum defined portfolio liquidity position, it is the intent of this Policy to seek out higher yielding alternative investments in accordance with the prioritized objectives of preservation and safety of principal, meeting liquidity needs and yield enhancement as stated throughout the Public Funds Investment Act.
2. The Investment Committee shall establish strategies and guidelines for the percentage of the total portfolio that may be invested in U.S. Treasury securities, federal agencies/instrumentalities, repurchase agreements, and insured/collateralized certificates of deposit and other securities or obligations. The Investment Committee shall conduct a quarterly review of these guidelines, and shall evaluate the probability of market and default risk in various investment sectors as part of its considerations.
3. Risk of principal loss in the portfolio as a whole shall be minimized by diversifying investment types according to the following limitations based on book values:

<u>Investment Type</u>	<u>% of Portfolio</u>
• U.S. Government Treasury Notes/Bills & Obligations	100%
• U.S. Government Agencies & Instrumentalities	100%
• State of Texas Obligations, Agencies & Local Gov't.	15%
• Local Government Investment Pools	50%
• Repurchase Agreements	20%
• Certificates of Deposit (fully insured or collateralized)	35%
• U.S. Money Market Mutual Fund	35%
• Callable U.S. Agencies/Instrumentalities	20%
• Commercial Paper	5%

By Institution:

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Repurchase Agreements	No more than 15%
Collateralized Certificates of Deposit	No more than 15%
All Other (except U.S. Treasuries)	No more than 35%

4. Purchases of securities with stated maturities greater than the maximum authorized under Section VIIB require prior City Council approval.

**VIII. SALE OF SECURITIES**

The City's policy is to hold all securities to maturity. However, securities may be sold to minimize the potential loss of principal on a security whose credit quality has declined, to swap into another security which would improve the quality, yield or target duration of the portfolio or to meet unanticipated liquidity needs. A horizon analysis is required for each swap proving benefit to the City before the trade decision is made, and will be held in the file for record keeping.

**IX. COMPETITIVE BIDDING**

It is the policy of the City to require competitive bidding for all individual security purchases and sales, as well as for certificates of deposit. Exceptions include:

- A. Transactions with money market mutual funds and local government investment pools which are deemed to be made at prevailing market rates.
- B. Treasury and agency securities purchased as new issues through an approved broker/dealer, financial institution or investment advisor.
- C. Automatic overnight "sweep" transactions with the City's depository bank.

At least three bids or offers must be solicited for all other transactions involving individual securities. The City's investment advisor is also required to solicit at least three bids or offers when transacting trades on the City's behalf. In situations where the exact security is not offered by other broker/dealers, offers on the closest comparable investment may be used to establish a fair market price for the security. In the case of a certificate of deposit purchase, at least two other offers should be solicited to provide a comparison. When few, if any, banks wish to participate then staff may use another authorized investment of similar maturity for evaluation purposes. The quotes may be accepted orally, in writing, electronically, or any combination of these methods. The Investment Committee may approve exceptions on a case by case basis or on a general basis in the form of guidelines. These guidelines shall take into consideration the investment type, maturity date, amount and potential disruptiveness to the City's investment strategy.

**X. ARBITRAGE**

The Tax Reform Act of 1986 provided limitations restricting the City's investment of tax-exempt bond proceeds. Revised arbitrage rebate provisions require that the City compute earnings on investment from each issue of bonds on an annual basis to determine if a rebate is required. To determine the City's arbitrage position, the City is required to perform specific calculations relative to the actual yield earned on the investment of the funds and the yield that could have been earned if the funds had been invested at a rate equal to the yield on the bonds sold by the City. The rebate provision states that periodically (not less than once every five years, and not later than sixty days after maturity of the bonds), the City is required to pay the U.S. Treasury a rebate of excess earnings based on the City's positive arbitrage position. The Tax Reform restrictions require precision in the

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monitoring and recording facets of investments as a whole, and particularly as they relate to yields and computations so as to insure compliance. Failure to comply may dictate that the bonds become taxable, retroactively from the date of issuance

The City's investment position, relative to the revised arbitrage restrictions, is the continued pursuit of maximizing yield on applicable investments while ensuring the safety of capital and liquidity. It is fiscally prudent to continue the maximization of yield and rebate excess earnings, if necessary.

**XI. SELECTION OF BANKS, BROKER/DEALERS AND INVESTMENT ADVISORS**

A. *Depository* – City Council shall, by ordinance, “select and designate one or more banking institutions as the depository for the monies and funds of the City” in accordance with the requirement of Tex. Loc. Gov't. Code Ch. 105. At least every five years a depository shall be selected through the City's banking services procurement process, which shall include a formal request for proposal (RFP). The selection of a depository will be determined by a competitive process and evaluated on the following criteria:

1. Qualified as a depository for public funds in accordance with state and local laws.
2. Provided requested information or financial statements for the periods specified.
3. Complied with all requirements in the banking RFP.
4. Completed responses to all required items on the proposal form.
5. Offered lowest net banking service cost, consistent with the ability to provide an appropriate level of service.
6. Met credit worthiness and financial standards.

B. *Investment Broker/Dealers* – If the City has not retained an investment advisor, then the Investment Committee shall be responsible for adopting the list of qualified brokers/dealers and financial institutions authorized to engage in investment transactions with the City. Authorized firms may include primary dealers or regional broker/dealers that qualify under SEC Rule 15C3-1 (uniform net capital rule) and qualified depositories as established by the Tex. Loc. Gov't. Code Ch. 105. The Investment Committee shall base its evaluation of security broker/dealers and financial institutions upon:

1. Financial condition, strength and capability to fulfill commitments.
2. Overall reputation with other broker/dealers or investors.
3. Regulatory status of the broker/dealer.
4. Background and expertise of the individual representatives.
5. Ability to provide additional advisory services.

The Investment Committee must annually review the list of qualified broker/dealers authorized to engage in investment transactions with the City. Investment Officers, or their authorized representatives, shall not conduct business with any firm with whom public

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entities have sustained realized losses on investments or whose name the Investment Committee has removed from an approved list.

- C. *Investment Advisor* – The City may retain the services of an investment advisory firm registered under the Investment Advisers Act of 1940 (15 U.S.C. Section 80b-1 et seq.) or with the State Securities Board to assist in the review of cash flow requirements, the formulation of investment strategies, and the execution of security purchases, sales and deliveries. The investment advisory contract with the City may not be for a term longer than two years and its renewal or extension must be approved by the City Council by ordinance or resolution as required by the Tex. Gov't. Code Sec.2256.003(b).
- D. *Compliance* – A qualified representative from any firm offering to engage in investment transactions with the City is required to sign a written instrument upon receiving and reviewing a copy of the City's Investment Policy. Investments shall only be made with those business organizations (including money market mutual funds and local government investment pools) which have provided the City with this written instrument executed by a qualified representative of the firm, acknowledging that the business organization has:
1. Received and reviewed the City's Investment Policy.
  2. Implemented reasonable procedures and controls in an effort to preclude investment transactions conducted between the City and the organization that are not authorized by the City's Investment Policy, except to the extent that this authorization is dependent on an analysis of the makeup of the City's entire portfolio or requires an interpretation of subjective investment standards.
  3. If the City has contracted with an investment advisor, the advisor shall be responsible for performing financial due diligence on the City's behalf. On an annual basis, the advisor will provide the City with a list of its authorized broker/dealers, as well as the required written instrument described above.

**XII. COLLATERALIZATION, SAFEKEEPING AND CUSTODY**

- A. *Collateralization* - The City requires that all uninsured collected balances plus accrued interest, if any, in depository accounts be secured in accordance with the requirements of state law. Financial institutions serving as City depositories will be required to sign a depository agreement with the City which details eligible collateral, collateralization ratios, standards for collateral custody and control, collateral valuation, rights of substitution and conditions for agreement termination.

The City requires that all securities purchased under the terms of a repurchase agreement be assigned to the City in accordance with state law. Dealers and financial institutions wishing to transact repurchase agreements with the City will be required to sign a Master Repurchase Agreement which details eligible collateral, collateralization ratios, standards for collateral custody and control, collateral valuation, rights of substitution, and conditions for agreement termination.

The City requires that all uninsured certificates of deposit plus accrued interest held with a depository be secured in accordance with the requirements of state law. Financial institutions will be required to sign a written depository and security agreement which



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stipulates eligible collateral, collateralization ratios, standards for collateral custody and control, collateral valuation, rights of substitution, and conditions for agreement termination.

Collateral will always be held by an independent third party with which the City has a current custodial agreement and shall be reviewed at least monthly to ensure that the market value of the pledged securities is adequate. All deposits and investments of City funds (other than direct security purchases, money market mutual funds and local government investment pools) shall be secured by pledged collateral set at no less than 102 percent of the market value of the principal and accrued interest on the deposits or investments, less an amount insured by FDIC. Eligible collateral to secure the City's deposits include:

1. Direct obligations of the United States government.
2. Other obligations, the principal and interest of which are unconditionally guaranteed or insured by, or backed by the full faith and credit of, the United States government.
3. Direct obligations of agencies or instrumentalities of the United States government, including letters of credit.
4. Cash

The City will reject adjustable rate mortgages (ARMs), collateralized mortgage obligations (CMOs), step-ups, variable rate instruments (except U.S. Treasury inflation protected securities), or securities that are not found on common pricing systems.

- B. *Safekeeping and Custody* – Safekeeping and custody of the City's investment securities shall be in accordance with state law. All security transactions, except local government investment pool and money market mutual fund transactions, shall be conducted on a delivery versus payment (DVP) basis. Investment securities will be held by a third party custodian designated by the City, and be required to issue safekeeping confirmation notices clearly detailing that the securities are owned by the City.

Safekeeping and custody of collateral pledged to the City shall be in accordance with state law. Collateral will be held by a third party custodian designated by the City. The custodian is required to issue safekeeping confirmation notices clearly showing that the securities are pledged to the City.

- C. *Subject to Audit* – All collateral shall be subject to inspection and audit by the Director of Finance, or designee, as well as the City's independent auditors.

**XIII. MANAGEMENT AND INTERNAL CONTROLS**

Controls shall be designed to prevent losses of public funds arising from fraud, employee error, and misrepresentation by third parties, unanticipated changes in financial markets, or imprudent actions by employees or Investment Officers of the City.

Controls and managerial emphasis deemed most important that shall be employed include the following:

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Imperative Controls

- Custodian safekeeping confirmation notices records management
- Avoidance of bearer-form securities
- Documentation of investment bidding events
- Written confirmation of telephone transactions
- Reconcilements and comparisons of security confirmation notices with the investment records
- Compliance with Investment Policy
- Verification of all interest income and security purchase and sell computations

Controls Where Practical

- Control of Collusion
- Separation of duties
- Separation of transaction authority between Accounting and record-keeping
- Clear delegation of authority
- Accurate and timely reports
- Validation of investment maturity decisions with supporting cash flow data
- Adequate training and development of Investment Officers and staff authorized to execute investment transactions
- Review of financial conditions of all brokers/dealers and depository institutions
- Access to information about market conditions, changes and trends that require adjustments to investment strategies.

**XIV. INVESTMENT POLICY ADOPTION**

The Investment Policy shall be formally approved and adopted by resolution of the City Council and reviewed annually in accordance with the provisions of the Public Funds Investment Act of the Texas Government Code Chapter 2256.

## AGENDA INFORMATION SHEET

**AGENDA DATE:** November 19, 2013  
**DEPARTMENT:** Materials Management  
**ACM:** Bryan Langley *LBL*

Questions concerning this acquisition may be directed to Phil Williams at 349-8487

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### **SUBJECT**

Consider adoption of an ordinance accepting competitive proposals and awarding a public works contract for the installation of a pre-cast concrete security/screening fence at the Cooper Creek Substation for Denton Municipal Electric; providing for the expenditure of funds therefor; and providing an effective date (RFP 5295-awarded to Walsh's Hawk Construction Co., LLC in an amount not-to-exceed \$354,971). The Public Utilities Board recommends approval (7-0).

### **RFP INFORMATION**

The Cooper Creek Substation is an approved Capital Improvements Plan (CIP) project (location shown in Exhibit 1) that will supply electric power to the eastern areas of the Denton Municipal Electric service territory. Its construction is necessary to support growth and reliability. Construction of the precast concrete fence is necessary to provide the required perimeter security for the substation. The fence will be constructed using Verti-Crete precast concrete panels. The panels will be supported by concrete columns mounted on engineered pier foundations. The panels will have a Ledge Stone pattern and the columns will have an Ashlar Stone pattern.

Request for proposals were sent to 2,225 prospective suppliers, including 12 Denton firms. In addition, specifications were placed on the Materials Management website for prospective suppliers to download and the notice to prospective suppliers was advertised in the local newspaper. Two responsive proposals were received (Exhibit 2). Proposals were evaluated based upon published criteria, including price, delivery and probable performance by the supplier. Information from the proposal evaluations is summarized (Exhibit 3). The proposal submitted by Walsh's Hawk Construction Co., LLC provided the highest evaluated score, and was contacted to provide a Best and Final Offer (BAFO). This negotiation resulted in a final offer of \$354,971 which provided a savings of \$6,388.40 to the City. The BAFO pricing is also shown on Exhibit 3.

### **PRIOR ACTION/REVIEW (COUNCIL, BOARDS, COMMISSIONS)**

On November 11, 2013, the Public Utilities Board recommended approval to forward this item to the City Council for consideration.

**RECOMMENDATION**

Award RFP 5295 to Walsh's Hawk Construction Co., LLC in an amount not-to-exceed \$354,971.

**PRINCIPAL PLACE OF BUSINESS**

Walsh's Hawk Construction Co., LLC  
Princeton, TX

**ESTIMATED SCHEDULE OF PROJECT**

The construction of the fence is estimated to be completed within 59 calendar days of issuance of the Notice to Proceed.

**FISCAL INFORMATION**

This project will be funded from CIP fund account 603112500.1350.3530. Requisition #116285 has been entered in the Purchasing software system.

**EXHIBITS**

- Exhibit 1: Map of Location
- Exhibit 2: RFP Pricing Sheet
- Exhibit 3: Evaluation Ranking and Best and Final Offer
- Exhibit 4: Public Utilities Board Draft Minutes

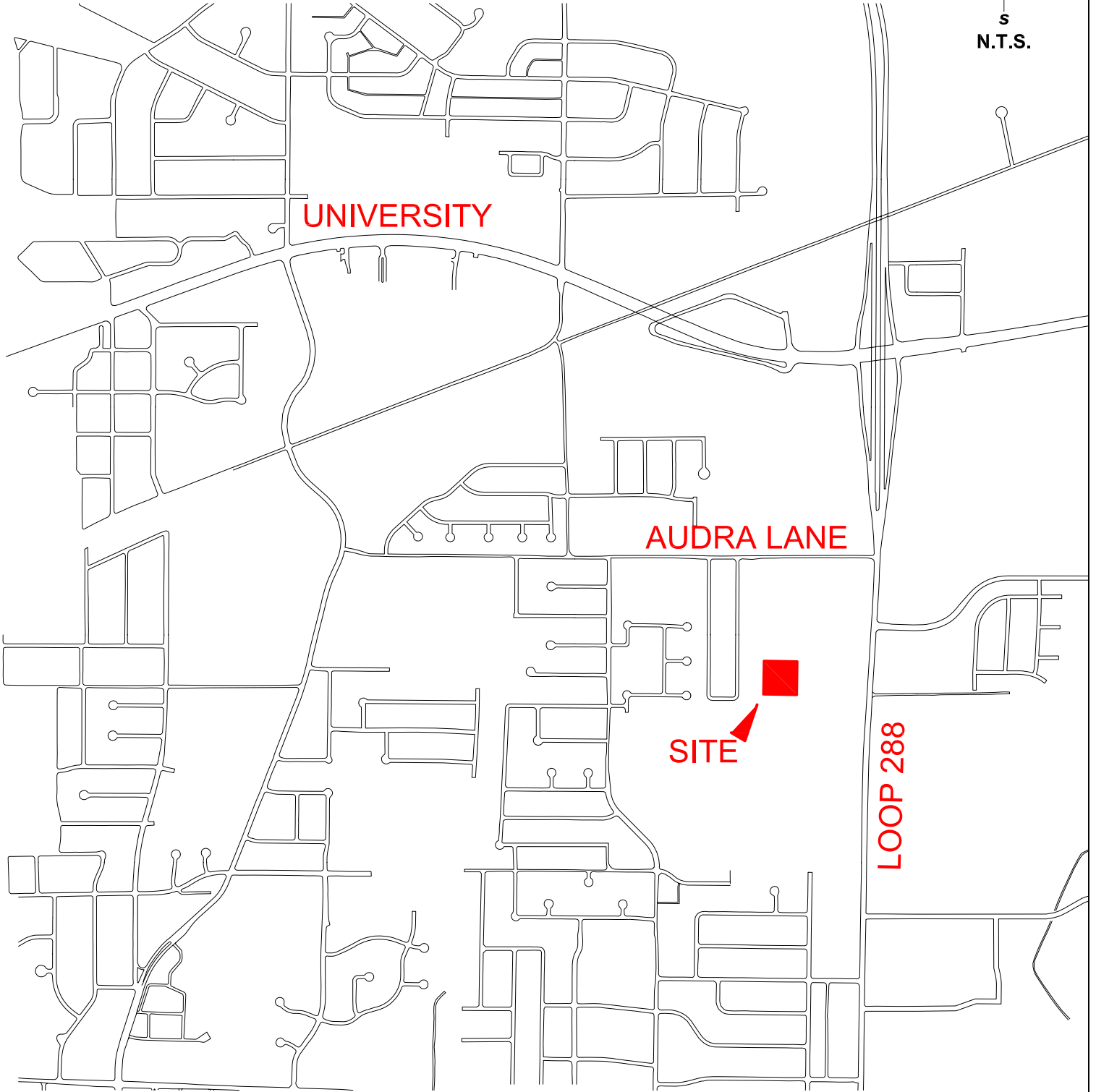
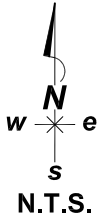
Respectfully submitted:



Chuck Springer, 349-8260  
Director of Finance

# EXHIBIT 1

## COOPER CREEK SUBSTATION FENCE



### Cooper Creek Sub. Location Map

1221 N. Bonnie Brae • Denton, TX 76201 • 940-349-7100

DRAWN BY: Chris Lutrick

APPROVED:

DATE: 10/31/13

TILE:

DRC#:

CREW MGR. #:

PROJECT #:

SCALE:

SHEET:

**RFP #5295 Pre-cast Substation Security/Screening Fence - Cooper Creek Substation**

SECTION I - Cooper Creek Substation Fence				Walsh's Hawk Construction		Structures Hardscapes Specialist, Inc	
Principal Place of Business				Princeton, TX		Chaska, MN	
Item #	Construction Unit	Estimated Quantity	Unit of Measure	Unit Price	Extended Price	Unit Price	Extended Price
1	10' Security/screening wall material, pier design, and complete construction including stockpiling, cleanup, regrading and compacting	1,670	LF	\$ 174.00	\$ 290,580.00	\$ 196.77	\$ 328,605.90
2	Mow strip construction	1,670	LF	\$ 12.00	\$ 20,040.00	\$ 14.77	\$ 24,665.90
3	Rock excavation (for evaluation, assume 2' each on 50 piers)	100	VF	\$ 54.00	\$ 5,400.00	\$ 34.85	\$ 3,485.00
4	Additional for integrated wall/gate column that includes gate post installation	4	EA	\$ 850.00	\$ 3,400.00	\$ 413.42	\$ 1,653.68
5	Increase pier depth (for evaluation, assume 2' extensions on 130 piers)	260	VF	\$ 22.00	\$ 5,720.00	\$ 29.53	\$ 7,677.80
6	Decrease pier depth (for evaluation, assume 1' decrease on 130 piers)	130	VF	\$ (11.00)	\$ (1,430.00)	\$ 29.43	\$ 3,825.90
7	Increase in price for 24" diameter pier	100	EA	\$ 127.00	\$ 12,700.00	\$ 70.87	\$ 7,087.00
8	Payment and Performance Bonds for Project	1	EA	\$12,250.00	\$ 12,250.00	\$ 7,444.00	\$ 7,444.00
<b>Estimated Typical Cooper Creek Substation Total Cost</b>					<b>\$ 348,660.00</b>		<b>\$ 384,445.18</b>
SECTION II - Hourly Rates for Additional Services							
Item #	Type of Service or Equipment	Quantity	Unit	Unit Price	Extended Price	Unit Price	Extended Price
9	HYDRO-VAC TRUCK	20	Hour	\$275.00	\$ 5,500		
10	SKIDSTEER WITH OPERATOR	20	Hour	\$120.00	\$ 2,400		
11	BACKHOE WITH OPERATOR	20	Hour	\$165.00	\$ 3,300		



**RFP #5295 Pre-cast Substation Security/Screening Fence - Cooper  
Creek Substation - Evaluated Score**

%	Evaluated Criteria	Walsh's Hawk Construction	Structures Hardscapes Specialist, Inc
5	Project Schedule	4.4	5.0
20	Compliance with Specifications	18.0	16.0
15	Indicators of Probable Performance	14.0	12.0
60	Price	60.0	56.6
<b>100</b>	<b>TOTAL</b>	<b>96.4</b>	<b>89.6</b>



### RFP #5295 Pre-Cast Substation Security/Screening Fence-Cooper Creek Substation-Best and Final Offer

SECTION I - Cooper Creek Substation Fence				Walsh's Hawk Construction			
Principal Place of Business				Princeton, TX			
Item #	Construction Unit	Estimated Quantity	Unit of Measure	Unit Price	Extended Price	BAFO UNIT PRICE	BAFO TOTAL
1	10' Security/screening wall material, pier design, and complete construction including stockpiling, cleanup, regrading and compacting	1,670	LF	\$ 174.00	\$ 290,580.00	\$ 170.52	\$ 284,768.40
2	Mow strip construction	1,670	LF	\$ 12.00	\$ 20,040.00	\$ 11.76	\$ 19,639.20
3	Rock excavation (for evaluation, assume 2' each on 50 piers)	100	VF	\$ 54.00	\$ 5,400.00	\$ 52.92	\$ 5,292.00
4	Additional for integrated wall/gate column that includes gate post installation	4	EA	\$ 850.00	\$ 3,400.00	\$ 833.00	\$ 3,332.00
5	Increase pier depth (for evaluation, assume 2' extensions on 130 piers)	260	VF	\$ 22.00	\$ 5,720.00	\$ 22.00	\$ 5,720.00
6	Decrease pier depth (for evaluation, assume 1' decrease on 130 piers)	130	VF	\$ (11.00)	\$ (1,430.00)	\$ (11.00)	\$ (1,430.00)
7	Increase in price for 24" diameter pier	100	EA	\$ 127.00	\$ 12,700.00	\$ 127.00	\$ 12,700.00
8	Payment and Performance Bonds for Project	1	EA	\$12,250.00	\$ 12,250.00	\$ 12,250.00	\$ 12,250.00
<b>Estimated Typical Cooper Creek Substation Total Cost</b>					\$ 348,660.00		\$ 342,271.60
SECTION II - Hourly Rates for Additional Services							
Item #	Type of Service or Equipment	Quantity	Unit	Unit Price	Extended Price	BAFO UNIT PRICE	BAFO TOTAL
9	HYDRO-VAC TRUCK	20	Hour	\$275.00	\$ 5,500	\$275.00	\$ 5,500
10	SKIDSTEER WITH OPERATOR	20	Hour	\$120.00	\$ 2,400	\$120.00	\$ 2,400
11	BACKHOE WITH OPERATOR	20	Hour	\$165.00	\$ 3,300	\$165.00	\$ 3,300

**RFP #5295 Pre-Cast Substation Security/Screening Fence-Cooper Creek Substation-Best and Final Offer**

12	FOREMAN WITH PICKUP	20	Hour	\$50.00	\$ 1,000	\$50.00	\$ 1,000
13	LABOR	20	Hour	\$25.00	\$ 500	\$25.00	\$ 500
14	J.D. 310 LDR/Hoe	20	Hour				
15	Cat Skidsteer	20	Hour				
16	Skytrac Extended Forklift	20	Hour				
<b>SUBTOTAL</b>					\$ 12,700		\$ 12,700
<b>GRAND TOTAL</b>					\$ 361,360.00		\$ 354,971.60

**SECTION III - Delivery Timeframe**

25	Estimated time between notice to proceed for a project until work begins (calendar days)	14	59
26	Normal time to complete a typical project as depicted in the plans and on the Pricing Sheet (calendar days)	45	
27	Expected maximum number of projects that could be completed annually assuming the average above for one substation	6	
28	Expected number of projects that could be undertaken simultaneously or that could have overlapping times	2	
29	Number of similar wall construction projects completed during the past 36 months	45	
30	Total length of wall construction completed to date	225,000LF	
31	Are there any exceptions to the specification (attach explanation)?	NO	
	Invoice Paid in 20 days	0%	<b>1.0%</b>
	Invoice Paid in 15 days	0%	
	Invoice Paid in 10 days	0.5%	

%	Evaluated Criteria
5	Project Schedule
20	Compliance with Specifications
15	Indicators of Probable Performance
60	Price
<b>100</b>	<b>TOTAL</b>

4.4
18.0
14.0
60.0
<b>96.4</b>

**DRAFT MINUTES**  
**PUBLIC UTILITIES BOARD**  
November 11, 2013

1  
2  
3  
4  
5 After determining that a quorum of the Public Utilities Board of the City of Denton, Texas is  
6 present, the Chair of the Public Utilities Board will thereafter convene into an open meeting on  
7 Monday, November 11 at 9:00 a.m. in the Service Center Training Room, City of Denton Service  
8 Center, 901A Texas Street, Denton, Texas.

9  
10 Present: Chairman Dick Smith, Vice Chair Billy Cheek, Secretary Randy  
11 Robinson, Leonard Herring, Phil Gallivan Barbara Russell and Lilia  
12 Bynum

13  
14 Ex Officio Members: George Campbell City Manager and Howard Martin, ACM Utilities

15  
16 **OPEN MEETING:**

17  
18 **CONSENT AGENDA:**

- 19  
20 1) Consider recommending approval of a contract with Walsh's Hawk Construction Company,  
21 LLC, a limited liability corporation, Princeton, Texas, for constructing a precast concrete  
22 security/screening fence for the Cooper Creek Substation in an amount not to exceed  
23 \$354,971.60. (RFP #5295).

24  
25 **Motion was made to approve item 1 by Board Member Gallivan with the second by Board**  
26 **Member Russell. The vote was 7-0 approved.**

27  
28 **Adjournment 10:25 a.m.**

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE ACCEPTING COMPETITIVE PROPOSALS AND AWARDING A PUBLIC WORKS CONTRACT FOR THE INSTALLATION OF A PRE-CAST CONCRETE SECURITY/SCREENING FENCE AT THE COOPER CREEK SUBSTATION FOR DENTON MUNICIPAL ELECTRIC; PROVIDING FOR THE EXPENDITURE OF FUNDS THEREFOR; AND PROVIDING AN EFFECTIVE DATE (RFP 5295-AWARDED TO WALSH'S HAWK CONSTRUCTION CO., LLC IN AN AMOUNT NOT-TO-EXCEED \$354,971).

WHEREAS, the City has solicited, received and tabulated competitive proposals for the construction of public works or improvements in accordance with the procedures of State law and City ordinances; and

WHEREAS, the City Manager or a designated employee has received and recommended that the herein described proposal is the highest scored proposal for the construction of the public works or improvements described in the Request for Proposal (RFP) document and plans and specifications therein; NOW, THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The following competitive proposal for the construction of public works or improvements, as described in the "Request for Proposals" or plans and specifications on file in the Office of the City's Purchasing Agent filed according to the RFP number assigned hereto, are hereby accepted and approved:

<u>RFP</u> <u>NUMBER</u>	<u>CONTRACTOR</u>	<u>AMOUNT</u>
5295	Walsh's Hawk Construction Co., LLC	\$354,971

SECTION 2. The acceptance and approval of the above competitive proposals shall not constitute a contract between the City and the person submitting the proposal for construction of such public works or improvements herein accepted and approved, until such person shall comply with all requirements specified in the Notice to Proposers including the timely execution of a written contract and furnishing of performance and payment bonds, and insurance certificate after notification of the award.

SECTION 3. The City Manager is hereby authorized to execute all necessary written contracts for the performance of the construction of the public works or improvements in accordance with the proposals accepted and approved herein, provided that such contracts are made in accordance with the Notice to Proposers and Request for Proposals, and documents relating thereto specifying the terms, conditions, plans and specifications, standards, quantities and specified sums contained therein.

SECTION 4. The City Council of the City of Denton, Texas hereby expressly delegates the authority to take any actions that may be required or permitted to be performed by the City of Denton under RFP 5295 to the City Manager of the City of Denton, Texas, or his designee.

SECTION 5. Upon acceptance and approval of the above competitive proposals and the execution of contracts for the public works and improvements as authorized herein, the City Council hereby authorizes the expenditure of funds in the manner and in the amount as specified in such approved proposals and authorized contracts executed pursuant thereto.

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

PASSED AND APPROVED this the \_\_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
MARK A. BURROUGHS, MAYOR

ATTEST:  
JENNIFER WALTERS, CITY SECRETARY

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

APPROVED AS TO LEGAL FORM:  
ANITA BURGESS, CITY ATTORNEY



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

**AGENDA INFORMATION SHEET****AGENDA DATE:** November 19, 2013

Questions concerning this acquisition may be directed to Frank Payne at 349-8946

**DEPARTMENT:** Materials Management**ACM:** Bryan Langley

LbL

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**SUBJECT**

Consider adoption of an ordinance accepting competitive bids and awarding a public works contract for water and wastewater improvements as specified in Bid 5366 State School Interceptor II; providing for the expenditure of funds therefor; and providing an effective date (Bid 5366-awarded to the lowest responsible bidder meeting specification, Wright Construction Company, Inc. in the amount of \$2,594,780). The Public Utilities Board recommends approval (7-0).

**BID INFORMATION**

The State School Interceptor II project consists primarily of the replacement of approximately 6,000 feet of parallel 21 inch and 24 inch gravity sanitary sewer with a single, new 48 inch sanitary sewer (Exhibit 1-Map of Location). The project is required to increase pipeline capacity and eliminate wet weather sanitary sewer overflows that occur during large rain events.

Standard City of Denton purchasing procedures were utilized. Bid notices were advertised in the local paper, posted on the internet, and emailed to prospective bidders. Bids for the construction phase of this project were opened on October 17, 2013. Three responses were received. The base bids ranged from a low bid of \$2,393,868.00 to a high bid of \$3,560,526.50. The alternate bids ranged from a low bid of \$194,580.00 to a high bid of \$235,796.00. The lowest combined total was \$2,594,780.00. The engineer's opinion of probable construction cost for the base bid work plus the alternate bid work was \$2,551,247.00. The bid summary is enclosed as Exhibit 2. The low bidder for this project, Wright Construction Company, Inc., appears to meet all of the necessary requirements for qualification on this project.

**PRIOR ACTION/REVIEW (COUNCIL, BOARDS, COMMISSIONS)**

On November 11, 2013, the Public Utilities Board recommended approval to forward this item to the City Council for consideration.

**RECOMMENDATION**

Award Bid 5366 to the lowest responsible bidder meeting specification, Wright Construction Company, Inc. in the amount of \$2,594,780.

**PRINCIPAL PLACE OF BUSINESS**

Wright Construction Company, Inc.  
Grapevine, TX

**ESTIMATED SCHEDULE OF PROJECT**

The replacement of the sewer crossings is estimated to be completed within 240 calendar days of issuance of the Notice to Proceed.

**FISCAL INFORMATION**

This project will be funded from Bond fund account 640172544.1365.21100. Requisition #116107 has been entered in the Purchasing software system.

**EXHIBITS**

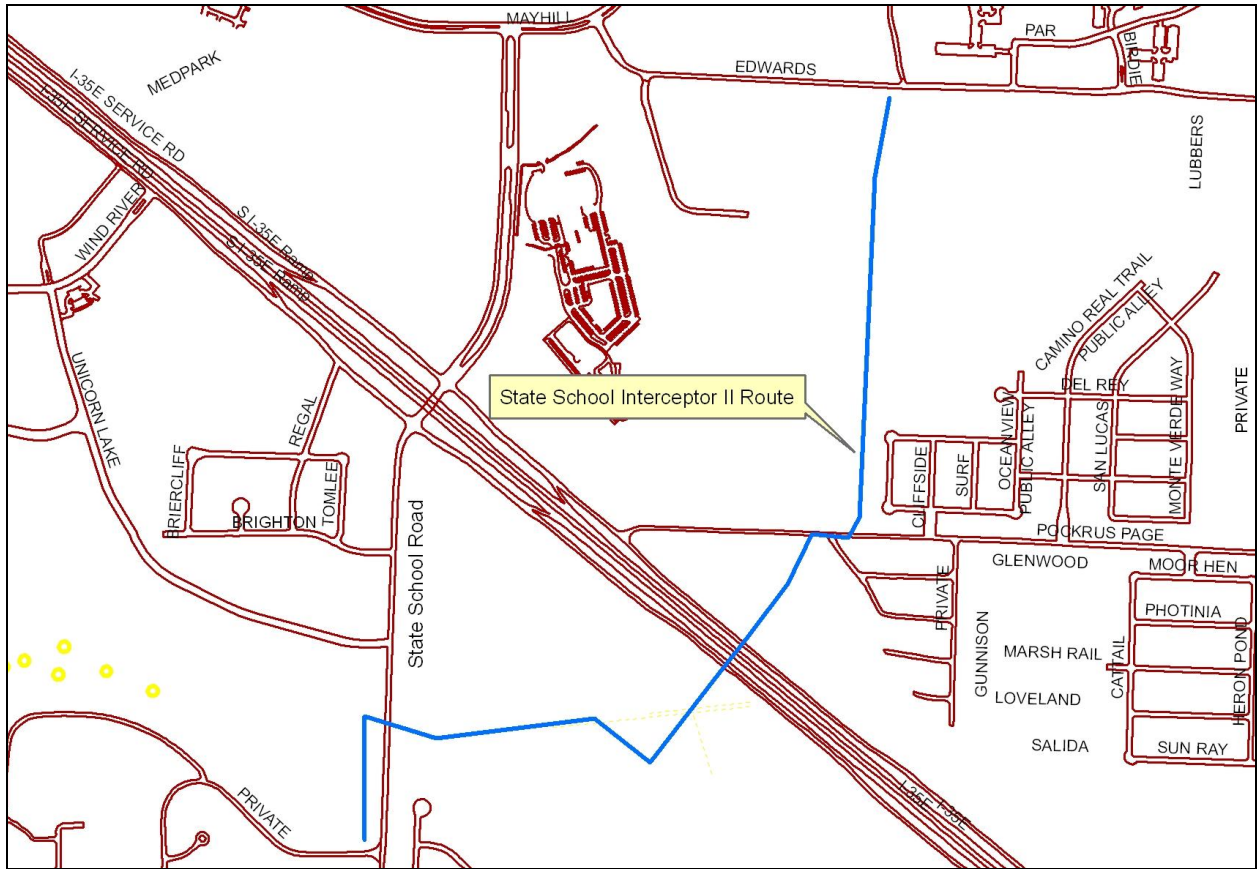
- Exhibit 1: Map of Location
- Exhibit 2: Bid Tabulation
- Exhibit 3: Public Utilities Board Draft Minutes

Respectfully submitted:

*Chuck Springer*

Chuck Springer, 349-8260  
Director of Finance

# Exhibit 1



Project Location Map



**Bid # 5366**

EXHIBIT 2

**10/17/2013****Description: State School Interceptor II**

<b>DESCRIPTION</b>	<b>VENDOR</b>	<b>VENDOR</b>	<b>VENDOR</b>
	<b>Wright Construction Company, Inc.</b>	Lewis Contractors	Condie Construction Co
<b>Principle Place of Business:</b>	<b>Grapevine TX</b>	Georgetown, TX	Springville, UT
<b>Base Price</b>	<b>\$2,393,868.00</b>	\$2,653,585.00	\$3,560,526.50
<b>Base Price + Alternate A</b>	<b>\$2,594,780.00</b>	\$2,848,165.40	\$3,796,322.50
<b>Addendum 1 Acknowledged</b>	Yes	Yes	Yes
<b>Addendum 2 Acknowledged</b>	Yes	Yes	Yes
<b>Completion Date</b>	<b>240 Calendar Days</b>	240 Calendar Days	240 Calendar Days
<b>Bid Bond</b>	Yes	Yes	Yes

**DRAFT MINUTES**  
**PUBLIC UTILITIES BOARD**  
November 11, 2013

1  
2  
3  
4  
5 After determining that a quorum of the Public Utilities Board of the City of Denton, Texas is  
6 present, the Chair of the Public Utilities Board will thereafter convene into an open meeting on  
7 Monday, November 11 at 9:00 a.m. in the Service Center Training Room, City of Denton Service  
8 Center, 901A Texas Street, Denton, Texas.  
9

10 Present: Chairman Dick Smith, Vice Chair Billy Cheek, Secretary Randy  
11 Robinson, Leonard Herring, Phil Gallivan Barbara Russell and Lilia  
12 Bynum  
13

14 Ex Officio Members: George Campbell City Manager and Howard Martin, ACM Utilities  
15

16 **OPEN MEETING:**  
17

18 **CONSENT AGENDA:**  
19

20 2) Consider recommending approval of Bid No. 5366 to Wright Construction Company, Inc. for  
21 the construction of the State School Interceptor II project, in an amount not to exceed  
22 \$2,594,780.  
23

24 **Motion was made to approve item 2 by Board Member Gallivan with the second by Board**  
25 **Member Russell. The vote was 7-0 approved.**  
26

27 **ITEMS FOR INDIVIDUAL CONSIDERATION:**  
28

29 Adjournment 10:25 a.m.

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE ACCEPTING COMPETITIVE BIDS AND AWARDING A PUBLIC WORKS CONTRACT FOR WATER AND WASTEWATER IMPROVEMENTS AS SPECIFIED IN BID 5366 STATE SCHOOL INTERCEPTOR II; PROVIDING FOR THE EXPENDITURE OF FUNDS THEREFOR; AND PROVIDING AN EFFECTIVE DATE (BID 5366-AWARDED TO THE LOWEST RESPONSIBLE BIDDER MEETING SPECIFICATION, WRIGHT CONSTRUCTION COMPANY, INC. IN THE AMOUNT OF \$2,594,780).

WHEREAS, the City has solicited, received and tabulated competitive bids for the construction of public works or improvements in accordance with the procedures of State law and City ordinances; and

WHEREAS, the City Manager or a designated employee has received and recommended that the herein described bids are the lowest responsible bids for the construction of the public works or improvements described in the bid invitation, bid proposals and plans and specifications therein; NOW, THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The following competitive bids for the construction of public works or improvements, as described in the "Bid Invitations", "Bid Proposals" or plans and specifications on file in the Office of the City's Purchasing Agent filed according to the bid number assigned hereto, are hereby accepted and approved as being the lowest responsible bids:

<u>BID NUMBER</u>	<u>CONTRACTOR</u>	<u>AMOUNT</u>
5366	Wright Construction Company, Inc.	\$2,594,780

SECTION 2. The acceptance and approval of the above competitive bids shall not constitute a contract between the City and the person submitting the bid for construction of such public works or improvements herein accepted and approved, until such person shall comply with all requirements specified in the Notice to Bidders including the timely execution of a written contract and furnishing of performance and payment bonds, and insurance certificate after notification of the award of the bid.

SECTION 3. The City Manager is hereby authorized to execute all necessary written contracts for the performance of the construction of the public works or improvements in accordance with the bids accepted and approved herein, provided that such contracts are made in accordance with the Notice to Bidders and Bid Proposals, and documents relating thereto specifying the terms, conditions, plans and specifications, standards, quantities and specified sums contained therein.

SECTION 4. The City Council of the City of Denton, Texas hereby expressly delegates the authority to take any actions that may be required or permitted to be performed by the City of Denton under Bid 5366 to the City Manager of the City of Denton, Texas, or his designee.

SECTION 5. Upon acceptance and approval of the above competitive bids and the execution of contracts for the public works and improvements as authorized herein, the City Council hereby authorizes the expenditure of funds in the manner and in the amount as specified in such approved bids and authorized contracts executed pursuant thereto.

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

PASSED AND APPROVED this the \_\_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
MARK A. BURROUGHS, MAYOR

ATTEST:  
JENNIFER WALTERS, CITY SECRETARY

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

APPROVED AS TO LEGAL FORM:  
ANITA BURGESS, CITY ATTORNEY



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

**AGENDA INFORMATION SHEET****AGENDA DATE:** November 19, 2013Questions concerning this  
acquisition may be directed  
to Dean Hartley at 349-8243**DEPARTMENT:** Materials Management**ACM:** Bryan Langley

LBL

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**SUBJECT**

Consider adoption of an ordinance accepting competitive proposals and awarding a contract for Janitorial Services for City of Denton buildings; providing for the expenditure of funds therefor; and providing an effective date (RFP 5317-awarded to Oriental Building Services, Inc. in the annual not-to-exceed amount of \$581,238 for a three (3) year not-to-exceed amount of \$1,743,714).

**RFP INFORMATION**

The City of Denton has outsourced janitorial services, as a cost-effective service delivery, to City facilities, for the past fifteen years. The contract for janitorial services provides various cleaning services and associated supplies to thirty-two (32) City buildings. In addition to the main City facilities, the new contract will include three (3) Denton Municipal Electric buildings, the Public Safety Training Facility, and the Linda McNatt Animal Adoption and Services building (when completed). These facilities have not been included in previous janitorial service contracts.

The City's current five (5) year janitorial services contract with Britton Building Maintenance, Inc. will expire on December 31, 2013. In order to ensure the continuity of cleaning services, the City of Denton Materials Management Department issued RFP 5317 in August 2013 with the intent to award a new contract that allows for a transition period if needed. Request for proposals were sent to 189 prospective service providers. In addition, specifications were placed on the Purchasing website for prospective suppliers to download and advertised in the local newspaper. Thirteen (13) proposals were received. Eleven (11) of the thirteen (13) proposals met the minimum qualifications. An initial evaluation process was conducted and the ranking is detailed in Exhibit 1.

A final evaluation process was conducted for the three (3) top ranked firms. The references for these three firms were contacted. Oriental Building Services, Inc. and UBM Enterprises received excellent remarks based on their performance. The lowest-priced firm of the three finalists, ServiceMaster Clean, offered references that provided feedback which raised the following concerns: less than optimal performance, staff turnover issues, and areas not being cleaned in a timely manner. As a result, the evaluation committee ranked ServiceMaster Clean lower in the area of probable performance.

**RFP INFORMATION (CONTINUED)**

The top three firms were invited to make a presentation to the evaluation committee as part of the interview process. In the interviews, clarifications were made to the specifications and to the proposals submitted by each firm. Each firm resubmitted pricing based upon the clarifications and Best and Final Offers (BAFO) were negotiated. The proposal evaluations and ranking for the top three (3) finalists are included in Exhibit 2. Oriental Building Services, Inc. received the highest evaluated score including a BAFO savings of \$4,508, which equals \$13,524 over the three (3) year time period. Therefore, staff recommends the award of this contract to Oriental Building Services, Inc. as achieving the best value for the City.

Staff also conducted a comparison of the current janitorial services contract cost versus the proposed award amount. The comparison shows that Oriental Building Services, Inc. will save the City an estimated \$39,445 annually, for a total savings of \$118,335 for the three-year term, which is a seven percent savings over the current annual cost. This comparison is included as Exhibit 3 of the Building Cost Comparison.

**RECOMMENDATION**

Approve the award of a contract for janitorial services for City of Denton buildings to Oriental Building Services, Inc. in the annual not-to-exceed amount of \$581,238 for a three (3) year not-to-exceed amount of \$1,743,714. The annual not-to-exceed amount of \$581,238 is comprised of the following cost elements:

Sections I–VI: Existing buildings	\$539,878
Section VII: On-demand additional services	Not-to-exceed \$5,000
Section VIII: Future buildings	<u>\$36,360</u>
	\$581,238

**PRINCIPAL PLACE OF BUSINESS**

Oriental Building Services, Inc.  
Dallas, TX

**ESTIMATED SCHEDULE OF PROJECT**

The initial term of this contract is for one (1) year. The City and Oriental Building Services, Inc. shall have the option to renew this contract for two (2) additional one (1) year periods. If the contract is awarded to Oriental Building Services, Inc., a transition period will go into effect to prepare for the changeover of the cleaning staff on January 1, 2014. The transition process will include background checks and training of staff.

**FISCAL INFORMATION**

These services will be funded from various operating accounts based on each building's usage. Requisition #116276 has been entered in the Purchasing software system.

**EXHIBITS**

- Exhibit 1: Initial Ranking and Evaluation Sheet
- Exhibit 2: Final Ranking with Best and Final Offer
- Exhibit 3: Building Cost Comparison

Respectfully submitted:

*Chuck Springer*

Chuck Springer, 349-8260  
Director of Finance

Exhibit 1

**RFP 5317 - Evaluation**

**Janitorial Services for City of Denton Buildings**

**October 4, 2013**

**Initial Ranking/Score:**

	<b>LOCATION</b>	<b>SCORE</b>	<b>RANKING</b>	<b>PRICING EXCLUDING SECTIONS VII AND VIII FOR EVALUATION PURPOSES</b>
<b>ServiceMaster Clean</b>	Plano, TX	<b>95.72</b>	<b>1st</b>	<b>\$426,955.16</b>
<b>Oriental Building Services</b>	Dallas, TX	<b>84.45</b>	<b>2nd</b>	<b>\$544,385.80</b>
<b>UBM Enterprise</b>	Dallas, TX	<b>82.72</b>	<b>3rd</b>	<b>\$571,323.90</b>
<b>OJS Systems</b>	Plano, TX	<b>76.81</b>	<b>4th</b>	<b>\$490,426.10</b>
<b>AHI Facility Services</b>	Dallas, TX	<b>74.84</b>	<b>5th</b>	<b>\$646,438.32</b>
<b>James Enterprise</b>	Cedar Hill, TX	<b>74.08</b>	<b>6th</b>	<b>\$420,287.92</b>
<b>Member's Building Maintenance</b>	Dallas, TX	<b>70.46</b>	<b>7th</b>	<b>\$610,449.92</b>
<b>Evelyn's Professional Janitorial Services</b>	Plano, TX	<b>69.03</b>	<b>8th</b>	<b>\$508,583.00</b>
<b>Kemp &amp; Sons General Services</b>	Ft. Worth, TX	<b>61.82</b>	<b>9th</b>	<b>\$604,725.00</b>
<b>Apogee Technical Services</b>	Dallas, TX	<b>59.24</b>	<b>10th</b>	<b>\$518,342.04</b>
<b>Britton Building Maintenance</b>	Irving, TX	<b>58.49</b>	<b>11th</b>	<b>\$623,899.72</b>



**RFP #5317 Evaluation - Janitorial Services - Ranking with All Material and Labor Options**  
**October 4, 2013**

ITEM	Type of Product/Service Requested	ServiceMaster Clean				Oriental Building Services				
		Price	Price Score (50%)	Indicators of Probable Performance (25%)	Compliance w/specs & Performance (25%)	Total Evaluated Score	Price	Price Score (50%)	Indicators of Probable Performance (25%)	Compliance w/specs & Performance (25%)
<b>Janitorial Services Proposal:</b>										
1 - 9	Section I - City Halls	\$108,201.88					\$135,494.24			
10 - 17	Section II - Recreation Centers	\$92,228.56					\$123,453.16			
18 - 20	Section III - Libraries	\$64,687.02					\$81,335.00			
21 - 24	Section IV - Service Center Complex	\$33,886.64					\$39,575.04			
25 - 35	Section V - Additional Facilities	\$79,363.06					\$84,638.36			
36 - 38	Section VI - Miscellaneous	\$48,588.00					\$79,890.00			
<b>Total Proposed Cost:</b>		<b>\$426,955.16</b>					<b>\$544,385.80</b>			
39 - 42	Section VII - On Demand Additional Services (Average Hourly Rate)	<b>\$13.60</b>					<b>\$33.95</b>			
43 - 44	Section VIII - Future Buildings	\$37,730.00					\$35,160.00			
<b>Expedited Payment Discounts</b>										
	Invoice Paid in 20 days	1.00%					0.75%			
	Invoice Paid in 15 days	1.50%					1.00%			
	Invoice Paid in 10 days	2.00%					1.25%			
<b>Total Proposed Cost - Less average expedited discount</b>		<b>\$420,550.83</b>					<b>\$538,941.94</b>			
<b>Evaluated Score:</b>			<b>49.80</b>	<b>24</b>	<b>22</b>	<b>95.72</b>		<b>38.86</b>	<b>24</b>	<b>22</b>
										<b>84.45</b>

\*See proposal for details

<b>Evaluation Criteria:</b>
Price (Factor 50%) : Adjusted Total Proposed Pricing: (includes 10 day Expedited Payment Discount)
Evaluation Criteria - Indicators of Probable Performance (Factor 25%): Financial Soundness, References, Ability to Perform, Experience, Demonstrated Capability and Responsibility, Quality Control, and Support.
Evaluation Criteria - Compliance with Specifications (Factor 25%): Ability to Meet Overall Deliverables and Specifications.

<b>Evaluation Team Members:</b>
Facilities Management
Parks & Recreation Department
Denton Municipal Electric

EXHIBIT 1

ITEM	Type of Product/Service Requested	UBM Enterprise					OJS Systems				
		Price	Price Score (50%)	Indicators of Probable Performance (25%)	Compliance w/specs & Performance (25%)	Total Evaluated Score	Price	Price Score (50%)	Indicators of Probable Performance (25%)	Compliance w/specs & Performance (25%)	Total Evaluated Score
<b>Janitorial Services Proposal:</b>											
1 - 9	Section I - City Halls	\$155,174.04					\$125,267.20				
10 - 17	Section II - Recreation Centers	\$117,603.92					\$104,562.00				
18 - 20	Section III - Libraries	\$76,920.40					\$77,334.00				
21 - 24	Section IV - Service Center Complex	\$40,858.48					\$36,630.00				
25 - 35	Section V - Additional Facilities	\$99,557.06					\$85,166.50				
36 - 38	Section VI - Miscellaneous	\$81,210.00					\$61,466.40				
<b>Total Proposed Cost:</b>		<b>\$571,323.90</b>					<b>\$490,426.10</b>				
39 - 42	Section VII - On Demand Additional Services (Average Hourly Rate)	<b>\$12.50</b>					<b>\$11.45</b>				
43 - 44	Section VIII - Future Buildings	\$27,200.00					See proposal*				
<b>Expedited Payment Discounts</b>											
Invoice Paid in 20 days		0.00%					0.00%				
Invoice Paid in 15 days		0.00%					0.25%				
Invoice Paid in 10 days		0.50%					0.50%				
<b>Total Proposed Cost - Less average expedited discount</b>		<b>\$570,371.69</b>					<b>\$489,200.03</b>				
<b>Evaluated Score:</b>			<b>36.72</b>	<b>23</b>	<b>23</b>	<b>82.72</b>		<b>42.81</b>	<b>20</b>	<b>14</b>	<b>76.81</b>

\*See proposal for details

<b>Evaluation Criteria:</b>
Price (Factor 50%) : Adjusted Total Proposed Pricing: (includes 10 day Expedited Payment Discount)
Evaluation Criteria - Indicators of Probable Performance (Factor 25%): Financial Soundness, References, Ability to Perform, Experience, Demonstrated Capability and Responsibility, Quality Control, and Support.
Evaluation Criteria - Compliance with Specifications (Factor 25%): Ability to Meet Overall Deliverables and Specifications.

<b>Evaluation Team Members:</b>
Facilities Management
Parks & Recreation Department
Denton Municipal Electric

EXHIBIT 1

ITEM	Type of Product/Service Requested	AHI Facility Services					James Enterprise				
		Price	Price Score (50%)	Indicators of Probable Performance (25%)	Compliance w/specs & Performance (25%)	Total Evaluated Score	Price	Price Score (50%)	Indicators of Probable Performance (25%)	Compliance w/specs & Performance (25%)	Total Evaluated Score
<b>Janitorial Services Proposal:</b>											
1 - 9	Section I - City Halls	\$172,458.84					\$102,987.00				
10 - 17	Section II - Recreation Centers	\$129,109.68					\$88,806.00				
18 - 20	Section III - Libraries	\$91,325.72					\$57,075.00				
21 - 24	Section IV - Service Center Complex	\$51,180.56					\$34,746.00				
25 - 35	Section V - Additional Facilities	\$113,697.68					\$86,132.92				
36 - 38	Section VI - Miscellaneous	\$88,665.84					\$50,541.00				
<b>Total Proposed Cost:</b>		<b>\$646,438.32</b>					<b>\$420,287.92</b>				
39 - 42	Section VII - On Demand Additional Services (Average Hourly Rate)	<b>\$14.40</b>					<b>\$9.67</b>				
43 - 44	Section VIII - Future Buildings	\$43,080.00					\$4,584.00*				
<b>Expedited Payment Discounts</b>											
	Invoice Paid in 20 days	0.25%					1.00%				
	Invoice Paid in 15 days	0.50%					0.00%				
	Invoice Paid in 10 days	1.00%					0.00%				
<b>Total Proposed Cost - Less average expedited discount</b>		<b>\$642,667.43</b>					<b>\$418,886.96</b>				
<b>Evaluated Score:</b>			<b>32.59</b>	<b>21</b>	<b>21</b>	<b>74.84</b>		<b>50.00</b>	<b>15</b>	<b>10</b>	<b>74.08</b>

\*See proposal for details

<b>Evaluation Criteria:</b>
Price (Factor 50%) : Adjusted Total Proposed Pricing: (includes 10 day Expedited Payment Discount)
Evaluation Criteria - Indicators of Probable Performance (Factor 25%): Financial Soundness, References, Ability to Perform, Experience, Demonstrated Capability and Responsibility, Quality Control, and Support.
Evaluation Criteria - Compliance with Specifications (Factor 25%): Ability to Meet Overall Deliverables and Specifications.

<b>Evaluation Team Members:</b>
Facilities Management
Parks & Recreation Department
Denton Municipal Electric

EXHIBIT 1

ITEM	Type of Product/Service Requested	Member's Building Maintenance					Evelyn's Professional Janitorial Services				
		Price	Price Score (50%)	Indicators of Probable Performance (25%)	Compliance w/specs & Performance (25%)	Total Evaluated Score	Price	Price Score (50%)	Indicators of Probable Performance (25%)	Compliance w/specs & Performance (25%)	Total Evaluated Score
<b>Janitorial Services Proposal:</b>											
1 - 9	Section I - City Halls	\$159,025.76					\$136,130.00				
10 - 17	Section II - Recreation Centers	\$129,822.56					\$104,082.00				
18 - 20	Section III - Libraries	\$92,795.60					\$62,884.00				
21 - 24	Section IV - Service Center Complex	\$47,833.20					\$34,524.00				
25 - 35	Section V - Additional Facilities	\$104,529.20					\$101,981.00				
36 - 38	Section VI - Miscellaneous	\$76,443.60					\$68,982.00				
<b>Total Proposed Cost:</b>		<b>\$610,449.92</b>					<b>\$508,583.00</b>				
39 - 42	Section VII - On Demand Additional Services (Average Hourly Rate)	<b>\$12.80</b>					<b>\$11.10</b>				
43 - 44	Section VIII - Future Buildings	\$52,704.08					\$9,600.00*				
<b>Expedited Payment Discounts</b>											
	Invoice Paid in 20 days	2.00%					1.00%				
	Invoice Paid in 15 days	0.00%					2.00%				
	Invoice Paid in 10 days	0.00%					2.50%				
<b>Total Proposed Cost - Less average expedited discount</b>		<b>\$606,380.25</b>					<b>\$499,258.98</b>				
<b>Evaluated Score:</b>			<b>34.54</b>	<b>18</b>	<b>18</b>	<b>70.46</b>		<b>41.95</b>	<b>16</b>	<b>11</b>	<b>69.03</b>

\*See proposal for details

<b>Evaluation Criteria:</b>
Price (Factor 50%) : Adjusted Total Proposed Pricing: (includes 10 day Expedited Payment Discount)
Evaluation Criteria - Indicators of Probable Performance (Factor 25%): Financial Soundness, References, Ability to Perform, Experience, Demonstrated Capability and Responsibility, Quality Control, and Support.
Evaluation Criteria - Compliance with Specifications (Factor 25%): Ability to Meet Overall Deliverables and Specifications.

<b>Evaluation Team Members:</b>
Facilities Management
Parks & Recreation Department
Denton Municipal Electric

EXHIBIT 1

ITEM	Type of Product/Service Requested	Kemp & Sons General Services					Apogee Technical Services				
		Price	Price Score (50%)	Indicators of Probable Performance (25%)	Compliance w/specs & Performance (25%)	Total Evaluated Score	Price	Price Score (50%)	Indicators of Probable Performance (25%)	Compliance w/specs & Performance (25%)	Total Evaluated Score
<b>Janitorial Services Proposal:</b>											
1 - 9	Section I - City Halls	\$159,155.00					\$133,955.92				
10 - 17	Section II - Recreation Centers	\$127,400.00					\$110,022.04				
18 - 20	Section III - Libraries	\$85,695.00					\$73,120.60				
21 - 24	Section IV - Service Center Complex	\$46,490.00					\$37,556.72				
25 - 35	Section V - Additional Facilities	\$112,905.00					\$85,785.04				
36 - 38	Section VI - Miscellaneous	\$73,080.00					\$77,901.72				
<b>Total Proposed Cost:</b>		<b>\$604,725.00</b>					<b>\$518,342.04</b>				
39 - 42	Section VII - On Demand Additional Services (Average Hourly Rate)	<b>\$15.50</b>					<b>\$11.83</b>				
43 - 44	Section VIII - Future Buildings	\$59,420.00					\$45,805.33				
<b>Expedited Payment Discounts</b>											
Invoice Paid in 20 days		1.50%					0.00%				
Invoice Paid in 15 days		1.00%					0.00%				
Invoice Paid in 10 days		0.50%					0.00%				
<b>Total Proposed Cost - Less average expedited discount</b>		<b>\$598,677.75</b>					<b>\$518,342.04</b>				
<b>Evaluated Score:</b>			<b>34.98</b>	<b>15</b>	<b>12</b>	<b>61.82</b>		<b>40.41</b>	<b>11</b>	<b>8</b>	<b>59.24</b>

\*See proposal for details

<b>Evaluation Criteria:</b>
Price (Factor 50%) : Adjusted Total Proposed Pricing: (includes 10 day Expedited Payment Discount)
Evaluation Criteria - Indicators of Probable Performance (Factor 25%): Financial Soundness, References, Ability to Perform, Experience, Demonstrated Capability and Responsibility, Quality Control, and Support.
Evaluation Criteria - Compliance with Specifications (Factor 25%): Ability to Meet Overall Deliverables and Specifications.

<b>Evaluation Team Members:</b>
Facilities Management
Parks & Recreation Department
Denton Municipal Electric

ITEM	Type of Product/Service Requested	Britton Building Maintenance				
		Price	Price Score (50%)	Indicators of Probable Performance (25%)	Compliance w/specs & Performance (25%)	Total Evaluated Score
<b>Janitorial Services Proposal:</b>						
1 - 9	Section I - City Halls	\$177,568.32				
10 - 17	Section II - Recreation Centers	\$112,686.40				
18 - 20	Section III - Libraries	\$79,110.88				
21 - 24	Section IV - Service Center Complex	\$64,391.36				
25 - 35	Section V - Additional Facilities	\$101,642.76				
36 - 38	Section VI - Miscellaneous	\$88,500.00				
<b>Total Proposed Cost:</b>		<b>\$623,899.72</b>				
39 - 42	Section VII - On Demand Additional Services (Average Hourly Rate)	<b>\$17.40</b>				
43 - 44	Section VIII - Future Buildings	\$1,360.00*				
<b>Expedited Payment Discounts</b>						
	Invoice Paid in 20 days	0.00%				
	Invoice Paid in 15 days	0.00%				
	Invoice Paid in 10 days	0.00%				
<b>Total Proposed Cost - Less average expedited discount</b>		<b>\$623,899.72</b>				
<b>Evaluated Score:</b>			<b>33.57</b>	<b>14</b>	<b>11</b>	<b>58.49</b>

\*See proposal for details

<b>Evaluation Criteria:</b>
Price (Factor 50%) : Adjusted Total Proposed Pricing: (includes 10 day Expedited Payment Discount)
Evaluation Criteria - Indicators of Probable Performance (Factor 25%): Financial Soundness, References, Ability to Perform, Experience, Demonstrated Capability and Responsibility, Quality Control, and Support.
Evaluation Criteria - Compliance with Specifications (Factor 25%): Ability to Meet Overall Deliverables and Specifications.

<b>Evaluation Team Members:</b>
Facilities Management
Parks & Recreation Department
Denton Municipal Electric

Exhibit 2

**RFP 5317 - Evaluation**

**Janitorial Services for City of Denton  
Buildings**

**November 4, 2013**

**Final Ranking/Score:**

<b>Oriental Building Services</b>	<b>85.19</b>	<b>1st</b>
<b>UBM Enterprise</b>	<b>84.58</b>	<b>2nd</b>
<b>ServiceMaster Clean</b>	<b>80.35</b>	<b>3rd</b>

**Exhibit 2**

**RFP #5317 Final Evaluation with Best & Final Offer (BAFO) Pricing - Janitorial Services - Ranking with All Material and Labor Options  
November 4, 2013**

ITEM	Type of Product/Service Requested	Oriental Building Services, Dallas, TX					UBM Enterprises, Dallas, TX						
		Initial Price	BAFO Price	Price Score (50%)	Indicators of Probable Performance (25%)	Compliance w/specs & Performance (25%)	Total Evaluated Score	Initial Price	BAFO Price	Price Score (50%)	Indicators of Probable Performance (25%)	Compliance w/specs & Performance (25%)	Total Evaluated Score
<b>Janitorial Services Proposal:</b>													
1 - 9	Section I - City Halls	\$135,494.24	\$134,510.00					\$155,174.04	\$148,234.80				
10 - 17	Section II - Recreation Centers	\$123,453.16	\$121,874.20					\$117,603.92	\$117,254.48				
18 - 20	Section III - Libraries	\$81,335.00	\$80,332.40					\$76,920.40	\$76,920.40				
21 - 24	Section IV - Service Center Complex	\$39,575.04	\$39,469.20					\$40,858.48	\$40,858.48				
25 - 35	Section V - Additional Facilities	\$84,638.36	\$85,035.30					\$99,557.06	\$95,159.06				
36 - 38	Section VI - Miscellaneous	\$79,890.00	\$78,657.00					\$81,210.00	\$79,806.00				
<b>Total Proposed Cost:</b>		<b>\$544,385.80</b>	<b>\$539,878.10</b>					<b>\$571,323.90</b>	<b>\$558,233.22</b>				
39 - 42	Section VII - On Demand Additional Services (Average Hourly Rate) Not to Exceed \$5,000*	<b>\$33.95</b>	<b>\$29.85</b>					<b>\$12.50</b>	<b>\$12.50</b>				
43 - 44	Section VIII - Future Buildings	\$35,160.00	\$36,360.00					\$27,200.00	\$27,200.00				
Total Including \$5,000 NTE Amount*		<b>\$584,545.00</b>	<b>\$581,238.00</b>					<b>\$603,523.90</b>	<b>\$590,433.22</b>				
<b>Expedited Payment Discounts</b>													
Invoice Paid in 20 days		0.75%	0.75%					0.00%	0.00%				
Invoice Paid in 15 days		1.00%	1.00%					0.00%	0.00%				
Invoice Paid in 10 days		1.25%	1.25%					0.50%	0.50%				
<b>Total Proposed Cost - Less average expedited discount</b>		<b>\$538,941.94</b>	<b>\$534,479.32</b>					<b>\$570,371.69</b>	<b>\$557,302.83</b>				
<b>Evaluated Score:</b>				<b>39.19</b>	<b>24</b>	<b>22</b>	<b>85.19</b>			<b>37.58</b>	<b>24</b>	<b>23</b>	<b>84.58</b>

<b>Evaluation Criteria:</b>
Price (Factor 50%) : Adjusted Total Proposed Pricing: (includes 10 day Expedited Payment Discount)
Evaluation Criteria - Indicators of Probable Performance (Factor 25%): Financial Soundness, References, Ability to Perform, Experience, Demonstrated Capability and Responsibility, Quality Control, and Support.
Evaluation Criteria - Compliance with Specifications (Factor 25%): Ability to Meet Overall Deliverables and Specifications.

<b>Evaluation Team Members:</b>
Facilities Management
Parks & Recreation Department
Denton Municipal Electric



**Exhibit 2**

ITEM	Type of Product/Service Requested	ServiceMaster Clean, Plano, TX					Total Evaluated Score
		Initial Price	BAFO Price	Price Score (50%)	Indicators of Probable Performance (25%)	Compliance w/specs & Performance (25%)	
<b>Janitorial Services Proposal:</b>							
1 - 9	Section I - City Halls	\$108,201.88	\$110,939.08				
10 - 17	Section II - Recreation Centers	\$92,228.56	\$95,084.56				
18 - 20	Section III - Libraries	\$64,687.02	\$67,110.42				
21 - 24	Section IV - Service Center Complex	\$33,886.64	\$35,121.44				
25 - 35	Section V - Additional Facilities	\$79,363.06	\$83,681.46				
36 - 38	Section VI - Miscellaneous	\$48,588.00	\$47,808.00				
<b>Total Proposed Cost:</b>		<b>\$426,955.16</b>	<b>\$439,744.96</b>				
39 - 42	Section VII - On Demand Additional Services (Average Hourly Rate) Not to Exceed \$5,000*	<b>\$13.60</b>	<b>\$13.60</b>				
43 - 44	Section VIII - Future Buildings	\$37,730.00	\$63,360.00				
Total Including \$5,000 NTE Amount*		<b>\$469,685.16</b>	<b>\$508,104.96</b>				
<b>Expedited Payment Discounts</b>							
Invoice Paid in 20 days		1.00%	1.00%				
Invoice Paid in 15 days		1.50%	1.50%				
Invoice Paid in 10 days		2.00%	2.00%				
<b>Total Proposed Cost - Less average expedited discount</b>		<b>\$420,550.83</b>	<b>\$433,148.79</b>				
<b>Evaluated Score:</b>				<b>48.35</b>	<b>10</b>	<b>22</b>	<b>80.35</b>

<b>Evaluation Criteria:</b>
Price (Factor 50%) : Adjusted Total Proposed Pricing: (includes 10 day Expedited Payment Discount)
Evaluation Criteria - Indicators of Probable Performance (Factor 25%): Financial Soundness, References, Ability to Perform, Experience, Demonstrated Capability and Responsibility, Quality Control, and Support.
Evaluation Criteria - Compliance with Specifications (Factor 25%): Ability to Meet Overall Deliverables and Specifications.

<b>Evaluation Team Members:</b>
Facilities Management
Parks & Recreation Department
Denton Municipal Electric

**Exhibit 3**

**RFP #5317 Janitorial Services  
Building Cost Comparison**

**Sections I - VI and VIII:**

No.	Name of Facility	Exterior Square Footage	Janitorial Square Footage	Current Annual Cost [A]	Recommended Contractor's Annual Price [B]	% Change [A to B]
1	Airport Control Tower	2,044	1,200	\$ 2,190.10	\$ 6,051.90	176%
2	Airport Terminal	4,624	4,224	\$ 4,634.30	\$ 2,743.00	-41%
3	American Legion North	3,298	2,677	\$ 2,865.28	\$ 2,475.40	-14%
4	American Legion South	2,482	2,376	\$ 2,865.28	\$ 2,475.40	-14%
5	Animal Services	7,379	1,600	\$ 3,763.10	\$ 4,579.40	22%
6	City Hall	35,000	35,000	\$ 31,823.00	\$ 25,105.60	-21%
7	City Hall East	153,000	110,640	\$ 112,227.50	\$ 91,019.60	-19%
7a	City Hall/City Hall East Restroom Day Cleaning	N/A	N/A	\$ 5,445.00	\$ 7,482.00	37%
8	City Hall West	24,660	24,660	\$ 26,731.32	\$ 18,384.00	-31%
9	Civic Center	27,741	27,741	\$ 26,934.60	\$ 20,936.00	-22%
10	Denia Recreation Center	17,580	17,580	\$ 19,592.32	\$ 20,538.00	5%
11	DME - Admin	8,500	8,500	\$ 16,333.00	\$ 12,592.00	-23%
12	DME - Engineer. and Syst. Operations	9,838	9,838	\$ 16,333.00	\$ 12,652.00	-23%
13	DME - System Ops	10,900	10,900	\$ 16,334.00	\$ 12,652.00	-23%
14	Facilities Management	14,000	9,000	\$ 4,326.96	\$ 5,657.40	31%
15	Fire Central (Station #1)	26,368	12,000	\$ 13,370.50	\$ 11,396.60	-15%
16	Fleet Services	24,000	2,000	\$ 2,214.30	\$ 4,279.40	93%
17	Goldfield Tennis Center	900	900	\$ 3,782.46	\$ 3,334.40	-12%
19	Library - Emily Fowler	22,876	22,876	\$ 24,684.00	\$ 25,636.00	4%
20	Library - North Branch	33,000	33,000	\$ 30,603.32	\$ 33,818.00	11%
21	Library - South Branch	20,700	20,700	\$ 11,814.44	\$ 20,878.40	77%
22	MLK, Jr. Rec. Center	20,000	20,000	\$ 21,380.70	\$ 20,538.00	-4%
23	Nature Center ( <i>as needed basis</i> )	N/A	N/A	\$125/mo.	\$45/hr	N/A
24	North Lakes Annex	3,500	3,500	\$ 3,767.94	\$ 4,527.00	20%
25	North Lakes Recreation Center	17,580	17,580	\$ 19,505.20	\$ 25,102.00	29%
26	Senior Center	19,500	19,500	\$ 17,794.26	\$ 21,948.00	23%
27	Service Center (Purchasing 1,068 sf)	69,146	37,068	\$ 35,341.68	\$ 31,000.40	-12%
28	Solid Waste	12,000	12,000	\$ 13,043.80	\$ 10,827.00	-17%
29	Solid Waste HCC	3,600	1,200	\$ 3,496.90	\$ 3,122.00	-11%
30	Solid Waste Scale House	1,000	1,000	\$ 2,820.00	\$ 2,762.00	-2%
31	Traffic Control	4,070	400	\$ 3,356.54	\$ 4,189.40	25%
<b>Total:</b>				<b>\$ 499,374.80</b>	<b>\$ 468,702.30</b>	<b>-6%</b>

**Section VI:**

Description	Avg. Annual Hours	Current Annual Cost [A]	Recommended Contractor's Annual Price [B]	% Change [A to B]
Cleaning Supervisor, as needed	1,560	\$ 28,096.20	\$ 23,400.00	-17%
Nighttime Floor Workers & Floaters	3,900	\$ 51,850.92	\$ 47,775.00	-8%
		<b>\$ 79,947.12</b>	<b>\$ 71,175.00</b>	<b>-11%</b>
<b>Grand Total:</b>		<b>\$ 579,321.92</b>	<b>\$ 539,877.30</b>	<b>-7%</b>

Note: This building cost comparison does not include on-demand additional cleaning services, floaters, and supervisors' salaries.

\* Annual cost savings of \$39,445, for a total three-year cost savings of \$118.335.

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE ACCEPTING COMPETITIVE PROPOSALS AND AWARDING A CONTRACT FOR JANITORIAL SERVICES FOR CITY OF DENTON BUILDINGS; PROVIDING FOR THE EXPENDITURE OF FUNDS THEREFOR; AND PROVIDING AN EFFECTIVE DATE (RFP 5317-AWARDED TO ORIENTAL BUILDING SERVICES, INC. IN THE ANNUAL NOT-TO-EXCEED AMOUNT OF \$581,238 FOR A THREE (3) YEAR NOT-TO-EXCEED AMOUNT OF \$1,743,714).

WHEREAS, the City has solicited, received and evaluated competitive sealed proposals for the supply of Janitorial Services for the City of Denton in accordance with the procedures of State law and City ordinances; and

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

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

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

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

<u>RFP</u> <u>NUMBER</u>	<u>CONTRACTOR</u>	<u>AMOUNT</u>
5317	Oriental Building Services, Inc.	\$1,743,714

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

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

SECTION 4. The City Council of the City of Denton, Texas hereby expressly delegates the authority to take any actions that may be required or permitted to be performed by the City of Denton under the RFP 5317 to the City Manager of the City of Denton, Texas, or his designee.

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

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

PASSED AND APPROVED this the \_\_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
MARK A. BURROUGHS, MAYOR

ATTEST:  
JENNIFER WALTERS, CITY SECRETARY

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

APPROVED AS TO LEGAL FORM:  
ANITA BURGESS, CITY ATTORNEY



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

**CONTRACT BY AND BETWEEN  
CITY OF DENTON, TEXAS AND ORIENTAL BUILDING SERVICES, INC.  
(RFP 5317)**

**THIS CONTRACT** is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_ A.D., 20\_\_, by and between Oriental Building Services, Inc. a corporation, whose address is 2526 Manana Drive, Suite 208, Dallas, Texas 75220, hereinafter referred to as "Contractor," and the **CITY OF DENTON, TEXAS**, a home rule municipal corporation, hereinafter referred to as "City," to be effective upon approval of the Denton City Council and subsequent execution of this Contract by the Denton City Manager or his duly authorized designee.

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

**SCOPE OF SERVICES**


Contractor shall provide products and or services in accordance with the Contractor's proposal in response thereto, a copy of which is attached hereto and incorporated herein for all purposes as **Exhibit "E"**. The Contract consists of this written agreement and the following items which are attached hereto and incorporated herein by reference:

- (a) City of Denton Standard Terms and Conditions (**Exhibit "A"**);
- (b) Special Terms and Conditions (**Exhibit "B"**);
- (c) Insurance Requirements (**Exhibit "C"**);
- (d) Form CIQ – Conflict of Interest Questionnaire (**Exhibit "D"**);
- (e) Contractor's Proposal. (**Exhibit "E"**);

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

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

**CONTRACTOR**

BY:   
AUTHORIZED SIGNATURE

Date: November 7, 2013

Name: Steve Gye

Title: President

469-522-0001  
PHONE NUMBER

obsco@msn.com  
EMAIL ADDRESS

**CITY OF DENTON, TEXAS**

ATTEST:  
JENNIFER WALTERS, CITY SECRETARY

BY: \_\_\_\_\_  
GEORGE C. CAMPBELL, CITY MANAGER

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

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

APPROVED AS TO LEGAL FORM:  
ANITA BURGESS, CITY ATTORNEY

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

**Exhibit A**  
**Standard Purchase Terms and Conditions**

These standard Terms and Conditions and the Terms and Conditions, Specifications, Drawings and other requirements included in the City's solicitation are applicable to Contracts/Purchase Orders issued by the City hereinafter referred to as the City or Buyer and the Seller herein after referred to as the Bidder, Contractor or Supplier. Any deviations must be in writing and signed by a representative of the City's Procurement Department and the Supplier. No Terms and Conditions contained in the Sellers Solicitation Response, Invoice or Statement shall serve to modify the terms set forth herein. If there is a conflict between the provisions on the face of the Contract/Purchase Order these written provisions will take precedence.

By submitting an Offer in response to the Solicitation, the Contractor agrees that the Contract shall be governed by the following terms and conditions, unless exceptions are duly noted and fully negotiated.

1. **CONTRACTOR'S OBLIGATIONS.** The Contractor shall fully and timely provide all deliverables described in the Solicitation and in the Contractor's Offer in strict accordance with the terms, covenants, and conditions of the Contract and all applicable Federal, State, and local laws, rules, and regulations.

2. **EFFECTIVE DATE/TERM.** Unless otherwise specified in the Solicitation, this Contract shall be effective as of the date the contract is signed by the City, and shall continue in effect until all obligations are performed in accordance with the Contract.

3. **INVOICES:**

A. The Contractor shall submit separate invoices in duplicate on each purchase order or purchase release after each delivery. If partial shipments or deliveries are authorized by the City, a separate invoice must be sent for each shipment or delivery made.

**B. Proper Invoices must include a unique invoice number, the purchase order or delivery order number and the master agreement number if applicable, the Department's Name, and the name of the point of contact for the Department.** Invoices shall be itemized and transportation charges, if any, shall be listed separately. A copy of the bill of lading and the freight waybill, when applicable, shall be attached to the invoice. The Contractor's name, remittance address and, if applicable, the tax identification number on the invoice must exactly match the information in the Vendor's registration with the City. Unless otherwise instructed in writing, the City may rely on the remittance address specified on the Contractor's invoice.

C. Invoices for labor shall include a copy of all time-sheets with trade labor rate and deliverables order number clearly identified. Invoices shall also include a tabulation of work-hours at the appropriate rates and grouped by work order number. Time billed for labor shall be limited to hours actually worked at the work site.

D. Unless otherwise expressly authorized in the Contract, the Contractor shall pass through all Subcontract and other authorized expenses at actual cost without markup.

E. Federal excise taxes, State taxes, or City sales taxes must not be included in the invoiced amount.

The City will furnish a tax exemption certificate upon request.

**4. PAYMENT:**

A. All proper invoices need to be sent to Accounts Payable. Approved invoices will be paid within thirty (30) calendar days of the City's receipt of the deliverables or of the invoice being received in Accounts Payable, whichever is later.

**B. If payment is not timely made, (per paragraph A); interest shall accrue on the unpaid balance at the lesser of the rate specified in Texas Government Code Section 2251.025 or the maximum lawful rate; except, if payment is not timely made for a reason for which the City may withhold payment hereunder, interest shall not accrue until ten (10) calendar days after the grounds for withholding payment have been resolved.**

C. If partial shipments or deliveries are authorized by the City, the Contractor will be paid for the partial shipment or delivery, as stated above, provided that the invoice matches the shipment or delivery.

D. The City may withhold or set off the entire payment or part of any payment otherwise due the Contractor to such extent as may be necessary on account of:

- i. delivery of defective or non-conforming deliverables by the Contractor;
- ii. third party claims, which are not covered by the insurance which the Contractor is required to provide, are filed or reasonable evidence indicating probable filing of such claims;
- iii. failure of the Contractor to pay Subcontractors, or for labor, materials or equipment;
- iv. damage to the property of the City or the City's agents, employees or contractors, which is not covered by insurance required to be provided by the Contractor;
- v. reasonable evidence that the Contractor's obligations will not be completed within the time specified in the Contract, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
- vi. failure of the Contractor to submit proper invoices with purchase order number, with all required attachments and supporting documentation; or
- vii. failure of the Contractor to comply with any material provision of the Contract Documents.

E. Notice is hereby given that any awarded Contractor who is in arrears to the City for delinquent taxes, the City may offset indebtedness owed the City through payment withholding.

F. Payment will be made by check unless the parties mutually agree to payment by credit card or electronic transfer of funds. The Contractor agrees that there shall be no additional charges, surcharges, or penalties to the City for payments made by credit card or electronic funds transfer.

G. The awarding or continuation of this contract is dependent upon the availability of funding. The City's payment obligations are payable only and solely from funds Appropriated and available for this contract. The absence of Appropriated or other lawfully available funds shall render the Contract null and void to the extent funds are not Appropriated or available and any deliverables delivered but unpaid shall be returned to the Contractor. The City shall provide the Contractor written notice of the failure of the City to make an adequate Appropriation for any fiscal year to pay the amounts due under the Contract, or the reduction of any Appropriation to an amount insufficient to permit the City to pay its obligations under the Contract. In the event of none or inadequate appropriation of funds, there will be no penalty nor removal fees charged to the City.

**5. TRAVEL EXPENSES:** All travel, lodging and per diem expenses in connection with the Contract shall be paid by the Contractor, unless otherwise stated in the contract terms.

**6. FINAL PAYMENT AND CLOSE-OUT:**



A. If a DBE/MBE/WBE Program Plan is agreed to and the Contractor has identified Subcontractors, the Contractor is required to submit a Contract Close-Out MBE/WBE Compliance Report to the Purchasing Manager no later than the 15th calendar day after completion of all work under the contract. Final payment, retainage, or both may be withheld if the Contractor is not in compliance with the requirements as accepted by the City.

B. The making and acceptance of final payment will constitute:

i. a waiver of all claims by the City against the Contractor, except claims (1) which have been previously asserted in writing and not yet settled, (2) arising from defective work appearing after final inspection, (3) arising from failure of the Contractor to comply with the Contract or the terms of any warranty specified herein, (4) arising from the Contractor's continuing obligations under the Contract, including but not limited to indemnity and warranty obligations, or (5) arising under the City's right to audit; and ii. a waiver of all claims by the Contractor against the City other than those previously asserted in writing and not yet settled.

#### **7. RIGHT TO AUDIT:**

A. The City shall have the right to audit and make copies of the books, records and computations pertaining to the Contract. The Contractor shall retain such books, records, documents and other evidence pertaining to the Contract period and five years thereafter, except if an audit is in progress or audit findings are yet unresolved, in which case records shall be kept until all audit tasks are completed and resolved. These books, records, documents and other evidence shall be available, within ten (10) business days of written request. Further, the Contractor shall also require all Subcontractors, material suppliers, and other payees to retain all books, records, documents and other evidence pertaining to the Contract, and to allow the City similar access to those documents. All books and records will be made available within a 50 mile radius of the City of Denton. The cost of the audit will be borne by the City unless the audit reveals an overpayment of 1% or greater. If an overpayment of 1% or greater occurs, the reasonable cost of the audit, including any travel costs, must be borne by the Contractor which must be payable within five (5) business days of receipt of an invoice.

B. Failure to comply with the provisions of this section shall be a material breach of the Contract and shall constitute, in the City's sole discretion, grounds for termination thereof. Each of the terms "books", "records", "documents" and "other evidence", as used above, shall be construed to include drafts and electronic files, even if such drafts or electronic files are subsequently used to generate or prepare a final printed document.

#### **8. SUBCONTRACTORS:**

A. If the Contractor identified Subcontractors in a DBE/MBE/WBE agreed to Plan, the Contractor shall comply with all requirements approved by the City. The Contractor shall not initially employ any Subcontractor except as provided in the Contractor's Plan. The Contractor shall not substitute any Subcontractor identified in the Plan, unless the substitute has been accepted by the City in writing. No acceptance by the City of any Subcontractor shall constitute a waiver of any rights or remedies of the City with respect to defective deliverables provided by a Subcontractor. If a Plan has been approved, the Contractor is additionally required to submit a monthly Subcontract Awards and Expenditures Report to the Procurement Manager, no later than the tenth calendar day of each month.

B. Work performed for the Contractor by a Subcontractor shall be pursuant to a written contract between the Contractor and Subcontractor. The terms of the subcontract may not conflict with the terms of the Contract, and shall contain provisions that:

- i. require that all deliverables to be provided by the Subcontractor be provided in strict accordance with the provisions, specifications and terms of the Contract;
- ii. prohibit the Subcontractor from further subcontracting any portion of the Contract without the prior written consent of the City and the Contractor. The City may require, as a condition to such further subcontracting, that the Subcontractor post a payment bond in form, substance and amount acceptable to the City;
- iii. require Subcontractors to submit all invoices and applications for payments, including any claims for additional payments, damages or otherwise, to the Contractor in sufficient time to enable the Contractor to include same with its invoice or application for payment to the City in accordance with the terms of the Contract;
- iv. require that all Subcontractors obtain and maintain, throughout the term of their contract, insurance in the type and amounts specified for the Contractor, with the City being a named insured as its interest shall appear; and
- v. require that the Subcontractor indemnify and hold the City harmless to the same extent as the Contractor is required to indemnify the City.

C. The Contractor shall be fully responsible to the City for all acts and omissions of the Subcontractors just as the Contractor is responsible for the Contractor's own acts and omissions. Nothing in the Contract shall create for the benefit of any such Subcontractor any contractual relationship between the City and any such Subcontractor, nor shall it create any obligation on the part of the City to pay or to see to the payment of any moneys due any such Subcontractor except as may otherwise be required by law.

D. The Contractor shall pay each Subcontractor its appropriate share of payments made to the Contractor not later than ten (10) calendar days after receipt of payment from the City.

#### **9. WARRANTY-PRICE:**

A. The Contractor warrants the prices quoted in the Offer are no higher than the Contractor's current prices on orders by others for like deliverables under similar terms of purchase.

B. The Contractor certifies that the prices in the Offer have been arrived at independently without consultation, communication, or agreement for the purpose of restricting competition, as to any matter relating to such fees with any other Contractor or with any competitor.

C. In addition to any other remedy available, the City may deduct from any amounts owed to the Contractor, or otherwise recover, any amounts paid for items in excess of the Contractor's current prices on orders by others for like deliverables under similar terms of purchase.

**10. WARRANTY – SERVICES:** The Contractor warrants and represents that all services to be provided the City under the Contract will be fully and timely performed in a good and workmanlike manner in accordance with generally accepted industry standards and practices, the terms, conditions, and covenants of the Contract, and all applicable Federal, State and local laws, rules or regulations.

A. The Contractor may not limit, exclude or disclaim the foregoing warranty or any warranty implied by law, and any attempt to do so shall be without force or effect.

B. Unless otherwise specified in the Contract, the warranty period shall be at least one year from the Acceptance Date. If during the warranty period, one or more of the above warranties are breached, the Contractor shall promptly upon receipt of demand perform the services again in accordance with above standard at no additional cost to the City. All costs incidental to such additional performance shall be borne by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery

of the breach warranty, but failure to give timely notice shall not impair the City's rights under this section.

C. If the Contractor is unable or unwilling to perform its services in accordance with the above standard as required by the City, then in addition to any other available remedy, the City may reduce the amount of services it may be required to purchase under the Contract from the Contractor, and purchase conforming services from other sources. In such event, the Contractor shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such services from another source.

**11. ACCEPTANCE OF INCOMPLETE OR NON-CONFORMING DELIVERABLES:** If, instead of requiring immediate correction or removal and replacement of defective or non-conforming deliverables, the City prefers to accept it, the City may do so. The Contractor shall pay all claims, costs, losses and damages attributable to the City's evaluation of and determination to accept such defective or non-conforming deliverables. If any such acceptance occurs prior to final payment, the City may deduct such amounts as are necessary to compensate the City for the diminished value of the defective or non-conforming deliverables. If the acceptance occurs after final payment, such amount will be refunded to the City by the Contractor.

**12. RIGHT TO ASSURANCE:** Whenever one party to the Contract in good faith has reason to question the other party's intent to perform, demand may be made to the other party for written assurance of the intent to perform. In the event that no assurance is given within the time specified after demand is made, the demanding party may treat this failure as an anticipatory repudiation of the Contract.

**13. STOP WORK NOTICE:** The City may issue an immediate Stop Work Notice in the event the Contractor is observed performing in a manner that is in violation of Federal, State, or local guidelines, or in a manner that is determined by the City to be unsafe to either life or property. Upon notification, the Contractor will cease all work until notified by the City that the violation or unsafe condition has been corrected. The Contractor shall be liable for all costs incurred by the City as a result of the issuance of such Stop Work Notice.

**14. DEFAULT:** The Contractor shall be in default under the Contract if the Contractor (a) fails to fully, timely and faithfully perform any of its material obligations under the Contract, (b) fails to provide adequate assurance of performance under Paragraph 24, (c) becomes insolvent or seeks relief under the bankruptcy laws of the United States or (d) makes a material misrepresentation in Contractor's Offer, or in any report or deliverable required to be submitted by the Contractor to the City.

**15. TERMINATION FOR CAUSE:** In the event of a default by the Contractor, the City shall have the right to terminate the Contract for cause, by written notice effective ten (10) calendar days, unless otherwise specified, after the date of such notice, unless the Contractor, within such ten (10) day period, cures such default, or provides evidence sufficient to prove to the City's reasonable satisfaction that such default does not, in fact, exist. In addition to any other remedy available under law or in equity, the City shall be entitled to recover all actual damages, costs, losses and expenses, incurred by the City as a result of the Contractor's default, including, without limitation, cost of cover, reasonable attorneys' fees, court costs, and prejudgment and post-judgment interest at the maximum lawful rate. Additionally, in the event of a default by the

Contractor, the City may remove the Contractor from the City's vendor list for three (3) years and any Offer submitted by the Contractor may be disqualified for up to three (3) years. All rights and remedies under the Contract are cumulative and are not exclusive of any other right or remedy provided by law.

**16. TERMINATION WITHOUT CAUSE:** The City shall have the right to terminate the Contract, in whole or in part, without cause any time upon thirty (30) calendar days' prior written notice. Upon receipt of a notice of termination, the Contractor shall promptly cease all further work pursuant to the Contract, with such exceptions, if any, specified in the notice of termination. The City shall pay the Contractor, to the extent of funds Appropriated or otherwise legally available for such purposes, for all goods delivered and services performed and obligations incurred prior to the date of termination in accordance with the terms hereof.

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

**18. DELAYS:**

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

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

**19. INDEMNITY:**

**A. Definitions:**

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

breach of any legally imposed strict liability standard.

**B. THE CONTRACTOR SHALL DEFEND (AT THE OPTION OF THE CITY), INDEMNIFY, AND HOLD THE CITY, ITS SUCCESSORS, ASSIGNS, OFFICERS, EMPLOYEES AND ELECTED OFFICIALS HARMLESS FROM AND AGAINST ALL INDEMNIFIED CLAIMS DIRECTLY ARISING OUT OF, INCIDENT TO, CONCERNING OR RESULTING FROM THE FAULT OF THE CONTRACTOR, OR THE CONTRACTOR'S AGENTS, EMPLOYEES OR SUBCONTRACTORS, IN THE PERFORMANCE OF THE CONTRACTOR'S OBLIGATIONS UNDER THE CONTRACT. NOTHING HEREIN SHALL BE DEEMED TO LIMIT THE RIGHTS OF THE CITY OR THE CONTRACTOR (INCLUDING, BUT NOT LIMITED TO, THE RIGHT TO SEEK CONTRIBUTION) AGAINST ANY THIRD PARTY WHO MAY BE LIABLE FOR AN INDEMNIFIED CLAIM.**

20. **INSURANCE:** The following insurance requirements are applicable, in addition to the specific insurance requirements detailed in **EXHIBIT C** The successful Contractor shall procure and maintain insurance of the types and in the minimum amounts acceptable to the City. The insurance shall be written by a company licensed to do business in the State of Texas and satisfactory to the City.

A. General Requirements:

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

City of Denton  
Materials Management Department  
901B Texas Street

Denton, Texas 76209

vii. The “other” insurance clause shall not apply to the City where the City is an additional insured shown on any policy. It is intended that policies required in the Contract, covering both the City and the Contractor, shall be considered primary coverage as applicable.

viii. If insurance policies are not written for amounts agreed to with the City, the Contractor shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.

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

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

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

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

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

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

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

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

**22. NOTICES:** Unless otherwise specified, all notices, requests, or other communications required or appropriate to be given under the Contract shall be in writing and shall be deemed delivered three (3) business days after postmarked if sent by U.S. Postal Service Certified or

Registered Mail, Return Receipt Requested. Notices delivered by other means shall be deemed delivered upon receipt by the addressee. Routine communications may be made by first class mail, telefax, or other commercially accepted means. Notices to the Contractor shall be sent to the address specified in the Contractor's Offer, or at such other address as a party may notify the other in writing. Notices to the City shall be addressed to the City at 901B Texas Street, Denton, Texas 76209 and marked to the attention of the Purchasing Manager.

**23. RIGHTS TO BID, PROPOSAL AND CONTRACTUAL MATERIAL:** All material submitted by the Contractor to the City shall become property of the City upon receipt. Any portions of such material claimed by the Contractor to be proprietary must be clearly marked as such. Determination of the public nature of the material is subject to the Texas Public Information Act, Chapter 552, and Texas Government Code.

**24. NO WARRANTY BY CITY AGAINST INFRINGEMENTS:** The Contractor represents and warrants to the City that: (i) the Contractor shall provide the City good and indefeasible title to the deliverables and (ii) the deliverables supplied by the Contractor in accordance with the specifications in the Contract will not infringe, directly or contributorily, any patent, trademark, copyright, trade secret, or any other intellectual property right of any kind of any third party; that no claims have been made by any person or entity with respect to the ownership or operation of the deliverables and the Contractor does not know of any valid basis for any such claims. The Contractor shall, at its sole expense, defend, indemnify, and hold the City harmless from and against all liability, damages, and costs (including court costs and reasonable fees of attorneys and other professionals) arising out of or resulting from: (i) any claim that the City's exercise anywhere in the world of the rights associated with the City's ownership, and if applicable, license rights, and its use of the deliverables infringes the intellectual property rights of any third party; or (ii) the Contractor's breach of any of Contractor's representations or warranties stated in this Contract. In the event of any such claim, the City shall have the right to monitor such claim or at its option engage its own separate counsel to act as co-counsel on the City's behalf. Further, Contractor agrees that the City's specifications regarding the deliverables shall in no way diminish Contractor's warranties or obligations under this paragraph and the City makes no warranty that the production, development, or delivery of such deliverables will not impact such warranties of Contractor.

**25. CONFIDENTIALITY:** In order to provide the deliverables to the City, Contractor may require access to certain of the City's and/or its licensors' confidential information (including inventions, employee information, trade secrets, confidential know-how, confidential business information, and other information which the City or its licensors consider confidential) (collectively, "Confidential Information"). Contractor acknowledges and agrees that the Confidential Information is the valuable property of the City and/or its licensors and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information will substantially injure the City and/or its licensors. The Contractor (including its employees, subcontractors, agents, or representatives) agrees that it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate, or otherwise use the Confidential Information without the prior written consent of the City or in a manner not expressly permitted under this Agreement, unless the Confidential Information is required to be disclosed by law or an order of any court or other governmental authority with proper jurisdiction, provided the Contractor promptly notifies the City before disclosing such information so as to permit the City reasonable time to seek an appropriate protective order. The

Contractor agrees to use protective measures no less stringent than the Contractor uses within its own business to protect its own most valuable information, which protective measures shall under all circumstances be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.

**26. OWNERSHIP AND USE OF DELIVERABLES:** The City shall own all rights, titles, and interests throughout the world in and to the deliverables.

A. Patents. As to any patentable subject matter contained in the deliverables, the Contractor agrees to disclose such patentable subject matter to the City. Further, if requested by the City, the Contractor agrees to assign and, if necessary, cause each of its employees to assign the entire right, title, and interest to specific inventions under such patentable subject matter to the City and to execute, acknowledge, and deliver and, if necessary, cause each of its employees to execute, acknowledge, and deliver an assignment of letters patent, in a form to be reasonably approved by the City, to the City upon request by the City.

B. Copyrights. As to any deliverables containing copyrightable subject matter, the Contractor agrees that upon their creation, such deliverables shall be considered as work made-for-hire by the Contractor for the City and the City shall own all copyrights in and to such deliverables, provided however, that nothing in this Paragraph 38 shall negate the City's sole or joint ownership of any such deliverables arising by virtue of the City's sole or joint authorship of such deliverables. Should by operation of law, such deliverables not be considered works made-for-hire, the Contractor hereby assigns to the City (and agrees to cause each of its employees providing services to the City hereunder to execute, acknowledge, and deliver an assignment to the City of) all worldwide right, title, and interest in and to such deliverables. With respect to such work made-for-hire, the Contractor agrees to execute, acknowledge, and deliver and cause each of its employees providing services to the City hereunder to execute, acknowledge, and deliver a work-made-for-hire agreement, in a form to be reasonably approved by the City, to the City upon delivery of such deliverables to the City or at such other time as the City may request.

C. Additional Assignments. The Contractor further agrees to, and if applicable, cause each of its employees to, execute, acknowledge, and deliver all applications, specifications, oaths, assignments, and all other instruments which the City might reasonably deem necessary in order to apply for and obtain copyright protection, mask work registration, trademark registration and/or protection, letters patent, or any similar rights in any and all countries and in order to assign and convey to the City, its successors, assigns and nominees, the sole and exclusive right, title, and interest in and to the deliverables. The Contractor's obligations to execute, acknowledge, and deliver (or cause to be executed, acknowledged, and delivered) instruments or papers such as those described in this Paragraph 38 a., b., and c. shall continue after the termination of this Contract with respect to such deliverables. In the event the City should not seek to obtain copyright protection, mask work registration or patent protection for any of the deliverables, but should desire to keep the same secret, the Contractor agrees to treat the same as Confidential Information under the terms of Paragraph 37 above.

**27. PUBLICATIONS:** All published material and written reports submitted under the Contract must be originally developed material unless otherwise specifically provided in the Contract. When material not originally developed is included in a report in any form, the source shall be identified.

**28. ADVERTISING:** The Contractor shall not advertise or publish, without the City's prior consent, the fact that the City has entered into the Contract, except to the extent required by law.



29. **NO CONTINGENT FEES:** The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the Contract upon any agreement or understanding for commission, percentage, brokerage, or contingent fee, excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the City shall have the right, in addition to any other remedy available, to cancel the Contract without liability and to deduct from any amounts owed to the Contractor, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

30. **GRATUITIES:** The City may, by written notice to the Contractor, cancel the Contract without liability if it is determined by the City that gratuities were offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the City with a view toward securing the Contract or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performing of such contract. In the event the Contract is canceled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the Contractor in providing such gratuities.

31. **PROHIBITION AGAINST PERSONAL INTEREST IN CONTRACTS:** No officer, employee, independent consultant, or elected official of the City who is involved in the development, evaluation, or decision-making process of the performance of any solicitation shall have a financial interest, direct or indirect, in the Contract resulting from that solicitation. Any willful violation of this section shall constitute impropriety in office, and any officer or employee guilty thereof shall be subject to disciplinary action up to and including dismissal. Any violation of this provision, with the knowledge, expressed or implied, of the Contractor shall render the Contract voidable by the City. The Contractor shall complete and submit the City's Conflict of Interest Questionnaire (**Exhibit D**).

32. **INDEPENDENT CONTRACTOR:** The Contract shall not be construed as creating an employer/employee relationship, a partnership, or a joint venture. The Contractor's services shall be those of an independent contractor. The Contractor agrees and understands that the Contract does not grant any rights or privileges established for employees of the City, Texas for the purposes of income tax, withholding, social security taxes, vacation or sick leave benefits, worker's compensation, or any other City employee benefit. The City shall not have supervision and control of the Contractor or any employee of the Contractor, and it is expressly understood that Contractor shall perform the services hereunder according to the attached specifications at the general direction of the City Manager of the City, Texas, or his designee under this agreement.

33. **ASSIGNMENT-DELEGATION:** The Contract shall be binding upon and ensure to the benefit of the City and the Contractor and their respective successors and assigns, provided however, that no right or interest in the Contract shall be assigned and no obligation shall be delegated by the Contractor without the prior written consent of the City. Any attempted assignment or delegation by the Contractor shall be void unless made in conformity with this paragraph. The Contract is not intended to confer rights or benefits on any person, firm or entity not a party hereto; it being the intention of the parties that there are no third party beneficiaries to the Contract.

34. **WAIVER:** No claim or right arising out of a breach of the Contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. No waiver by either the Contractor or the City of any one or more events of default by the other party shall operate as, or be construed to be, a permanent waiver of any rights or obligations under the Contract, or an express or implied acceptance of any other existing or future default or defaults, whether of a similar or different character.

35. **MODIFICATIONS:** The Contract can be modified or amended only by a writing signed by both parties. No pre-printed or similar terms on any the Contractor invoice, order or other document shall have any force or effect to change the terms, covenants, and conditions of the Contract.

36. **INTERPRETATION:** The Contract is intended by the parties as a final, complete and exclusive statement of the terms of their agreement. No course of prior dealing between the parties or course of performance or usage of the trade shall be relevant to supplement or explain any term used in the Contract. Although the Contract may have been substantially drafted by one party, it is the intent of the parties that all provisions be construed in a manner to be fair to both parties, reading no provisions more strictly against one party or the other. Whenever a term defined by the Uniform Commercial Code, as enacted by the State of Texas, is used in the Contract, the UCC definition shall control, unless otherwise defined in the Contract.

**37. DISPUTE RESOLUTION:**

A. If a dispute arises out of or relates to the Contract, or the breach thereof, the parties agree to negotiate prior to prosecuting a suit for damages. However, this section does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. Either party may make a written request for a meeting between representatives of each party within fourteen (14) calendar days after receipt of the request or such later period as agreed by the parties. Each party shall include, at a minimum, one (1) senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within thirty (30) calendar days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will proceed directly to mediation as described below. Negotiation may be waived by a written agreement signed by both parties, in which event the parties may proceed directly to mediation as described below.

B. If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within thirty (30) calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option; the City and the Contractor agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in the Contract prevents the parties from relying on the skills of a person who is trained in the subject matter of the dispute or a contract interpretation expert. If the parties fail to agree on a mediator within thirty (30) calendar days of initiation of the mediation process, the mediator shall be selected by the Denton County Alternative Dispute Resolution Program (DCAP). The parties agree to participate in mediation in good faith for up to thirty (30) calendar days from the date of the first mediation session. The City and the Contractor will share the mediator's fees equally and the parties will bear their own costs of participation such as fees for any consultants or attorneys they may utilize to represent them or otherwise assist them in the mediation.

38. **JURISDICTION AND VENUE:** The Contract is made under and shall be governed by the laws of the State of Texas, including, when applicable, the Uniform Commercial Code as adopted in Texas, V.T.C.A., Bus. & Comm. Code, Chapter 1, excluding any rule or principle that would refer to and apply the substantive law of another state or jurisdiction. All issues arising from this Contract shall be resolved in the courts of Denton County, Texas and the parties agree to submit to the exclusive personal jurisdiction of such courts. The foregoing, however, shall not be construed or interpreted to limit or restrict the right or ability of the City to seek and secure injunctive relief from any competent authority as contemplated herein.

39. **INVALIDITY:** The invalidity, illegality, or unenforceability of any provision of the Contract shall in no way affect the validity or enforceability of any other portion or provision of the Contract. Any void provision shall be deemed severed from the Contract and the balance of the Contract shall be construed and enforced as if the Contract did not contain the particular portion or provision held to be void. The parties further agree to reform the Contract to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this section shall not prevent this entire Contract from being void should a provision which is the essence of the Contract be determined to be void.

40. **HOLIDAYS:** The following holidays are observed by the City:

New Year's Day (observed)
MLK Day
Memorial Day
4th of July
Labor Day
Thanksgiving Day
Day After Thanksgiving
Christmas Eve (observed)
Christmas Day (observed)
New Year's Day (observed)

If a Legal Holiday falls on Saturday, it will be observed on the preceding Friday. If a Legal Holiday falls on Sunday, it will be observed on the following Monday. Normal hours of operation shall be between 8:00 am and 5:00 pm, Monday through Friday, excluding City of Denton Holidays. Any scheduled deliveries or work performance not within the normal hours of operation **must be approved** by the City Manager of Denton, Texas or his authorized designee.

41. **SURVIVABILITY OF OBLIGATIONS:** All provisions of the Contract that impose continuing obligations on the parties, including but not limited to the warranty, indemnity, and confidentiality obligations of the parties, shall survive the expiration or termination of the Contract.

42. **NON-SUSPENSION OR DEBARMENT CERTIFICATION:**

The City is prohibited from contracting with or making prime or sub-awards to parties that are suspended or debarred or whose principals are suspended or debarred from Federal, State, or City Contracts. By accepting a Contract with the City, the Vendor certifies that its firm and its principals are not currently suspended or debarred from doing business with the Federal

Government, as indicated by the General Services Administration List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City.

#### 43. **EQUAL OPPORTUNITY**

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

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

#### 44. **BUY AMERICAN ACT-SUPPLIES (Applicable to certain federally funded requirements)**

The following federally funded requirements are applicable, in addition to the specific federally funded requirements.

A. Definitions. As used in this paragraph

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

ii. "Cost of components" means -

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

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

iii. "Domestic end product" means-

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

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

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

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

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

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

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

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

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

**46. LICENSE FEES OR TAXES:** Provided the solicitation requires an awarded contractor or supplier to be licensed by the State of Texas, any and all fees and taxes are the responsibility of the respondent.

**47. PREVAILING WAGE RATES:** All respondents will be required to comply with Provision 5159a of “Vernon’s Annotated Civil Statutes” of the State of Texas with respect to the payment of prevailing wage rates and prohibiting discrimination in the employment practices.  
<http://www.access.gpo.gov/davisbacon/tx.html>

**48. COMPLIANCE WITH ALL STATE, FEDERAL, AND LOCAL LAWS:** The contractor or supplier shall comply with all State, Federal, and Local laws and requirements. The Respondent must comply with all applicable laws at all times, including, without limitation, the following: (i) §36.02 of the Texas Penal Code, which prohibits bribery; (ii) §36.09 of the Texas Penal Code, which prohibits the offering or conferring of benefits to public servants. The Respondent shall give all notices and comply with all laws and regulations applicable to furnishing and performance of the Contract.

**49. FEDERAL, STATE, AND LOCAL REQUIREMENTS:** Respondent shall demonstrate on-site compliance with the Federal Tax Reform Act of 1986, Section 1706, amending Section 530 of the Revenue Act of 1978, dealing with issuance of Form W-2's to common law employees. Respondent is responsible for both federal and State unemployment insurance coverage and standard Worker's Compensation insurance coverage. Respondent shall ensure compliance with all federal and State tax laws and withholding requirements. The City shall not be liable to Respondent or its employees for any Unemployment or Workers' Compensation coverage, or federal or State withholding requirements. Contractor shall indemnify the City and shall pay all costs, penalties, or losses resulting from Respondent's omission or breach of this Section.

**50. DRUG FREE WORKPLACE:** The contractor shall comply with the applicable provisions of the Drug-Free Work Place Act of 1988 (Public Law 100-690, Title V, Subtitle D; 41 U.S.C. 701 ET SEQ.) and maintain a drug-free work environment; and the final rule, government-wide requirements for drug-free work place (grants), issued by the Office of Management and Budget and the Department of Defense (32 CFR Part 280, Subpart F) to implement the provisions of the Drug-Free Work Place Act of 1988 is incorporated by reference and the contractor shall comply with the relevant provisions thereof, including any amendments to the final rule that may hereafter be issued.

**51. RESPONDENT LIABILITY FOR DAMAGE TO GOVERNMENT PROPERTY:** The Respondent shall be liable for all damages to government-owned, leased, or occupied property and equipment caused by the Respondent and its employees, agents, subcontractors, and suppliers, including any delivery or cartage company, in connection with any performance pursuant to the Contract. The Respondent shall notify the City Procurement Manager in writing of any such damage within one (1) calendar day.

52. **FORCE MAJEURE:** The City, any Customer, and the Respondent shall not be responsible for performance under the Contract should it be prevented from performance by an act of war, order of legal authority, act of God, or other unavoidable cause not attributable to the fault or negligence of the City. In the event of an occurrence under this Section, the Respondent will be excused from any further performance or observance of the requirements so affected for as long as such circumstances prevail and the Respondent continues to use commercially reasonable efforts to recommence performance or observance whenever and to whatever extent possible without delay. The Respondent shall immediately notify the City Procurement Manager by telephone (to be confirmed in writing within five (5) calendar days of the inception of such occurrence) and describe at a reasonable level of detail the circumstances causing the non-performance or delay in performance.

53. **NON-WAIVER OF RIGHTS:** Failure of a Party to require performance by another Party under the Contract will not affect the right of such Party to require performance in the future. No delay, failure, or waiver of either Party's exercise or partial exercise of any right or remedy under the Contract shall operate to limit, impair, preclude, cancel, waive or otherwise affect such right or remedy. A waiver by a Party of any breach of any term of the Contract will not be construed as a waiver of any continuing or succeeding breach.

54. **NO WAIVER OF SOVEREIGN IMMUNITY:** The Parties expressly agree that no provision of the Contract is in any way intended to constitute a waiver by the City of any immunities from suit or from liability that the City may have by operation of law.

55. **RECORDS RETENTION:** The Respondent shall retain all financial records, supporting documents, statistical records, and any other records or books relating to the performances called for in the Contract. The Respondent shall retain all such records for a period of four (4) years after the expiration of the Contract, or until the CPA or State Auditor's Office is satisfied that all audit and litigation matters are resolved, whichever period is longer. The Respondent shall grant access to all books, records and documents pertinent to the Contract to the CPA, the State Auditor of Texas, and any federal governmental entity that has authority to review records due to federal funds being spent under the Contract.

## **Exhibit B**

### **Special Terms and Conditions**

#### **Total Contract Amount**

The contact total for services shall not exceed \$581,238 per one-year term. Pricing shall be per Exhibit E attached.

#### **Contract Terms**

The contract term will be one (1) year, effective from date of award or notice to proceed as determined by the City of Denton Purchasing Department. At the City of Denton's option and approval by the vendor, the contract may be renewed for an additional two (2) one-year periods, as further explained in Renewal Options.

#### **Renewal Options**

The Contract shall commence upon the issuance of a Notice of Award by the City of Denton and shall automatically renew each year, from the date of award by City Council, unless either party notifies the other prior to the scheduled renewal date in accordance with the provision of the section titled "price adjustments", or the section(s) titled "termination". At the sole option of the City of Denton, the Contract may be further extended as needed, not to exceed a total of six (6) months.

#### **Price Adjustments**

Prices per Exhibit E must be firm for a period of one year from date of contract award. Any request for price adjustment must be accompanied with a detailed itemized cost breakdown including cost of labor, cost of materials, overhead costs, general administrative costs, and profit margin. The itemized costs shall be supported with documentation showing reasonable validation for the price adjustment requested. The price will be increased or decreased based upon the annual percentage change in the documentation. The maximum escalation will not exceed +/- 8% for any individual year. The escalation will be determined annually at the renewal date. Should the percentage change exceed a minimum threshold value of +/-1%, then the stated eligible bid prices shall be adjusted in accordance with the change not to exceed the 8% limit per year. The supplier should provide documentation as percentage of each cost associated with the unit prices quoted for consideration.

Request must be submitted in writing with supporting evidence for need of such increase to the Purchasing Manager at least 60 days prior to contract expiration of each year. Respondent must also provide supporting documentation as justification for the request.

Upon receipt of such request, the City of Denton reserves the right to either: accept the escalation as competitive with the general market price at the time, and become effective upon the renewal date of the contract award or reject the increases within 30 calendar days after receipt of a properly submitted request. If a properly submitted increase is rejected, the Contractor may request cancellation of such items from the Contract by giving the City of Denton written notice. Cancellation will not go into effect for 90 calendar days after a determination has been issued. Pre-price increase prices must be honored on orders dated up to the official date of the City of Denton approval and/or cancellation.

The request can be sent by e-mail to: [purchasing@cityofdenton.com](mailto:purchasing@cityofdenton.com)

RFP #5217

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Or mail to:  
City of Denton  
Attn: Purchasing Manager  
RFP # 5317  
901B Texas Street  
Denton, Texas 76209

Or call:  
City of Denton Purchasing  
(940) 349-7100

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

### **Hours**

The cleaning hours per week indicated on the Pricing Sheet are estimates based upon the best available information. The City reserves the right to increase or decrease the quantities to meet its actual needs without any adjustments in the unit prices. Individual purchase orders will be issued on an as needed basis.

### **Product Changes**

The Contractor shall not change specifications during the contract term without prior approval. Any deviation in the specifications or change in the product must be approved in advance by the City of Denton. Notice of a change shall be submitted in writing to purchasing@cityofdenton.com, with the RFP number in the subject line, for review. Products found to have changed specifications without notification, and acceptance, will be returned at the Contractor's expense. Products that have been installed will be replaced at the Contractor's expense.

### **Contractor Standards of Performance**

Monthly Time Standards - Contractors shall fully understand that the City relies on the product or service of the contract to provide vital municipal services, and the availability and reliability of the equipment is of the essence. With this in mind, the Contractor shall meet the following performance standards at all times. Labor disputes, strikes, and other events, except those beyond the Contractor's control such as acts of God, shall not relieve the Contractor from meeting these standards. For service category, the Contractor must ensure the given level of service is achieved, within the designated number of working hours.

Contractor shall deliver goods or services within specified delivery times for 95% of all orders.

### **Performance Liquidated Damages**

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

The Contractor shall be assessed a rate of \$50 per hour and shall be deducted from the monthly payment if an outside janitorial vendor has to be called in to perform work not completed by the Contractor. A deduction of twice the amount of the daily cost as determined by the negotiated pricing shall be made for each day in the event of an absence of the



Contractor's crew. These penalties will be deducted from the monthly billing.

In the case of non-performance, the Contractor will be given written notice of the areas needing attention. The Contractor will have twenty four (24) hours from the time the notice is delivered to perform to specifications. If the Contractor does not comply to specifications within the designated time, the contract may be terminated. A trip fee of **\$50.00** will be charged for each time a Facilities Technician is called out due to janitorial staff setting off the security alarms.

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

**Exhibit C**  
**INSURANCE REQUIREMENTS AND**  
**WORKERS' COMPENSATION REQUIREMENTS**

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

**STANDARD PROVISIONS:**

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

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

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

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

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

**SPECIFIC ADDITIONAL INSURANCE REQUIREMENTS:**

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

A. **General Liability Insurance:**

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

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

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

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

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

contract, personal injury liability and broad form property damage liability.

**Automobile Liability Insurance:**

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

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

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

**Workers' Compensation Insurance**

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

**Owner's and Contractor's Protective Liability Insurance**

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

**Fire Damage Legal Liability Insurance**

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

**Professional Liability Insurance**

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

**Builders' Risk Insurance**

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

**Commercial Crime**

Provides coverage for the theft or disappearance of cash or checks, robbery inside/outside the premises, burglary of the premises, and employee fidelity. The employee fidelity portion of this coverage should be written on a "blanket" basis to cover all employees, including new hires. This type insurance should be required if the contractor has access to City funds. Limits of not less than \$100,000 each occurrence are required.

**Additional Insurance**

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

## ATTACHMENT 1

### [X] **Workers' Compensation Coverage for Building or Construction Projects for Governmental Entities**

#### A. Definitions:

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

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

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

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

and provide to the governmental entity:

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

the project; and

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





# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

11/08/2013

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Phone: 972-671-9105 Fax: 972-671-9804 <b>GRAYHAWK INSURANCE &amp; RISK MANAGEMENT</b> 1740 NORTH COLLINS, SUITE 200 RICHARDSON TX 75080	CONTACT NAME: <b>GRAYHAWK INSURANCE &amp; RISK MANAGEMENT</b> PHONE (A/C, No, Ext): <b>972-671-9105</b> FAX (A/C, No): <b>972-671-9804</b> E-MAIL ADDRESS:
INSURED <b>ORIENTAL BUILDING SERVICES, INC.</b> 2526 MANANA DRIVE #208 DALLAS, TX 75220	INSURER(S) AFFORDING COVERAGE INSURER A : <b>JAMES RIVER INSURANCE COMPANY</b> INSURER B : <b>PROGRESSIVE COUNTY MUTUAL</b> INSURER C : <b>TEXAS MUTUAL INSURANCE COMPANY</b> INSURER D : <b>RSUI</b> INSURER E : <b>MERCHANTS</b> INSURER F :

**COVERAGES** CERTIFICATE NUMBER: 68289 REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADD'L INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
<b>A</b>	<b>GENERAL LIABILITY</b> <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC			<b>00057686-0</b>	<b>05/08/13</b>	<b>05/08/14</b>	EACH OCCURRENCE	\$ <b>1,000,000</b>
							DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ <b>50,000</b>
							MED. EXP (Any one person)	\$ <b>EXCLUDED</b>
							PERSONAL & ADV NJURY	\$ <b>1,000,000</b>
							GENERAL AGGREGATE	\$ <b>2,000,000</b>
							PRODUCTS - COMP/OP AGG	\$ <b>2,000,000</b>
								\$
<b>B</b>	<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS			<b>02196982-0</b>	<b>05/08/13</b>	<b>05/08/14</b>	COMBINED SINGLE LIMIT (Ea accident)	\$ <b>1,000,000</b>
							BOD LY INJURY (Per person)	\$
							BOD LY INJURY (Per accident)	\$
							PROPERTY DAMAGE (per accident)	\$
								\$
<b>A</b>	<input checked="" type="checkbox"/> <b>UMBRELLA LIAB</b> <input type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$ <b>10,000</b>			<b>00057688-0</b>	<b>05/08/13</b>	<b>05/08/14</b>	EACH OCCURRENCE	\$ <b>5,000,000</b>
							AGGREGATE	\$ <b>5,000,000</b>
								\$
<b>C</b>	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N <input checked="" type="checkbox"/> N	N/A	<b>TSF0001249418</b>	<b>03/10/13</b>	<b>03/10/14</b>	<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTH ER	\$
							E L. EACH ACCIDENT	\$ <b>1,000,000</b>
							E L. DISEASE-EA EMPLOYEE	\$ <b>1,000,000</b>
							E L. DISEASE-POLICY LIMIT	\$ <b>1,000,000</b>
<b>D</b>	<b>EXCESS UMBRELLA</b>			<b>NHA232955</b>	<b>05/08/13</b>	<b>05/08/14</b>	<b>\$5,000,000 LIMIT</b>	<b>\$10,000 RETENTION</b>
<b>E</b>	<b>JANITORIAL THEFT GUARD BOND</b>			<b>2581</b>	<b>02/15/13</b>	<b>02/15/14</b>	<b>\$100,000 LIMIT</b>	

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

CERTIFICATE HOLDER IS PROVIDED ADDITIONAL INSURED STATUS ON THE GENERAL LIABILITY POLICY BY A BLANKET AUTOMATIC ADDITIONAL INSURED PROVISION THAT PROVIDES ADDITIONAL INSURED STATUS AND ARE PROVIDED A WAIVER OF SUBROGATION FOR GENERAL LIABILITY AND WORKERS COMPENSATION PER THE BLANKET WAIVER OF SUBROGATION ENDORSEMENTS ATTACHED TO THE POLICIES ONLY WHEN THE IS A WRITTEN CONTRACT BETWEEN THE NAMED INSURED AND THE CERTIFICATE HOLDER. CERTIFICATE HOLDER IS NAMED AS ADDITIONAL INSURED AND WAIVER OF SUBROGATION ON THE AUTO POLICY.

CERTIFICATE HOLDER CANCELLATION

CITY OF DENTON RFP #5317 901B TEXAS STREET DENTON, TX 76209  Attention:	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.  AUTHORIZED REPRESENTATIVE    Robert Dreiling
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Exhibit D

CONFLICT OF INTEREST QUESTIONNAIRE FORM CIQ

**For vendor or other person doing business with local governmental entity**

This questionnaire reflects changes made to the law by H.B. 1491, 80th Leg., Regular Session.

OFFICE  
USE ONLY

This questionnaire is being filed in accordance with chapter 176 of the Local Government Code by a person who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the person meets requirements under Section 176.006(a).

Date Received

By law this questionnaire must be filed with the records administrator of the local government entity not later than the 7th business day after the date the person becomes aware of facts that require the statement to be filed. See Section 176.006, Local Government Code.

A person commits an offense if the person knowingly violates Section 176.006, Local Government Code. An offense under this section is a Class C misdemeanor.

**1 Name of person who has a business relationship with local governmental entity.**

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

(The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7<sup>th</sup> business day after the date the originally filed questionnaire becomes incomplete or inaccurate.)

**3 Name of local government officer with whom filer has an employment or business relationship.**

Steve Gye

Name of Officer

This section, (item 3 including subparts A, B, C & D), must be completed for each officer with whom the filer has an employment or other business relationship as defined by Section 176.001(1-a), Local Government Code. Attach additional pages to this Form CIQ as necessary.

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

Yes  No

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

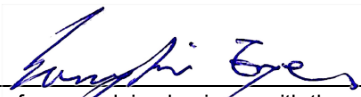
Yes  No

C. Is the filer of this questionnaire employed by a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership of 10 percent or more?

Yes  No

D. Describe each affiliation or business relationship.

**4**



Signature of person doing business with the governmental entity

November 7, 2013

Date

# Best and Final Offer

Exhibit E

Respondent's Name: iental Building Services, I

## RFP 5317 - Pricing Sheet for Janitorial Services

The respondent shall complete the yellow cells in the following sections, which directly corresponds to the specifications. The contractor shall not make changes to this format.

### FACILITY INFORMATION FOR CLEANING

ITEM	QTY	DESCRIPTION	HOURS/ WEEK	AVERAGE HOURS/ MONTH	HOURLY PRICE <sup>1</sup>	MONTHLY PRICE	YEARLY TOTAL
<b>SECTION I: CITY HALLS</b>							
1	12 mth	<b>Main City Hall</b> - Location: 215 E McKinney St Cleaning (M-F) after 10:00 p.m. or AS NEEDED Facility Representative: <u>David Saltsman 940-349-7200</u> Estimated work hours per day: <u>8</u>	40	173	\$ 10.60	\$ 1,833.80	\$ 22,005.60
1a	2/yr	Carpet Cleaning, after business hours: 2 times a year (Dec. & July)				\$ 50.00	\$ 100.00
1b	12 mth	Paper towels, toilet paper & hand soap				\$ 250.00	\$ 3,000.00
<b>City Hall East-Human Resources/Risk Management</b>							
2	12 mth	Location: 601 E Hickory St Cleaning (M-F) after 6:00 p.m. Facility Representative: <u>Diana Flores 940-349-8345</u> Estimated work hours per day: <u>2</u>	10	43	\$ 10.05	\$ 432.15	\$ 5,185.80
2a	2/yr	Carpet Cleaning, after business hours: 2 times a year (Dec. & July)				\$ 20.00	\$ 40.00
2b	12 mth	Paper towels, toilet paper & hand soap				\$ 40.00	\$ 480.00
3	12 mth	<b>City Hall East-Technology Services</b> - Location: 601 E Hickory St Cleaning (M-F) after 6:00 p.m. or AS NEEDED Facility Representative: <u>Bobbie Arashiro 940-349-7758</u> Estimated work hours per day: <u>2</u>	10	43	\$ 9.25	\$ 397.75	\$ 4,773.00
<b>Person assigned to area must be TLETS* BACKGROUND CHECKED</b>							
3a	2/yr	Carpet Cleaning, after business hours: 2 times a year (Dec. & July)				\$ 25.00	\$ 50.00
3b	12 mth	Paper towels, toilet paper & hand soap				\$ 35.00	\$ 420.00
4	12 mth	<b>City Hall East-Upstairs</b> - Location: 601 E Hickory St Cleaning (M-F) after 6:00 p.m. Facility Representative: <u>Amanda Green 940-349-7462</u> Estimated work hours per day: <u>3</u>	15	65	\$ 10.00	\$ 650.00	\$ 7,800.00
4a	2/yr	Carpet Cleaning, after business hours: 2 times a year (Dec. & July)				\$ 75.00	\$ 150.00
4b	12 mth	Paper towels, toilet paper & hand soap				\$ 80.00	\$ 960.00

FACILITY INFORMATION FOR CLEANING

ITEM	QTY	DESCRIPTION	HOURS/ WEEK	AVERAGE HOURS/ MONTH	HOURLY PRICE <sup>1</sup>	MONTHLY PRICE	YEARLY TOTAL
5	12 mth	<b>City Hall East-Customer Service</b> - Location: 601 E Hickory St Cleaning (M-F) after 6:00 p.m. Facility Representative: <u>Juanita Clarke 940-349-7415</u> Estimated work hours per day: <u>2</u>	10	43	\$ 10.30	\$ 442.90	\$ 5,314.80
5a	2/yr	Carpet Cleaning, after business hours: 2 times a year (Dec. & July)				\$ 75.00	\$ 150.00
5b	12 mth	Paper towels, toilet paper & hand soap				\$ 50.00	\$ 600.00
6	12 mth	<b>City Hall East-Courts</b> - Location: 601 E Hickory St Cleaning (M-F) after 6:00p.m. Facility Representative: <u>Cay McSpedden 940-349-8139</u> or <u>Toby May 940-349-8515</u> Estimated work hours per day: <u>3</u>	15	65	\$ 10.15	\$ 659.75	\$ 7,917.00
6a	2/yr	Carpet Cleaning, after business hours: 2 times a year (Dec. & July)				\$ 50.00	\$ 100.00
6b	12 mth	Paper towels, toilet paper & hand soap				\$ 75.00	\$ 900.00
7	12 mth	<b>City Hall East-Police</b> - Location: 601 E Hickory St Cleaning (M-Sun) after 5:00p.m.; 2 people each for five (5) hours per day Facility Representative: <u>Suzi Miller 940-349-7923</u> Estimated work hours per day: <u>10</u>	70	303	\$ 10.15	\$ 3,075.45	\$ 36,905.40
		<b>Person assigned to area must be TLETS* Background Check</b>					
7a	2/yr	Carpet Cleaning, after business hours: 2 times a year (Dec. & July)				\$ 60.00	\$ 120.00
7b	12 mth	Paper towels, toilet paper & hand soap				\$ 500.00	\$ 6,000.00
8	12 mth	<b>City Hall East-Police Days</b> - Location: 601 E Hickory St Cleaning (M-F) 12p.m-5p.m. Facility Representative: <u>Suzi Miller 940-349-7923</u> Estimated work hours per day: <u>5</u>	25	108	\$ 10.15	\$ 1,096.20	\$ 13,154.40
		<b>Person assigned to area must be TLETS* Background Check</b>					
9	12 mth	<b>City Hall West</b> - Location: 221 N Elm St Cleaning (M-F) after 6:00p.m. Facility Representative: <u>Sandy Lawson 940-349-8188</u> Estimated work hours per day: <u>6</u>	30	130	\$ 10.15	\$ 1,319.50	\$ 15,834.00
9a	2/yr	Carpet Cleaning, after business hours: 2 times a year (Dec. & July)				\$ 75.00	\$ 150.00
9b	12 mth	Paper towels, toilet paper & hand soap				\$ 200.00	\$ 2,400.00

FACILITY INFORMATION FOR CLEANING

ITEM	QTY	DESCRIPTION	HOURS/ WEEK	AVERAGE HOURS/ MONTH	HOURLY PRICE <sup>1</sup>	MONTHLY PRICE	YEARLY TOTAL
<b>SECTION II: RECREATION CENTERS</b>							
10	12 mth	<b>American Legion North &amp; South</b> - Location: 629 Lakey St Cleaning (M-F) Facility Representative: <u>Bobby Givens 940-349-8576</u> Estimated work hours per day: <u>2</u> Both Buildings	10	43	\$ 8.80	\$ 378.40	\$ 4,540.80
10a	2/yr	Carpet Cleaning, after business hours: 2 times a year (Dec. & July)				\$ 25.00	\$ 50.00
10b	12 mth	Paper towels, toilet paper & hand soap				\$ 30.00	\$ 360.00
11	12 mth	<b>Civic Center</b> - Location: 321 E McKinney St Cleaning (M-F) after 10:00p.m. & after special events as directed Facility Representative: <u>Myra Anderson 940-349-8733</u> Estimated work hours per day: <u>5</u>	30	130	\$ 10.60	\$ 1,378.00	\$ 16,536.00
11a	2/yr	Carpet Cleaning, after business hours: 2 times a year (Dec. & July)				\$ 250.00	\$ 500.00
11b	12 mth	Paper towels, toilet paper & hand soap				\$ 325.00	\$ 3,900.00
12	12 mth	<b>Denia Recreation Center</b> - Location: 1001 Parvin Rd Cleaning (M-F) after 10:00p.m. & (Sun) after 3:30p.m. Facility Representative: <u>Robbie Johnson 940-349-8578</u> Estimated work hours per day: <u>5</u>	30	130	\$ 11.55	\$ 1,501.50	\$ 18,018.00
12a	2/yr	Carpet Cleaning, after business hours: 2 times a year (Dec. & July)				\$ 60.00	\$ 120.00
12b	12 mth	Paper towels, toilet paper & hand soap				\$ 200.00	\$ 2,400.00
13	12 mth	<b>MLK Jr Recreation Center</b> - Location: 1300 Wilson St Cleaning (M-F) after 10:00p.m. & (Sun) after 3:30p.m. Facility Representative: <u>Bobby Givens 940-349-8576</u> Estimated work hours per day: <u>5</u>	30	130	\$ 11.55	\$ 1,501.50	\$ 18,018.00
13a	2/yr	Carpet Cleaning, after business hours: 2 times a year (Dec. & July)				\$ 60.00	\$ 120.00
13b	12 mth	Paper towels, toilet paper & hand soap				\$ 200.00	\$ 2,400.00
14	12 mth	<b>North Lakes Annex</b> - Location: 1117 Riney Rd Cleaning (M-F) after 5:00p.m. Facility Representative: <u>David Saltsman 940-349-7200</u> Estimated work hours per day: <u>2</u>	10	43	\$ 8.25	\$ 354.75	\$ 4,257.00
14a	2/yr	Carpet Cleaning, after business hours: 2 times a year (Dec. & July)				\$ 15.00	\$ 30.00
14b	12 mth	Paper towels, toilet paper & hand soap				\$ 20.00	\$ 240.00

FACILITY INFORMATION FOR CLEANING

ITEM	QTY	DESCRIPTION	HOURS/ WEEK	AVERAGE HOURS/ MONTH	HOURLY PRICE <sup>1</sup>	MONTHLY PRICE	YEARLY TOTAL
15	12 mth	<b>North Lakes Recreation Center</b> - Location: 2001 W Windsor Dr Cleaning (M-Sun) after 10:00p.m. Facility Representative: <u>Megan Thomas 940-349-7752</u> Estimated work hours per day: 5	35	152	\$ 11.75	\$ 1,786.00	\$ 21,432.00
15a	2/yr	Carpet Cleaning, after business hours: 2 times a year (Dec. & July)				\$ 35.00	\$ 70.00
15b	12 mth	Paper towels, toilet paper & hand soap				\$ 300.00	\$ 3,600.00
16	12 mth	<b>Senior Recreation Center</b> - Location: 509 N Bell Ave Cleaning *(M-F) 1:00-2:00p.m. & after 10:00p.m. & (Sun) after 3:30p.m. Facility Representative: <u>Jeff Gilbert 940-349-8727</u> Estimated work hours per day: 6	36	156	\$ 10.25	\$ 1,599.00	\$ 19,188.00
16a	2/yr	Carpet Cleaning, after business hours: 2 times a year (Dec. & July)				\$ 60.00	\$ 120.00
16b	12 mth	Paper towels, toilet paper & hand soap				\$ 220.00	\$ 2,640.00
		**Cleaning throughout the week needs to be scheduled after lunch					
17	12 mth	<b>Tennis Center</b> - Location: 2005 W Windsor Dr Cleaning (M-S) after 10:00p.m. Facility Representative: <u>Jason Barrow 940-349-8525</u> Estimated work hours per day: 1	6	26	\$ 8.70	\$ 226.20	\$ 2,714.40
17a	2/yr	Carpet Cleaning, after business hours: 2 times a year (Dec. & July)				\$ 10.00	\$ 20.00
17b	12 mth	Paper towels, toilet paper & hand soap				\$ 50.00	\$ 600.00
<b>SECTION III: LIBRARIES</b>							
18	12 mth	<b>Emily Fowler Library</b> - Location: 502 Oakland St Cleaning (T-TR) after 9:00p.m. & (M,W,F,S,Sun) after 6:00p.m. Facility Representative: <u>Wylaina Polk 940-349-8774</u> Estimated work hours per day: 6	42	182	\$ 10.25	\$ 1,865.50	\$ 22,386.00
18a	2/yr	Carpet Cleaning, after business hours: 2 times a year (Dec. & July)				\$ 125.00	\$ 250.00
18b	12 mth	Paper towels, toilet paper & hand soap				\$ 250.00	\$ 3,000.00
19	12 mth	<b>North Branch Library</b> - Location: 3020 N Locust Cleaning (M/T/W) after 9:00p.m. & (Th-Sun) after 6:00p.m. Facility Representative: <u>Kimberly Wells 940-349-8796</u> Estimated work hours per day: 8 <b>Glass walls to be cleaned daily</b>	56	243	\$ 10.50	\$ 2,551.50	\$ 30,618.00
19a	2/yr	Carpet Cleaning, after business hours: 2 times a year (Dec. & July)				\$ 100.00	\$ 200.00
19b	12 mth	Paper towels, toilet paper & hand soap				\$ 250.00	\$ 3,000.00

FACILITY INFORMATION FOR CLEANING

ITEM	QTY	DESCRIPTION	HOURS/ WEEK	AVERAGE HOURS/ MONTH	HOURLY PRICE <sup>1</sup>	MONTHLY PRICE	YEARLY TOTAL
20	12 mth	<b>South Branch Library</b> - Location: 3228 Teasley Ln Cleaning (M,W) after 9:00p.m. & (T,Th,F,S,Sun) after 6:00p.m. Facility Representative: <u>Stacy Sizemore 940-349-8761</u> Estimated work hours per day: 5	35	152	\$ 10.35	\$ 1,573.20	\$ 18,878.40
20a	2/yr	Carpet Cleaning, after business hours: 2 times a year (Dec. & July)				\$ 100.00	\$ 200.00
20b	12 mth	Paper towels, toilet paper & hand soap				\$ 150.00	\$ 1,800.00
<b>SECTION IV: SERVICE CENTER COMPLEX</b>							
21	12 mth	<b>Fleet Services</b> - Location: 804 Texas St Cleaning (M-F) after 5:00p.m. Facility Representative: <u>Diane Simington 940-349-8423</u> Estimated work hours per day: 1.5	7.5	33	\$ 10.15	\$ 334.95	\$ 4,019.40
21a	2/yr	Carpet Cleaning, after business hours: 2 times a year (Dec. & July)				\$ 10.00	\$ 20.00
21b	12 mth	Paper towels, toilet paper & hand soap				\$ 20.00	\$ 240.00
22	12 mth	<b>Service Center-Purchasing</b> - Location: 901-B Texas St Cleaning (M-F) 11:30a.m.-1:00p.m. Facility Representative: <u>Jody Word 940-349-7132</u> Estimated work hours per day: 1.5	7.5	33	\$ 10.15	\$ 334.95	\$ 4,019.40
22a	2/yr	Carpet Cleaning, after business hours: 2 times a year (Dec. & July)				\$ 75.00	\$ 150.00
22b	12 mth	Paper towels, toilet paper & hand soap				\$ 40.00	\$ 480.00
23	12 mth	<b>Service Center-Utilities</b> - Location: 901-A Texas St Cleaning (M-F) after 5:00p.m. Facility Representative: <u>Annie Bunger 940-349-8463</u> Estimated work hours per day: 9	45	195	\$ 10.15	\$ 1,979.25	\$ 23,751.00
23a	2/yr	Carpet Cleaning, after business hours: 2 times a year (Dec. & July)				\$ 100.00	\$ 200.00
23b	12 mth	Paper towels, toilet paper & hand soap				\$ 200.00	\$ 2,400.00
24	12 mth	<b>Traffic Control</b> - Location: Cleaning (M-F) after 5:00p.m. Facility Representative: <u>Curt Arndt 940-349-7342</u> Estimated work hours per day: 1.5	7.5	33	\$ 10.15	\$ 334.95	\$ 4,019.40
24a	2/yr	Carpet Cleaning, after business hours: 2 times a year (Dec. & July)				\$ 25.00	\$ 50.00
24b	12 mth	Paper towels, toilet paper & hand soap				\$ 10.00	\$ 120.00

FACILITY INFORMATION FOR CLEANING

ITEM	QTY	DESCRIPTION	HOURS/ WEEK	AVERAGE HOURS/ MONTH	HOURLY PRICE <sup>1</sup>	MONTHLY PRICE	YEARLY TOTAL
<b>SECTION V: ADDITIONAL FACILITIES</b>							\$ -
25	12 mth	<b>Airport Control Tower</b> - Location: 5003 Airport Rd Cleaning (7 Days/week) between 5:00 & 8:00p.m - <b>HOLIDAYS INCLUDED</b> Facility Representative: <u>Julie Mullins 940-349-7736</u> Estimated work hours per day: <u>1.5</u>	10.5	45.5	\$ 10.15	\$ 461.83	\$ 5,541.90
<b>Person assigned to area must PASS TLETS* Background Check</b>							
25a	2/yr	Carpet Cleaning, after business hours: 2 times a year (Dec. & July)				\$ 25.00	\$ 50.00
25b	12 mth	Paper towels, toilet paper & hand soap				\$ 15.00	\$ 180.00
25c	4/yr	<b>Window cleaning (Tower CAB) quarterly (10/15, 1/15, 4/15 &amp; 7/15)</b>				\$ 70.00	\$ 280.00
26	12 mth	<b>Airport Terminal</b> - Location: 5000 Airport Rd Cleaning (M/W/F) 6AM- 8 AM Facility Representative: <u>Julie Mullins 940-349-7736</u> Estimated work hours per day: <u>1.5</u>	4.5	19.5	\$ 9.50	\$ 185.25	\$ 2,223.00
26a	2/yr	Carpet Cleaning, after business hours: 2 times a year (Dec. & July)				\$ 20.00	\$ 40.00
26b	12 mth	Paper towels, toilet paper & hand soap				\$ 40.00	\$ 480.00
27	12 mth	<b>Animal Services</b> - Location: 300 S Woodrow Ln OFFICE ONLY: Cleaning (M-F) after 6:00p.m. Facility Representative: <u>Woodie Wilson 940-349-7594</u> Estimated work hours per day: <u>1.5</u>	7.5	33	\$ 10.15	\$ 334.95	\$ 4,019.40
27a	2/yr	Carpet Cleaning, after business hours: 2 times a year (Dec. & July)				\$ 10.00	\$ 20.00
27b	12 mth	Paper towels, toilet paper & hand soap				\$ 45.00	\$ 540.00
28	12 mth	<b>Facilities Management</b> - Location: 869 S. Woodrow Ln. Cleaning (M-F) after 5:00p.m. Facility Representative: <u>David Saltsman 940-349-7200</u> Estimated work hours per day: <u>2</u>	10	43	\$ 10.15	\$ 436.45	\$ 5,237.40
28a	2/yr	Carpet Cleaning, after business hours: 2 times a year (Dec. & July)				\$ 30.00	\$ 60.00
28b	12 mth	Paper towels, toilet paper & hand soap				\$ 30.00	\$ 360.00
29	12 mth	<b>Fire Central</b> - Location: 332 E Hickory St - Upstairs Offices, Lobby & attached restrooms & meeting rooms: Cleaning (M-F) after 6:00p.m. Facility Representative: <u>Laura Behrens 940-349-8844</u> Estimated work hours per day: <u>4</u>	20	87	\$ 10.15	\$ 883.05	\$ 10,596.60
29a	2/yr	Carpet Cleaning, after business hours: 2 times a year (Dec. & July)				\$ 100.00	\$ 200.00
29b	12 mth	Paper towels, toilet paper & hand soap				\$ 50.00	\$ 600.00



FACILITY INFORMATION FOR CLEANING

ITEM	QTY	DESCRIPTION	HOURS/ WEEK	AVERAGE HOURS/ MONTH	HOURLY PRICE <sup>1</sup>	MONTHLY PRICE	YEARLY TOTAL
30	12 mth	<b>Solid Waste</b> - Location: 1527 S Mayhill Rd Cleaning (M-F) after 6:00p.m. Facility Representative: <u>David Dugger 940-349-8001</u> Estimated work hours per day: 4	20	87	\$ 9.25	\$ 804.75	\$ 9,657.00
30a	2/yr	Carpet Cleaning, after business hours: 2 times a year (Dec. & July)				\$ 60.00	\$ 120.00
30b	12 mth	Paper towels, toilet paper & hand soap				\$ 75.00	\$ 900.00
30c	2/yr	<b>Two (2) extra carpet cleanings per year (to be scheduled)</b>				\$ 75.00	\$ 150.00
31	12 mth	<b>Solid Waste Annex (HCC)</b> - Location: S Mayhill Rd Cleaning (M-F) after 6:00p.m. Facility Representative: <u>Craig Waggoner 940-349-8011</u> Estimated work hours per day: 1	5	22	\$ 9.25	\$ 203.50	\$ 2,442.00
31a	2/yr	Carpet Cleaning, after business hours: 2 times a year (Dec. & July)				\$ 40.00	\$ 80.00
31b	12 mth	Paper towels, toilet paper & hand soap				\$ 50.00	\$ 600.00
32	12 mth	<b>Soild Waste Scale House</b> - Location: S Mayhill Rd Cleaning (M-F) after 6:00p.m. Facility Representative: <u>David Dugger 940-349-8001</u> Estimated work hours per day: 1	5	22	\$ 9.25	\$ 203.50	\$ 2,442.00
32a	2/yr	Carpet Cleaning, after business hours: 2 times a year (Dec. & July)				\$ 50.00	\$ 100.00
32b	12 mth	Paper towels, toilet paper & hand soap				\$ 10.00	\$ 120.00
32c	2/yr	<b>Two (2) extra carpet cleanings per year (to be scheduled)</b>				\$ 50.00	\$ 100.00
33	12 mth	<b>DME ADMIN-</b> 1659 Spencer Rd. Bldg C <b>***OPTIONAL***</b> Cleaning (M-F) after 5 PM Facility Representative: <u>Misty Willis 940-349-7603</u> Estimated Work Hours per Day: 5	25	108	\$ 9.50	\$ 1,026.00	\$ 12,312.00
		<b>Person assigned MUST PASS NERC** BACKGROUND CHECK</b>					
33a	2/yr	Carpet Cleaning, after business hours: 2 times a year (Dec. & July)				\$ 50.00	\$ 100.00
33b	12 mth	Paper towels, toilet paper & hand soap				\$ 15.00	\$ 180.00
34	12 mth	<b>DME ENGSO-</b> 1685 Spencer Rd. <b>***OPTIONAL***</b> Cleaning (M-F) after 5 PM Facility Representative: <u>Misty Willis 940-349-7603</u> Estimated Work Hours Per Day: 5	25	108	\$ 9.50	\$ 1,026.00	\$ 12,312.00
		<b>Person assigned MUST PASS NERC** BACKGROUND CHECK</b>					
34a	2/yr	Carpet Cleaning, after business hours: 2 times a year (Dec. & July)				\$ 50.00	\$ 100.00
34b	12 mth	Paper towels, toilet paper & hand soap				\$ 20.00	\$ 240.00

FACILITY INFORMATION FOR CLEANING

ITEM	QTY	DESCRIPTION	HOURS/ WEEK	AVERAGE HOURS/ MONTH	HOURLY PRICE <sup>1</sup>	MONTHLY PRICE	YEARLY TOTAL
35	12 mth	<b>DME OPERATIONS-</b> 1701 Spencer Rd. <b>***OPTIONAL***</b> Cleaning (M-F) after 5 PM Facility Representative: <u>Misty Willis 940-349-7603</u> Estimated Work Hours Per Day: 5	25	108	\$ 9.50	\$ 1,026.00	\$ 12,312.00
		<b>Person assigned MUST PASS NERC** BACKGROUND CHECK</b>					
35a	2/yr	Carpet Cleaning, after business hours: 2 times a year (Dec. & July)				\$ 50.00	\$ 100.00
35b	12 mth	Paper towels, toilet paper & hand soap				\$ 20.00	\$ 240.00
		<b>SECTION VI: MISCELLANEOUS</b>					
36		<b>City Hall East &amp; City Hall: Two (2) restrooms at each building</b> Cleaning & Stocking (M-F) 11:00a.m.-1:00p.m. Estimated work hours per day: <u>2</u>	10	43	\$ 14.50	\$ 623.50	\$ 7,482.00
37		<b>Cleaning Supervisor</b> (M-F) as needed Estimated work hours per day: <u>6</u>	30	130	\$ 15.00	\$ 1,950.00	\$ 23,400.00
		<b>Supervisor MUST PASS FBI***/TLETS*/NERC** Background Check</b>					
38		<b>Nighttime Floor Workers &amp; Floaters</b> (M-F) 5:00-10:00p.m. Three (3) people each for five (5) hours per day Estimated work hours per day: <u>15</u> used for night floor work & special cleaning as needed	75	325	\$ 12.25	\$ 3,981.25	\$ 47,775.00
		<b>Nighttime/Floater Workers MUST PASS FBI***/TLETS*/NERC** Background Check</b>					

**Total Cost of Services and Supplies:**

\$ 46,778.18 \$ 539,878.10

M = Monday F = Friday  
T = Tuesday S = Saturday  
W = Wednesday Sun = Sunday  
Th = Thursday

Total Hours / Week 885  
Total Hours / Month 3,835  
Total Hours / Year 46,020

\$ 46,778.18  
\$ 539,878.10

FACILITY INFORMATION FOR CLEANING

ITEM	QTY	DESCRIPTION	HOURS/ WEEK	AVERAGE HOURS/ MONTH	HOURLY PRICE <sup>1</sup>	MONTHLY PRICE	YEARLY TOTAL
<b>SECTION VII: ON DEMAND ADDITIONAL SERVICES</b> (To be scheduled within 4 hours prior to cleaning.)							
<b>Hourly Rates</b>							
39	1 hr.	Supervisor					\$ 25.00 per hour
40	1 hr.	Floor Man					\$ 18.00 per hour
41	1 hr.	General Cleaner					\$ 16.25 per hour
<b>SECTION VIIa: ON DEMAND ADDITIONAL SERVICES - NATURE CENTER</b> (To be scheduled within 24 hours prior to cleaning.)							
42		Nature Center - Location: 3310 Collins Rd Cleaning - as requested					\$ 45.00 per hour
42a		Floor cleaning - as requested					\$ 45.00 per hour
<b>SECTION VIII: FUTURE BUILDINGS</b> (Currently under construction)							
43		<b>Animal Adoption and Services Center - LEED Cleaning Required</b> (Building completion scheduled for late 2014)	N/A	N/A	\$ 1.00	\$ 780.00	\$ 9,360.00
43a	2/yr	Carpet Cleaning, after business hours: 2 times a year (Dec. & July)	N/A	N/A	\$ 1.00	\$ 200.00	\$ 400.00
43b	12 mth	Paper towels, toilet paper & hand soap			\$ 1.00	\$ 250.00	\$ 3,000.00
44		<b>Public Safety Training Facility (City Hall East Addition)</b> (Building completion scheduled for Oct. 2013)	N/A	N/A	\$ 1.00	\$ 1,525.00	\$ 18,300.00
44a	2/yr	Carpet Cleaning, after business hours: 2 times a year (Dec. & July)	N/A	N/A	\$ 1.00	\$ 250.00	\$ 500.00
44b	12 mth	Paper towels, toilet paper & hand soap			\$ 1.00	\$ 400.00	\$ 4,800.00

**Payment Term Discounts**

the time period indicated below.

Payment Terms	Additional Discount %
Invoice Paid in 20 days	0.75%
Invoice Paid in 15 days	1.00%
Invoice Paid in 10 days	1.25%

<sup>1</sup> Hourly Price shall include all costs required to provide cleaning services, except for paper towels, toilet paper, and hand soap.

\*TLETS = Texas Law Enforcements Telecommunication Systems

\*\*NERC = North American Electric Reliability Commission

\*\*\*FBI = Federal Bureau of Investigations

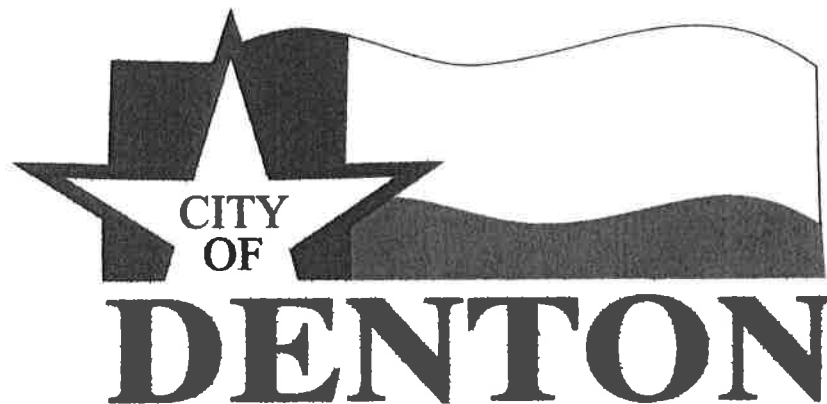


**Original**

**P R O P O S A L**

**PRESENTED  
TO**

**Cindy Alonzo  
CPPB, CTL, A.P.P  
Buyer**



**RFP - 5317**

**FOR**

**JANITORIAL SERVICES**

**PRESENTED BY  
Nixon Shum**


**ORIENTAL BUILDING SERVICES**

August 27, 2013

RFP #5317 – Addendum #1

NO OTHER CHANGES AT THIS TIME.

*This form should be signed and returned with your proposal.*

**Name:** Nixon Shum  
**Signature:**   
**Company:** Oriental Building Services, Inc.  
**Title:** Vice President  
**Date:** August 26, 2013

## ADDENDUM #2

### Addendum #2 to be returned with Proposal

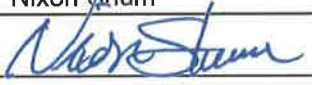
The following changes were made to Exhibit 1 - Pricing Sheet:

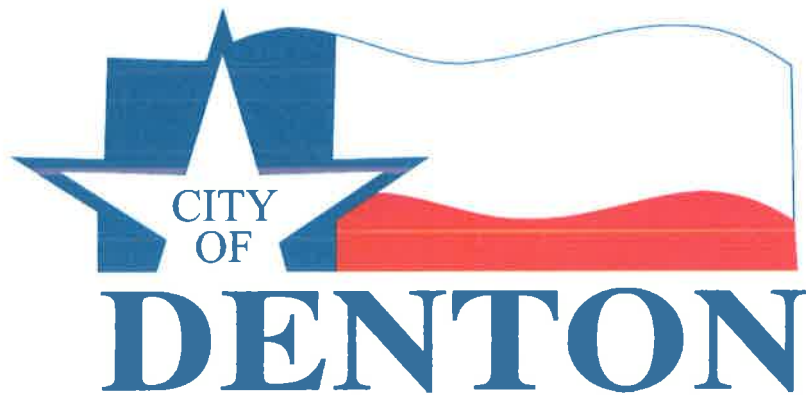
- Hourly price column has been added along with a footnote of the costs that should be included in this rate.
- Formulas were corrected or added.
- The hourly price and monthly price columns are available for data input.

Please replace the original and Addendum #1's pricing sheets with this sheet. The attached pricing sheet shall be submitted with your proposal.

**NO OTHER CHANGES AT THIS TIME.**

*This form should be signed and returned with your proposal.*

**Name:** Nixon Shum  
**Signature:**   
**Company:** Oriental Building Services, Inc.  
**Title:** Vice President  
**Date:** August 26, 2013



**The City of Denton  
Purchasing Department  
901-B Texas Street  
Denton, Texas 76209**

**REQUEST FOR PROPOSALS  
RFP 5317**

**JANITORIAL SERVICES  
FOR CITY OF DENTON BUILDINGS**

**NIGP CLASS and ITEM**

<b>910</b>	<b>39</b>
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**Issue Date: August 6<sup>th</sup>, 2013  
Response due Date and Time (Central Time):  
Tuesday, August 27, 2013, 2:00 p.m.**

**CITY OF DENTON  
RFP FOR JANITORIAL SERVICES**

**SOLICITATION CHECKLIST**

Checklist for RFP #5317

Title: JANITORIAL SERVICES FOR CITY OF DENTON BUILDINGS

**Opening Date: 8/27/2013 at 2:00 PM**

Contractor Name and Address: Oriental Building Services, Inc. - 2526 Manana Dr., # 208, Dallas, TX 75220

Contact: Nixon Shum

TX Taxpayer VIN#: 20-5158539

Phone: 469-522-0001

Fax: 469-522-0003

Email: nshum@obsusa.net

1. Submit one (1) original and three (3) WRITTEN copies of submittal **(REQUIRED)** Yes
  - a. Submit Written Proposal by courier, hand delivery, or mail to Purchasing Yes
  - b. Exhibit 1-Excel Pricing Sheet, Review, complete, and return Yes
2. Email Exhibit 1 in **Excel format** to ebids@cityofdenton.com
3. Submittal Content (Meet Section III)
  - Review all requirements Yes
  - Ensure your firm meets all stated minimum requirements Yes
  - Documentation included to support the evaluation criteria. Yes
  - Company Information Yes
  - Relevant Experience and Qualifications Yes
  - Methodology (Service Contracts Only) \_\_\_\_\_
  - Quality Assurance / Quality Control Yes
  - Litigation History Statement N/A
  - Addendum(s) Reviewed and return Yes
  - Attachment A, Review Yes
  - Attachment B, Not Applicable
  - Attachment C, Review, complete, and return Yes
  - Attachment D, Review, complete, and return Yes
  - Attachment E, Review, complete, and return Yes
  - Attachment F, Review, complete, and return Yes
  - Attachment G, Review, complete, and return Yes
  - Attachment H, Review, complete, and return Yes
  - Attachment I, Review Yes
  - Attachment J, Review, complete, and return Yes



**CITY OF DENTON  
RFP FOR JANITORIAL SERVICES**

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**CITY OF DENTON  
RFP FOR JANITORIAL SERVICES**

**Section I  
General**

**17. INTRODUCTION**

In accordance with the provisions of Texas Local Government Code, Chapter 252, The City of Denton (the City) is requesting proposals to contract with an individual or business with considerable experience in providing goods or services of this RFP. The proposals and the cost solutions shall be submitted to the City of Denton in a sealed submission, in accordance with Texas Local Government Code 252.0415 and 252.042.

The awarded individual or business shall possess a proven track record of using innovative approaches to providing goods and services that represent the best value to their clients. The awarded individual or business shall have the ability to accomplish all aspects of the requested services. The selected individual or firm should be able to provide innovative methods to deal with municipal challenges, and cost effective solutions.

*The City of Denton is exempt from Federal Excise and State Sales Tax.*

**A. COMMUNITY PROFILE**

Denton, Texas is a Main Street City in the North Texas region at the apex of Interstate 35 East and Interstate 35 West. Established in 1857, Denton is the county seat of Denton County and was named for John B. Denton. Denton is unique in composition; the city is comprised of over 92 square miles which radiate out in all directions from the downtown core, with a population of 113,000. In addition to the unique physical composition of the city, there is a unique character to the City. It is comprised of a diversity of neighborhoods and land uses that range from historical residential and commercial districts to new residential subdivisions and industrial complexes to greenbelt areas and newly annexed rural areas. Denton is home to two state universities, the University of North Texas, and Texas Woman's University, and two regional hospitals. The City is traversed by state highways, rail lines, and Interstate 35 E & W. This summer Denton County Transportation Authority (DCTA) began operation of a passenger rail service that runs from downtown Denton to the City of Carrollton, where passengers may transfer to the Dallas Area Rapid Transit (DART) system and continue travelling by rail within the Metroplex region. The rail service is accompanied by the opening of two rail stations in Denton. The City of Denton has also taken a proactive approach in its pursuit of environmental and sustainable initiatives. The City has, through DME, become a national leader in renewable energy with more wind power per capita than any other city in the United States and through Denton Solid Waste, become a national leader in sustainability and environmental stewardship through various award winning programs.

**B. BACKGROUND**

**CITY OF DENTON  
RFP FOR JANITORIAL SERVICES**

The City of Denton has experienced significant growth over the past few years and significant utilization of goods and services to meet the ever growing needs of a vibrant community has driven the need to obtain long term commitments to supply materials and services. The City desires an innovative solution that ensures a successful approach to provide goods and services; and allows for fluid responsiveness to upcoming changes – both anticipated and unforeseen. The use of technological opportunities throughout the service delivery is encouraged.

**C. COMMODITY OR SERVICE DESCRIPTION**

The City is seeking a long term contract for **janitorial services and associated supplies needed to perform the services.**

**The products and services shall be accomplished per the Scope of Work/Technical Specifications as identified in Exhibit 2.**

**18. MINIMUM SUBMISSION REQUIREMENTS**

The following minimum requirements must be demonstrated in order for the submission to be **considered responsive** to the City of Denton. Any proposal received, which is determined to not meet these mandatory requirements shall be immediately disqualified and rejected as non-responsive.

- Five (5) years experience providing similar services and products for contracts of similar sizes or larger in the North Texas area.
- Three (3) references from governmental entities for the products or services requested. The City prefers references from municipalities of similar size.
- A defined level of industry knowledge and understanding.

**19. CONTRACT TERM**

It is the intention of the City of Denton to award a contract for a one (1) year period. The City and the Awarded Contractor shall have the option to renew this contract for an additional two (2) one-year periods. Materials and services undertaken pursuant to this RFP will be required to commence within fourteen (14) days of delivery of a Notice to Proceed.

The Contract shall commence upon the issuance of a Notice of Award by the City of Denton and shall automatically renew each year, from the date of award by City Council, unless either party notifies the other prior to the scheduled renewal date in accordance with the provision of the section titled “price adjustments”, or the section(s) titled “termination”. At the sole option of the City of Denton, the Contract may be further extended as needed, not to exceed a total of six (6) months.

**CITY OF DENTON  
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**20. PRICING**

**Firm Price**

Pricing and discounts proposed is firm for the initial one-year period specified in the solicitation. Price decreases are allowed at any time. Price increases shall only be considered as stipulated below in paragraph #5, "PRICE ADJUSTMENTS".

**Price Decreases/Discount Increases**

Contractors are required to immediately implement any price decrease or discount increase that may become available. The City of Denton must be notified in writing for updating the contract.

**21. PRICE ADJUSTMENTS**

Prices quoted for the commodities or services described in the RFP must be firm for a period of one year from date of contract award. Any request for price adjustment must be accompanied with a detailed itemized cost breakdown including cost of labor, cost of materials, overhead costs, general administrative costs, and profit margin. The itemized costs shall be supported with documentation showing reasonable validation for the price adjustment requested. The price will be increased or decreased based upon the annual percentage change in the documentation. The maximum escalation will not exceed +/- 8% for any individual year. The escalation will be determined annually at the renewal date. Should the percentage change exceed a minimum threshold value of +/-1%, then the stated eligible bid prices shall be adjusted in accordance with the change not to exceed the 8% limit per year. The supplier should provide documentation as percentage of each cost associated with the unit prices quoted for consideration.

Request must be submitted in writing with supporting evidence for need of such increase to the Purchasing Manager at least 60 days prior to contract expiration of each year. Respondent must also provide supporting documentation as justification for the request.

Upon receipt of such request, the City of Denton reserves the right to either: accept the escalation as competitive with the general market price at the time, and become effective upon the renewal date of the contract award or reject the increases within 30 calendar days after receipt of a properly submitted request. If a properly submitted increase is rejected, the Contractor may request cancellation of such items from the Contract by giving the City of Denton written notice. Cancellation will not go into effect for 90 calendar days after a determination has been issued. Pre-price increase prices must be honored on orders dated up to the official date of the City of Denton approval and/or cancellation.

The request can be sent by e-mail to: [purchasing@cityofdenton.com](mailto:purchasing@cityofdenton.com)

Or mail to:  
City of Denton  
Attn: Purchasing Manager  
RFP # 5317

Or call:  
City of Denton Purchasing  
(940) 349-7100

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RFP FOR JANITORIAL SERVICES**

901B Texas Street  
Denton, Texas 76209

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

**22. SUBSTITUTIONS – Not Applicable**

**23. DISQUALIFICATIONS**

Any terms and conditions attached to a solicitation will not be considered unless specifically referred to on a solicitation and may result in disqualification. Any proposals that do not clearly outline all qualifications may be disqualified.

**24. INTELLECTUAL PROPERTY INDEMNIFICATION**

The contractor will indemnify, defend and hold harmless the City of Denton, and its authorized users, against any action or claim brought against the City of Denton, or its authorized users that is based on a claim that software infringes any patent rights, copyright rights or incorporated misappropriated trade secrets. Contractor will pay any damages attributable to such claim that are awarded against the City of Denton or its authorized users, in a judgment or settlement. If the City of Denton or its authorized users' utilization of the software becomes subject to a claim, or is likely to become subject to a claim, in the sole opinion of the City of Denton, or its authorized users, the Contractor shall, at its sole expense (1) procure for City of Denton or its authorized users, the right to continue using such software under the terms of this Contract; or (2) replace or modify the software so that it is non-infringing.

**25. RIGHTS TO DATA, DOCUMENTS, AND COMPUTER SOFTWARE  
(GOVERNMENTAL ENTITY OWNERSHIP)**

Any software, research, reports studies, data, photographs, negatives or other documents, drawings or materials prepared by contractor in the performance of its obligations under this contract shall be the exclusive property of the City of Denton and all such materials shall be delivered to the City by the contractor upon completion, termination, or cancellation of this contract. Contractor may, at its own expense, keep copies of all its writings for its personal files. Contractor shall not use, willingly allow, or cause to have such materials used for any purpose other than the performance of contractor's obligations under this contract without the prior written consent of the City; provided, however, that contractor shall be allowed to use non-confidential materials for writing samples in pursuit of the work.

The ownership rights described herein shall include, but not be limited to, the right to copy, publish, display, transfer, prepare derivative works, or otherwise use the works.

**26. ADDING NEW PRODUCTS OR SERVICES TO THE CONTRACT AFTER AWARD**

Following the Contract award, ADDITIONAL services or products of the same general category that could have been encompassed in the award of this contract, and that are not already on the contract, may be added. A formal written request may be sent to successful Contractor (s) to provide a proposal on the additional services and shall submit proposals to the City of Denton as instructed. All prices are subject to negotiation with a Best and Final Offer

**CITY OF DENTON  
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("BAFO"). The City of Denton may accept or reject any or all pricing proposals, and may issue a separate RFP or IFB for the products after rejecting some or all of the proposals. The commodities and services covered under this provision shall conform to the statement of work, specifications, and requirements as outlined in the request. Contract changes shall be made in accordance with Local Government Code 252.048

**11. QUANTITIES**

The quantities indicated on the Pricing Sheet (Exhibit 1) are estimates based upon the best available information. The City reserves the right to increase or decrease the quantities to meet its actual needs without any adjustments in the prices. Individual purchase orders will be issued on an as needed basis.

**12. PRODUCT CHANGES DURING CONTRACT TERM**

The supplier shall not change specifications during the contract term without prior approval. Any deviation in the specifications or change in the product must be approved in advance by the City of Denton. Notice of a change shall be submitted in writing to [purchasing@cityofdenton.com](mailto:purchasing@cityofdenton.com), with the RFP number in the subject line, for review. Products found to have changed specifications without notification, and acceptance, will be returned at the supplier's expense. Products that have been installed will be replaced at the supplier's expense.

**13. AUTHORIZED DISTRIBUTOR**

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

**14. SAMPLES**

Respondents must make samples available upon request by the City of Denton prior to award with no costs to the City.

**15. SHIPPING, DELIVERY, AND PACKAGING – NOT APPLICABLE**

**Identification of Shipments:**

In addition to the complete destination address, each delivery must be clearly marked with the purchase order number. Each shipment must be accompanied by a packing slip.

**Packaging and Labeling:**

All items shipped must be properly labeled, with weather resistant labeling, showing the brand name, package quantity, lot number (if applicable) and any other necessary identifying information.

**Special Delivery Requirements:**

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Customers may have specific, internal delivery rules and policies. These will be provided on each purchase order issued by the customer. The contractor(s) will be required to adhere to those requirements.

**Hours of Delivery:**

Delivery shall be made during the hours of 8:00 am to 4:00 pm (CST) of the Customer unless prior approval for after-hours delivery has been obtained from the Customer. In the event of any approval by the Customer for after-hours delivery, Respondent may not invoice any additional charges for that delivery. Respondent is encouraged to obtain Customer's hours of operation at time of order.

**Delivery Schedule:**

Respondent's shall furnish, in the space indicated on the Mandatory Price Sheet, a delivery schedule for each line item as to time required for delivery after receipt of order (ARO) under normal conditions. Delivery Days means calendar days, unless otherwise specified. Failure to state delivery time may disqualify Respondent. The City of Denton, at its sole option, may choose to negotiate delivery times.

**Delivery Delays:**

If delay is foreseen, Contractor shall give written notice to the Customer and must keep Customer advised at all times of status of order. Default in promised delivery (without accepted reasons) or failure to meet specifications authorizes the Customer to purchase goods and services of this RFP elsewhere and charge any increased costs for the goods and services, including the cost of re-soliciting, to the Contractor. Failure to pay a damage assessment is cause for Contract cancellation and/or removal of the Respondent from the City's authorized list of suppliers.

**Compliant Products:**

Providing products or materials which do not meet all specification requirements does not constitute delivery. Delivery does not occur until the Respondent delivers products or materials in full compliance with the specifications to Customer's F.O.B. destination, unless delivery is specifically accepted, in whole or in part, by the Customer. Customer reserves the right to require new delivery or a refund in the event that materials or products not meeting specifications are discovered after payment has been made.

**Restocking Fee:**

The Customer may request that a Contractor accept return of merchandise already delivered or that a Contractor cancel an order prior to delivery. If the return is required through no fault of the Contractor, the Contractor may request a reasonable restocking charge. The Customer may pay a restocking charge if the CPA or Customer determines that the charge is justifiable. As a guideline, such charges shall not exceed 10%. There shall be no fees charged for cancellation of an order prior to shipment by the Contractor.

**16. SAFETY AND ENVIRONMENTAL HAZARDS**

The City does not warrant or guarantee against the possibility that safety or environmental hazards or potential hazards (including premises and special defects) may exist at the City's facilities. The Contractor shall be responsible for identifying any hazardous conditions and

**CITY OF DENTON  
RFP FOR JANITORIAL SERVICES**

notifying the City of these conditions in writing no later than 30 days after contract award and prior to initiation of service delivery on the property. This will be accomplished by the Contractor conducting an environmental assessment and an occupational health, and safety inspection of the service bay or field service areas by competent, qualified and appropriately licensed practitioners. The costs of these inspections and any subsequent corrective action will be negotiated between the City and the Contractor.

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

**17. CONTRACTOR STANDARDS OF PERFORMANCE**

Monthly Time Standards - Contractors shall fully understand that the City relies on the product or service of the RFP to provide vital municipal services, and the availability and reliability of the equipment is of the essence. With this in mind, the Contractor shall meet the following performance standards at all times. Labor disputes, strikes, and other events, except those beyond the Contractor's control such as acts of God, shall not relieve the Contractor from meeting these standards. For service category, the Contractor must ensure the given level of service is achieved, within the designated number of working hours.

Contractor shall deliver goods or services within specified delivery times for 95% of all orders.

**18. PERFORMANCE LIQUIDATED DAMAGES**

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

The Contractor shall be assessed a rate of \$50 per hour and shall be deducted from the monthly payment if an outside janitorial vendor has to be called in to perform work not completed by the Contractor. A deduction of twice the amount of the daily cost as determined by the negotiated pricing shall be made for each day in the event of an absence of the Contractor's crew. These penalties will be deducted from the monthly billing.

In the case of non-performance, the Contractor will be given written notice of the areas needing attention. The Contractor will have twenty four (24) hours from the time the notice is delivered to perform to specifications. If the Contractor does not comply to specifications within the designated time, the contract may be terminated. A trip fee of \$50.00 will be charged for each time a Facilities Technician is called out due to janitorial staff setting off the security alarms.

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



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**19. WARRANTIES**

The contractor shall provide a warranty that is standard in the industry. Repair or Maintenance of fleet not performed to industry standards shall be accomplished at the contractor's expense, at the option of the City.

**20. INSURANCE**

Respondent shall provide, upon award, a certificate of insurance evidencing their insurance coverage's and amounts per Insurance and Workers' Compensation Requirements - Attachment A.

**21. CONTRACTS**

The successful awarded vendor will be required to sign an original contract. A sample contract is provided in Attachment I – Sample Contract. Respondents shall review the document and note exceptions in the proposal.

**22. ANTICIPATED PROBLEMS AND PROPOSED SOLUTIONS**

Respondent shall offer written observations, based upon previous experiences in public projects of this magnitude, addressing any anticipated problems and offer proposed solutions to those problems.

**CITY OF DENTON  
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**Section II  
Procurement Process and Procedures**

**1. SCHEDULE OF EVENTS**

The City of Denton reserves the right to change the dates indicated below:

Solicitation Schedule:

Issue RFP:	8/06/2013
Deadline for Submission of Questions:	8/16/2013 at 2:00 PM Central Time
Deadline for Submission of Proposal:	8/27/2013 at 2:00 PM Central Time
Evaluate and rank initial results:	8/27/2013 – 9/06/2013
Completion of Negotiations:	9/10/2013
Official Award:	10/01/2013

The City of Denton is using the RFP 'Issue Date' as noted in the Schedule of Events above as the official 30 day notification requirement for an interview with a firm.

**2. NON-MANDATORY PRE-SUBMITTAL CONFERENCE**

The pre-submittal conference is scheduled for **Wednesday, August 14<sup>th</sup>, 2013 at 10:00 a.m.** The pre-submittal conference is at the **Facilities Management Training Room**, located at **869 S. Woodrow Ln. Denton, Texas, 76205**. Please allow ample time for parking. The pre-submittal conference is not mandatory, but prospective proposers are strongly encouraged to attend.

**Internet link to meeting location:**

**869 S. Woodrow Ln., Denton, TX 76205**

**3. PROPOSERS COST TO DEVELOP SUBMITTAL**

Respondents to this RFP are responsible for all costs of submittal preparation, delivery and any oral presentations required as part of the selection process. All materials submitted in response to the RFP become property of the City of Denton and will be returned only at the option of the City.

**4. MINIMUM RESPONSE**

Submittals that do not, at a minimum, contain the information as specified under Section III and Exhibit 1 Pricing Sheet will be subject to **disqualification** at the sole discretion of the City of Denton. If any Firm submitting a Proposal is a corporation, it must be registered to conduct business in the State of Texas. Proof of this registration **must be included** as part of the submittal.

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**5. VALIDITY PERIOD**

The information included in the solicitation response(s), and any cost information obtained from a negotiation process, remain valid for 120 days from the response due date or until the contract is approved by the governing body.

**6. REJECTION OF SUBMITTAL**

**ANY PROPOSAL SUBMITTED AFTER THE DUE DATE AND TIME SPECIFIED WITHIN SECTION III, SHALL BE REJECTED. THE CITY SHALL REJECT PROPOSALS SUBMITTED BY FIRMS THAT DO NOT MEET MINIMUM QUALIFICATIONS.**

The City of Denton reserves the right to reject any and all submittals received in response to the RFP and to waive any minor technicalities or irregularities as determined to be in the best interest of the City.

**7. PROPRIETARY INFORMATION**

If a Proposer does not desire proprietary information in the Proposal to be disclosed, the Proposer shall identify all proprietary information in the Proposal. This identification will be accomplished by individually marking each page or line item detail with the words "Proprietary Information". If the Proposer fails to identify proprietary information, the Proposer agrees that by submission of its Proposal, that those sections shall be deemed non-proprietary and made available upon public request. Proposers are advised that the City, to the extent permitted by law, will protect the confidentiality of all Proposals. Proposer shall consider the implications of the Texas Public Information Act, particularly after the RFP process has ceased and the Contract has been awarded. While there are provisions in the Texas Public Information Act to protect proprietary information, where the Proposer can meet certain evidentiary standards, please be advised that a determination on whether those standards have been met will not be decided by the City of Denton, but by the Office of the Attorney General of the State of Texas. In the event a request for public information is made, the City will notify the Proposer, who may then request an opinion from the Attorney General pursuant to 552.305, Texas Government Code. The City will not make a request of the Attorney General.

**8. NON-ENDORSEMENT**

If a Proposal is accepted, the successful Proposer shall not issue any news releases or other statements pertaining to the award or servicing of the agreement that state or imply the City of Denton's endorsement of the successful Proposer's services.

**9. UNAUTHORIZED COMMUNICATIONS**

After release of this solicitation, Proposer contact regarding this RFP with members of the RFP evaluation, interview or selection panels, employees of the City or officials of the City other than the Purchasing Manager, or authorized City of Denton purchasing

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staff, or as otherwise indicated is prohibited and may result in disqualification from this procurement process. No officer, employee, agent or representative of the Proposer shall have any contact or discussion, verbal or written, with any members of the City Council, members of the RFP evaluation, interview, or selection panels, City staff or City's consultants, or directly or indirectly through others, seeking to influence any City Council member, City staff, or City's consultants regarding any matters pertaining to this solicitation, except as herein provided. If a representative of any Proposer violates the foregoing prohibition by contacting any of the above listed parties with who contact is not authorized, such contact may result in the Proposer being disqualified from the procurement process. Any oral communications are considered unofficial and non-binding with regard to this RFP.

**10. ADDENDUMS**

Proposers are required to submit signed addendum acknowledgement(s) with their proposal. Proposers will be responsible for monitoring the City of Denton Purchasing Website at: Current Bids and Proposals to ensure they have downloaded and signed all addendum(s) required for submission with their proposal.

**11. CONTACT BETWEEN PROPOSER AND THE CITY OF DENTON**

Respondents shall direct **all** inquiries and communications concerning this RFP to the Point of Contact(s) listed below:

City of Denton Procurement Point of Contact:

Cindy Alonzo, CPPB, CTL, A.P.P.

Buyer

901-B Texas Street

Denton, TX 76209

(940) 349-7100

Fax: (940) 349-7302

[cynthia.alonzo@cityofdenton.com](mailto:cynthia.alonzo@cityofdenton.com)

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**Section III**  
**Submittal Requirements**

Proposals shall address the following criteria. **For consideration, the proposal must submit the minimum criteria noted below.** Proposals shall, as a minimum, include all the information described in Items 1 through 10 below to be considered responsive. The “Business Overview Questionnaire” included as Attachment C is an acceptable format for providing much of this information. A Microsoft Word copy of this form will be provided on receipt of an email request. Other information, if provided, shall be included as appendices at the back of the proposal.

A firm may submit a solicitation response for one or more of the categories of services requested in this RFP. The City of Denton shall accept **written submissions only**, until **Tuesday, August 27, 2013 at 2:00 p.m.** Firms shall submit one original copy signed by an officer authorized to bind the company, and **3 copies** of the completed response to this solicitation in a sealed envelope. *Additionally, the respondent shall provide a formatted CD(s) or memory drive, containing a complete copy of the contractor’s response to this solicitation, or submit electronically to [ebids@cityofdenton.com](mailto:ebids@cityofdenton.com).* The format shall be in Microsoft Office format. *Submit pricing for requested services as provided in Exhibit 1. Pricing shall be provided in hard copy with the written submission, and also e-mailed in Excel to [ebids@cityofdenton.com](mailto:ebids@cityofdenton.com) before the proposal due date.* The format shall be in Microsoft Word and Excel format only.

Submittals shall include on the envelope and the cover sheet the following information: **Request for Proposals (RFP) # 5317 – JANITORIAL SERVICES.**

Proposals may be hand delivered (by firm or express courier) to the address listed below; however, e-mailed only submittals will not be accepted. Additionally, no oral, telephone, telegraphic, or facsimile proposals will be accepted. Where solicitation responses are sent by mail or courier, the responsibility of timely delivery is the respondent’s. Pages should be numbered and contain an organized, paginated table of contents corresponding to the section and page of the submittal. Appendices may be used for general firm information. The solicitation response shall be no more than 200 pages in length (excluding sample contracts, directories, and lists, etc.). All submittals, whether mailed or delivered by courier shall be sent to and received **no later than August 27, 2013 at 2:00 p.m., Central Time** at the following address:

City of Denton  
Attention: Cindy Alonzo, CPPB, CTL, A.P.P.  
Buyer  
901B Texas Street  
Denton, TX 76209

940-349-7100

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**Written proposals must be submitted by 2:00 p.m. on the response due date. Any proposal received after the date and/or hour set for proposal opening will be returned unopened.** The City of Denton reserves the right to accept or reject in part or in whole any proposals submitted, and to waive technicalities of the submission, in the best interest of obtaining best value for the City.

Each Contractor is responsible for taking the necessary steps to ensure their proposal is received by the date and time noted herein. The City is not responsible for missing, lost or late mail or any mail delays, internal or external, that may result in the proposal arriving after the set time.

Proposals shall include on the envelope and the cover sheet with the RFP number and name.

**1. COVER SHEET**

Include Respondent Company name, contact information, RFP number and name.

**2. INTRODUCTION (EXECUTIVE SUMMARY) – 1 Page Maximum**

Briefly describe your understanding of the requested services, important issues, and City requirements.

**3. FIRMS ORGANIZATION**

- a. Name and Address of the Individual or Business
- b. General overview of the Business
- c. Business Profile(s), including:
  - 1) Type of Business (limited partnership, corporation, etc.)
  - 2) Business History and Age
  - 3) Business Size (including number in each required discipline)
  - 4) Areas of special concentration
  - 5) Telephone number and fax number
  - 6) Number of year firm in business
  - 7) Amount of equity capital of the firm
  - 8) Number and location of offices in Texas
  - 9) Location of the office from which the work is to be managed
  - 10) Service description with specific descriptions of responsibilities, successes and failures related to the project. Include website URLs for any service projects for which they are available.
  - 11) Name and contact information for the project manager or other key contact with the entity contracting these products or services.
  - 12) Details of any awards received.

As stated above, completion of Attachment C - Business Overview Form may substitute for submission of the above information. Additionally, firms may submit additional information, to ensure a more complete understanding of the firm, and comprehension of the capabilities.

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**4. RELEVANT EXPERIENCE AND CAPABILITIES**

The responding individual or business shall provide pertinent information about the individual or business and related experience(s) with the requested products or services. Indicate what resources the individual or business will have available to allocate to the project. The respondent must currently be licensed to perform work in the State of Texas. A copy of current licensing must be included in your proposal. Relevant experiences and capabilities of the individual or business team members and team as a whole will be rated by the City by a review of both completed and on-going assignments, years of relevant experience in communities of comparable size, and credentials; greater weight will be given to project experience within the past five (5) years containing the team members proposed:

- a. Five (5) years experience with similar products or services, provide a description.
- b. A standard license or certification, if applicable.
- c. A defined level of industry knowledge and understanding
- d. The individual or business must be registered by the State of Texas or the County of Denton as a business and the must have all licensure required by the State to provide any services.
- e. The individual or business must disclose any business relationship that would have an effect, of a conflict of interest. A conflict of interest statement must be signed as part of the contract negotiated with the awardee(s).

**5. DISCLOSURES**

- a. Respondent shall detail any and all relevant history of litigation involving public projects.
- b. Respondent shall detail any and all exceptions within the proposal response.
- c. The individual or business must disclose any business relationship that would have an effect, of a conflict of interest. A conflict of interest statement must be signed as part of the contract negotiated with the awardee(s). (Attachment G)

**6. BUSINESS OVERVIEW**

Respondent shall complete the business overview questionnaire, Project Information Form & Schedule Compliance Form per Attachment C.

**7. REFERENCES**

Respondent shall provide references including contact names, e-mail addresses and current, correct phone numbers of Firms or public entities for which you have performed similar professional services. Respondent shall complete Attachment F – References.

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**8. FEE STRUCTURE –PRICING**

Submit pricing for requested products or services as provided in Exhibit 1. Pricing shall be provided in hard copy and emailed in Excel to [ebids@cityofdenton.com](mailto:ebids@cityofdenton.com) before the proposal due date.

**9. EQUIPMENT SCHEDULE**

The respondent shall provide an equipment schedule. The schedule shall include the year, make, model and description of the equipment.

**10. SAFETY RECORD**

The City of Denton desires to avail itself of the benefits of Section 252.0435 of the Local Government Code, and consider the safety records of potential contractors prior to awarding bids on City contracts. Pursuant to Section 252.0435 of the Local Government Code, the City of Denton has adopted the written definition and criteria as shown in the Safety Record Questionnaire (Attachment E) for accurately determining the safety record of a bidder prior to awarding bids on City contracts.

**11. ACKNOWLEDGEMENT**

Submit a signed acknowledgement by authorized agent of the Proposing firm (Attachment J).

**12. EXCEPTIONS**

The Request for Proposal (RFP) process allows for negotiation of the terms and conditions of this proposal. The respondent shall note any exceptions to the RFP document, on Attachment D, sign the document, and return with their proposal packet. If no exceptions are taken, the Respondent shall sign the document and return with their proposal packet.

**13. PRODUCT LITERATURE – Not Applicable**

Complete descriptive literature for each proposed item to include outline drawings, nameplate data and verification of other ratings.

**14. ADDITIONAL GENERAL REQUIREMENTS**

- a. Prior to commencement of the services, the City and selected individual or business will conduct an initial meeting to review the overall scope, schedule, deliverables and planning process to implement a successful program.
- b. The awarded Contractor shall provide to the City of Denton, detailed reports of time and services provided to the City on a monthly basis.



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- c. Staff available to assist the selected provider is limited; the proposals submitted should not anticipate extensive staff assistance during equipment repairs or maintenance.

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**Section IV  
Evaluation and Award**

**1. EVALUATION PROCEDURES**

Selection of a Firm(s) to provide the aforementioned services will be in accordance with the City of Denton Purchasing Policies and procedures and the State of Texas Local Government Code 252.043. The City of Denton shall open all proposals and evaluate each respondent in accordance to the below criteria:

**Step 1:** The City of Denton will evaluate the **Proposal** submission in accordance with the selection criteria and will rank the Firms on the basis of the submittals. The City of Denton, reserves the right to consider information obtained in addition to the data submitted in the Proposal. The selection criterion is listed below:

**a) Indicators of Probable Performance under contract (FACTOR: 25%).**

Indicators of probable performance under the contract to include: past vendor performance, financial resources and ability to perform, experience or demonstrated capability and responsibility, references, and the vendor's ability to provide reliable maintenance agreements and support.

**b) Compliance with Specifications, Quality, Reliability, Characteristics to meet stated or implied needs (FACTOR: 25%)**

Compliance with the stated specification(s), coupled with the quality and reliability of the goods and services, such as fitness for use that meets or exceeds customers expectations, and the characteristics of the product or service that bear on its ability to meet the stated/implied needs.

**c) Price, Total Cost of Ownership (FACTOR: 50%).**

The price of the items, to include total cost of ownership, such as installation costs, life cycle costs, and warranty provisions.

**In addition to the above factors, others that can be utilized as stated within Local Government Code 252.043 are: (1) the extent to which the goods or services meet the City's needs, (2)the impact on the ability of the City to comply with the laws and rules related to contracting with historically underutilized businesses and non-profit organizations employing persons with disabilities, (3) the long term cost to the City to**

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**acquire the respondents' goods and services, and (4) any relevant criteria specifically listed in the solicitation by the City.**

The total possible score of the proposals shall be scored and weighted as indicated in Section IV, Step 1 items a-c. Based on the outcome of the computations performed, each proposal will be assigned a raw score. The assigned weight will then be applied to these scores to calculate an overall score for each proposal for completion of the final scoring process.

The proposals shall be evaluated utilizing standard tools, based upon the weighted factors above, and will be assigned a final score. The City of Denton will proceed to Step 2, with the Firm(s) that are considered within the competitive range and present an overall best value to the City of Denton.

**Step 2:** After the final ranking of the proposals and determination of Firm(s) that provide a best value to the City and are within the competitive range, provided the City of Denton elects to proceed without oral discussions, the City will immediately proceed to negotiate final pricing, terms and conditions with the **highest ranked Firm or Firms**. The City of Denton may elect to conduct oral discussions, request clarifications, and presentations concerning the project approach and ability to furnish the requirements, as part of the negotiation process. The City may elect to utilize a Best and Final negotiation phase to determine the Firm that provides the overall best value to the City.

**Step 3:** The City of Denton Procurement Department shall provide a written recommendation to the City of Denton City Council, which represents "best value" and request authorization to proceed with contract execution for the proposed services.

In accordance with Local Government Code 252.049, trade secrets and confidential information in competitive sealed bids are not open for public inspection. All proposals shall be opened in a manner that avoids disclosure of the contents to competing offerors and keeps the proposals secret during negotiations. A public opening will not be conducted with this process. **THE AWARD PROCESS IS CONSIDERED OPEN AND ON-GOING UNTIL ALL FINAL NEGOTIATIONS HAVE CONCLUDED.**

After the contract has been awarded all proposals are open for public inspection and the unsuccessful respondent(s) may request a debriefing regarding their submittal. Please contact the City of Denton Materials Management staff to document the request for a debriefing. A meeting with the City of Denton Materials Management Staff and the using Department shall be provided in a timely manner.

**2. AWARD**

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The City reserves the right to award by line item, section, or by entire proposal; whichever is most advantageous, or provides the "best value" to the City, unless denied by the bidder.

**3. PREFERENCES**

**A. Environmentally Preferable Purchasing Policy**

Texas Local Government Code, Sec. 271.907. VENDORS THAT MEET OR EXCEED AIR QUALITY STANDARDS.

- (a) In this section, "governmental agency" has the meaning assigned by Section 271.003.
- (b) This section applies only to a contract to be performed, wholly or partly, in a nonattainment area or in an affected county, as those terms are defined by Section 386.001, Health and Safety Code.
- (c) A governmental agency procuring goods or services may:
  - (1) give preference to goods or services of a vendor that demonstrates that the vendor meets or exceeds any state or federal environmental standards, including voluntary standards, relating to air quality; or
  - (1) require that a vendor demonstrate that the vendor meets or exceeds any state or federal environmental standards, including voluntary standards, relating to air quality.
- (d) The preference may be given only if the cost to the governmental agency for the goods or services would not exceed 105 percent of the cost of the goods or services provided by a vendor who does not meet the standards. The cost may not exceed \$100,000.

This provision shall comply with City of Denton Resolution R2007-032.

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**Section V  
Payment and Performance Requirements**

These standard Terms and Conditions and the Terms and Conditions, Specifications, Drawings and other requirements included in the City of Denton's solicitation are applicable to Contracts/Purchase Orders issued by the City of Denton hereinafter referred to as the City or Buyer and the Seller herein after referred to as the Bidder, Contractor or Supplier. Any deviations must be in writing and signed by a representative of the City's Procurement Department and the Supplier. No Terms and Conditions contained in the Sellers Proposal response, Invoice or Statement shall serve to modify the terms set forth herein. If there is a conflict between the provisions on the face of the Contract/Purchase Order these written provisions will take precedence.

By submitting an Offer in response to the Solicitation, the Contractor agrees that the Contract shall be governed by the following terms and conditions, unless exceptions are duly noted and fully negotiated. Unless otherwise specified in the Contract, Sections 3, 4, 5, 6, 7, 8, 20, 21, and 36 shall apply only to a Solicitation to purchase Goods, and Sections 9, 10, 11 and 22 shall apply only to a Solicitation to purchase Services to be performed principally at the City's premises or on public rights-of-way.

**1. PAYMENT AND INVOICES:**

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

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

**Invoices** shall be sent directly to the City of Denton Accounts Payable Department, 215 E McKinney St, Denton, TX, 76201-4299. A pro-forma invoice shall be sent to the contract administrator. It is the intention of the City of Denton to make payment on completed orders within thirty days after receipt of invoice or items; whichever is later, unless unusual circumstances arise. **Invoices must be fully documented as to labor, materials, and equipment provided, if applicable, and must reference the City of Denton Purchase Order Number in order to be processed. No payments shall be made on invoices not listing a Purchase Order Number.**

Upon contract award, suppliers are encouraged to receive payments through direct deposit.

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**2. TAX EXEMPTION:**

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

**3. PAYMENT TO PERFORMANCE MILESTONES:**

Awarded contractor shall prepare and **submit invoices after completion of specific project milestones.** The invoice shall detail the major milestones accomplished and detailed cost information for project. These milestones shall be submitted to the City of Denton and the City's Project Staff shall review such for completion and accuracy, prior to payment authorization. **The respondent shall complete Exhibit 1, pricing sheet.**

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**Section VI  
Standard Purchase Terms and Conditions**

These standard Terms and Conditions and the Terms and Conditions, Specifications, Drawings and other requirements included in the City of Denton's solicitation are applicable to Contracts/Purchase Orders issued by the City of Denton hereinafter referred to as the City or Buyer and the Seller herein after referred to as the Bidder, Contractor or Supplier. Any deviations must be in writing and signed by a representative of the City's Procurement Department and the Supplier. No Terms and Conditions contained in the Sellers Proposal response, Invoice or Statement shall serve to modify the terms set forth herein. If there is a conflict between the provisions on the face of the Contract/Purchase Order these written provisions will take precedence.

By submitting an Offer in response to the Solicitation, the Contractor agrees that the Contract shall be governed by the following terms and conditions, unless exceptions are duly noted and fully negotiated. Unless otherwise specified in the Contract, Sections 3, 4, 5, 6, 7, 8, 20, 21, and 36 shall apply only to a Solicitation to purchase Goods, and Sections 9, 10, 11 and 22 shall apply only to a Solicitation to purchase Services to be performed principally at the City's premises or on public rights-of-way.

**1. CONTRACTOR'S OBLIGATIONS.** The Contractor shall fully and timely provide all deliverables described in the Solicitation and in the Contractor's Offer in strict accordance with the terms, covenants, and conditions of the Contract and all applicable Federal, State, and local laws, rules, and regulations.

**2. EFFECTIVE DATE/TERM.** Unless otherwise specified in the Solicitation, this Contract shall be effective as of the date the contract is signed by the City, and shall continue in effect until all obligations are performed in accordance with the Contract.

**3. CONTRACTOR TO PACKAGE DELIVERABLES:** The Contractor will package deliverables in accordance with good commercial practice and shall include a packing list showing the description of each item, the quantity and unit price unless otherwise provided in the Specifications or Supplemental Terms and Conditions, each shipping container shall be clearly and permanently marked as follows: (a) The Contractor's name and address, (b) the City's name, address and purchase order or purchase release number and the price agreement number if applicable, (c) Container number and total number of containers, e.g. box 1 of 4 boxes, and (d) the number of the container bearing the packing list. The Contractor shall bear cost of packaging. Deliverables shall be suitably packed to secure lowest transportation costs and to conform to all the requirements of common carriers and any applicable specification. The City's count or weight shall be final and conclusive on shipments not accompanied by packing lists.

**4. SHIPMENT UNDER RESERVATION PROHIBITED:** The Contractor is not authorized to ship the deliverables under reservation and no tender of a bill of lading will operate as a tender of deliverables.

**5. TITLE & RISK OF LOSS:** Title to and risk of loss of the deliverables shall pass to the City only when the City actually receives and accepts the deliverables.

**6. DELIVERY TERMS AND TRANSPORTATION CHARGES:** Deliverables shall be shipped F.O.B. point of delivery unless otherwise specified in the Supplemental Terms and

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Conditions. Unless otherwise stated in the Offer, the Contractor's price shall be deemed to include all delivery and transportation charges. The City shall have the right to designate what method of transportation shall be used to ship the deliverables. The place of delivery shall be that set forth the purchase order.

**7. RIGHT OF INSPECTION AND REJECTION:** The City expressly reserves all rights under law, including, but not limited to the Uniform Commercial Code, to inspect the deliverables at delivery before accepting them, and to reject defective or non-conforming deliverables. If the City has the right to inspect the Contractor's, or the Contractor's Subcontractor's, facilities, or the deliverables at the Contractor's, or the Contractor's Subcontractor's, premises, the Contractor shall furnish, or cause to be furnished, without additional charge, all reasonable facilities and assistance to the City to facilitate such inspection.

**8. NO REPLACEMENT OF DEFECTIVE TENDER:** Every tender or delivery of deliverables must fully comply with all provisions of the Contract as to time of delivery, quality, and quantity. Any non-complying tender shall constitute a breach and the Contractor shall not have the right to substitute a conforming tender; provided, where the time for performance has not yet expired, the Contractor may notify the City of the intention to cure and may then make a conforming tender within the time allotted in the contract.

**9. PLACE AND CONDITION OF WORK:** The City shall provide the Contractor access to the sites where the Contractor is to perform the services as required in order for the Contractor to perform the services in a timely and efficient manner, in accordance with and subject to the applicable security laws, rules, and regulations. The Contractor acknowledges that it has satisfied itself as to the nature of the City's service requirements and specifications, the location and essential characteristics of the work sites, the quality and quantity of materials, equipment, labor and facilities necessary to perform the services, and any other condition or state of fact which could in any way affect performance of the Contractor's obligations under the contract. The Contractor hereby releases and holds the City harmless from and against any liability or claim for damages of any kind or nature if the actual site or service conditions differ from expected conditions.

**10. WORKFORCE**

A. The Contractor shall employ only orderly and competent workers, skilled in the performance of the services which they will perform under the Contract.

B. The Contractor, its employees, subcontractors, and subcontractor's employees may not while engaged in participating or responding to a solicitation or while in the course and scope of delivering goods or services under a City of Denton contract or on the City's property .

i. use or possess a firearm, including a concealed handgun that is licensed under state law, except as required by the terms of the contract; or

ii. use or possess alcoholic or other intoxicating beverages, illegal drugs or controlled substances, nor may such workers be intoxicated, or under the influence of alcohol or drugs, on the job.

C. If the City or the City's representative notifies the Contractor that any worker is incompetent, disorderly or disobedient, has knowingly or repeatedly violated safety regulations, has possessed any firearms, or has possessed or was under the influence of alcohol or drugs on the job, the



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Contractor shall immediately remove such worker from Contract services, and may not employ such worker again on Contract services without the City's prior written consent.

**Immigration:** The Contractor represents and warrants that it shall comply with the requirements of the Immigration Reform and Control Act of 1986 and 1990 regarding employment verification and retention of verification forms for any individuals hired on or after November 6, 1986, who will perform any labor or services under the Contract and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA) enacted on September 30, 1996.

**11. COMPLIANCE WITH HEALTH, SAFETY, AND ENVIRONMENTAL**

**REGULATIONS:** The Contractor, its Subcontractors, and their respective employees, shall comply fully with all applicable federal, state, and local health, safety, and environmental laws, ordinances, rules and regulations in the performance of the services, including but not limited to those promulgated by the City and by the Occupational Safety and Health Administration (OSHA). In case of conflict, the most stringent safety requirement shall govern. The Contractor shall indemnify and hold the City harmless from and against all claims, demands, suits, actions, judgments, fines, penalties and liability of every kind arising from the breach of the Contractor's obligations under this paragraph.

**Environmental Protection:** The Respondent shall be in compliance with all applicable standards, orders, or regulations issued pursuant to the mandates of the Clean Air Act (42 U.S.C. §7401 *et seq.*) and the Federal Water Pollution Control Act, as amended, (33 U.S.C. §1251 *et seq.*).

**12. INVOICES:**

A. The Contractor shall submit separate invoices in duplicate on each purchase order or purchase release after each delivery. If partial shipments or deliveries are authorized by the City, a separate invoice must be sent for each shipment or delivery made.

**B. Proper Invoices must include a unique invoice number, the purchase order or delivery order number and the master agreement number if applicable, the Department's Name, and the name of the point of contact for the Department.** Invoices shall be itemized and transportation charges, if any, shall be listed separately. A copy of the bill of lading and the freight waybill, when applicable, shall be attached to the invoice. The Contractor's name, remittance address and, if applicable, the tax identification number on the invoice must exactly match the information in the Vendor's registration with the City. Unless otherwise instructed in writing, the City may rely on the remittance address specified on the Contractor's invoice.

C. Invoices for labor shall include a copy of all time-sheets with trade labor rate and deliverables order number clearly identified. Invoices shall also include a tabulation of work-hours at the appropriate rates and grouped by work order number. Time billed for labor shall be limited to hours actually worked at the work site.

D. Unless otherwise expressly authorized in the Contract, the Contractor shall pass through all Subcontract and other authorized expenses at actual cost without markup.

E. Federal excise taxes, State taxes, or City sales taxes must not be included in the invoiced amount.

The City will furnish a tax exemption certificate upon request.

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**13. PAYMENT:**

A. All proper invoices need to be sent to Accounts Payable. Approved invoices will be paid within thirty (30) calendar days of the City's receipt of the deliverables or of the invoice being received in Accounts Payable, whichever is later.

**B. If payment is not timely made, (per paragraph A); interest shall accrue on the unpaid balance at the lesser of the rate specified in Texas Government Code Section 2251.025 or the maximum lawful rate; except, if payment is not timely made for a reason for which the City may withhold payment hereunder, interest shall not accrue until ten (10) calendar days after the grounds for withholding payment have been resolved.**

C. If partial shipments or deliveries are authorized by the City, the Contractor will be paid for the partial shipment or delivery, as stated above, provided that the invoice matches the shipment or delivery.

D. The City may withhold or set off the entire payment or part of any payment otherwise due the Contractor to such extent as may be necessary on account of:

- i. delivery of defective or non-conforming deliverables by the Contractor;
- ii. third party claims, which are not covered by the insurance which the Contractor is required to provide, are filed or reasonable evidence indicating probable filing of such claims;
- iii. failure of the Contractor to pay Subcontractors, or for labor, materials or equipment;
- iv. damage to the property of the City or the City's agents, employees or contractors, which is not covered by insurance required to be provided by the Contractor;
- v. reasonable evidence that the Contractor's obligations will not be completed within the time specified in the Contract, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
- vi. failure of the Contractor to submit proper invoices with purchase order number, with all required attachments and supporting documentation; or
- vii. failure of the Contractor to comply with any material provision of the Contract Documents.

E. Notice is hereby given that any awarded firm who is in arrears to the City of Denton for delinquent taxes, the City may offset indebtedness owed the City through payment withholding.

F. Payment will be made by check unless the parties mutually agree to payment by credit card or electronic transfer of funds. The Contractor agrees that there shall be no additional charges, surcharges, or penalties to the City for payments made by credit card or electronic funds transfer.

G. The awarding or continuation of this contract is dependent upon the availability of funding. The City's payment obligations are payable only and solely from funds Appropriated and available for this contract. The absence of Appropriated or other lawfully available funds shall render the Contract null and void to the extent funds are not Appropriated or available and any deliverables delivered but unpaid shall be returned to the Contractor. The City shall provide the Contractor written notice of the failure of the City to make an adequate Appropriation for any fiscal year to pay the amounts due under the Contract, or the reduction of any Appropriation to an amount insufficient to permit the City to pay its obligations under the Contract. In the event of none or inadequate appropriation of funds, there will be no penalty nor removal fees charged to the City.

**14. TRAVEL EXPENSES:** All travel, lodging and per diem expenses in connection with the Contract shall be paid by the Contractor, unless otherwise stated in the contract terms.

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**15. FINAL PAYMENT AND CLOSE-OUT:**

A. If a DBE/MBE/WBE Program Plan is agreed to and the Contractor has identified Subcontractors, the Contractor is required to submit a Contract Close-Out MBE/WBE Compliance Report to the Purchasing Manager no later than the 15th calendar day after completion of all work under the contract. Final payment, retainage, or both may be withheld if the Contractor is not in compliance with the requirements as accepted by the City.

B. The making and acceptance of final payment will constitute:

i. a waiver of all claims by the City against the Contractor, except claims (1) which have been previously asserted in writing and not yet settled, (2) arising from defective work appearing after final inspection, (3) arising from failure of the Contractor to comply with the Contract or the terms of any warranty specified herein, (4) arising from the Contractor's continuing obligations under the Contract, including but not limited to indemnity and warranty obligations, or (5) arising under the City's right to audit; and ii. a waiver of all claims by the Contractor against the City other than those previously asserted in writing and not yet settled.

**16. SPECIAL TOOLS & TEST EQUIPMENT:** If the price stated on the Offer includes the cost of any special tooling or special test equipment fabricated or required by the Contractor for the purpose of filling this order, such special tooling equipment and any process sheets related thereto shall become the property of the City and shall be identified by the Contractor as such.

**17. RIGHT TO AUDIT:**

A. The City shall have the right to audit and make copies of the books, records and computations pertaining to the Contract. The Contractor shall retain such books, records, documents and other evidence pertaining to the Contract period and five years thereafter, except if an audit is in progress or audit findings are yet unresolved, in which case records shall be kept until all audit tasks are completed and resolved. These books, records, documents and other evidence shall be available, within ten (10) business days of written request. Further, the Contractor shall also require all Subcontractors, material suppliers, and other payees to retain all books, records, documents and other evidence pertaining to the Contract, and to allow the City similar access to those documents. All books and records will be made available within a 50 mile radius of the City of Denton. The cost of the audit will be borne by the City unless the audit reveals an overpayment of 1% or greater. If an overpayment of 1% or greater occurs, the reasonable cost of the audit, including any travel costs, must be borne by the Contractor which must be payable within five (5) business days of receipt of an invoice.

B. Failure to comply with the provisions of this section shall be a material breach of the Contract and shall constitute, in the City's sole discretion, grounds for termination thereof. Each of the terms "books", "records", "documents" and "other evidence", as used above, shall be construed to include drafts and electronic files, even if such drafts or electronic files are subsequently used to generate or prepare a final printed document.

**18. SUBCONTRACTORS: (NOT APPLICABLE)**

A. If the Contractor identified Subcontractors in a DBE/MBE/WBE agreed to Plan, the Contractor shall comply with all requirements approved by the City. The Contractor shall not initially employ any Subcontractor except as provided in the Contractor's Plan. The Contractor shall not substitute any Subcontractor identified in the Plan, unless the substitute has been accepted by the City in writing. No acceptance by the City of any Subcontractor shall constitute a waiver of any rights or remedies of the City with respect to defective deliverables provided by

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a Subcontractor. If a Plan has been approved, the Contractor is additionally required to submit a monthly Subcontract Awards and Expenditures Report to the Procurement Manager, no later than the tenth calendar day of each month.

B. Work performed for the Contractor by a Subcontractor shall be pursuant to a written contract between the Contractor and Subcontractor. The terms of the subcontract may not conflict with the terms of the

Contract, and shall contain provisions that:

- i. require that all deliverables to be provided by the Subcontractor be provided in strict accordance with the provisions, specifications and terms of the Contract;
- ii. prohibit the Subcontractor from further subcontracting any portion of the Contract without the prior written consent of the City and the Contractor. The City may require, as a condition to such further subcontracting, that the Subcontractor post a payment bond in form, substance and amount acceptable to the City;
- iii. require Subcontractors to submit all invoices and applications for payments, including any claims for additional payments, damages or otherwise, to the Contractor in sufficient time to enable the Contractor to include same with its invoice or application for payment to the City in accordance with the terms of the Contract;
- iv. require that all Subcontractors obtain and maintain, throughout the term of their contract, insurance in the type and amounts specified for the Contractor, with the City being a named insured as its interest shall appear; and
- v. require that the Subcontractor indemnify and hold the City harmless to the same extent as the Contractor is required to indemnify the City.

C. The Contractor shall be fully responsible to the City for all acts and omissions of the Subcontractors just as the Contractor is responsible for the Contractor's own acts and omissions. Nothing in the Contract shall create for the benefit of any such Subcontractor any contractual relationship between the City and any such Subcontractor, nor shall it create any obligation on the part of the City to pay or to see to the payment of any moneys due any such Subcontractor except as may otherwise be required by law.

D. The Contractor shall pay each Subcontractor its appropriate share of payments made to the Contractor not later than ten (10) calendar days after receipt of payment from the City.

**19. WARRANTY-PRICE:**

A. The Contractor warrants the prices quoted in the Offer are no higher than the Contractor's current prices on orders by others for like deliverables under similar terms of purchase.

B. The Contractor certifies that the prices in the Offer have been arrived at independently without consultation, communication, or agreement for the purpose of restricting competition, as to any matter relating to such fees with any other firm or with any competitor.

C. In addition to any other remedy available, the City may deduct from any amounts owed to the Contractor, or otherwise recover, any amounts paid for items in excess of the Contractor's current prices on orders by others for like deliverables under similar terms of purchase.

**20. WARRANTY – TITLE:** The Contractor warrants that it has good and indefeasible title to all deliverables furnished under the Contract, and that the deliverables are free and clear of all liens, claims, security interests and encumbrances. The Contractor shall indemnify and hold the City harmless from and against all adverse title claims to the deliverables.

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**21. WARRANTY – DELIVERABLES:** The Contractor warrants and represents that all deliverables sold the City under the Contract shall be free from defects in design, workmanship or manufacture, and conform in all material respects to the specifications, drawings, and descriptions in the Solicitation, to any samples furnished by the Contractor, to the terms, covenants and conditions of the Contract, and to all applicable State, Federal or local laws, rules, and regulations, and industry codes and standards. Unless otherwise stated in the Solicitation, the deliverables shall be new or recycled merchandise, and not used or reconditioned.

A. Recycled deliverables shall be clearly identified as such.

B. The Contractor may not limit, exclude or disclaim the foregoing warranty or any warranty implied by law; and any attempt to do so shall be without force or effect.

C. Unless otherwise specified in the Contract, the warranty period shall be at least one year from the date of acceptance of the deliverables or from the date of acceptance of any replacement deliverables. If during the warranty period, one or more of the above warranties are breached, the Contractor shall promptly upon receipt of demand either repair the non-conforming deliverables, or replace the non-conforming deliverables with fully conforming deliverables, at the City's option and at no additional cost to the City. All costs incidental to such repair or replacement, including but not limited to, any packaging and shipping costs shall be borne exclusively by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach of warranty, but failure to give timely notice shall not impair the City's rights under this section.

D. If the Contractor is unable or unwilling to repair or replace defective or non-conforming deliverables as required by the City, then in addition to any other available remedy, the City may reduce the quantity of deliverables it may be required to purchase under the Contract from the Contractor, and purchase conforming deliverables from other sources. In such event, the Contractor shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such deliverables from another source.

E. If the Contractor is not the manufacturer, and the deliverables are covered by a separate manufacturer's warranty, the Contractor shall transfer and assign such manufacturer's warranty to the City. If for any reason the manufacturer's warranty cannot be fully transferred to the City, the Contractor shall assist and cooperate with the City to the fullest extent to enforce such manufacturer's warranty for the benefit of the City.

**22. WARRANTY – SERVICES:** The Contractor warrants and represents that all services to be provided the City under the Contract will be fully and timely performed in a good and workmanlike manner in accordance with generally accepted industry standards and practices, the terms, conditions, and covenants of the Contract, and all applicable Federal, State and local laws, rules or regulations.

A. The Contractor may not limit, exclude or disclaim the foregoing warranty or any warranty implied by law, and any attempt to do so shall be without force or effect.

B. Unless otherwise specified in the Contract, the warranty period shall be at least one year from the Acceptance Date. If during the warranty period, one or more of the above warranties are breached, the Contractor shall promptly upon receipt of demand perform the services again in accordance with above standard at no additional cost to the City. All costs incidental to such additional performance shall be borne by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach warranty, but failure to give timely notice shall not impair the City's rights under this section.

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C. If the Contractor is unable or unwilling to perform its services in accordance with the above standard as required by the City, then in addition to any other available remedy, the City may reduce the amount of services it may be required to purchase under the Contract from the Contractor, and purchase conforming services from other sources. In such event, the Contractor shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such services from another source.

**23. ACCEPTANCE OF INCOMPLETE OR NON-CONFORMING DELIVERABLES:** If, instead of requiring immediate correction or removal and replacement of defective or non-conforming deliverables, the City prefers to accept it, the City may do so. The Contractor shall pay all claims, costs, losses and damages attributable to the City's evaluation of and determination to accept such defective or non-conforming deliverables. If any such acceptance occurs prior to final payment, the City may deduct such amounts as are necessary to compensate the City for the diminished value of the defective or non-conforming deliverables. If the acceptance occurs after final payment, such amount will be refunded to the City by the Contractor.

**24. RIGHT TO ASSURANCE:** Whenever one party to the Contract in good faith has reason to question the other party's intent to perform, demand may be made to the other party for written assurance of the intent to perform. In the event that no assurance is given within the time specified after demand is made, the demanding party may treat this failure as an anticipatory repudiation of the Contract.

**25. STOP WORK NOTICE:** The City may issue an immediate Stop Work Notice in the event the Contractor is observed performing in a manner that is in violation of Federal, State, or local guidelines, or in a manner that is determined by the City to be unsafe to either life or property. Upon notification, the Contractor will cease all work until notified by the City that the violation or unsafe condition has been corrected. The Contractor shall be liable for all costs incurred by the City as a result of the issuance of such Stop Work Notice.

**26. DEFAULT:** The Contractor shall be in default under the Contract if the Contractor (a) fails to fully, timely and faithfully perform any of its material obligations under the Contract, (b) fails to provide adequate assurance of performance under Paragraph 24, (c) becomes insolvent or seeks relief under the bankruptcy laws of the United States or (d) makes a material misrepresentation in Contractor's Offer, or in any report or deliverable required to be submitted by the Contractor to the City.

**27. TERMINATION FOR CAUSE:** In the event of a default by the Contractor, the City shall have the right to terminate the Contract for cause, by written notice effective ten (10) calendar days, unless otherwise specified, after the date of such notice, unless the Contractor, within such ten (10) day period, cures such default, or provides evidence sufficient to prove to the City's reasonable satisfaction that such default does not, in fact, exist. In addition to any other remedy available under law or in equity, the City shall be entitled to recover all actual damages, costs, losses and expenses, incurred by the City as a result of the Contractor's default, including, without limitation, cost of cover, reasonable attorneys' fees, court costs, and prejudgment and post-judgment interest at the maximum lawful rate. Additionally, in the event of a default by the Contractor, the City may remove the Contractor from the City's vendor list for three (3) years

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and any Offer submitted by the Contractor may be disqualified for up to three (3) years. All rights and remedies under the Contract are cumulative and are not exclusive of any other right or remedy provided by law.

**28. TERMINATION WITHOUT CAUSE:** The City shall have the right to terminate the Contract, in whole or in part, without cause any time upon thirty (30) calendar days' prior written notice. Upon receipt of a notice of termination, the Contractor shall promptly cease all further work pursuant to the Contract, with such exceptions, if any, specified in the notice of termination. The City shall pay the Contractor, to the extent of funds Appropriated or otherwise legally available for such purposes, for all goods delivered and services performed and obligations incurred prior to the date of termination in accordance with the terms hereof.

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

**30. DELAYS:**

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

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

**31. INDEMNITY:**

A. Definitions:

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

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the sale of defective or non-conforming deliverables, negligence, willful misconduct or a breach of any legally imposed strict liability standard.

**B. THE CONTRACTOR SHALL DEFEND (AT THE OPTION OF THE CITY), INDEMNIFY, AND HOLD THE CITY, ITS SUCCESSORS, ASSIGNS, OFFICERS, EMPLOYEES AND ELECTED OFFICIALS HARMLESS FROM AND AGAINST ALL INDEMNIFIED CLAIMS DIRECTLY ARISING OUT OF, INCIDENT TO, CONCERNING OR RESULTING FROM THE FAULT OF THE CONTRACTOR, OR THE CONTRACTOR'S AGENTS, EMPLOYEES OR SUBCONTRACTORS, IN THE PERFORMANCE OF THE CONTRACTOR'S OBLIGATIONS UNDER THE CONTRACT. NOTHING HEREIN SHALL BE DEEMED TO LIMIT THE RIGHTS OF THE CITY OR THE CONTRACTOR (INCLUDING, BUT NOT LIMITED TO, THE RIGHT TO SEEK CONTRIBUTION) AGAINST ANY THIRD PARTY WHO MAY BE LIABLE FOR AN INDEMNIFIED CLAIM.**

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

**A. General Requirements:**

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



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City of Denton  
Materials Management Department  
901B Texas Street  
Denton, Texas 76209

vii. The “other” insurance clause shall not apply to the City where the City is an additional insured shown on any policy. It is intended that policies required in the Contract, covering both the City and the Contractor, shall be considered primary coverage as applicable.

viii. If insurance policies are not written for amounts agreed to with the City, the Contractor shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.

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

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

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

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

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

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

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

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

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

**35. RIGHTS TO BID, PROPOSAL AND CONTRACTUAL MATERIAL:** All material submitted by the Contractor to the City shall become property of the City upon receipt. Any portions of such material claimed by the Contractor to be proprietary must be clearly marked as such. Determination of the public nature of the material is subject to the Texas Public Information Act, Chapter 552, and Texas Government Code.

**36. NO WARRANTY BY CITY AGAINST INFRINGEMENTS:** The Contractor represents and warrants to the City that: (i) the Contractor shall provide the City good and indefeasible title to the deliverables and (ii) the deliverables supplied by the Contractor in accordance with the specifications in the Contract will not infringe, directly or contributorily, any patent, trademark, copyright, trade secret, or any other intellectual property right of any kind of any third party; that no claims have been made by any person or entity with respect to the ownership or operation of the deliverables and the Contractor does not know of any valid basis for any such claims. The Contractor shall, at its sole expense, defend, indemnify, and hold the City harmless from and against all liability, damages, and costs (including court costs and reasonable fees of attorneys and other professionals) arising out of or resulting from: (i) any claim that the City's exercise anywhere in the world of the rights associated with the City's ownership, and if applicable, license rights, and its use of the deliverables infringes the intellectual property rights of any third party; or (ii) the Contractor's breach of any of Contractor's representations or warranties stated in this Contract. In the event of any such claim, the City shall have the right to monitor such claim or at its option engage its own separate counsel to act as co-counsel on the City's behalf. Further, Contractor agrees that the City's specifications regarding the deliverables shall in no way diminish Contractor's warranties or obligations under this paragraph and the City makes no warranty that the production, development, or delivery of such deliverables will not impact such warranties of Contractor.

**37. CONFIDENTIALITY:** In order to provide the deliverables to the City, Contractor may require access to certain of the City's and/or its licensors' confidential information (including inventions, employee information, trade secrets, confidential know-how, confidential business information, and other information which the City or its licensors consider confidential) (collectively, "Confidential Information"). Contractor acknowledges and agrees that the Confidential Information is the valuable property of the City and/or its licensors and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information will substantially injure the City and/or its licensors. The Contractor (including its employees, subcontractors, agents, or representatives) agrees that it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate, or

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otherwise use the Confidential Information without the prior written consent of the City or in a manner not expressly permitted under this Agreement, unless the Confidential Information is required to be disclosed by law or an order of any court or other governmental authority with proper jurisdiction, provided the Contractor promptly notifies the City before disclosing such information so as to permit the City reasonable time to seek an appropriate protective order. The Contractor agrees to use protective measures no less stringent than the Contractor uses within its own business to protect its own most valuable information, which protective measures shall under all circumstances be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.

**38. OWNERSHIP AND USE OF DELIVERABLES:** The City shall own all rights, titles, and interests throughout the world in and to the deliverables.

A. Patents. As to any patentable subject matter contained in the deliverables, the Contractor agrees to disclose such patentable subject matter to the City. Further, if requested by the City, the Contractor agrees to assign and, if necessary, cause each of its employees to assign the entire right, title, and interest to specific inventions under such patentable subject matter to the City and to execute, acknowledge, and deliver and, if necessary, cause each of its employees to execute, acknowledge, and deliver an assignment of letters patent, in a form to be reasonably approved by the City, to the City upon request by the City.

B. Copyrights. As to any deliverables containing copyrightable subject matter, the Contractor agrees that upon their creation, such deliverables shall be considered as work made-for-hire by the Contractor for the City and the City shall own all copyrights in and to such deliverables, provided however, that nothing in this Paragraph 38 shall negate the City's sole or joint ownership of any such deliverables arising by virtue of the City's sole or joint authorship of such deliverables. Should by operation of law, such deliverables not be considered works made-for-hire, the Contractor hereby assigns to the City (and agrees to cause each of its employees providing services to the City hereunder to execute, acknowledge, and deliver an assignment to the City of) all worldwide right, title, and interest in and to such deliverables. With respect to such work made-for-hire, the Contractor agrees to execute, acknowledge, and deliver and cause each of its employees providing services to the City hereunder to execute, acknowledge, and deliver a work-made-for-hire agreement, in a form to be reasonably approved by the City, to the City upon delivery of such deliverables to the City or at such other time as the City may request.

C. Additional Assignments. The Contractor further agrees to, and if applicable, cause each of its employees to, execute, acknowledge, and deliver all applications, specifications, oaths, assignments, and all other instruments which the City might reasonably deem necessary in order to apply for and obtain copyright protection, mask work registration, trademark registration and/or protection, letters patent, or any similar rights in any and all countries and in order to assign and convey to the City, its successors, assigns and nominees, the sole and exclusive right, title, and interest in and to the deliverables. The Contractor's obligations to execute, acknowledge, and deliver (or cause to be executed, acknowledged, and delivered) instruments or papers such as those described in this Paragraph 38 a., b., and c. shall continue after the termination of this Contract with respect to such deliverables. In the event the City should not seek to obtain copyright protection, mask work registration or patent protection for any of the deliverables, but should desire to keep the same secret, the Contractor agrees to treat the same as Confidential Information under the terms of Paragraph 37 above.

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39. **PUBLICATIONS:** All published material and written reports submitted under the Contract must be originally developed material unless otherwise specifically provided in the Contract. When material not originally developed is included in a report in any form, the source shall be identified.

40. **ADVERTISING:** The Contractor shall not advertise or publish, without the City's prior consent, the fact that the City has entered into the Contract, except to the extent required by law.

41. **NO CONTINGENT FEES:** The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the Contract upon any agreement or understanding for commission, percentage, brokerage, or contingent fee, excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the City shall have the right, in addition to any other remedy available, to cancel the Contract without liability and to deduct from any amounts owed to the Contractor, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

42. **GRATUITIES:** The City may, by written notice to the Contractor, cancel the Contract without liability if it is determined by the City that gratuities were offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the City of Denton with a view toward securing the Contract or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performing of such contract. In the event the Contract is canceled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the Contractor in providing such gratuities.

43. **PROHIBITION AGAINST PERSONAL INTEREST IN CONTRACTS:** No officer, employee, independent consultant, or elected official of the City who is involved in the development, evaluation, or decision-making process of the performance of any solicitation shall have a financial interest, direct or indirect, in the Contract resulting from that solicitation. Any willful violation of this section shall constitute impropriety in office, and any officer or employee guilty thereof shall be subject to disciplinary action up to and including dismissal. Any violation of this provision, with the knowledge, expressed or implied, of the Contractor shall render the Contract voidable by the City. The Contractor shall complete and submit the City's Conflict of Interest Questionnaire (**Attachment G**).

44. **INDEPENDENT CONTRACTOR:** The Contract shall not be construed as creating an employer/employee relationship, a partnership, or a joint venture. The Contractor's services shall be those of an independent contractor. The Contractor agrees and understands that the Contract does not grant any rights or privileges established for employees of the City of Denton, Texas for the purposes of income tax, withholding, social security taxes, vacation or sick leave benefits, worker's compensation, or any other City employee benefit. The City shall not have supervision and control of the Contractor or any employee of the Contractor, and it is expressly understood that Contractor shall perform the services hereunder according to the attached specifications at the general direction of the City Manager of the City of Denton, Texas, or his designee under this agreement.

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**45. ASSIGNMENT-DELEGATION:** The Contract shall be binding upon and ensure to the benefit of the City and the Contractor and their respective successors and assigns, provided however, that no right or interest in the Contract shall be assigned and no obligation shall be delegated by the Contractor without the prior written consent of the City. Any attempted assignment or delegation by the Contractor shall be void unless made in conformity with this paragraph. The Contract is not intended to confer rights or benefits on any person, firm or entity not a party hereto; it being the intention of the parties that there are no third party beneficiaries to the Contract.

**46. WAIVER:** No claim or right arising out of a breach of the Contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. No waiver by either the Contractor or the City of any one or more events of default by the other party shall operate as, or be construed to be, a permanent waiver of any rights or obligations under the Contract, or an express or implied acceptance of any other existing or future default or defaults, whether of a similar or different character.

**47. MODIFICATIONS:** The Contract can be modified or amended only by a writing signed by both parties. No pre-printed or similar terms on any the Contractor invoice, order or other document shall have any force or effect to change the terms, covenants, and conditions of the Contract.

**48. INTERPRETATION:** The Contract is intended by the parties as a final, complete and exclusive statement of the terms of their agreement. No course of prior dealing between the parties or course of performance or usage of the trade shall be relevant to supplement or explain any term used in the Contract. Although the Contract may have been substantially drafted by one party, it is the intent of the parties that all provisions be construed in a manner to be fair to both parties, reading no provisions more strictly against one party or the other. Whenever a term defined by the Uniform Commercial Code, as enacted by the State of Texas, is used in the Contract, the UCC definition shall control, unless otherwise defined in the Contract.

**49. DISPUTE RESOLUTION:**

A. If a dispute arises out of or relates to the Contract, or the breach thereof, the parties agree to negotiate prior to prosecuting a suit for damages. However, this section does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. Either party may make a written request for a meeting between representatives of each party within fourteen (14) calendar days after receipt of the request or such later period as agreed by the parties. Each party shall include, at a minimum, one (1) senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within thirty (30) calendar days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will proceed directly to mediation as described below. Negotiation may be waived by a written agreement signed by both parties, in which event the parties may proceed directly to mediation as described below.

B. If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within thirty (30) calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option; the City

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and the Contractor agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in the Contract prevents the parties from relying on the skills of a person who is trained in the subject matter of the dispute or a contract interpretation expert. If the parties fail to agree on a mediator within thirty (30) calendar days of initiation of the mediation process, the mediator shall be selected by the Denton County Alternative Dispute Resolution Program (DCAP). The parties agree to participate in mediation in good faith for up to thirty (30) calendar days from the date of the first mediation session. The City and the Contractor will share the mediator's fees equally and the parties will bear their own costs of participation such as fees for any consultants or attorneys they may utilize to represent them or otherwise assist them in the mediation.

**50. JURISDICTION AND VENUE:** The Contract is made under and shall be governed by the laws of the State of Texas, including, when applicable, the Uniform Commercial Code as adopted in Texas, V.T.C.A., Bus. & Comm. Code, Chapter 1, excluding any rule or principle that would refer to and apply the substantive law of another state or jurisdiction. All issues arising from this Contract shall be resolved in the courts of Denton County, Texas and the parties agree to submit to the exclusive personal jurisdiction of such courts. The foregoing, however, shall not be construed or interpreted to limit or restrict the right or ability of the City to seek and secure injunctive relief from any competent authority as contemplated herein.

**51. INVALIDITY:** The invalidity, illegality, or unenforceability of any provision of the Contract shall in no way affect the validity or enforceability of any other portion or provision of the Contract. Any void provision shall be deemed severed from the Contract and the balance of the Contract shall be construed and enforced as if the Contract did not contain the particular portion or provision held to be void. The parties further agree to reform the Contract to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this section shall not prevent this entire Contract from being void should a provision which is the essence of the Contract be determined to be void.

**52. HOLIDAYS:** The following holidays are observed by the City:

New Year's Day (observed)
MLK Day
Memorial Day
4th of July
Labor Day
Thanksgiving Day
Day After Thanksgiving
Christmas Eve (observed)
Christmas Day (observed)
New Year's Day (observed)

If a Legal Holiday falls on Saturday, it will be observed on the preceding Friday. If a Legal Holiday falls on Sunday, it will be observed on the following Monday. Normal hours of operation shall be between 8:00 am and 4:00 pm, Monday through Friday, excluding City of Denton Holidays. Any scheduled deliveries or work performance not within the normal hours of operation **must be approved** by the City Manager of Denton, Texas or his authorized designee.

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**53. SURVIVABILITY OF OBLIGATIONS:** All provisions of the Contract that impose continuing obligations on the parties, including but not limited to the warranty, indemnity, and confidentiality obligations of the parties, shall survive the expiration or termination of the Contract.

**54. NON-SUSPENSION OR DEBARMENT CERTIFICATION:**

The City of Denton is prohibited from contracting with or making prime or sub-awards to parties that are suspended or debarred or whose principals are suspended or debarred from Federal, State, or City of Denton Contracts. By accepting a Contract with the City, the Vendor certifies that its firm and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Denton.

**55. EQUAL OPPORTUNITY**

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

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

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

The following federally funded requirements are applicable, in addition to the specific federally funded requirements detailed in **Attachment B**.

A. Definitions. As used in this paragraph –

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

ii. "Cost of components" means -

(1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or  
(2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the end product.

iii. "Domestic end product" means-

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

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

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- iv. "End product" means those articles, materials, and supplies to be acquired under the contract for public use.
  - v. "Foreign end product" means an end product other than a domestic end product.
  - vi. "United States" means the 50 States, the District of Columbia, and outlying areas.
- B. The Buy American Act (41 U.S.C. 10a - 10d) provides a preference for domestic end products for supplies acquired for use in the United States.
- C. The City does not maintain a list of foreign articles that will be treated as domestic for this Contract; but will consider for approval foreign articles as domestic for this product if the articles are on a list approved by another Governmental Agency. The Offeror shall submit documentation with their Offer demonstrating that the article is on an approved Governmental list.
- D. The Contractor shall deliver only domestic end products except to the extent that it specified delivery of foreign end products in the provision of the Solicitation entitled "Buy American Act Certificate".

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

**58. LICENSE FEES OR TAXES:** Provided the solicitation requires an awarded contractor or supplier to be licensed by the State of Texas, any and all fees and taxes are the responsibility of the respondent.

**59. PREVAILING WAGE RATES:** The awarded contractor shall comply with prevailing wage rates as defined by the United States Department of Labor Davis-Bacon Wage Determination at <http://www.dol.gov/whd/contracts/dbra.htm> and at the Wage Determinations website [www.wdol.gov](http://www.wdol.gov) for Denton County, Texas (WD-2509). *(Not Applicable)*

**60. COMPLIANCE WITH ALL STATE, FEDERAL, AND LOCAL LAWS:** The contractor or supplier shall comply with all State, Federal, and Local laws and requirements. The Respondent must comply with all applicable laws at all times, including, without limitation, the following: (i) §36.02 of the Texas Penal Code, which prohibits bribery; (ii) §36.09 of the Texas Penal Code, which prohibits the offering or conferring of benefits to public servants. The Respondent shall give all notices and comply with all laws and regulations applicable to furnishing and performance of the Contract.

**61. FEDERAL, STATE, AND LOCAL REQUIREMENTS:** Respondent shall demonstrate on-site compliance with the Federal Tax Reform Act of 1986, Section 1706, amending Section 530 of the Revenue Act of 1978, dealing with issuance of Form W-2's to common law employees. Respondent is responsible for both federal and State unemployment insurance coverage and standard Workers' Compensation insurance coverage. Respondent shall ensure compliance with all federal and State tax laws and withholding requirements. The City of Denton shall not be liable to Respondent or its employees for any Unemployment or Workers' Compensation coverage, or federal or State withholding requirements. Contractor shall indemnify the City of Denton and shall pay all costs, penalties, or losses resulting from Respondent's omission or breach of this Section.



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**62. DRUG FREE WORKPLACE:** The contractor shall comply with the applicable provisions of the Drug-Free Work Place Act of 1988 (Public Law 100-690, Title V, Subtitle D; 41 U.S.C. 701 ET SEQ.) and maintain a drug-free work environment; and the final rule, government-wide requirements for drug-free work place (grants), issued by the Office of Management and Budget and the Department of Defense (32 CFR Part 280, Subpart F) to implement the provisions of the Drug-Free Work Place Act of 1988 is incorporated by reference and the contractor shall comply with the relevant provisions thereof, including any amendments to the final rule that may hereafter be issued.

**63. RESPONDENT LIABILITY FOR DAMAGE TO GOVERNMENT PROPERTY:** The Respondent shall be liable for all damages to government-owned, leased, or occupied property and equipment caused by the Respondent and its employees, agents, subcontractors, and suppliers, including any delivery or cartage company, in connection with any performance pursuant to the Contract. The Respondent shall notify the City of Denton Procurement Manager in writing of any such damage within one (1) calendar day.

**64. FORCE MAJEURE:** The City of Denton, any Customer, and the Respondent shall not be responsible for performance under the Contract should it be prevented from performance by an act of war, order of legal authority, act of God, or other unavoidable cause not attributable to the fault or negligence of the City of Denton. In the event of an occurrence under this Section, the Respondent will be excused from any further performance or observance of the requirements so affected for as long as such circumstances prevail and the Respondent continues to use commercially reasonable efforts to recommence performance or observance whenever and to whatever extent possible without delay. The Respondent shall immediately notify the City of Denton Procurement Manager by telephone (to be confirmed in writing within five (5) calendar days of the inception of such occurrence) and describe at a reasonable level of detail the circumstances causing the non-performance or delay in performance.

**65. NON-WAIVER OF RIGHTS:** Failure of a Party to require performance by another Party under the Contract will not affect the right of such Party to require performance in the future. No delay, failure, or waiver of either Party's exercise or partial exercise of any right or remedy under the Contract shall operate to limit, impair, preclude, cancel, waive or otherwise affect such right or remedy. A waiver by a Party of any breach of any term of the Contract will not be construed as a waiver of any continuing or succeeding breach.

**66. NO WAIVER OF SOVEREIGN IMMUNITY:** The Parties expressly agree that no provision of the Contract is in any way intended to constitute a waiver by the City of Denton of any immunities from suit or from liability that the City of Denton may have by operation of law.

**67. RECORDS RETENTION:** The Respondent shall retain all financial records, supporting documents, statistical records, and any other records or books relating to the performances called for in the Contract. The Respondent shall retain all such records for a period of four (4) years after the expiration of the Contract, or until the CPA or State Auditor's Office is satisfied that all audit and litigation matters are resolved, whichever period is longer. The Respondent shall grant access to all books, records and documents pertinent to the Contract to the CPA, the State Auditor of Texas, and any federal governmental entity that has authority to review records due to federal funds being spent under the Contract.

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**ATTACHMENT A  
INSURANCE REQUIREMENTS AND  
WORKERS' COMPENSATION REQUIREMENTS**

*Respondent's attention is directed to the insurance requirements below. It is highly recommended that respondents confer with their respective insurance carriers or brokers to determine in advance of Proposal/Bid submission the availability of insurance certificates and endorsements as prescribed and provided herein. If an apparent low respondent fails to comply strictly with the insurance requirements, that respondent may be disqualified from award of the contract. Upon contract award, all insurance requirements shall become contractual obligations, which the successful contractor shall have a duty to maintain throughout the course of this contract.*

**STANDARD PROVISIONS:**

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

***As soon as practicable after notification of contract award, Contractor shall file with the Purchasing Department satisfactory certificates of insurance including any applicable addendum or endorsements, containing the contract number and title of the project. Contractor may, upon written request to the Purchasing Department, ask for clarification of any insurance requirements at any time; however, Contractors are strongly advised to make such requests prior to proposal/bid opening, since the insurance requirements may not be modified or waived after proposal/bid opening unless a written exception has been submitted with the proposal/bid. Contractor shall not commence any work or deliver any material until he or she receives notification that the contract has been accepted, approved, and signed by the City of Denton.***

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

- Each policy shall be issued by a company authorized to do business in the State of Texas with an A.M. Best Company rating of at least **A- VII or better**.
- Any deductibles or self-insured retentions shall be declared in the proposal. If requested by the City, the insurer shall reduce or eliminate such deductibles or self-insured retentions with respect to the City, its officials, agents, employees and volunteers; or, the contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.
- Liability policies shall be endorsed to provide the following:
  - Name as Additional Insured the City of Denton, its Officials, Agents, Employees and volunteers.

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- That such insurance is primary to any other insurance available to the Additional Insured with respect to claims covered under the policy and that this insurance applies separately to each insured against whom claim is made or suit is brought. The inclusion of more than one insured shall not operate to increase the insurer's limit of liability.
- ***Cancellation: City requires 30 day written notice should any of the policies described on the certificate be cancelled or materially changed before the expiration date.***
- Should any of the required insurance be provided under a claims made form, Contractor shall maintain such coverage continuously throughout the term of this contract and, without lapse, for a period of three years beyond the contract expiration, such that occurrences arising during the contract term which give rise to claims made after expiration of the contract shall be covered.
- Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit providing for claims investigation or legal defense costs to be included in the general annual aggregate limit, the Contractor shall either double the occurrence limits or obtain Owners and Contractors Protective Liability Insurance.
- Should any required insurance lapse during the contract term, requests for payments originating after such lapse shall not be processed until the City receives satisfactory evidence of reinstated coverage as required by this contract, effective as of the lapse date. If insurance is not reinstated, City may, at its sole option, terminate this agreement effective on the date of the lapse.

**SPECIFIC ADDITIONAL INSURANCE REQUIREMENTS:**

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

A. **General Liability Insurance:**

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

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

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

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

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

**[X] Automobile Liability Insurance:**

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

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

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

**[X] Workers' Compensation Insurance**

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

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

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

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**Fire Damage Legal Liability Insurance**

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

**Professional Liability Insurance**

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

**Builders' Risk Insurance**

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

**Commercial Crime**

Provides coverage for the theft or disappearance of cash or checks, robbery inside/outside the premises, burglary of the premises, and employee fidelity. The employee fidelity portion of this coverage should be written on a "blanket" basis to cover all employees, including new hires. This type insurance should be required if the contractor has access to City funds. Limits of not less than \$100,000 each occurrence are required.

**Additional Insurance**

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

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**ATTACHMENT A**

**[X] Workers' Compensation Coverage for Building or Construction Projects for Governmental Entities**

**A. Definitions:**

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

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

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

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

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

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



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**ATTACHMENT B  
NOT APPLICABLE**

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**ATTACHMENT C  
BUSINESS OVERVIEW QUESTIONNAIRE AND FORMS**

1. Contractor Name: Oriental Building Services
2. Address (Principal Place of Business): 2526 Manana Dr., # 208, Dallas, TX 75220
3. Does your company have an established physical presence in the State of Texas, or the City of Denton? Yes
4. Tax Payer ID#: 20-5158539
5. Email Address of Primary contact: nshum@obsusa.net
6. Website Address: www.obsusa.net
7. Telephone: 469-522-0001
8. Fax: 469-522-0003
9. Other Locations: None
10. Organization Class: Corporation  
Partnership  
Individual  
Corporation  
Association
11. Date Established: June, 1992
12. Former Business Name: N/A
13. Date of Dissolution: N/A
14. Subsidiary of: N/A
15. Historically Underutilized Business: Yes or No No
16. Principals and Officers: Steve Gye

Please detail responsibilities with the name of each principal or officer.

17. Key Personnel and Responsibilities: Steve Gye / President, Nixon Shum / Vice President, Moon kim / Office Manager  
Sang J Gye / Equipment & Supplies Manager, Andrew Kim / General Manager

Please detail responsibilities with the name of each key personnel. Please also see attachment staff resume

18. Number of Personnel by Discipline: 138

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Discipline                      Number of Staff                      # Registered

19. Services Provided by Contractor: Please see attachment
- a. Please provide a detailed listing of all services that your company provides. Qualifications
  - b. Please detail your prior experience working on similar projects with Texas governmental entities. Oriental Building has over 20 yrs of experience servicing Texas government entities. 90% of our contract is with Texas governmental entities. The many years of experience allow us the understanding the requirement each entities set for.
  - c. Please detail your similar services provided over the past five (5) years. Oriental Building Services has the management team in place and ready to mobilize if awarded the contract in hold or in part.  
Please see attachment F Reference List
  - d. Detail documented proof of at least three (3) projects in the past five (5) years.  
Please see attachment F Reference List
  - e. Please detail these services, including, the nature of the services provided, the scope of the activities, the organizations for which the services were provided, the dates of the projects, and the documented benefit to the governmental entity.  
Please see attachment additional reference and contract information next to "Attachment F Reference"
20. Has your company filed or been named in any litigation involving your company and the Owner on a contract within the last five years under your current company name or any other company name? If so provide details of the issues and resolution if available. Include lawsuits where Owner was involved.    None
21. Please provide at least three (3) references (*preferably municipalities*) and contract amounts. Include project description, contact names, position, and organization name and telephone number for each reference listed. See attachment F.    Please See Attachment F reference List
22. Have you ever defaulted on or failed to complete a contract under your current company name or any other company name? If so, where and why? Give name and telephone number of Owner.    None
23. Have you ever had a contract terminated by the Owner? If so, where and why? Give name and telephone number (s) of Owner (s).    None
24. Has your company implemented an Employee Health and Safety Program compliant with 29 CFR 1910 "General Industry Standards" and/or 29 CFR 1926 "General Construction Standards" as they apply to your Company's customary activities?    Yes  
[http://www.osha.gov/pls/oshaweb/owasrch.search\\_form?p\\_doc\\_type=STANDARDS&p\\_toc\\_level=1&p\\_keyvalue=1926](http://www.osha.gov/pls/oshaweb/owasrch.search_form?p_doc_type=STANDARDS&p_toc_level=1&p_keyvalue=1926)
25. Please indicate the total number of janitorial contracts your Firm has undertaken within the last five years?  
Please see attached additional reference and contract information next to "Attachment F Reference"
26. For each contract, please list the total annual dollar value of the contract, number of employees assigned for the contract, and the total square footage of the areas that were cleaned.  
Please see attached additional reference and contract information next to "Attachment F Reference"
27. For each contract, please list how many of your crews it took to fulfill the contract?  
Please see attached additional reference and contract information next to "Attachment F Reference"

**CITY OF DENTON  
RFP FOR JANITORIAL SERVICES**

28. Does your Firm have the capability to fully staff a contract of this size? Please explain.  
Yes, we do have the capability to fully staff this size of contract and the experience to operate

29. How many employees are assigned to perform janitorial duties for all clients? Please include the number of cleaning personnel and the number of supervisors.

30. What hours did your staff work for each of the listed contracts?  
Is different from contract to contract, it can from M-F 8a-5p or Su-Sa 24 hr a day.

31. Resident/Non-Resident Bidder Determination:

Texas Government Code Section 2252.002: Non-resident bidders. Texas law prohibits cities and other governmental units from awarding contracts to a non-resident firm unless the amount of such a bid is lower than the lowest bid by a Texas resident by the amount the Texas resident would be required to underbid in the non-resident bidders' state. In order to make this determination, please provide the name, address and phone number of:

- a. Proposing firms principle place of business:  
Oriental Building Services, Inc.  
2526 Manana Dr, # 208, Dallas, TX 75220
- b. Company's majority owner principle place of business:  
Same as about
- c. Ultimate Parent Company's principle place of business:  
Same as about

**CITY OF DENTON  
RFP FOR JANITORIAL SERVICES**

**ATTACHMENT E  
SAFETY RECORD QUESTIONNAIRE**

The City of Denton desires to avail itself of the benefits of Section 252.0435 of the Local Government Code, and consider the safety records of potential contractors prior to awarding bids on City contracts. Pursuant to Section 252.0435 of the Local Government Code, the City of Denton has adopted the following written definition and criteria for accurately determining the safety record of a bidder prior to awarding bids on City contracts.

The definition and criteria for determining the safety record of a bidder for this consideration shall be:

**The City of Denton shall consider the safety record of the bidders in determining the responsibility thereof. The City may consider any incidence involving worker safety or safety of the citizens of the City of Denton, be it related or caused by environmental, mechanical, operational, supervision or any other cause or factor. Specifically, the City may consider, among other things:**

- a. Complaints to, or final orders entered by, the Occupational Safety and Health Review Commission (OSHRC), against the bidder for violations of OSHA regulations within the past three (3) years.     None
  
- b. Citations (as defined below) from an Environmental Protection Agency (as defined below) for violations within the past five (5) years. Environmental Protection Agencies include, but are not necessarily limited to, the U.S. Army Corps of Engineers (USACOE), the U.S. Fish and Wildlife Service (USFWS), the Environmental Protection Agency (EPA), the Texas Commission on Environmental Quality (TCEQ), the Texas Natural Resource Conservation Commission (TNRCC) (predecessor to the TCEQ), the Texas Department of Health (TDH), the Texas Parks and Wildlife Department (TPWD), the Structural Pest Control Board (SPCB), agencies of local governments responsible for enforcing environmental protection or worker safety related laws or regulations, and similar regulatory agencies of other states of the United States. Citations include notices of violation, notices of enforcement, suspension/revocations of state or federal licenses or registrations, fines assessed, pending criminal complaints, indictments, or convictions, administrative orders, draft orders, final orders, and judicial final judgments.     None
  
- c. Convictions of a criminal offense within the past ten (10) years, which resulted in bodily harm or death.     None
  
- d. Any other safety related matter deemed by the City Council to be material in determining the responsibility of the bidder and his or her ability to perform the services or goods required by the bid documents in a safe environment, both for the workers and other employees of bidder and the citizens of the City of Denton.     None

In order to obtain proper information from bidders so that City of Denton may consider the safety records of potential contractors prior to awarding bids on City contracts, City of Denton requires that bidders answer the following three (3) questions and submit them with their bids:

**CITY OF DENTON  
RFP FOR JANITORIAL SERVICES**

**QUESTION ONE**

Has the bidder, or the firm, corporation, partnership, or institution represented by the bidder, or anyone acting for such firm, corporation, partnership or institution, received citations for violations of OSHA within the past three (3) years?

YES \_\_\_\_\_ NO XXXXX

If the bidder has indicated YES for question number one above, the bidder must provide to City of Denton, with its bid submission, the following information with respect to each such citation:

Date of offense, location of establishment inspected, category of offense, final disposition of offense, if any, and penalty assessed.

**QUESTION TWO**

**Has the bidder, or the firm, corporation, partnership, or institution represented by the bidder, or anyone acting for such firm, corporation, partnership or institution, received citations for violations of environmental protection laws or regulations, of any kind or type, within the past five years? Citations include notice of violation, notice of enforcement, suspension/revocations of state or federal licenses, or registrations, fines assessed, pending criminal complaints, indictments, or convictions, administrative orders, draft orders, final orders, and judicial final judgments.**

YES \_\_\_\_\_ NO XXXXX

If the bidder has indicated YES for question number two above, the bidder must provide to City of Denton, with its bid submission, the following information with respect to each such conviction:

Date of offense or occurrence, location where offense occurred, type of offense, final disposition of offense, if any, and penalty assessed.

**QUESTION THREE**

Has the bidder, or the firm, corporation, partnership, or institution represented by bidder, or anyone acting for such firm, corporation, partnership, or institution, ever been convicted, within the past ten (10) years, of a criminal offense which resulted in serious bodily injury or death?

YES \_\_\_\_\_ NO XXXXX

If the bidder has indicated YES for question number three above, the bidder must provide to City of Denton, with its bid submission, the following information with respect to each such conviction:

Date of offense, location where offense occurred, type of offense, final disposition of offense, if any, and penalty assessed.



**CITY OF DENTON  
RFP FOR JANITORIAL SERVICES**

**ATTACHMENT F  
REFERENCES**

Please list three (3) Government references, **other than the City of Denton**, who can verify the quality of service your company provides. The City prefers customers of similar size and scope of work to this proposal. If there are no governmental references available, please list three (3) references.

**REFERENCE ONE**

GOVERNMENT/COMPANY NAME: City of Arlington  
LOCATION: City of Arlington  
CONTACT PERSON AND TITLE: Janice K Hughes, Sr. Buyer Purchasing  
TELEPHONE NUMBER: 817-459-6304 / janice.hughes@arlingtontx.gov  
SCOPE OF WORK: Janitorial Services for 31 City own Building (City Hall, Police HQ, Sub Station, and Jail, Services Ctr, Library)  
CONTRACT PERIOD: April 1, 2011 - March 31, 2016

**REFERENCE TWO**

GOVERNMENT/COMPANY NAME: City of Plano  
LOCATION: City of Plano  
CONTACT PERSON AND TITLE: Joseph Weigel / Facilities Services Manager  
TELEPHONE NUMBER: 972-941-5517 / josephw@plano.gov  
SCOPE OF WORK: Janitorial Services for 37 City own Facilities (City Hall, Police HQ & Jail, Recreation Ctr, Services Ctr, Library etc)  
CONTRACT PERIOD: May 2013 - April 2013

**REFERENCE THREE**

GOVERNMENT/COMPANY NAME: DFW Airport  
LOCATION: DFW Airport  
CONTACT PERSON AND TITLE: Kofi Armardi / Facilities Coordinator  
TELEPHONE NUMBER: 972-973-6211 / karmardi@dfwairport.com  
SCOPE OF WORK: Janitorial Services for 28 Airport own Facilities ( Admin. Building, Fire Station, Police station & Jail, Operation )  
CONTRACT PERIOD: Oct. 2010 - Sept. 2015





**References List**

**1 DFW Airport**

2900 E. 28th St., DFW Airport, TX 75216  
25 Non Public Building

Annual Amount **404,432** Staffing: **22**  
 Approx. Sq. Ft. **492,000**  
 Servicing Since **Oct 1, 2010 – Present**  
 Contact Person Mr. Kofi Armardi / Custodial Coordinator  
 E-Mail karmardi@dfwairport.com  
 Phone No. P (972) 973-6211 F (972) 574-8677

**2 City of Arlington**

801 W, Main, Arlington, Texas  
32 City of Arlington Facilities

Annual Amount **475,620** Staffing: **31**  
 Approx. Sq. Ft. **480,000**  
 Servicing Since **April 1, 2011 – Present**  
 Contact Person Janice K Hughes  
 E-Mail janice.hughes@arlingtontx.gov  
 Phone No. P (817) 459-6304

**3 George Allen Court House**

600 Commerce, Dallas, TX 75202  
Clinic, Office, Courts

Annual Amount **355,464** Staffing: **27**  
 Approx. Sq. Ft. **600,000**  
 Servicing Since **May 1, 2010 – Present "2 Term of 3 yrs Contract"**  
 Contact Person Ms. Sandra Gomez / Contract Manager  
 E-Mail sgamez@dallascounty.org  
 Phone No. (214) 653-6731

**4 TEXAS WORKFORCE COMMISSION**

301 West 13th St., Fort Worth, TX 76102  
Office, Parking Garage

Annual Amount **49,536** Staffing: **4**  
 Approx. Sq. Ft. **68,000**  
 Servicing Since **Sept 1, 2004 – 2009, Oct 1, 2011 – Present**  
 Contact Person Ms. Candace Kothmann / Building Manager  
 E-Mail candace.kothmann@twc.state.tx.us  
 Phone No. P (817) 420-1804 F (817) 420-1611

**5 City of Grand Prairie**

318 W. Main St. Grand Prairie, TX 75050  
Various City Owned 28 Bldg.

Annual Amount **357,864** Staffing: **22**  
 Approx. Sq. Ft. **308,000**  
 Servicing Since **Jan. 10, 2005 – Present "4 Term of 3ys Contract"**  
 Contact Person Mr. Kurt R. Benson Facility Management  
 E-Mail Kbenison@GPTX.org  
 Phone No. P (972) 237-8072 F (972)-237-8146



**References List**

- |   |
|---|
| <p><b>6 Fort Worth AFR Center</b><br/>         11280 white Settlement road<br/>         Fort Worth TX 76108</p> <p>Annual Amount      <b>43,680</b>      Staffing:    <b>5</b><br/>         Approx. Sq. Ft.      <b>101,638</b><br/>         Servicing Since      <b>October 1, 2011 – Present "4 yrs contract"</b><br/>         Contact Person      Mr.Bobby French / Coordinator<br/>         E-Mail                  bobby.j.french.ctr@mail.mil<br/>         Phone No.              P (501) 442-1811 F (972) 343-4023</p> |
| <p><b>7 Texas Woman's University</b><br/>         TWU Department of University Housing</p> <p>Annual Amount      <b>42,000</b>      Staffing:    <b>18</b><br/>         Approx. Sq. Ft.      <b>210,000</b><br/>         Servicing Since      <b>Jan 1, 2004 – Present " 3 Term of 4 yrs Contract"</b><br/>         Contact Person      Tonya Gilbeaux<br/>         E-Mail                  tgilbeaux@twu.edu<br/>         Phone No.              P (940) 898-3676 F (972) 973-5601</p>                                       |
| <p><b>8 City of Plano</b><br/>         4850 E. 14th, Plano, TX 75074<br/>         37 City own Facilities</p> <p>Annual Amount      <b>1,105,212</b>      Staffing:    <b>46</b><br/>         Approx. Sq. Ft.      <b>1,064,061</b><br/>         Servicing Since      <b>May 1, 2013 – Present</b><br/>         Contact Person      Mr. Joseph Weigel<br/>         E-Mail                  josephw@plano.gov<br/>         Phone No.              O (972) 941-5517 F (972) 941-5515</p>   |
| <p><b>9 Dallas Area Rapid Transit</b><br/>         Rail Operation Facilities, Fleet Services Facilities</p> <p>Annual Amount      <b>474,720</b>      Staffing:    <b>27</b><br/>         Approx. Sq. Ft.      <b>265,000</b><br/>         Servicing Since      <b>April 1, 2011 – Present "2 Term of 3 yrs Contract"</b><br/>         Contact Person      Berry Pierces/Purchasing<br/>         E-Mail                  BPierce@dart.org<br/>         Phone No.              (214) 749-2539, F (214) 749-3666</p>            |
| <p><b>10 University of North Texas</b><br/>         Class room and Office<br/>         Daily Cleanig Event Setup</p> <p>Annual Amount      <b>67,600</b>      Staffing:    <b>4</b><br/>         Approx. Sq. Ft.      <b>65,000</b><br/>         Servicing Since      <b>October 1, 2010 – Present</b><br/>         Contact Person      Cynthia Hall<br/>         E-Mail                  cynthia.hall@unt.edu<br/>         Phone No.              P (214) 752-8574, F (214) 752-8827</p>                                     |

CITY OF DENTON  
RFP FOR JANITORIAL SERVICES

ATTACHMENT G

CONFLICT OF INTEREST QUESTIONNAIRE

FORM CIQ

For vendor or other person doing business with local governmental entity

This questionnaire reflects changes made to the law by H.B. 1491, 80th Leg., Regular Session.

OFFICE USE ONLY

This questionnaire is being filed in accordance with chapter 176 of the Local Government Code by a person who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the person meets requirements under Section 176.006(a).

Date Received

By law this questionnaire must be filed with the records administrator of the local government entity not later than the 7th business day after the date the person becomes aware of facts that require the statement to be filed. See Section 176.006, Local Government Code.

A person commits an offense if the person knowingly violates Section 176.006, Local Government Code. An offense under this section is a Class C misdemeanor.

1 Name of person who has a business relationship with local governmental entity.

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

(The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7<sup>th</sup> business day after the date the originally filed questionnaire becomes incomplete or inaccurate.)

3 Name of local government officer with whom filer has an employment or business relationship.

Steve Gye

Name of Officer

This section, (item 3 including subparts A, B, C & D), must be completed for each officer with whom the filer has an employment or other business relationship as defined by Section 176.001(1-a), Local Government Code. Attach additional pages to this Form CIQ as necessary.

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

Yes  No

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

Yes  No

C. Is the filer of this questionnaire employed by a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership of 10 percent or more?

Yes  No

D. Describe each affiliation or business relationship.

4

Signature of person doing business with the governmental entity

8-26-2013

Date

**CITY OF DENTON  
RFP FOR JANITORIAL SERVICES**

**ATTACHMENT H  
DISADVANTAGED BUSINESS UTILIZATION**

The City of Denton will ensure that purchases of equipment, materials, supplies, and /or services comply with Texas Local Government Code 252.0215, in regards to competitive requirements in relation to Disadvantaged Business Enterprises (DBE). The City will ensure that all procurement opportunities are cost effective, and contributable to the competitiveness of the City, and its customers. All Procurement activities will be conducted in an open and fair manner with equal opportunity provided for all qualified parties. The City of Denton will provide equal contracting opportunities as provided by State and Federal law to small business enterprises, Historically Underutilized Businesses, and Disadvantaged Business Enterprises. The City of Denton **encourages** all awarded Contractors to seek qualification as a DBE and/or utilize DBE's as sub-contractors, where feasible, to meet the overall intent of the legislation.

**Disadvantaged Business Enterprises (DBE):** are encouraged to participate in the City of Denton's procurement process. The Purchasing Department will provide additional clarification of specifications, assistance with Proposal Forms, and further explanation of procurement procedures to those DBEs who request it. Representatives from DBE companies should identify themselves as such and submit a copy of the Certification. The City recognizes the certifications of the State of Texas Building and Procurement Commission HUB Program. All companies seeking information concerning DBE certification are urged to contact.

State of Texas HUB Program – TPASS Division  
PO Box 13047, Austin, TX 78711-3047  
(512) 463-5872 or (888) 863-5881 or <http://www.window.state.tx.us/procurement/prog/hub/>

**Instructions:** If your company is already certified, attach a copy of your certification to this form and return with the submission. If your company is not already certified, and could be considered as meeting certification requirements, please use the web link to obtain such. If you are submitting a response and plan to utilize DBE's, then use the form below to identify the business and include the business HUB certification.

COMPANY NAME: \_\_\_\_\_

REPRESENTATIVE: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

CITY, STATE, ZIP: \_\_\_\_\_

TELEPHONE NO. \_\_\_\_\_ FAX NO. \_\_\_\_\_

**Indicate all that apply:**

- \_\_\_\_\_ Minority-Owned Business Enterprise
- \_\_\_\_\_ Women-Owned Business Enterprise
- \_\_\_\_\_ Disadvantaged Business Enterprise

**CITY OF DENTON  
RFP FOR JANITORIAL SERVICES**

**ATTACHMENT I**

**CONTRACT BY AND BETWEEN  
CITY OF DENTON, TEXAS AND \_\_\_\_\_**

**THIS CONTRACT** is made and entered into this \_\_\_\_ day of \_\_\_\_ A.D., 2013, by and between \_\_\_\_\_ a corporation, whose address is \_\_\_\_\_, hereinafter referred to as "Supplier," and the **CITY OF DENTON, TEXAS**, a home rule municipal corporation, hereinafter referred to as "City," to be effective upon approval of the Denton City Council and subsequent execution of this Contract by the Denton City Manager or his duly authorized designee.

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

**SCOPE OF SERVICES**

Supplier shall provide products or services in accordance with the Supplier's proposal in response thereto, a copy of which is attached hereto and incorporated herein for all purposes as **Exhibit "D"**. The Contract consists of this written agreement and the following items which are attached hereto and incorporated herein by reference:

- (a) Request for Proposal (RFP # 5317 – Janitorial Services)
- (b) City of Denton Standard Terms and Conditions (**Exhibit "A"**)
- (c) Special Terms and Conditions (**Exhibit "B"**)
- (d) Form CIQ – Conflict of Interest Questionnaire (**Exhibit "C"**).
- (e) Supplier's Proposal. (**Exhibit "D"**);

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

**Sample**

**CITY OF DENTON  
RFP FOR JANITORIAL SERVICES**

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

ATTEST:

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
City of Denton  
OWNER

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

(SEAL)

ATTEST:

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
CONTRACTOR

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

MAILING ADDRESS

\_\_\_\_\_  
PHONE NUMBER

\_\_\_\_\_  
FAX NUMBER

BY: \_\_\_\_\_  
AUTHORIZED SIGNATURE

\_\_\_\_\_  
PRINTED NAME, TITLE

APPROVED AS TO FORM:

(SEAL)

\_\_\_\_\_  
ANITA BURGESS, CITY ATTORNEY

**CITY OF DENTON  
RFP FOR JANITORIAL SERVICES**

**ATTACHMENT J  
ACKNOWLEDGEMENT**

THE STATE OF TEXAS

COUNTY OF DENTON

The undersigned agrees this RFP becomes the property of the City of Denton after the official opening.

The undersigned affirms he has familiarized himself with the local conditions under which the work is to be performed; satisfied himself of the conditions of delivery, handling and storage of equipment and all other matters that may be incidental to the work, before submitting a proposal.

The undersigned agrees, if this proposal is accepted, to furnish any and all items/services upon which prices are offered, at the price(s) and upon the terms and conditions contained in the Specifications. The period for acceptance of this Proposal will be ninety (90) calendar days unless a different period is noted.

The undersigned affirms that they are duly authorized to execute this contract, that this RFP has not been prepared in collusion with any other Bidder, nor any employee of the City of Denton, and that the contents of this RFP have not been communicated to any other proposer or to any employee of the City of Denton prior to the official opening of this bid.

Respondent hereby assigns to the City any and all claims for overcharges associated with this contract which arise under the antitrust laws of the United States, 15 USCA Section 1 et seq., and which arise under the antitrust laws of the State of Texas, Tex. Bus. & Com. Code, Section 15.01, et seq.

The undersigned affirms that they have read and do understand the specifications and any attachments contained in this RFP package.

The undersigned agrees that the RFP posted on the website are the official specifications and shall not alter the electronic copy of the specifications and/or pricing sheet (Exhibit 1), without clearly identifying changes.

The undersigned understands they will be responsible for monitoring the City of Denton Purchasing Website at: <http://www.cityofdenton.com/index.aspx?page=397> to ensure they have downloaded and signed all addendum(s) required for submission with their proposal.


Should a conflict arise between the PO, supplier terms, or contract; the terms and conditions set forth in this RFP shall prevail.

I certify that I have made no willful misrepresentations in this Proposal Submission, nor have I withheld information in my statements and answers to questions. I am aware that the information given by me in this proposal will be investigated, with my full permission, and that any misrepresentations or omissions may cause my proposal to be rejected.

**NAME AND ADDRESS OF COMPANY:**

Oriental Building Services, Inc.  
2526 Manana Dr, # 208  
Dallas, TX 75220  
Tel. No. 469-522-0001  
Email. obsco@msn.com

**AUTHORIZED REPRESENTATIVE:**

Signature   
Date August 26, 2013  
Name Steve Gye  
Title President  
Fax No. 469-522-0003

**CITY OF DENTON  
RFP FOR JANITORIAL SERVICES**

**EXHIBIT 2  
SCOPE OF WORK AND PRODUCT SPECIFICATIONS**

The scope of work and/or technical specifications shall be finalized upon the selection of the Contractor. The proposal submission shall have accurately described your understanding of the objectives and scope of the requested products and services and provided an outline of your process to implement the requirements of the scope of work and/or technical specification below. It is anticipated that the scope proposal submission will include, at a minimum, the following:

**GENERAL CONDITIONS**

Each proposer shall be held to have examined the areas and premises under consideration and confirms he fully understands these specifications and the City's needs and satisfies himself that he is cognizant of all factors relating to the requirements contained in these specifications as no extra charges or compensation will be allowed after the bids are opened. Direct all technical questions and to arrange tours of each facility, contact the Facilities Management Representative, David Saltsman at 940-349-7200. Request for Proposal or specifications-related questions shall be e-mailed to Cindy Alonzo, Buyer at [cynthia.alonzo@cityofdenton.com](mailto:cynthia.alonzo@cityofdenton.com).

Workers Hours, as shown on Exhibit 1 – Pricing Sheet, is defined as the estimated time it takes an average person to satisfactorily clean the designated area.

**A. SUPPLIES**

Sustainability is of the utmost importance to the City of Denton. The City of Denton will require Green Cleaning Practices, using proper equipment, cleaning products and consumables and/or meet the City needs.

1. Contractor will agree to provide all necessary cleaning supplies and equipment as may be required to perform the cleaning assignments outlined in the bid specifications. Contractor will use Green chemicals approved by EPA standards and, if awarded, will provide detailed information on products to be used. A quaternary-based disinfectant will be used where disinfectant is specified. Disinfectant will be applied per manufacturer's instruction.
  
2. If awarded, the Contractor will furnish paper towels, toilet paper, hand soap and deodorizers. Paper towels will be white multi-fold or rolled, an appropriate type and weight to dispense easily from holder. Toilet tissue will be two (2) ply. City buildings have a variety of hand soap dispensers and types of soap for the dispensers. The Contractor will be responsible for providing the appropriate hand soap for the dispensers, such as Dermapro, foaming, or equivalent. Contractor will furnish all trash liners.



**CITY OF DENTON  
RFP FOR JANITORIAL SERVICES**

3. All Contractor-furnished supplies and materials shall be appropriate size and quantity, to be determined by the City of Denton. All Contractor furnished supplies and materials shall be of the highest quality. No additional charges shall be made to the City for these items.
4. Contractor will provide MSDS sheets for all cleaning supplies.

**B. PERSONNEL**

1. THERE WILL BE NO SUBCONTRACTING OF CONTRACT CLEANING.
2. The Contractor will provide a daytime contact person at a supervisory/management level. This person will have inspections and conversations with each assigned facility representative monthly minimal or more often if needed.
3. Due to the travel from building to building, one or more rover supervisors will be required to insure security and quality work at night.
4. Contract staff will lock and secure all doors and turn off all lights before leaving their job site(s).
5. Contract staff will not prop open any locked/secured doors.
6. The Contractor shall provide a list of employees (by name) who will work at the City of Denton. Beside each name, list their auto insurance company if they will be using their autos to transport paper goods, or other equipment on City property and public streets and/or roadways.
7. The Contractor shall provide a list of supervisor's names and their respective telephone and pager numbers.
8. The Contractor shall provide a list of employees who will have keys/cards for entering buildings and shall denote which employee(s) have access to which buildings.
9. The Contractor shall insure that daytime staff and supervisors can speak, read, and write fluent English.
10. No person under eighteen (18) years of age may perform janitorial work. No person under eighteen (18) years of age may accompany janitor while janitorial work is being performed.

**CITY OF DENTON  
RFP FOR JANITORIAL SERVICES**

11. All Contractor's staff must have picture I.D. badges, provided by the City of Denton, on while on City property.

**C. BACKGROUND CHECKS**

Upon award of the contract, the selected Contractor's custodians, supervisors, and floor cleaners, who will be assigned to work in the City of Denton buildings, shall be required to pass a criminal background and social security number validity checks. The background check clearance documentation shall be provided to the contract administrator for review. The cost of these shall be included in the Contractor's proposal. As the custodians, supervisors, and floor cleaners are replaced throughout the term of the contract, the Contractor shall provide clearance documentation to the contract administrator. The Contractor's staff will not be authorized to work on City premises until approval is granted by the contract administrator. The Contractor shall be responsible for all costs associated with these background checks performed for the replacements.

The City shall conduct additional background checks for the selected Contractor's custodians, supervisors, and floor cleaners, who will be assigned to certain areas of the City. The additional background checks shall include checks conducted by the following agencies: Federal Bureau of Investigations (FBI), Texas Law Enforcement Telecommunications Systems (TLETS), and North American Electric Reliability Commission (NERC). Exhibit 1 of the Request for Proposal indicates which areas and positions that require these additional background checks. The City shall be responsible for the costs of the initial FBI, TLETS, and NERC background checks performed, upon the award of the contract by City Council. As the assigned employees are replaced with new employees throughout the term of the contract, the Contractor shall be responsible for paying for the costs to perform the FBI, TLETS, and NERC background checks for the new employees. The City shall conduct all FBI, TLETS, and NERC background checks. The City reserves the right, at its discretion, to bill the Contractor upon employee replacement or re-assignment for the performance of background checks.

**The Contractor's staff will not be authorized to work on City premises until approval is granted by the contract administrator.**

**D. QUALITY ASSURANCE**

1. The Contractor will complete a monthly, quarterly, and annual job assignment schedule before beginning the contract. The schedule form will be provided by the Contractor. A copy of the schedule will be given to the City.
2. Each night before cleaning the building the janitorial staff will review the previous night's checklist and correct any deficiencies noted by City of Denton staff.
3. The janitorial staff will complete a checklist nightly indicating the work completed.

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**JANITORIAL DUTIES ALL BUILDINGS**

**A. DAILY**

1. Remove all trash and replace liners.
2. Vacuum all rugs and carpeted areas, spot clean carpet as needed.
3. Sweep/dust mop floors and wet mop floor coverings as specified.
4. Feather dust and wipe with cloth all furniture and equipment.
5. Wipe clean all entry/exit glass, sidelights, glass partitions, and inside glass and glass doors, and building directories.
6. Spot clean all soil and finger marks from walls, light switches, doors, doorframes, and metalwork.
7. Wipe clean and disinfect all water fountains, break room tables, conference tables, and kitchen counters.
8. Refill all paper towels, toilet tissue and soap dispensers.
9. Clean and disinfect walls, floors, and equipment in restrooms.
10. Sweep and remove all waste materials from open storage areas.
11. Sweep clean doormats.
12. Clean Communication/Computer areas and Jail as specified.
13. Secure doors and turn out lights.
14. Disinfect, but never wax, all ceramic tile floors and walls.

**B. DAILY- EXTERIOR AREAS**

1. Clean the exterior building entries including landing in front of the doors, steps, exterior glass, walls, ceiling, lighting, signs, and smoking receptacles.
2. Screen all sand urns and replenish sand as required.
3. Pick up any trash, sweep and mop.
4. Empty and damp wipe all ashtrays and ash receptacles.
5. Sweep and mop landings.

**C. WEEKLY (Completed by Tuesday at 8:00 a.m.)**

1. Edge vacuum, move furniture as needed weekly.
2. Spray buff floors weekly.
3. Wipe clean and disinfect all telephones weekly.
4. Surface-clean all appliances in kitchen areas.
5. Clean Communications/Computer areas and Jail as specified.
6. Vacuum upholstered chairs/couches.

**D. MONTHLY (Completed by 3rd Tuesday of each month at 8:00a.m.)**

1. Scrub and re-wax floors monthly (as needed or requested).
2. Dust with cloth and clean Venetian, vertical, and mini blinds.
3. Dust with cloth and canister vacuum the exterior of lighting fixtures, ceiling fans, air diffusers, return grills, louvers, baseboards, and ledges.
4. Wash all corridor, vestibule and elevator doors and frames; clean and polish all door hardware and unpainted metalwork (mail depository, signs, and lettering).
5. Dust all surfaces not reached in daily cleaning (window frames, curtain pockets, etc.).
6. Dust all pictures, frames, chart boards, clocks, and similar wall hangings.
7. Wash all exterior doorframes and remove all dirt and cobwebs from entry areas.
8. Dust all woodwork, wood walls, railings, chair rails, trim, and hanging signs.

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9. Vacuum beneath plastic carpet protectors.
10. Pour five (5) gallons of hot water down all floor drains monthly.
11. Clean Communications/Common areas and Jail as specified.

**E. QUARTERLY (Completed by 10/15, 1/15, 4/15 and 7/15)**

1. Strip and wax all resilient flooring.
2. Strip, wash, wax, and buff resilient flooring, including all hallways. **Ceramic tile floors/walls do not get waxed.**
3. Dust and clean Venetian, vertical, and mini blinds.
4. Dust the exterior of lighting fixtures, air diffusers, return grills, and louvers.
5. Wash all corridor, vestibule and elevator doors and frames; clean and polish all door hardware and unpainted metalwork (mail depository, signs, and lettering.)
6. Dust all surfaces not reached in daily cleaning (window frames, curtain pockets, etc.)
7. Dust all pictures, frames, chart boards, and similar wall hangings.
8. Wash all inside glass and glass doors.
9. Provide written schedule for numbers 1, 3 & 6.

**LOBBIES, OFFICE AREAS, CONFERENCE ROOMS, AND LIBRARIES**

**A. DAILY**

1. Ensure entrance lobbies and public areas are clean and free from litter.
2. During inclement weather mop or vacuum rubber mats and/or carpet runners.
3. Empty wastebaskets and replace liner daily. Remove waste paper and other waste materials.
4. Remove finger marks from glass doors, sidelights, and inside/outside of all glass entry/exit doors.
5. Thoroughly dust and wipe clean all furniture (such as desk tops and table tops), files, windowsills, and counters.
6. Wash, wipe clean, and disinfect all drinking fountains.
7. Dust and wipe clean all plastic, vinyl, or leather covered chairs.
8. Move light furniture other than desks, files, etc., prior to sweeping or vacuuming floors; replace furniture upon completion.
9. Vacuum all rugs and carpeted areas and wet mop tile floor areas every day. **Spot clean carpet as needed.** Thoroughly vacuum all carpeted stairs.
10. Spot clean soil and finger marks from painted or washable surfaces.
11. Library shelving -dust at least one range of shelving nightly until entire stacks are cleaned and then begin the process over.
12. Clean underneath Library book stacks, dust extensions on ends and panels behind book stacks.
13. Dust and wipe clean Library magazine shelving.
14. Secure doors and turn lights out.
15. Secure all interior and exterior doors and turn out lights. Set the security alarm if applicable.

**B. WEEKLY (Completed by Tuesday at 8:00a.m.)**

1. Spray buff floors.
2. Clean all glass furniture tops.
3. Canister edge vacuum, move furniture as needed.

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4. Wipe clean and disinfect all telephones.
5. Vacuum upholstered chairs/couches.

**C. MONTHLY (Completed by 3rd Tuesday of each month at 8:00 a.m.)**

1. Scrub and re-wax floors.
2. Dust with cloth Venetian, vertical, and mini blinds.
3. Dust with cloth and canister vacuum the exterior of light fixtures, ceiling fans, air diffusers, return grills, louver, baseboards, and ledges.
4. Wash and remove all finger marks and soil from doors, doorjambs, walls, and elevator doors with particular attention to areas surrounding light switches and drinking fountains.
5. Clean and polish all door hardware and unpainted metalwork.
6. Dust all surfaces not reached in daily cleaning (window frames, curtain pockets, etc.).
7. Dust all pictures, frames, chart boards, clocks, and similar wall hangings.
8. Dust all woodwork, woodcarvings, railings, chair rails, trim, and hanging signs.
9. Vacuum beneath plastic carpet protectors.
10. Clean Library fireplace, clean and polish all brass work and fireplace tools.

**D. QUARTERLY (Completed by 10/15, 1/15, 4/15 and 7/15)**

1. Strip and wax all resilient flooring.

**ELEVATORS/CORRIDORS/UTILITY ROOMS/SERVICE CLOSETS**

**A. DAILY**

1. Dust and wipe clean, using disinfectant, elevator entrance doors and frames, hose cabinets, etc.
2. Dust and wipe clean all counters and tables used by public.
3. Remove finger marks from glass entryways, doors, and partitions.
4. Spot clean soil and finger marks from painted or washable surfaces.
5. Sweep and mop all resilient flooring.
6. Spot clean all vinyl furniture.
7. Vacuum all rugs and carpeted areas, spot clean carpet.
8. Clean and maintain, in an orderly condition, all utility rooms and service closets. Store cleaning materials, supplies, and cleaning equipment neatly, in a lawful manner, and in full compliance with the Owner's insurance requirements.
9. Sweep and mop with soap and/or disinfectant all tile floors.

**B. WEEKLY (Completed by Tuesday at 8:00 a.m.)**

1. Sweep and dust mop all uncarpeted areas. Spray buff traffic areas of resilient tile flooring, to continually maintain resilient flooring.

**C. MONTHLY (Completed by 3rd Tuesday of each month at 8:00a.m.)**

1. Remove all finger marks and soil from doors, doorjambs, and walls with particular attention to areas surrounding light switches and drinking fountains.
2. Thoroughly clean, vacuum, and spot clean upholstered furniture.
3. Clean ceiling fan blades.

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INTERIOR STAIRWAYS

A. DAILY

1. Remove litter from stairs and stair landings. Sweep clean every night.

B. WEEKLY (Completed by Tuesday at 8:00a.m.)

1. Sweep and wet mop stairs and landing.
2. Wipe clean, using disinfectant, all handrails and walls adjacent to handrails.

C. MONTHLY (Completed by 3rd Tuesday of each month at 8:00a.m.)

1. Dust and wash tread, risers, stringers, base, spindles, and newels.
2. Dust and wipe clean hose racks, risers, piping, and fitting.
3. Remove all finger marks and soil from doors and doorframes.
4. Dust and wipe clean doors and doorframes and polish all unpainted hardware.
5. Dust and wash soffits of stairs and stair landings.
6. Dust exterior of lighting fixtures, signs, etc.

CREWROOMS

A. DAILY

1. Sweep and wet mop floors.
2. Remove all finger marks and soil from doors, doorjambs, and walls.
3. Clean interior glass, windows, clean and disinfect water fountains.
4. Spot clean and vacuum carpet as applicable.
5. Empty wastebaskets, wipe down and replace liners.
6. Wipe down all table tops.

B. WEEKLY (Completed by Tuesday at 8:00a.m.)

1. Spray buff resilient flooring weekly.

C. MONTHLY (Completed by 3rd Tuesday of each month at 8:00 a.m.)

1. Scrub and re-wax floors monthly.
2. Perform all high and low dusting.

D. QUARTERLY (Completed by 10/15, 1/15, 4/15 and 7/15)

1. Strip and wax all resilient flooring.

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**COMMUNICATIONS/911/COMPUTER AREAS**

Computer areas can be defined as those where access is limited to specified personnel and generally controlled with locked doors requiring special key or key card for entry. The area will usually have a raised floor and will contain electronic equipment. Only approved building receptacles are to be used when connecting any electrical applicant to power.

**NOTE: Communications/Computer/Restricted areas only:** Access is allowed during the day for cleaning; no access is allowed at night unless authorized, and **person assigned to clean these areas must have the following background checks: FBI, TLETS, and NERC.**

**A. DAILY**

1. Empty wastepaper and carbon bins. Replace the liner daily.
2. Raised floor should be dry-mopped. Never wax raised floor or use harsh abrasive or steel wool for cleaning. A damp mop may be used for removing spills.
3. Dust and wipe clean all furniture, files, and tops of computing equipment. Only a dust absorbent cloth may be used. Never use a feather duster.
4. Dust doors and trim within reach.
5. Clean all glass furniture tops.
6. Remove finger marks from glass doors and sidelights.
7. Dust and wipe clean all plastic, vinyl, or leather covered chairs.
8. Move light furniture other than desks, files, etc. prior to mopping; replace furniture upon completion.
9. Sweep and mop floor areas and all rubber ramp areas nightly.

**B. WEEKLY (Completed by Tuesday at 8:00 a.m.)**

1. Scrub mop, with a damp mop, floors in Communication areas.

**C. MONTHLY (Completed by 3rd Tuesday of each month at 8:00a.m.)**

1. Remove all finger marks and soil from doors, doorjamb, and walls with particular attention to areas surrounding light switches.
2. Wash all partition glass and glass doors.
3. Scrub and wax floors in Communications area.

**D. QUARTERLY (Completed by 10/15, 1/15, 4/15 and 7/15)**

1. Strip and wax all resilient flooring.

**E. SEMI-ANNUALLY (Completed on 10/15 and 3/15)**

1. Vacuum beneath raised floor area.

Coordinate with:

Facilities Management Representative- David Saltsman- Police Department/  
Technology Services Department- Bobbie Arashiro

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**JAIL AREA**

**A. DAILY**

1. Collect trash, sweep and mop with disinfectant all individual jail cells as well as all common areas of the jail.
2. Clean and disinfect toilets in each jail cell.
3. Wipe down mattresses in jail cells with disinfectant.
4. Clean and disinfect shower stalls.
5. Check detoxification (drunk) tank, clean and disinfect floors and walls daily.
6. Sweep and mop kitchen area.
7. Clean all glass windows and disinfect counter tops, including attorney's booth, entry desk and fingerprint counter.
8. Maintain an adequate supply of toilet paper in each cell.
9. Fill soap dispenser as needed.
10. Sweep and mop floors in visitation areas.
11. Clean other areas not listed that may be required by the jailers.

**B. WEEKLY (Completed by Tuesday at 8:00 a.m.)**

1. Spray and buff all tile floors in jail area.

**C. MONTHLY (Completed by 3rd Tuesday of each month at 8:00a.m.)**

1. Scrub and re-wax floors monthly.

**D. QUARTERLY (Completed by 10/15, 1/15, 4/15 and 7/15)**

1. Strip and wax all resilient flooring.

**SALLY PORT IN POLICE DEPARTMENT AT CITY HALL EAST**

**A. DAILY**

1. Sweep clean of debris daily.
2. Empty wastepaper and replace the liner.

**B. WEEKLY (Completed by Tuesday at 8:00 a.m.)**

1. Mop and remove any drip spots left by vehicles.

**CONFERENCE ROOMS/MULTI-PURPOSE ROOMS/CRAFT ROOMS**

**A. DAILY**

1. Empty wastebaskets and replace liner daily. Remove waste paper and other waste materials.
2. Remove finger marks from glass doors, sidelights, and inside/outside of all glass entry/exit doors.
3. Wash all drinking fountains.
4. Dust and wipe clean all furniture, plastic, vinyl, or leather covered chairs.
5. Move light furniture other than desks, files, etc., prior to sweeping or vacuuming floors; replace furniture upon completion.



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6. Vacuum all rugs and carpeted areas and dust mop tile floor areas every day. Spot clean carpet as needed.
7. Spot clean soil and finger marks from painted or washable surfaces.
8. Secure all interior and exterior doors and turn out lights. Set security alarm.
9. Mop all VCT floors and tile floors.
10. Disinfect, but never wax, all ceramic tile floors and walls.

**B. WEEKLY (Completed by Tuesday at 8:00a.m.)**

1. Thoroughly dust and wipe clean all furniture (such as desk tops/tabletops) files, telephones, windowsills, and counters.
2. Clean all glass furniture tops.
3. Spray buff tile floors.

**C. MONTHLY (Completed by 3rd Tuesday of each month at 8:00 a.m.)**

1. Dust doors, chair rails, and trim within reach.
2. Dust and wipe clean all unpainted metalwork.
3. Remove all finger marks and soil from doors, doorjamb, and walls with particular attention to areas surrounding light switches and drinking fountains.
4. Clean all interior partition glass.
5. Vacuum beneath plastic carpet protectors.
6. Thoroughly clean and vacuum all upholstered furniture.

**REST ROOMS**

**A. DAILY**

1. Scour, wash, and disinfect all lavatories, showers, water closets, and urinals.
2. Wash, disinfect, and wipe dry both sides of all toilet seats.
3. Wash and polish all mirrors, powder shelves, and unpainted metalwork including hardware, flush valves, piping, etc.
4. Remove all graffiti.
5. Wipe clean all toilet tissue, paper towel, soap, and sanitary napkin dispensers.
6. Empty paper towel and sanitary napkin disposal units.
7. Remove waste paper and other waste materials.
8. Refill all toilet tissue, paper towel, and soap dispensers.
9. Sweep, mop, and disinfect all floors and bases.

**B. MONTHLY (Completed by 3rd Tuesday of each month at 8:00 a.m.)**

1. Wash tile wall surfaces subject to splashing.
2. Wash and polish all wall tile, toilet stalls, and partitions.
3. Machine scrub and disinfect all floors and 4" bases.
4. Dust and wipe clean all corridor and vestibule entrance doors, toilet stalls, and partitions, including areas behind commodes and urinals.
5. Pour five (5) gallons of water monthly down floor drains to prevent sewer gas backup.

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**RECEPTION AREAS/SUN ROOM/LIVING AREAS**

**A. DAILY**

1. Dust walls within reach.
2. Spot clean finger marks and soil on walls.
3. Wash glass doors, both sides, glass partitions and glass entryways.
4. Wipe clean all glass side lights and glass walls.
5. Dust and wipe clean all telephones, telephones booths, counter tops, etc.
6. Sweep and mop floors; protect base during floor washing to avoid staining.
7. Wash glass of building directory.
8. Wash and disinfect all drinking fountains (interior and exterior).
9. Empty wastebaskets and replace liner daily.
10. Vacuum carpets and doormats, spot clean carpets.

**B. WEEKLY (Completed by Tuesday at 8:00 a.m.)**

1. Thoroughly dust and wipe clean all furniture (such as desk tops/table tops) files, telephones, windowsills, and counters.
2. Clean all glass furniture tops.
3. Spray buff tile floors.

**C. MONTHLY (Completed by 3rd Tuesday of each month at 8:00 a.m.)**

1. Wash painted doors, doorframes, and walls.
2. Clean and polish all unpainted metalwork (doors and frames, mail depository, signs, and lettering).
3. Dust exterior surface of lighting fixture, air diffusers, return grills and louvers.
4. Dust all surfaces not reached in daily cleaning including ceilings.
5. Machine scrub/wax VCT tile floors.

**BREAK ROOMS/GAME ROOMS/ACTIVITY ROOMS/CLASS ROOMS/KITCHEN AREAS**

**A. DAILY**

1. Wipe and disinfect tabletops.
2. Clean sink and appliances. Inside of sinks will be scrubbed when empty. Janitors will not be responsible washing dishes or other items in the sink.
3. Clean and disinfect water fountain.
4. Sweep and mop floor with soap and/or disinfectant.
5. Empty wastebaskets, wipe down, and replace liners.
6. Wipe, and remove spots from counter.
7. Wash all inside glass and glass doors.
8. Fill paper towel dispensers.
9. Wipe clean mirrors.
10. Spot clean carpet.

**B. WEEKLY (Completed by Tuesday at 8:00 a.m.)**

1. Surface clean refrigerator, ranges, icemaker and microwave.
2. Vacuum carpet.

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3. Remove all finger marks and soil from doors, doorjambs, and walls with particular attention to areas surrounding light switches and drinking fountains.
4. Spray buff floors.

**C. MONTHLY (Completed by 3rd Tuesday of each month at 8:00 a.m.)**

1. Scrub and re-wax floors.

**D. QUARTERLY (Completed by 10/15, 1/15, 4/15 and 7/15)**

1. Strip and wax all resilient flooring.

**GYMNASIUMS/WEIGHT ROOMS**

*\*Any facility where a gym is located, the gym is to be maintained by the janitorial vendor even if it is not indicated on the checklist for the particular complex.*

**A. DAILY**

1. Dust mop floors.
2. Remove all finger marks and soil from doors, doorjambs, and walls.
3. Clean interior glass, windows, and water fountains.
4. Spot/wet mop spills with soap and water or disinfectant, etc.
5. Empty wastebaskets, wipe down, and replace liners.
6. Mop black sport floor in weight room with manufacturer's recommended cleaner.

**B. WEEKLY (Completed by Tuesday at 8:00 a.m.)**

1. Wet mop (or scrub) floor surface per manufacturer's requirements; spray buff where required. Wax where required.
2. Wipe down bleachers and clean under them.

**C. MONTHLY (Completed by 3rd Tuesday of each month at 8:00 a.m.)**

1. Apply wax and/or conditions required by floor manufacturer.
2. Perform all high and low dusting.
3. Maintain wood floors and wall carpet.
4. Vacuum/remove stains from wall carpet.

**CARPET CLEANING**

All carpet will be cleaned per carpet manufacturers specification by an agreed upon carpet schedule up to two (2) times a year at the price bid herein. A schedule for carpet cleaning will be provided to Facilities Management within two (2) weeks from award of bid. If carpet is not cleaned satisfactorily in month when scheduled, an outside contractor will be brought in, with the price difference being billed to the bid contractor. All interior carpet will be spot cleaned daily. Contractor to provide a method of verifying that cleaning was completed to manufacturer's specifications.

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**Civic Center Specifications  
Monday-Friday Cleaning**

**DAILY**

**Office Areas**

Empty wastebaskets/trash cans and replace liners.  
Take recycled materials to blue recycle dumpster in the loading dock parking lot.  
Vacuum office floors (move light furniture, return furniture).  
Spot clean carpet as needed.  
Clean soil and finger marks from all washable surfaces (i.e., windows, door panels).

**Kitchen**

Wipe clean all stainless surfaces.  
Sweep and wet mop floor (use disinfectant)  
Empty trash receptacles and replace liners.  
Wipe clean all appliances (stove, microwave, ice machine, etc.).

**Restrooms**

Scour, wash, and disinfect all lavatories, urinals, and toilet stalls.  
Disinfect and wipe dry both sides of all toilet seats and entire toilet fixture.  
Polish all mirrors.  
Wash hardware, flush valves and pipes.  
Remove all gum, graffiti  
Wipe clean toilet tissue, paper towel, soap, and napkin dispensers.  
Remove waste paper and replace liner.  
Refill toilet tissue, paper towel, and soap dispensers.  
Lock toilet tissue, paper towel, and soap dispensers.  
Sweep and wet mop floors (use disinfectant).

**Lobby/Reception Area. Conference Room. Copier Room**

Clean glass in Lobby/Reception area.  
Clean all glass doors and all counters.  
Dust mop and wet mop flooring in Lobby area.  
Dust wall areas within reach and banisters.  
Empty trash cans and replace liners.  
Take recycled materials to blue recycle dumpster in the loading dock parking lot.  
Vacuum all door mats.  
Remove gum, candy from floors.  
Vacuum floors and spot clean carpets.  
Sweep and wet mop all brick floors.

**Community Room/Back Area Meeting Rooms Nestibule**

Empty waste baskets/trash cans and replace liners.  
Vacuum floors (move chairs as needed, return to original set-up).  
Spot clean carpet as needed.  
Dust wallboards, AN equipment, tables and chairs.  
Dust and clean soil and finger marks from all washable surfaces (i.e., windows, door panels).  
Lock all meeting rooms after cleaning is completed to ensure ALL equipment is secure.  
Turn off all lights.

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**Rotunda**

Remove all gum, candy, and marks from floor.  
Sweep, dust mop, and wet mop floor with soap and water and buff if needed.  
Empty trash cans and replace liners.  
Wash trash cans with soap and water weekly.  
Wipe clean glass and remove fingerprints from Building Attendant office.  
Wipe clean kick plates on dock doors.  
Wipe clean wooden benches.

**Track**

Wipe clean, disinfect, and polish all drinking fountains.  
Vacuum flooring and spot clean.  
Dust rails and all reachable areas, including lights.  
Empty trash can and replace liner.

**Vending**

Wipe clean, disinfect, and polish drinking fountain.  
Dust mop and wet mop floor with soap and water.  
Wipe clean glass door.  
Wipe clean and dust vending machines.  
Wipe clean wooden benches.  
Dust doorway entrances to vending area.

**Elevator**

Vacuum floor.  
Dust walls and operations panel.  
Wipe clean walls weekly.  
Clean doors inside and out on all 3 floors.

**Stairwells**

Remove litter from stairs and stair landings.  
Remove gum and candy from stairs and landings.  
Sweep clean every night.

**Building/Center**

**Cleaning is to be done after 11 p.m. Monday- Friday.**  
Provide all supplies and equipment necessary to clean the facility.  
Check porches/sidewalks and sweep to curb.  
Clean front glass at vestibules.  
Securely close and lock all interior and exterior doors.  
Turn off all lights and fans except the outdoor facility main entrance lights.  
Correctly reset all alarms/security systems.

**WEEKLY**

Spray buff all floors.  
Check walls for spots and remove spots.  
Clean all trash cans and wash.  
Dust hand rails.  
Dust fire extinguishers.

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Wet mop all stairs and landings with soap and water.  
Wipe clean all handrails.

**MONTHLY**

Dust doors, chair rails, shelving, and trim within reach.  
Wipe clean entrance doors and toilet stalls.  
Machine scrub and disinfect restroom floors.  
Machine scrub and buff auditorium floor.  
Remove all finger marks and soil from doors, doorjamb, and walls.  
Clean all doors and wood (furniture polish should be used when needed).  
Sweep/clean *NC* Room.

**SEMI-  
ANNUALLY**

Strip, wash, wax, and buff resilient flooring, including all hallways.  
Dust and clean venetian, vertical, and mini-blinds.  
Dust the exterior of light fixtures, air diffusers, return grills, and louvers.  
Clean and polish all door hardware and unpainted metalwork (mail depository, signs, and lettering).  
Dust all pictures, frames, chart boards, and similar wall hangings.  
Wash all inside glass and glass doors.

**JULY 4 and DECEMBER 23**

Steam (extract clean) all carpets.  
Strip auditorium floor and re-wax.  
Sweep *NC* storage room.  
Dust all surfaces in *NC* storage room

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**EXHIBIT 2 - ADDITIONAL FACILITIES**

**DENTON MUNICIPAL ELECTRIC (DME) ONLY  
SCOPE OF WORK AND PRODUCT SPECIFICATIONS**

*Note: The specifications and scope of work for the DME facilities are in addition to the scope of work and specifications as shown on pages 1 – 35 of Exhibit 2. DME staff shall have the option to utilize the contract for janitorial services at its discretion.*

The scope of work and/or technical specifications shall be finalized upon the selection of the Contractor. The proposal submission shall have accurately described your understanding of the objectives and scope of the requested products and services and provided an outline of your process to implement the requirements of the scope of work and/or technical specification below. It is anticipated that the scope proposal submission will include, at a minimum, the following:

**GENERAL CONDITIONS**

Each proposer shall be held to have examined the areas and premises under consideration and confirms he fully understands these specifications and the City's needs and satisfies himself that he is cognizant of all factors relating to the requirements contained in these specifications as no extra charges or compensation will be allowed after the bids are opened. Direct all technical questions and to arrange tours of each facility, contact the Facilities Management Representative, David Saltsman at 940-349-7200. Request for Proposal or specifications-related questions shall be e-mailed to Cindy Alonzo, Buyer at [cynthia.alonzo@cityofdenton.com](mailto:cynthia.alonzo@cityofdenton.com).

Workers Hours, as shown on Exhibit 1 – Pricing Sheet, is defined as the estimated time it takes an average person to satisfactorily clean the designated area.

**A. SUPPLIES**

Sustainability is of the utmost importance to the City of Denton. The City of Denton will require Green Cleaning Practices, using proper equipment, cleaning products and consumables and/or meet the City needs.

1. Contractor will agree to provide all necessary cleaning supplies and equipment as may be required to perform the cleaning assignments outlined in the bid specifications. Contractor will use Green chemicals approved by EPA standards and, if awarded, will provide detailed information on products to be used. A quaternary-based disinfectant will be used where disinfectant is specified. Disinfectant will be applied per manufacturer's instruction.
2. If awarded, the Contractor will furnish paper towels, toilet paper, hand soap and deodorizers. Paper towels will be white multi-fold or rolled; however, the DME campus

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building supplies shall be the appropriate Enmotion type of paper towels that fit our existing dispensers.. Toilet tissue shall be two (2) ply and the DME campus buildings will only use Angel soft compact tissue. . City buildings have a variety of hand soap dispensers and types of soap for the dispensers and the contractor shall supply the appropriate type that is presently utilized in all City buildings. The Contractor will be responsible for providing the appropriate sanitizing hand soap for the dispensers, such as Dermapro, foaming, or equivalent. Contractor will furnish all trash liners.

3. All Contractor-furnished supplies and materials shall be appropriate size and quantity, to be determined by the City of Denton. All Contractor furnished supplies and materials shall be of the highest quality. No additional charges shall be made to the City for these items. Contractor will provide MSDS sheets for all cleaning supplies.

**B. PERSONNEL**

1. THERE WILL BE NO SUBCONTRACTING OF CONTRACT CLEANING.
2. The selected Contractor is encouraged to interview and consider utilizing the existing cleaning personnel that DME is using thru existing their current temporary services agency.
3. The Contractor will provide a daytime contact person at a supervisory/management level. This person will have inspections and conversations with each assigned facility representative monthly minimal or more often if needed.
4. Due to the travel from building to building, one or more rover supervisors will be required to insure security and quality work at night.
5. Contract staff will lock and secure all doors and turn off all lights before leaving their job site(s).
6. Contract staff will not prop open any locked/secured doors.
7. The Contractor shall provide a list of employees (by name) who will work at the City of Denton. Beside each name, list their auto insurance company if they will be using their autos to transport paper goods, or other equipment on City property and public streets and/or roadways.
8. The Contractor shall provide a list of supervisor's names and their respective telephone and pager numbers.
9. The Contractor shall provide a list of employees who will have keys/cards for entering buildings and shall denote which employee(s) have access to which buildings.



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10. The Contractor shall insure that daytime staff and supervisors can speak, read, and write fluent English.
11. No person under eighteen (18) years of age may perform janitorial work. No person under eighteen (18) years of age may accompany janitor while janitorial work is being performed.
12. All Contractor's staff must have picture I.D. badges, provided by the City of Denton, on while on City property.
13. Should the DME facility buildings be among the facilities that are selected by DME and the City of Denton to fall under this contract, then at any point should DME or the City of Denton encounter an issue or have concerns with any individual Contractor employee or the manner in which they are attempting to perform their duties, DME and/or the City of Denton retain the right to immediately suspend the cleaning activities and request a Contractor supervisor to resolve the issue or replace their cleaning employee.

**C. BACKGROUND CHECKS**

Upon award of the contract, the selected Contractor's custodians, supervisors, and floor cleaners, who will be assigned to work in the City of Denton buildings, shall be required to pass a criminal background and social security number validity checks. The background check clearance documentation shall be provided to the contract administrator for review. The cost of these shall be included in the Contractor's proposal. As the custodians, supervisors, and floor cleaners are replaced throughout the term of the contract, the Contractor shall provide clearance documentation to the contract administrator. The Contractor's staff will not be authorized to work on City premises until approval is granted by the contract administrator. The Contractor shall be responsible for all costs associated with these background checks performed for the replacements.

The City shall conduct additional background checks for the selected Contractor's custodians, supervisors, and floor cleaners, who will be assigned to certain areas of the City. The additional background checks shall include checks conducted by the following agencies: Federal Bureau of Investigations (FBI), Texas Law Enforcement Telecommunications Systems (TLETS), and North American Electric Reliability Commission (NERC). Exhibit 1 of the Request for Proposal indicates which areas and positions that require these additional background checks. The City shall be responsible for the costs of the initial FBI, TLETS, and NERC background checks performed, upon the award of the contract by City Council. As the assigned employees are replaced with new employees throughout the term of the contract, the Contractor shall be responsible for paying for the costs to perform the FBI, TLETS, and NERC background checks for the new employees. The City shall conduct all FBI, TLETS, and NERC background checks. The City reserves the right, at its discretion, to bill the Contractor upon employee replacement or re-assignment for the performance of background checks.

**The Contractor's staff will not be authorized to work on City premises until approval is granted by the contract administrator.**

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**All DME Physical Security Perimeter (PSP) Areas can not be entered nor cleaned until at least two NERC certified System Operators on on duty and they are not currently engaged in electrical restoration activities. The cleaning personnel will be required to sign in, be escorted through out the cleaning activities and then sign out upon entry of the PSP areas. Should two DME NERC operators are not be available, then the cleaning personnel will be required to check back at a later time that day until time is available for DME to escort the cleaning personnel.**

**D. QUALITY ASSURANCE**

1. The Contractor will complete a monthly, quarterly, and annual job assignment schedule before beginning the contract. The schedule form will be provided by the Contractor. A copy of the schedule will be given to the City.
2. Each night before cleaning the building the janitorial staff will review the previous night's checklist and correct any deficiencies noted by City of Denton staff.
3. The janitorial staff will complete a checklist nightly indicating the work completed.

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**JANITORIAL DUTIES ALL DME BUILDINGS**

**A. DAILY**

1. Remove all trash and replace liners.
2. Vacuum all rugs and carpeted areas, spot clean carpet as needed.
3. Sweep/dust mop floors and wet mop floor coverings as specified.
4. Feather dust and wipe with cloth all furniture and equipment.
5. Wipe clean all entry/exit glass, sidelights, glass partitions, and inside glass and glass doors, and building directories.
6. Spot clean all soil and finger marks from walls, light switches, doors, doorframes, and metalwork.
7. Wipe clean and disinfect all water fountains, break room tables, conference tables, and kitchen counters.
8. Refill all paper towels, toilet tissue and soap dispensers.
9. Clean and disinfect walls, floors, and equipment in restrooms.
10. Sweep and remove all waste materials from open storage areas.
11. Sweep clean doormats.
12. Clean Communication/Computer areas and Jail as specified.
13. Secure doors and turn out lights.
14. Disinfect, but never wax, all ceramic tile floors and walls.

**B. DAILY- EXTERIOR AREAS**

1. Clean the exterior building entries including landing in front of the doors, steps, exterior glass, walls, ceiling, lighting, signs, and smoking receptacles.
2. Screen all sand urns and replenish sand as required.
3. Pick up any trash, sweep and mop.
4. Empty and damp wipe all ashtrays and ash receptacles.
5. Sweep and mop landings.

**C. WEEKLY (Completed by Tuesday at 7:00 a.m.)**

1. Edge vacuum, move furniture as needed weekly.
2. Spray buff floors weekly.
3. Wipe clean and disinfect all telephones weekly.
4. Surface-clean all appliances in kitchen areas.
5. Clean Communications/Computer areas and Jail as specified.
6. Vacuum upholstered chairs/couches.

**D. MONTHLY (Completed by 3rd Tuesday of each month at 7:00 a.m.)**

1. Scrub and re-wax floors monthly (as needed or requested).
2. Dust with cloth and clean Venetian, vertical, and mini blinds.
3. Dust with cloth and canister vacuum the exterior of lighting fixtures, ceiling fans, air diffusers, return grills, louvers, baseboards, and ledges.
4. Wash all corridor, vestibule and elevator doors and frames; clean and polish all door hardware and unpainted metalwork (mail depository, signs, and lettering).
5. Dust all surfaces not reached in daily cleaning (window frames, curtain pockets, etc.).
6. Dust all pictures, frames, chart boards, clocks, and similar wall hangings.
7. Wash all exterior doorframes and remove all dirt and cobwebs from entry areas.
8. Dust all woodwork, wood walls, railings, chair rails, trim, and hanging signs.

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9. Vacuum beneath plastic carpet protectors.
10. Pour five (5) gallons of hot water down all floor drains monthly.
11. Clean Communications/Common areas and Jail as specified.

**E. QUARTERLY (Completed by 10/15, 1/15, 4/15 and 7/15)**

1. Strip and wax all resilient flooring.
2. Strip, wash, wax, and buff resilient flooring, including all hallways. **Ceramic tile floors/walls do not get waxed.**
3. Dust and clean Venetian, vertical, and mini blinds.
4. Dust the exterior of lighting fixtures, air diffusers, return grills, and louvers.
5. Wash all corridor, vestibule and elevator doors and frames; clean and polish all door hardware and unpainted metalwork (mail depository, signs, and lettering.)
6. Dust all surfaces not reached in daily cleaning (window frames, curtain pockets, etc.)
7. Dust all pictures, frames, chart boards, and similar wall hangings.
8. Wash all inside glass and glass doors.
9. Provide written schedule for numbers 1, 3 & 6.

**LOBBIES, OFFICE AREAS, AND CONFERENCE ROOMS**

**A. DAILY**

1. Ensure entrance lobbies and public areas are clean and free from litter.
2. During inclement weather mop or vacuum rubber mats and/or carpet runners.
3. Empty wastebaskets and replace liner daily. Remove waste paper and other waste materials.
4. Remove finger marks from glass doors, sidelights, and inside/outside of all glass entry/exit doors.
5. Thoroughly dust and wipe clean all furniture (such as desk tops and table tops), files, windowsills, and counters.
6. Wash, wipe clean, and disinfect all drinking fountains.
7. Dust and wipe clean all plastic, vinyl, or leather covered chairs.
8. Move light furniture other than desks, files, etc., prior to sweeping or vacuuming floors; replace furniture upon completion.
9. Vacuum all rugs and carpeted areas and wet mop tile floor areas every day. **Spot clean carpet as needed.** Thoroughly vacuum all carpeted stairs.
10. Spot clean soil and finger marks from painted or washable surfaces.
11. Library shelving -dust at least one range of shelving nightly until entire stacks are cleaned and then begin the process over.
- 12..
- 13..
14. Secure doors and turn lights out.
15. Secure all interior and exterior doors and turn out lights. Set the security alarm if applicable.

**B. WEEKLY (Completed by Tuesday at 7:00a.m.)**

1. Spray buff floors.
2. Clean all glass furniture tops.
3. Canister edge vacuum, move furniture as needed.
4. Wipe clean and disinfect all telephones.

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5. Vacuum upholstered chairs/couches.

**C. MONTHLY (Completed by 3rd Tuesday of each month at 7:00 a.m.)**

1. Scrub and re-wax floors.
2. Dust with cloth Venetian, vertical, and mini blinds.
3. Dust with cloth and canister vacuum the exterior of light fixtures, ceiling fans, air diffusers, return grills, louver, baseboards, and ledges.
4. Wash and remove all finger marks and soil from doors, doorjamb, walls, and elevator doors with particular attention to areas surrounding light switches and drinking fountains.
5. Clean and polish all door hardware and unpainted metalwork.
6. Dust all surfaces not reached in daily cleaning (window frames, curtain pockets, etc.).
7. Dust all pictures, frames, chart boards, clocks, and similar wall hangings.
8. Dust all woodwork, woodcarvings, railings, chair rails, trim, and hanging signs.
9. Vacuum beneath plastic carpet protectors.
10. Clean Library fireplace, clean and polish all brass work and fireplace tools.

**D. QUARTERLY (Completed by 10/15, 1/15, 4/15 and 7/15)**

1. Strip and wax all resilient flooring.

**CORRIDORS/UTILITY ROOMS/SERVICE CLOSETS**

**A. DAILY**

1. Dust and wipe clean, using disinfectant, elevator entrance doors and frames, hose cabinets, etc.
2. Dust and wipe clean all counters and tables used by public.
3. Remove finger marks from glass entryways, doors, and partitions.
4. Spot clean soil and finger marks from painted or washable surfaces.
5. Sweep and mop all resilient flooring.
6. Spot clean all vinyl furniture.
7. Vacuum all rugs and carpeted areas, spot clean carpet.
8. Clean and maintain, in an orderly condition, all utility rooms and service closets. Store cleaning materials, supplies, and cleaning equipment neatly, in a lawful manner, and in full compliance with the Owner's insurance requirements.
9. Sweep and mop with soap and/or disinfectant all tile floors.

**B. WEEKLY (Completed by Tuesday at 7:00 a.m.)**

1. Sweep and dust mop all uncarpeted areas. Spray buff traffic areas of resilient tile flooring, to continually maintain resilient flooring.

**C. MONTHLY (Completed by 3rd Tuesday of each month at 7:00 a.m.)**

1. Remove all finger marks and soil from doors, doorjamb, and walls with particular attention to areas surrounding light switches and drinking fountains.
2. Thoroughly clean, vacuum, and spot clean upholstered furniture.
3. Clean ceiling fan blades.

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**CREWROOMS**

**A. DAILY**

1. Sweep and wet mop floors.
2. Remove all finger marks and soil from doors, doorjamb, and walls.
3. Clean interior glass, windows, clean and disinfect water fountains.
4. Spot clean and vacuum carpet as applicable.
5. Empty wastebaskets, wipe down and replace liners.
6. Wipe down all table tops.

**B. WEEKLY (Completed by Tuesday at 7:00 a.m.)**

1. Spray buff resilient flooring weekly.

**C. MONTHLY (Completed by 3rd Tuesday of each month at 7:00 a.m.)**

1. Scrub and re-wax floors monthly.
2. Perform all high and low dusting.

**D. QUARTERLY (Completed by 10/15, 1/15, 4/15 and 7/15)**

1. Strip and wax all resilient flooring.

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**DME PSP AREAS**

PSP areas can be defined as those where access is limited to specified personnel and generally controlled with locked doors requiring special key or key card for entry. The area will usually have a raised floor and will contain electronic equipment. Only approved building receptacles are to be used when connecting any electrical applicant to power.

**NOTE: DME PSP Restricted areas only:** Access is allowed during the day for cleaning; no access is allowed at night unless authorized, and **person assigned to clean these areas must have the following background checks: FBI, TLETS, and NERC.** This area must have two NERC Operators & will have to sign in and if two operators are not available then they must check back until available (for additional information, please see the previous Section Supplies item C).

**A. DAILY**

1. Empty wastepaper and carbon bins. Replace the liner daily.
2. Raised floor should be dry-mopped. Never wax raised floor or use harsh abrasive or steel wool for cleaning. A damp mop may be used for removing spills.
3. Dust and wipe clean all furniture, files, and tops of computing equipment. Only a dust absorbent cloth may be used. Never use a feather duster.
4. Dust doors and trim within reach.
5. Clean all glass furniture tops.
6. Remove finger marks from glass doors and sidelights.
7. Dust and wipe clean all plastic, vinyl, or leather covered chairs.
8. Move light furniture other than desks, files, etc. prior to mopping; replace furniture upon completion.
9. Sweep and mop floor areas and all rubber ramp areas nightly.

**B. WEEKLY (Completed by Tuesday at 7:00 a.m.)**

1. Scrub mop, with a damp mop, floors in Communication areas.

**C. MONTHLY (Completed by 3rd Tuesday of each month at 7:00 a.m.)**

1. Remove all finger marks and soil from doors, doorjamb, and walls with particular attention to areas surrounding light switches.
2. Wash all partition glass and glass doors.
3. Scrub and wax floors in Communications area.

**D. QUARTERLY (Completed by 10/15, 1/15, 4/15 and 7/15)**

1. Strip and wax all resilient flooring.

**E. SEMI-ANNUALLY (Completed on 10/15 and 3/15)**

1. Vacuum beneath raised floor area.

Coordinate with:

Facilities Management Representative- David Saltsman- Police Department/  
Technology Services Department- Bobbie Arashiro  
DME Engineering and Operations Building – Jerry Looper

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**REST ROOMS**

**A. DAILY**

1. Scour, wash, and disinfect all lavatories, showers, water closets, and urinals.
2. Wash, disinfect, and wipe dry both sides of all toilet seats.
3. Wash and polish all mirrors, powder shelves, and unpainted metalwork including hardware, flush valves, piping, etc.
4. Remove all graffiti.
5. Wipe clean all toilet tissue, paper towel, soap, and sanitary napkin dispensers.
6. Empty paper towel and sanitary napkin disposal units.
7. Remove waste paper and other waste materials.
8. Refill all toilet tissue, paper towel, and soap dispensers.
9. Sweep, mop, and disinfect all floors and bases.

**B. MONTHLY (Completed by 3rd Tuesday of each month at 7:00 a.m.)**

1. Wash tile wall surfaces subject to splashing.
2. Wash and polish all wall tile, toilet stalls, and partitions.
3. Machine scrub and disinfect all floors and 4" bases.
4. Dust and wipe clean all corridor and vestibule entrance doors, toilet stalls, and partitions, including areas behind commodes and urinals.
5. Pour five (5) gallons of water monthly down floor drains to prevent sewer gas backup.



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**DME RECEPTION AREAS**

**A. DAILY**

1. Dust walls within reach.
2. Spot clean finger marks and soil on walls.
3. Wash glass doors, both sides, glass partitions and glass entryways.
4. Wipe clean all glass side lights and glass walls.
5. Dust and wipe clean all telephones, telephones booths, counter tops, etc.
6. Sweep and mop floors; protect base during floor washing to avoid staining.
7. Wash glass of building directory.
8. Wash and disinfect all drinking fountains (interior and exterior).
9. Empty wastebaskets and replace liner daily.
10. Vacuum carpets and doormats, spot clean carpets.

**B. WEEKLY (Completed by Tuesday at 7:00 a.m.)**

1. Thoroughly dust and wipe clean all furniture (such as desk tops/table tops) files, telephones, windowsills, and counters.
2. Clean all glass furniture tops.
3. Spray buff tile floors.

**C. MONTHLY (Completed by 3rd Tuesday of each month at 7:00 a.m.)**

1. Wash painted doors, doorframes, and walls.
2. Clean and polish all unpainted metalwork (doors and frames, mail depository, signs, and lettering).
3. Dust exterior surface of lighting fixture, air diffusers, return grills and louvers.
4. Dust all surfaces not reached in daily cleaning including ceilings.
5. Machine scrub/wax VCT tile floors.

**BREAK ROOMS/ /KITCHEN AREAS**

**A. DAILY**

1. Wipe and disinfect tabletops.
2. Clean sink and appliances. Inside of sinks will be scrubbed when empty. Janitors will not be responsible washing dishes or other items in the sink.
3. Clean and disinfect water fountain.
4. Sweep and mop floor with soap and/or disinfectant.
5. Empty wastebaskets, wipe down, and replace liners.
6. Wipe, and remove spots from counter.
7. Wash all inside glass and glass doors.
8. Fill paper towel dispensers.
9. Wipe clean mirrors.
10. Spot clean carpet.

**B. WEEKLY (Completed by Tuesday at 7:00 a.m.)**

1. Surface clean refrigerator, ranges, icemaker and microwave.
2. Vacuum carpet.

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3. Remove all finger marks and soil from doors, doorjambs, and walls with particular attention to areas surrounding light switches and drinking fountains.
4. Spray buff floors.

**C. MONTHLY (Completed by 3rd Tuesday of each month at 7:00 a.m.)**

1. Scrub and re-wax floors.

**D. QUARTERLY (Completed by 10/15, 1/15, 4/15 and 7/15)**

1. Strip and wax all resilient flooring.

**CARPET CLEANING**

All carpet will be cleaned per carpet manufacturers specification by an agreed upon carpet schedule up to two (2) times a year at the price bid herein. A schedule for carpet cleaning will be provided to Facilities Management within two (2) weeks from award of bid. If carpet is not cleaned satisfactorily in month when scheduled, an outside contractor will be brought in, with the price difference being billed to the bid contractor. All interior carpet will be spot cleaned daily. Contractor to provide a method of verifying that cleaning was completed to manufacturer's specifications.

RFP #5317 – EXHIBIT 3

**City of Denton Buildings Maintained under  
the Janitorial Services Contract**

No.	Name of Facility	Address	Exterior Square Footage	Janitorial Square Footage	Date Built
	Animal Adoption and Services Center	<i>Under construction</i>	~18,000	TBD	2014
1	Airport Control Tower	5003 Airport Road	2,044	1,200	2003
2	Airport Terminal	5000 Airport Road	4,624	4,224	2007
3	American Legion North	629 Lakey Street	3,298	2,677	2003
4	American Legion South	629 Lakey Street	2,482	2,376	1957
5	Animal Services	300 S. Woodrow Ln.	7,379	1,600	1990
6	Chiller Tower	319 E. McKinney Street	816	0	1966
7	City Hall'	215 E. McKinney Street	35,000	35,000	1968
8	City Hall East	601 E. Hickory Street	153,000	110,640	1946/1964
9	City Hall West	221 N. Elm Street	24,660	24,660	1927
10	Civic Center	321 E. McKinney Street	27,741	27,741	1967
11	Denia Recreation Center	1001 Parvin Road	17,580	17,580	1978
12	DME - Admin	1659 Spencer Rd, Bldg C	8,500	8,500	2007
13	DME - Engineer. and Syst. Operations	1685 Spencer Rd	9,838	9,838	2012
14	DME - System Ops	1701 Spencer Rd	10,900	10,900	1983
15	Facilities Management	869 S Woodrow	14,000	9,000	1994
16	Fire Central (Station #1)	332 E. Hickory Street	26,368	12,000	2002
17	Fleet Services	901 Texas Street	24,000	2,000	1999
18	Goldfield Tennis Center	2005 W. Windsor Drive	900	900	1988
19	Joint Training Facility	<i>Under construction</i>	21,000	TBD	Oct. 2013
20	Library - Emily Fowler	502 Oakland Street	22,876	22,876	1968
21	Library - North Branch	3020 N. Locust Street	33,000	33,000	2002
22	Library - South Branch	3228 Teasley Lane	20,700	20,700	1994
23	Martin Luther King, Jr. Rec. Center	1300 Wilson Street	20,000	20,000	1989
24	Nature Center	3310 Collins Rd.	N/A	N/A	N/A
25	North Lakes Annex	1117 Riney Road	3,500	3,500	1987
26	North Lakes Recreation Center	2001 W. Windsor Drive	17,580	17,580	1978
27	Senior Center	509 N. Bell Avenue	19,500	19,500	1978
28	Service Center (Purchasing 1,068 sf)	901 Texas Street	69,146	37,068	1978
29	Solid Waste	1527 S. Mayhill	12,000	12,000	2002
30	Solid Waste HCC	1527 S. Mayhill	3,600	1,200	2006
31	Solid Waste Scale House	1527 S. Mayhill	1,000	1,000	2008
32	Traffic Control	901 Texas Street	4,070	400	
<b>Total Square Footages:</b>		*	<b>660,102</b>	<b>490,660</b>	*

# Exhibit 1 - REVISED (ADDENDUM #2)

Respondent's Name: **Oriental Building Service**

## RFP 5317 - Pricing Sheet for Janitorial Services

The respondent shall complete the yellow cells in the following sections, which directly corresponds to the specifications. The contractor shall not make changes to this format.

### FACILITY INFORMATION FOR CLEANING

ITEM	QTY	DESCRIPTION	HOURS/ WEEK	AVERAGE HOURS/ MONTH	HOURLY PRICE <sup>1</sup>	MONTHLY PRICE	YEARLY TOTAL
<b>SECTION I: CITY HALLS</b>							
1	12 mth	<b>Main City Hall - Location: 215 E McKinney St</b> Cleaning (M-F) after 10:00 p.m. or AS NEEDED Facility Representative: <u>David Saltsman 940-349-7200</u> Estimated work hours per day: <u>8</u>	40	173	\$ 10.80	\$ 1,868.40	\$ 22,420.80
1a	2/yr	Carpet Cleaning, after business hours: 2 times a year (Dec. & July)				\$ 50.00	\$ 100.00
1b	12 mth	Paper towels, toilet paper & hand soap				\$ 250.00	\$ 3,000.00
<b>City Hall East-Human Resources/Risk Management</b>							
2	12 mth	<b>Location: 601 E Hickory St</b> Cleaning (M-F) after 6:00 p.m. Facility Representative: <u>Diena Flores 940-349-8345</u> Estimated work hours per day: <u>2</u>	10	43	\$ 10.18	\$ 437.74	\$ 5,252.88
2a	2/yr	Carpet Cleaning, after business hours: 2 times a year (Dec. & July)				\$ 20.00	\$ 40.00
2b	12 mth	Paper towels, toilet paper & hand soap				\$ 40.00	\$ 480.00
<b>City Hall East-Technology Services - Location: 601 E Hickory St</b>							
3	12 mth	Cleaning (M-F) after 6:00 p.m. or AS NEEDED Facility Representative: <u>Bobbie Arashiro 940-349-7758</u> Estimated work hours per day: <u>2</u>	10	43	\$ 9.25	\$ 397.75	\$ 4,773.00
<b>Person assigned to area must be TLETS* BACKGROUND CHECKED</b>							
3a	2/yr	Carpet Cleaning, after business hours: 2 times a year (Dec. & July)				\$ 25.00	\$ 50.00
3b	12 mth	Paper towels, toilet paper & hand soap				\$ 35.00	\$ 420.00
<b>City Hall East-Upstairs - Location: 601 E Hickory St</b>							
4	12 mth	Cleaning (M-F) after 6:00 p.m. Facility Representative: <u>Amanda Green 940-349-7462</u> Estimated work hours per day: <u>3</u>	15	65	\$ 10.00	\$ 650.00	\$ 7,800.00
4a	2/yr	Carpet Cleaning, after business hours: 2 times a year (Dec. & July)				\$ 75.00	\$ 150.00
4b	12 mth	Paper towels, toilet paper & hand soap				\$ 80.00	\$ 960.00

FACILITY INFORMATION FOR CLEANING

ITEM	QTY	DESCRIPTION	HOURS/ WEEK	AVERAGE HOURS/ MONTH	HOURLY PRICE <sup>1</sup>	MONTHLY PRICE	YEARLY TOTAL
5	12 mth	<b>City Hall East-Customer Service</b> - Location: 601 E Hickory St Cleaning (M-F) after 6:00 p.m. Facility Representative: <u>Juanita Clarke 940-349-7415</u> Estimated work hours per day: <u>2</u>	10	43	\$ 10.85	\$ 466.55	\$ 5,598.60
5a	2/yr	Carpet Cleaning, after business hours: 2 times a year (Dec. & July)				\$ 75.00	\$ 150.00
5b	12 mth	Paper towels, toilet paper & hand soap				\$ 50.00	\$ 600.00
6	12 mth	<b>City Hall East-Courts</b> - Location: 601 E Hickory St Cleaning (M-F) after 6:00p.m. Facility Representative: <u>Cay McSpedden 940-349-8139 or Toby May 940-349-8515</u> Estimated work hours per day: <u>3</u>	15	65	\$ 10.18	\$ 661.70	\$ 7,940.40
6a	2/yr	Carpet Cleaning, after business hours: 2 times a year (Dec. & July)				\$ 50.00	\$ 100.00
6b	12 mth	Paper towels, toilet paper & hand soap				\$ 75.00	\$ 900.00
7	12 mth	<b>City Hall East-Police</b> - Location: 601 E Hickory St Cleaning (M-Sun) after 5:00p.m.; 2 people each for five (5) hours per day Facility Representative: <u>Suzi Miller 940-349-7923</u> Estimated work hours per day: <u>10</u>	70	303	\$ 10.18	\$ 3,084.54	\$ 37,014.48
		<b>Person assigned to area must be TLETS* Background Check</b>					
7a	2/yr	Carpet Cleaning, after business hours: 2 times a year (Dec. & July)				\$ 60.00	\$ 120.00
7b	12 mth	Paper towels, toilet paper & hand soap				\$ 500.00	\$ 6,000.00
8	12 mth	<b>City Hall East-Police Days</b> - Location: 601 E Hickory St Cleaning (M-F) 12p.m-5p.m. Facility Representative: <u>Suzi Miller 940-349-7923</u> Estimated work hours per day: <u>5</u>	25	108	\$ 10.18	\$ 1,099.44	\$ 13,193.28
		<b>Person assigned to area must be TLETS* Background Check</b>					
9	12 mth	<b>City Hall West</b> - Location: 221 N Elm St Cleaning (M-F) after 6:00p.m. Facility Representative: <u>Sandy Lawson 940-349-8188</u> Estimated work hours per day: <u>6</u>	30	130	\$ 10.18	\$ 1,323.40	\$ 15,880.80
9a	2/yr	Carpet Cleaning, after business hours: 2 times a year (Dec. & July)				\$ 75.00	\$ 150.00
9b	12 mth	Paper towels, toilet paper & hand soap				\$ 200.00	\$ 2,400.00

FACILITY INFORMATION FOR CLEANING

ITEM	QTY	DESCRIPTION	HOURS/ WEEK	AVERAGE HOURS/ MONTH	HOURLY PRICE <sup>1</sup>	MONTHLY PRICE	YEARLY TOTAL
<b>SECTION II: RECREATION CENTERS</b>							
10	12 mth	<b>American Legion North &amp; South</b> - Location: 629 Lakey St Cleaning (M-F) Facility Representative: <u>Bobby Givens 940-349-8576</u> Estimated work hours per day: <u>2</u> Both Buildings	10	43	\$ 8.80	\$ 378.40	\$ 4,540.80
10a	2/yr	Carpet Cleaning, after business hours: 2 times a year (Dec. & July)				\$ 25.00	\$ 50.00
10b	12 mth	Paper towels, toilet paper & hand soap				\$ 30.00	\$ 360.00
11	12 mth	<b>Civic Center</b> - Location: 321 E McKinney St Cleaning (M-F) after 10:00p.m. & after special events as directed Facility Representative: <u>Myra Anderson 940-349-8733</u> Estimated work hours per day: <u>5</u>	30	130	\$ 10.85	\$ 1,410.50	\$ 16,926.00
11a	2/yr	Carpet Cleaning, after business hours: 2 times a year (Dec. & July)				\$ 250.00	\$ 500.00
11b	12 mth	Paper towels, toilet paper & hand soap				\$ 325.00	\$ 3,900.00
12	12 mth	<b>Denia Recreation Center</b> - Location: 1001 Parvin Rd Cleaning (M-F) after 10:00p.m. & (Sun) after 3:30p.m. Facility Representative: <u>Robbie Johnson 940-349-8578</u> Estimated work hours per day: <u>5</u>	30	130	\$ 12.00	\$ 1,560.00	\$ 18,720.00
12a	2/yr	Carpet Cleaning, after business hours: 2 times a year (Dec. & July)				\$ 60.00	\$ 120.00
12b	12 mth	Paper towels, toilet paper & hand soap				\$ 200.00	\$ 2,400.00
13	12 mth	<b>MLK Jr Recreation Center</b> - Location: 1300 Wilson St Cleaning (M-F) after 10:00p.m. & (Sun) after 3:30p.m. Facility Representative: <u>Bobby Givens 940-349-8576</u> Estimated work hours per day: <u>5</u>	30	130	\$ 12.00	\$ 1,560.00	\$ 18,720.00
13a	2/yr	Carpet Cleaning, after business hours: 2 times a year (Dec. & July)				\$ 60.00	\$ 120.00
13b	12 mth	Paper towels, toilet paper & hand soap				\$ 200.00	\$ 2,400.00
14	12 mth	<b>North Lakes Annex</b> - Location: 1117 Riney Rd Cleaning (M-F) after 5:00p.m. Facility Representative: <u>David Saltsman 940-349-7200</u> Estimated work hours per day: <u>2</u>	10	43	\$ 8.25	\$ 354.75	\$ 4,257.00
14a	2/yr	Carpet Cleaning, after business hours: 2 times a year (Dec. & July)				\$ 15.00	\$ 30.00
14b	12 mth	Paper towels, toilet paper & hand soap				\$ 20.00	\$ 240.00

FACILITY INFORMATION FOR CLEANING

ITEM	QTY	DESCRIPTION	HOURS/ WEEK	AVERAGE HOURS/ MONTH	HOURLY PRICE <sup>1</sup>	MONTHLY PRICE	YEARLY TOTAL
15	12 mth	<b>North Lakes Recreation Center</b> - Location: 2001 W Windsor Dr Cleaning (M-Sun) after 10:00p.m. Facility Representative: <u>Megan Thomas 940-349-7752</u> Estimated work hours per day: 5	35	152	\$ 12.00	\$ 1,824.00	\$ 21,888.00
15a	2/yr	Carpet Cleaning, after business hours: 2 times a year (Dec. & July)				\$ 35.00	\$ 70.00
15b	12 mth	Paper towels, toilet paper & hand soap				\$ 300.00	\$ 3,600.00
16	12 mth	<b>Senior Recreation Center</b> - Location: 509 N Bell Ave Cleaning *(M-F) 1:00-2:00p.m. & after 10:00p.m. & (Sun) after 3:30p.m. Facility Representative: <u>Jeff Gilbert 940-349-8727</u> Estimated work hours per day: 6	36	156	\$ 10.18	\$ 1,588.08	\$ 19,056.96
16a	2/yr	Carpet Cleaning, after business hours: 2 times a year (Dec. & July)				\$ 60.00	\$ 120.00
16b	12 mth	Paper towels, toilet paper & hand soap **Cleaning throughout the week needs to be scheduled after lunch				\$ 220.00	\$ 2,640.00
17	12 mth	<b>Tennis Center</b> - Location: 2005 W Windsor Dr Cleaning (M-S) after 10:00p.m. Facility Representative: <u>Jason Barrow 940-349-8525</u> Estimated work hours per day: 1	6	26	\$ 8.70	\$ 226.20	\$ 2,714.40
17a	2/yr	Carpet Cleaning, after business hours: 2 times a year (Dec. & July)				\$ 10.00	\$ 20.00
17b	12 mth	Paper towels, toilet paper & hand soap				\$ 5.00	\$ 60.00
<b>SECTION III: LIBRARIES</b>							
18	12 mth	<b>Emily Fowler Library</b> - Location: 502 Oakland St Cleaning (T-TR) after 9:00p.m. & (M,W,F,S,Sun) after 6:00p.m. Facility Representative: <u>Wylaina Polk 940-349-8774</u> Estimated work hours per day: 6	42	182	\$ 10.25	\$ 1,865.50	\$ 22,386.00
18a	2/yr	Carpet Cleaning, after business hours: 2 times a year (Dec. & July)				\$ 125.00	\$ 250.00
18b	12 mth	Paper towels, toilet paper & hand soap				\$ 250.00	\$ 3,000.00
19	12 mth	<b>North Branch Library</b> - Location: 3020 N Locust Cleaning (M/T/W) after 9:00p.m. & (Th-Sun) after 6:00p.m. Facility Representative: <u>Kimberly Wells 940-349-8796</u> Estimated work hours per day: 8 <b>Glass walls to be cleaned daily</b>	56	243	\$ 10.75	\$ 2,612.25	\$ 31,347.00
19a	2/yr	Carpet Cleaning, after business hours: 2 times a year (Dec. & July)				\$ 100.00	\$ 200.00
19b	12 mth	Paper towels, toilet paper & hand soap				\$ 250.00	\$ 3,000.00

FACILITY INFORMATION FOR CLEANING

ITEM	QTY	DESCRIPTION	HOURS/ WEEK	AVERAGE HOURS/ MONTH	HOURLY PRICE <sup>1</sup>	MONTHLY PRICE	YEARLY TOTAL
20	12 mth	<b>South Branch Library</b> - Location: 3228 Teasley Ln Cleaning (M,W) after 9:00p.m. & (T,Th,F,S,Sun) after 6:00p.m. Facility Representative: <u>Stacy Sizemore 940-349-8761</u> Estimated work hours per day: <u>5</u>	35	152	\$ 10.50	\$ 1,596.00	\$ 19,152.00
20a	2/yr	Carpet Cleaning, after business hours: 2 times a year (Dec. & July)				\$ 100.00	\$ 200.00
20b	12 mth	Paper towels, toilet paper & hand soap				\$ 150.00	\$ 1,800.00
<b>SECTION IV: SERVICE CENTER COMPLEX</b>							
21	12 mth	<b>Fleet Services</b> - Location: 804 Texas St Cleaning (M-F) after 5:00p.m. Facility Representative: <u>Diane Simington 940-349-8423</u> Estimated work hours per day: <u>1.5</u>	7.5	33	\$ 10.18	\$ 335.94	\$ 4,031.28
21a	2/yr	Carpet Cleaning, after business hours: 2 times a year (Dec. & July)				\$ 10.00	\$ 20.00
21b	12 mth	Paper towels, toilet paper & hand soap				\$ 20.00	\$ 240.00
22	12 mth	<b>Service Center-Purchasing</b> - Location: 901-B Texas St Cleaning (M-F) 11:30a.m.-1:00p.m. Facility Representative: <u>Jody Word 940-349-7132</u> Estimated work hours per day: <u>1.5</u>	7.5	33	\$ 10.18	\$ 335.94	\$ 4,031.28
22a	2/yr	Carpet Cleaning, after business hours: 2 times a year (Dec. & July)				\$ 75.00	\$ 150.00
22b	12 mth	Paper towels, toilet paper & hand soap				\$ 40.00	\$ 480.00
23	12 mth	<b>Service Center-Utilities</b> - Location: 901-A Texas St Cleaning (M-F) after 5:00p.m. Facility Representative: <u>Annie Bunger 940-349-8463</u> Estimated work hours per day: <u>9</u>	45	195	\$ 10.18	\$ 1,985.10	\$ 23,821.20
23a	2/yr	Carpet Cleaning, after business hours: 2 times a year (Dec. & July)				\$ 100.00	\$ 200.00
23b	12 mth	Paper towels, toilet paper & hand soap				\$ 200.00	\$ 2,400.00
24	12 mth	<b>Traffic Control</b> - Location: Cleaning (M-F) after 5:00p.m. Facility Representative: <u>Curt Arndt 940-349-7342</u> Estimated work hours per day: <u>1.5</u>	7.5	33	\$ 10.18	\$ 335.94	\$ 4,031.28
24a	2/yr	Carpet Cleaning, after business hours: 2 times a year (Dec. & July)				\$ 25.00	\$ 50.00
24b	12 mth	Paper towels, toilet paper & hand soap				\$ 10.00	\$ 120.00



FACILITY INFORMATION FOR CLEANING

ITEM	QTY	DESCRIPTION	HOURS/ WEEK	AVERAGE HOURS/ MONTH	HOURLY PRICE <sup>1</sup>	MONTHLY PRICE	YEARLY TOTAL
<b>SECTION V: ADDITIONAL FACILITIES</b>							\$ -
25	12 mth	<b>Airport Control Tower</b> - Location: 5003 Airport Rd Cleaning (7 Days/week) between 5:00 & 8:00p.m - <b>HOLIDAYS INCLUDED</b> Facility Representative: <u>Julie Mullins 940-349-7736</u> Estimated work hours per day: <u>1.5</u>	10.5	45.5	\$ 10.18	\$ 463.19	\$ 5,558.28
<b>Person assigned to area must PASS TLETS* Background Check</b>							
25a	2/yr	Carpet Cleaning, after business hours: 2 times a year (Dec. & July)				\$ 25.00	\$ 50.00
25b	12 mth	Paper towels, toilet paper & hand soap				\$ 15.00	\$ 180.00
25c	4/yr	<b>Window cleaning (Tower CAB) quarterly (10/15, 1/15, 4/15 &amp; 7/15)</b>				\$ 70.00	\$ 840.00
26	12 mth	<b>Airport Terminal</b> - Location: 5000 Airport Rd Cleaning (M/W/F) 6AM- 8 AM Facility Representative: <u>Julie Mullins 940-349-7736</u> Estimated work hours per day: <u>1.5</u>	4.5	19.5	\$ 9.50	\$ 185.25	\$ 2,223.00
26a	2/yr	Carpet Cleaning, after business hours: 2 times a year (Dec. & July)				\$ 20.00	\$ 40.00
26b	12 mth	Paper towels, toilet paper & hand soap				\$ 40.00	\$ 480.00
27	12 mth	<b>Animal Services</b> - Location: 300 S Woodrow Ln OFFICE ONLY: Cleaning (M-F) after 6:00p.m. Facility Representative: <u>Woodie Wilson 940-349-7594</u> Estimated work hours per day: <u>1.5</u>	7.5	33	\$ 10.18	\$ 335.94	\$ 4,031.28
27a	2/yr	Carpet Cleaning, after business hours: 2 times a year (Dec. & July)				\$ 10.00	\$ 20.00
27b	12 mth	Paper towels, toilet paper & hand soap				\$ 45.00	\$ 540.00
28	12 mth	<b>Facilities Management</b> - Location: 869 S. Woodrow Ln. Cleaning (M-F) after 5:00p.m. Facility Representative: <u>David Saltsman 940-349-7200</u> Estimated work hours per day: <u>2</u>	10	43	\$ 10.18	\$ 437.74	\$ 5,252.88
28a	2/yr	Carpet Cleaning, after business hours: 2 times a year (Dec. & July)				\$ 30.00	\$ 60.00
28b	12 mth	Paper towels, toilet paper & hand soap				\$ 30.00	\$ 360.00
29	12 mth	<b>Fire Central</b> - Location: 332 E Hickory St - Upstairs Offices, Lobby & attached restrooms & meeting rooms: Cleaning (M-F) after 6:00p.m. Facility Representative: <u>Laura Behrens 940-349-8844</u> Estimated work hours per day: <u>4</u>	20	87	\$ 10.18	\$ 885.66	\$ 10,627.92
29a	2/yr	Carpet Cleaning, after business hours: 2 times a year (Dec. & July)				\$ 100.00	\$ 200.00
29b	12 mth	Paper towels, toilet paper & hand soap				\$ 50.00	\$ 600.00

FACILITY INFORMATION FOR CLEANING

ITEM	QTY	DESCRIPTION	HOURS/ WEEK	AVERAGE HOURS/ MONTH	HOURLY PRICE <sup>1</sup>	MONTHLY PRICE	YEARLY TOTAL
30	12 mth	<b>Solid Waste</b> - Location: 1527 S Mayhill Rd Cleaning (M-F) after 6:00p.m. Facility Representative: <u>David Dugger 940-349-8001</u> Estimated work hours per day: 4	20	87	\$ 9.25	\$ 804.75	\$ 9,657.00
30a	2/yr	Carpet Cleaning, after business hours: 2 times a year (Dec. & July)				\$ 60.00	\$ 120.00
30b	12 mth	Paper towels, toilet paper & hand soap				\$ 75.00	\$ 900.00
30c	2/yr	<b>Two (2) extra carpet cleanings per year (to be scheduled)</b>				\$ 75.00	\$ 150.00
31	12 mth	<b>Solid Waste Annex (HCC)</b> - Location: S Mayhill Rd Cleaning (M-F) after 6:00p.m. Facility Representative: <u>Craig Waggoner 940-349-8011</u> Estimated work hours per day: 1	5	22	\$ 9.25	\$ 203.50	\$ 2,442.00
31a	2/yr	Carpet Cleaning, after business hours: 2 times a year (Dec. & July)				\$ 40.00	\$ 80.00
31b	12 mth	Paper towels, toilet paper & hand soap				\$ 50.00	\$ 600.00
32	12 mth	<b>Soild Waste Scale House</b> - Location: S Mayhill Rd Cleaning (M-F) after 6:00p.m. Facility Representative: <u>David Dugger 940-349-8001</u> Estimated work hours per day: 1	5	22	\$ 9.25	\$ 203.50	\$ 2,442.00
32a	2/yr	Carpet Cleaning, after business hours: 2 times a year (Dec. & July)				\$ 50.00	\$ 100.00
32b	12 mth	Paper towels, toilet paper & hand soap				\$ 10.00	\$ 120.00
32c	2/yr	<b>Two (2) extra carpet cleanings per year (to be scheduled)</b>				\$ 50.00	\$ 100.00
33	12 mth	<b>DME ADMIN- 1659 Spencer Rd. Bldg C ***OPTIONAL***</b> Cleaning (M-F) after 5 PM Facility Representative: <u>Misty Willis 940-349-7603</u> Estimated Work Hours per Day: 5	25	108	\$ 9.25	\$ 999.00	\$ 11,988.00
		<b>Person assigned MUST PASS NERC** BACKGROUND CHECK</b>					
33a	2/yr	Carpet Cleaning, after business hours: 2 times a year (Dec. & July)				\$ 50.00	\$ 100.00
33b	12 mth	Paper towels, toilet paper & hand soap				\$ 15.00	\$ 180.00
34	12 mth	<b>DME ENGSO- 1685 Spencer Rd. ***OPTIONAL***</b> Cleaning (M-F) after 5 PM Facility Representative: <u>Misty Willis 940-349-7603</u> Estimated Work Hours Per Day: 5	25	108	\$ 9.25	\$ 999.00	\$ 11,988.00
		<b>Person assigned MUST PASS NERC** BACKGROUND CHECK</b>					
34a	2/yr	Carpet Cleaning, after business hours: 2 times a year (Dec. & July)				\$ 50.00	\$ 100.00
34b	12 mth	Paper towels, toilet paper & hand soap				\$ 15.00	\$ 180.00

FACILITY INFORMATION FOR CLEANING

ITEM	QTY	DESCRIPTION	HOURS/ WEEK	AVERAGE HOURS/ MONTH	HOURLY PRICE <sup>1</sup>	MONTHLY PRICE	YEARLY TOTAL
35	12 mth	<b>DME OPERATIONS-</b> 1701 Spencer Rd. <b>***OPTIONAL***</b> Cleaning (M-F) after 5 PM Facility Representative: <u>Misty Willis 940-349-7603</u> Estimated Work Hours Per Day: 5	25	108	\$ 9.25	\$ 999.00	\$ 11,988.00
		<b>Person assigned MUST PASS NERC** BACKGROUND CHECK</b>					
35a	2/yr	Carpet Cleaning, after business hours: 2 times a year (Dec. & July)				\$ 50.00	\$ 100.00
35b	12 mth	Paper towels, toilet paper & hand soap				\$ 20.00	\$ 240.00
<b>SECTION VI: MISCELLANEOUS</b>							
36		<b>City Hall East &amp; City Hall: Two (2) restrooms at each building</b> Cleaning & Stocking (M-F) 11:00a.m.-1:00p.m. Estimated work hours per day: <u>2</u>	10	43	\$ 15.00	\$ 645.00	\$ 7,740.00
37		<b>Cleaning Supervisor (M-F) as needed</b> Estimated work hours per day: <u>6</u>	30	130	\$ 15.00	\$ 1,950.00	\$ 23,400.00
		<b>Supervisor MUST PASS FBI***/TLETS*/NERC** Background Check</b>					
38		<b>Nighttime Floor Workers &amp; Floaters (M-F) 5:00-10:00p.m.</b> Three (3) people each for five (5) hours per day Estimated work hours per day: <u>15</u> used for night floor work & special cleaning as needed	75	325	\$ 12.50	\$ 4,062.50	\$ 48,750.00
		<b>Nighttime/Floater Workers MUST PASS FBI***/TLETS*/NERC** Background Check</b>					

**Total Cost of Services and Supplies:**

\$ 47,107.15 \$ 544,385.80

M = Monday F = Friday  
T = Tuesday S = Saturday  
W = Wednesday Sun = Sunday  
Th = Thursday

Total Hours / Week 885  
Total Hours / Month 3,835  
Total Hours / Year 46,020

\$ 47,107.15  
\$ 544,385.80

FACILITY INFORMATION FOR CLEANING

ITEM	QTY	DESCRIPTION	HOURS/ WEEK	AVERAGE HOURS/ MONTH	HOURLY PRICE <sup>1</sup>	MONTHLY PRICE	YEARLY TOTAL
<b>SECTION VII: ON DEMAND ADDITIONAL SERVICES</b> (To be scheduled within 4 hours prior to cleaning.)							
<b>Hourly Rates</b>							
39	1 hr.	Supervisor					\$25.00 per hour
40	1 hr.	Floor Man					\$18.00 per hour
41	1 hr.	General Cleaner					\$16.75 per hour
<b>SECTION VIIa: ON DEMAND ADDITIONAL SERVICES - NATURE CENTER</b> (To be scheduled within 24 hours prior to cleaning.)							
42		<b>Nature Center</b> - Location: 3310 Collins Rd Cleaning - as requested					\$55.00 per hour
42a		Floor cleaning - as requested					\$55.00 per hour
<b>SECTION VIII: FUTURE BUILDINGS</b> (Currently under construction)							
43		<b>Animal Adoption and Services Center - LEED Cleaning Required</b> (Building completion scheduled for late 2014)	N/A	N/A	\$ 1.00	\$ 780.00	\$ 9,360.00
43a	2/yr	Carpet Cleaning, after business hours: 2 times a year (Dec. & July)	N/A	N/A	\$ 1.00	\$ 200.00	\$ 400.00
43b	12 mth	Paper towels, toilet paper & hand soap			\$ 1.00	\$ 250.00	\$ 3,000.00
44		<b>Public Safety Training Facility (City Hall East Addition)</b> (Building completion scheduled for Oct. 2013)	N/A	N/A	\$ 1.00	\$ 1,525.00	\$ 18,300.00
44a	2/yr	Carpet Cleaning, after business hours: 2 times a year (Dec. & July)	N/A	N/A	\$ 1.00	\$ 250.00	\$ 500.00
44b	12 mth	Paper towels, toilet paper & hand soap			\$ 1.00	\$ 300.00	\$ 3,600.00

**Payment Term Discounts**

the time period indicated below.

Payment Terms	Additional Discount %
Invoice Paid in 20 days	0.75%
Invoice Paid in 15 days	1.00%
Invoice Paid in 10 days	1.25%

<sup>1</sup> Hourly Price shall include all costs required to provide cleaning services, except for paper towels, toilet paper, and hand soap.

\*TLETS = Texas Law Enforcements Telecommunication Systems

\*\*NERC = North American Electric Reliability Commission

\*\*\*FBI = Federal Bureau of Investigations

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**Oriental Building Services, Inc.**

2526 Manana Dr. Suite 208  
Dallas, TX 75220  
Phone: 469-522-0001  
Fax: 469-522-0003  
Email: obsco@msn.com  
Web Site: www.obsusa.net

**Management:**

President: Steve Gye  
Vice President: Nixon Shum  
Vice President Operation: Andrew Kim  
Director of Development: Joon Lee  
Director of Quality Control: Richard Kim

**Industry:**

**Oriental Building Services, Inc. "OBS". (in business since 1992)** is a regional company with a focus on providing on time janitorial services mainly to government entities. OBS uses the most effective technology, high quality products and knowledgeable personnel, to create the cleanest building environment for our customers.

**Services & Background:**

**Oriental Building Services, Inc.** has the experience and employee base to handle all government entities accounts ranging from US government, State Level, County, City to public entities. As our reputation grows. The company's revenue will be approaching 3 million dollars per year in 2012. Oriental Building Services Management is fiscally sound and stands ready to provide a high level services for years to come. Also, we are an MBE certified company.

**City Requirements & Important issues:**

**Oriental Building Services, Inc.** understand the City of Denton RFP on janitorial services requirements, with on time performance, self in post supervision, orderly and competent staffs, work safety practice, use of Green chemical and cleaning practices.



## Introduction of Organization

Mr. Sang Gye and his brother found Oriental Building Services in 1992; he is the sole owner of the company. The business is conducted under proprietorship in the State of Texas. Has been providing full spectrum of janitorial services to business, corporation, and government entities in Texas for 20 years. In 2006 the company becomes a corporation. Home office and warehouses are located at:

2526 Manana Dr. Suite 208

Dallas, TX 75220

Phone: 469-522-0001

Fax: 469-522-0003

E-Mail: [obsco@msn.com](mailto:obsco@msn.com) or [nshum@obsusa.net](mailto:nshum@obsusa.net)

Web Site: [www.obsusa.net](http://www.obsusa.net)

### Company's Vision, Mission, Creed, Commitment

**Vision:** Eventually, every building from the basement to the executive office, single home to multi-unit complex, school to university, train stations to airports, independent business, corporation to government entities, will benefit from the cleanest environment make possible by Oriental Building Services.

**Mission:** With the most effective technology, high quality products and knowledgeable personnel, creating the cleanest building environment for customers and communities, without increasing their cost.

**Creed:** We shall provide our Customers with the most dependable cleaning service through technological and operational excellence. Our people will be the best-trained, most knowledgeable building cleaning specialist who takes pride in being the best.

**Commitment:** At Oriental Building Services, we stand ready to custom design the most cost-efficient cleaning program to fit each building and project. Our management and employees are committed to respond "Twenty-five" hours a day, seven days a week, three hundred sixty five days a year, to provide the best service and coverage for each building and project like you are our only customer.



## **About Oriental Building Services**

**Oriental Building Services** is a regional company, with 20 years of professional operating experience, excellent references and a desire to get better, with our focus on commercial and government entities janitorial and custodial services.

**Oriental Building Services** uses the most effective technology, high quality products and knowledgeable personnel, and is continuing a period of strong growth, as our reputation grows. The company's revenue will be approaching 3.3 million dollars per year in 2010. Oriental Building Services fiscally sound and stands ready to provide a high quality of services to our customers. Also, we are an **M/WBE & GREEN CLEANING certified company**. **M/WBE certified** by North Central Texas Regional Certification Agency. **GREEN CLEANING certified** by Green Clean Institute. In 2007 the company had received award for **Asian company of the year** by **Dallas Regional Minority Enterprise Development**. 2008, 2009 award received **Top 100 Asian Owner Business in U.S.** 2010 award received **Top 10 Fastest Growing Asian Business**.

## **Executive Team**

### **Sang Gye, Owner/President**

Sang Gye, hold a business degree from Dan-Kook University in Seoul, Korea. Come to United State in 1985. Start working as a Supervisor for B.P.A Inc. Responsible for 22 janitors and 5 Building, 1989 H.B.M. Services Corp. as a Operations Manager, Responsible for two route supervisor and 4 Building, 1990 Oriental Building Services, as a Project Manager, later become owner/president of the business.

### **Nixon Shum, Vice President**

Nixon joint Oriental Building Services in 2000, after many years in the restaurant and finance industry. Bring along the experience he have on how to keeping a clean restaurant and customer services, to joint OBS as a project manager. Promoted through the ranks as Vice president by developed new training program, customers services and improve employees productive.

### **Joon Lee, Director of Development**

Joon joint Oriental Building Services in 2002. After year in property management, he bring along the experience he have obtain in the field of property management, what property management expectations from custodial services to help increase Oriental Building Services customer satisfaction.

### **Andrew Kim, Vice President Operation**

Andrew returns to Oriental Building Services in 1999 as Vice President of Operation, after two years of absent. He bring along 20 years of cleaning service experience from major national building services company, to added depth to our executive team.

### **Richard U Chu Kim, Quality Control Director/VP**

Richard joint Oriental Building Services in 2000. After 15 years as Quality Engineering Specialist with Lockheed Martin Tactical Aircraft System, he is a certified green belt & six sigma by International Organization for standardization (ISO). He bring along the experience he have as QES with Lockheed Martin, and help develop the quality control program at Oriental Building Services.

## **Full Service Solutions**

Janitorial  
Day Porter Services  
Carpet & Floor Care Services  
Minor & General Maintenance  
Landscaping / Grounds Keeping  
Parking Lot Sweeping  
Garage Maintenance  
Window Washing / Power Washing  
Event Service Staffing  
Marble and Terrazzo maintenance and resurfacing





## **Our Current Customer**

Dallas County  
City of Plano  
City of Grand Prairie  
City of Arlington  
City of Desoto  
City of Colleyville  
City of Ft. Worth  
Department of US Army  
Dallas Area Rapid Transit  
DFW Airport  
Texas Work Force Commission  
Texas Women University  
Trinity River Authority of Texas  
University of Texas Arlington  
University of North Texas

## **Our Customer Past Customer**

City of Dallas  
Dallas County Community Collage  
Dallas Meyerson Symphony Center  
Tarrant County TX  
Dallas Water Utilities  
North Texas Tollway Authority  
Mori Seiki Corporation

## **Our Support Group and M/W/DV/BE Associate**

Jan Pak  
Bob Schapansky  
4252 Simonton Rd  
Dallas, TX 75244  
972-385-0188 Ext.231

Access Capital Corporation  
Equipment Leasing  
Robert Calzaretta  
630-434-0088

Procter & Gamble  
Keith Koraska  
Account Manager  
711 Live Oak Dr.  
Euless, TX 76040  
817-355-0990

VCP Int'l  
Equipment  
Jesse Valladarez  
972-271-7474 ext 454

Master Cleaning Supply  
Supply and Equipment  
Yun Sun Kim  
2254 Royal Ln Suite 200  
Dallas, TX 75229  
973-243-6747

Alto Financial Services  
Equipment Leasing  
16091 Swingley Ridge Rd, Suite 180  
Chesterfield, MO 63017  
636-532-7430

## **Bonding and Insurance Support**

The Grayhawk Companies  
Brents M. Blonigan  
1740 N. Collins Blvd. Suite 200  
Richardson, TX 75080  
972-671-9105

## FIRM CERTIFICATION

# Green Clean Institute

Having completed extensive training in Green Clean Practices, Oriental Building Services, Inc. is certified in the practice of the principles of the Green Clean Institute Certified™ regarding building maintenance. This certificate may be presented as evidence of this janitorial firm's ability to deliver Green Clean services to its customers.

This certificate is awarded to:

## Oriental Building Services, Inc.



A handwritten signature in blue ink that reads "R. Michael Richmond".

R. Michael Richmond, Director of Education

Dated: 10/30/2012 Expires: 10/31/2013



# Disadvantaged Business Enterprise Certification



**Oriental Building Services Company**

Disadvantaged Business Enterprise

has filed with the Agency an Affidavit as defined by 49 CFR Part 26 and is hereby certified to provide service(s) in the following areas:

561720;

Janitorial Services;

This Certification is valid beginning January 2013 and superceded any registration or listing previously issued. This certification must ne updated annually by submission of an Annual Update Affidavit..At any time there is a change in ownership or control of the firm, notification must be made immediately to the North Central Texas Regional Certification Agency.

Certificate expiration January, 20 14

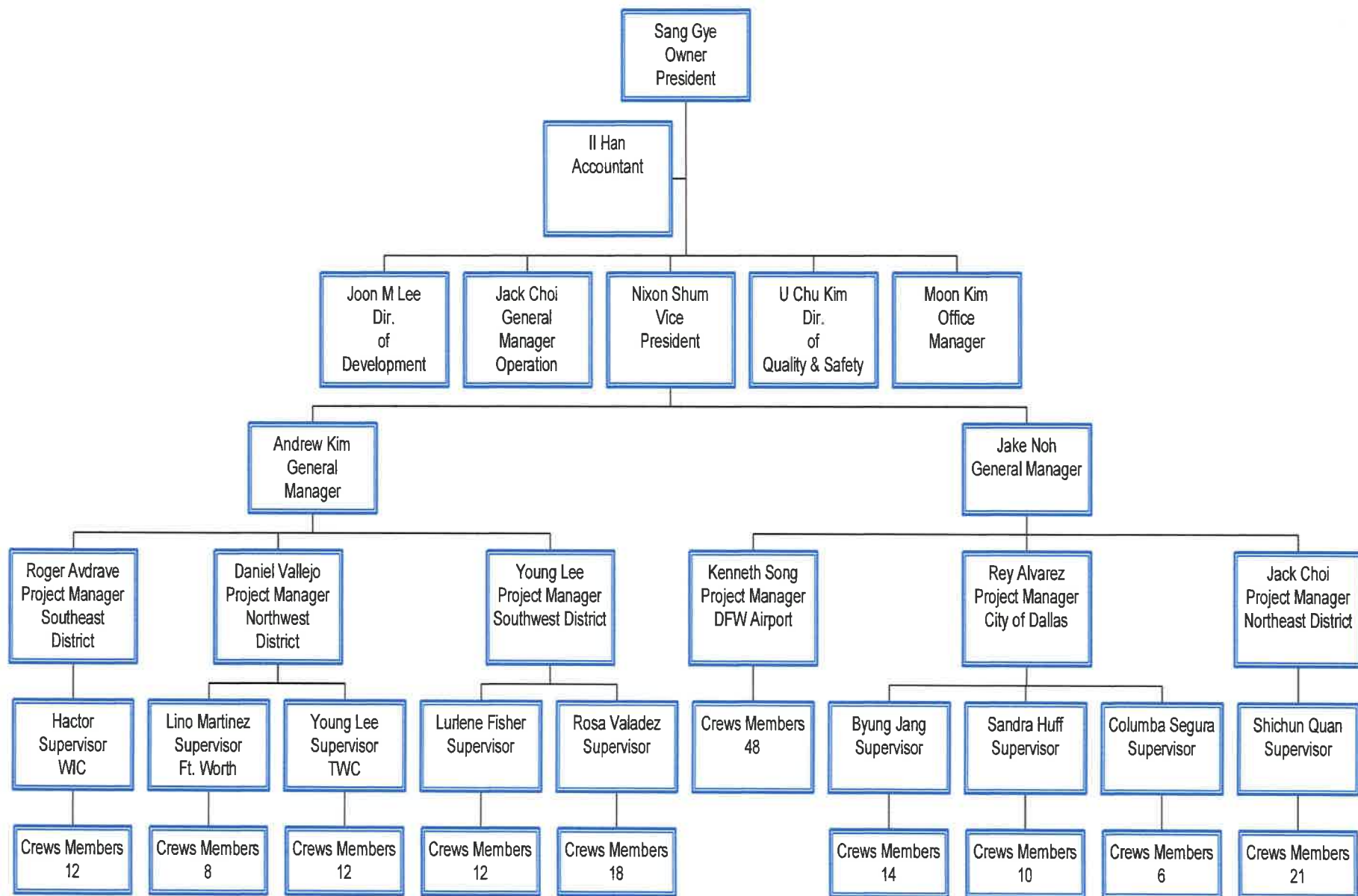
Issued date January, 20 13

**CERTIFICATION NO.**

PMDB55900Y0114

  
Certification Administrator

# Oriental Building Services Organization Chart





**Nixon Shum**  
2640 Northaven Suite 105  
Dallas, TX 75229  
214-287-0888

**BORN:**

May 31, 1955 Hong Kong, China

**EDUCATION:**

High School: North Dallas High School, Dallas TX. 1972 -1974  
Collage: El Central Collage, Dallas TX. 1975 – 1976 (Culinary Art)  
Richland Collage, Dallas TX. 1977 – 1979 (Business Administration)  
Technical: Spartan Collage of Aeronautical, Tulsa OK 1979 – 1980 (Pilot Training)  
TCC Flight School, Tulsa OK 1980 – 1982 (FAA Certified Pilot)

**SUMMARY:**

20 years of increasing responsibility in the hospitality and business management market place. Highly motivated, hands-on manager with strong problem solving, leadership and communication skills. Experience in turnaround poor performance, training, increase top line income, enhance operations efficiency, and improve return on investment.

**EXPERIENCE:**

2000 – Present **Oriental Building Services**  
Sr. Vice President

Joined Oriental Building Services as project manager, than promoted through the ranks to currant position. Responsible for project proposals, coordination/developing new project, development and implementation of all marketing plans and strategies, developed new training program to improve employee productive, communicate with all facilities management.

1997- 2000 **Profit Management International Group**  
Contract Management Service  
Operations Management Specialists

Engagements of firm included clients in hospitality, financial and service industries. Assignment included serving as Dining room/ banquet manager for a 60,500 Sq. ft. 2600 seats restaurant. Part of a crisis management team working on behalf of the bank trustee in an emergency bankruptcy situation. Helped nurtured the restaurant out of bankruptcy in 18 months, and sold to new owners. Saving the trustee from losing completely a 1.9 million dollars loan. During tenure, restaurant received several local and national commendations, including Best restaurant in America where Locals eat.



1995-1997      **Going Gourmet Bistros**

Chef/partner

Helped to build a niche Northern Italian bistro from a previous small deli to a three and half stars frequent haunt in North Dallas. In charge of new recipes development.

1991-1995      **The Law office of William Chu**

Office Manager

Managed the growth of the firm from 5 employees to over 40. Helped in expanding the office to China. In charge of all financial and administrative functions. In charge of marketing of the firm in its specialty area.

1982-1991      **United Fortunes Company**

Vice President

Helped the building and spearhead expansion of the first quick service Chinese food concept in regional malls in Texas. Helped to bring the company from a single store to multiple locations in two states.

1975-1979      **JGJ Inc. DBA Taco Bell Dallas**

Area Manager

Started as crewmember, than promoted through the ranks to Area Manager. Trained and developed managers for new stores. Improved store line employee productivity and built same store sales to among the highest increase in the region.

**Work Reference**

Sandra Gamez  
Dallas County  
Building Inspector  
214-653-6731

Candy Kothmann  
Texas Workforce Commission  
Ft. Worth Tele-Center Dir.  
817-420-1804



**Resume of:**

**U Chu Kim**  
Quality Control Director

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## **EMPLOYMENT HISTORY**

### **Oriental Building Services, Inc.**

**Quality Control Director** Sep 2000 - Present

#### **Principle Activities/Responsibilities**

Plans and directs activities concerned with development, application, and maintenance of quality standards for janitorial services, materials, and products: Develops and initiates standards and methods for inspection, and evaluation, utilizing knowledge in sanitation engineering fields such as productivity, chemical, or mechanical. Directs supervisors engaged in measuring and testing productivity and manpower data concerning materials, product, or process quality and reliability. Compiles and writes training material and conducts training sessions on quality control activities. Specialize in areas of quality control engineering, such as hiring practice, incoming material, process control, product evaluation, product reliability, inventory control and administrative application. Manage and direct quality control program.

### **Lockheed Martin Tactical Aircraft Systems**

**Quality Engineering Specialist** Aug 1986 - Aug 2000

#### **Principle Activities/Responsibilities**

- Schedule and assist in the performance testing of daily samples produced in the Assembly Department.
- Study problems which might be found in the regular sampling for possible causes and solutions. Devise the appropriate actions necessary to identify and implement corrective action.
- Schedule and assist in the performance of daily audit tours of compressor and/or evaporator functions.
- Observe aircraft assembly conversion procedures to assure all procedures are being done correctly.
- Interact with various customers to resolve any problems.
- Direct and/or perform any systems audit which may be necessary.
- Designs, schedules and performs any validation/reliability and/or quality tests required.
- Investigate and implement customer imposed requirements.
- Interact with individuals to provide needed training, expertise or the sharing of information.

## **EDUCATION**

### **International Organization for Standardization (ISO)**

Certified Green Belt & Six Sigma (2007)

### **Embry-Riddle Aeronautical University**

Currently attending the university getting a Master Degree in Business Management (Current)

### **Texas Technical University**

Mechanical Engineering (B.S. 1992)

### **Texas State Technical College**

Mechanical Engineering Technology (A.A.S. 1986)

**Jack Choi**  
**General Manager**

5014 willowhaven  
Garland, TX 75043  
(214) 287-2646  
Born March 7, 1965

**Objective**

To engage all my skills and Certified training in the Educational and commercial cleaning services. Combined with my management, operations and sales experience.

**Education**

High School: Garland High School 1983 - 1985

Collage: University of Texas Austin 1985 – 1987 (Business Administration)

**Work Experience**

**Oriental Building Services, General Manager of Operation (Oct/2004 – Current)**

- General Manager - Region 10 education center
- General Manager - Dallas Area Rapid Transit
- Project Manager - North Central Texas Community Collage
- Project Manager - City of Dallas Municipal & Courts Bldg custodial service.
- Responsibilities - Managing of janitorial service activities and business daily operation.  
Supervise cleaning crew to reach the target goals and activities reporting and analysis

**Amira Maid, Owner (1998 – Current)**

- Co-owner - Amira Maid a residential cleaning service manages and promotes a small residential cleaning service from 10 resident's home per month to a 30 resident's home per week business.

**Members Building Maintenance Inc (March /2003 – Oct/2004)**

- Project Manager – North Central Texas Community Collage  
Responsibilities - General managing of janitorial service activities and daily business operation, inspection, planning, training, communication with facility management

**KBS, Inc. Project Manager (Feb/1988 – Feb/2003)**

- Manager -Dallas County district building project
- Manager - Dallas County Community College District
- Assistant Manager - Southern Methodist University project
- Custodial supervisor – City of Arlington project

Started as crewmember, promoted through strong work ethics to operation manager, assignment included coordinating maintenance task, scheduling, training, compliance with all requirements o maintain the building appearance standards.





## Joon Lee

2640 Northaven Rd. Ste 105 Dallas, TX 75229 Phone: 469-226-8403 Email: [joonlee@obsusa.net](mailto:joonlee@obsusa.net)

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### **Director of Development (Oriental Building Services)**

Dedicated Manager with 3 years of experience developing relationship and controls improvements of properties. systems and best practices; cost-reduction, and lasting business relationships to ensure goal-surpassing performance. Computer skills include proficiency in Excel, QuickBooks and MS Office.

### **Experience**

*Oriental Building Services, Inc. Director of Development/Project Manager [7/02 to Present]*

From Project Manager I was promoted to Director of Development. I developed projects and saw them through completion. Worked with engineers to change and install equipment. Did all phases of preventative maintenance. Trained and qualified new employees. Took money saving ideas to management and worked with them hand in hand to completion of project

- Direct activities with development, application, and maintenance
- Develop standards and methods for inspections
- Inventory control
- Responsible for employee attendance
- Relations with management

*Pacific Century Realty, Property Manager [5/01 to 7/02]*

Efficiently coordinate and manage accounts in order to increase company profit margins. Promoted to Coordinator position to direct construction functions for a growing company.

- Supervised 2 engineers and oversaw their duties.
  - 1 year experience with the Peak accounting software.
  - Worked on gathering bids for construction for developing properties.
  - Have 2 years of accounting experience from school.
  - To collect from tenants and send out disbursements to vendors.

*Hank Haney Golf Center/ CompuGolf, General Manager [4/00 to 5/01]*

- Started as a cashier and worked myself up to an instructor.
- Experienced club seller plus club fitter.
- Building custom clubs for many different golfers (Pros and Amateurs).
- Instructor to the juniors and adults.
- Handicap was at 8.

### **Education**

2 years of North Lake College in Business 2000-2001

Graduated from Renaissance Charter High School 1999



Position: Project Manager

Daniel Vallejo  
DOB 6-4-1977  
2014 Appalachia Dr.  
Mesquite TX 75149

### Qualification

12 years janitorial and custodial experience, last 9 years as project manager and management. Administering contract from 10 to 35 employees, ability to communicate with employees, upper manager and contract manager, quality control and problem solving.

### Projects Experience

City of Grand Prairie (January 1 2005 - 2008)

Position: Project Manager  
28 City Building  
308,000 sq ft  
Employees 16

Dallas County May (May 1998 - Present)

District Building and District Government Building  
Position: Project Manager  
36,000 sq ft  
Employees 2

Dallas County Community Collage District (January 2001 – January 2006)

District Office  
Position: Project Manager  
78,000 sq ft  
Employees 6

Meyerson Symphony Center (March 2001 – October 2003)

City of Dallas  
Position: Project Manager  
290,000 sq ft  
Supervisor 3  
Employees 32

### Education

High School: H. Adamson High School, Dallas TX, 1991 – 1994  
Technical School: DeVry Tech, Dallas TX, 1994 - 1996

# Reynaldo Alvarez

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**Objective** A bilingual professional, seeking a rewarding and challenging position which will effectively utilize my skills and experience.

**Education** 1985 – 1989 **Sunset High School** **Dallas, TX**

1990 – 1991 **Mountain View College** **Dallas, TX**

**Experience** 16 years of field related chemistry and custodial work

**Certification and Training**

Commercial Driver's License – Class A

**Endorsements:** Tank vehicle & Hazardous materials

24-Hour Emergency Response

Blood Born Pathogens

First Aid-CPR

Hazardous Materials Transportation

Hazwoper/Awareness

Inventory Control

Accident Prevention

Confined Space Entry, Attendant, Supervisor and Rescue

Hotwork Permit

Forklift Operations

**Languages** English and Spanish

**Work experience**      **2004 – Present**      **Oriental Building Services, Inc.**      **Dallas, TX**

**Project Manager**

- Responsible for managing Dart and various other locations.
- Responsible for managing clean-up sites for hazardous and non-hazardous materials.
- Coordinating work schedule.
- Coordinating and managing the crew to make sure all the safety precautions are being followed.

**Field Services Technician**

- Lab Pack and Field services technician responsible of complete turnkey laboratory packaging services and cleanups, which include: sampling unknowns, segregation and packaging, labeling and manifesting.
- Part-time driving.
- Field Services which include pressure washing, tank cleaning, site clean up, site remediation, and vacuum services.

**1991 -- 2005**      **Teris LLC**      **Dallas, TX**

**TSD Supervisor**

- Responsible for preparing hazardous waste for transportation to ten different TSDF's for disposal, remediation and recycling. Required thorough and complete knowledge of EPA< DOT and state regulations for packaging, labeling and documentation.

**Field Services Technician**

- Lab Pack/Field services technician responsible of complete turnkey laboratory packaging services and cleanups, which include: sampling unknowns, segregation and packaging, labeling and manifesting, obtaining waste stream approvals, scheduling transportation and obtaining appropriate and cost-effective disposal sites.

**Reactivities Supervisor**

- Responsible for repackaging, bulking, labeling and inventorying all waste stored in Bay II (i.e. reactive or non-compatible with fuels or bulked items). This includes, but not limited to, waste segregation, lab packaging, repackaging, bulking, and reacting the materials.

**Lab Technician**

- Responsible for performing analytical analyses and recording the results as needed on all in-bound waste shipments.
- Handle day to day operations, quality control and required paperwork.
- Interpret gas chromatograms and review test results.

Procure laboratory supplies and reagents as well as instruments and equipments.

**REFERENCES AVAILABLE UPON REQUEST**

Roger Andrade  
Floor Care Manager  
3604 Portland St  
Irving, TX 75061

## PROPOSED ASSIGNMENT

City of Duncanville Fieldhouse

### EDUCATION

High School – Juticalpa – Honduras 1982  
Collage – Northlake Collage 1987 -1990

### EXPERIENCE

Floor Care Manager, Oriental Building Services, 2003 – present

Projects: Dart Buildings and LRV, City of Dallas-WIC

Joined Oriental Building Services as a supervisor. Responsibilities includes oversee day-to-day operation, maintain task scheduling, inspection, planning, training, and reports to project manager.

Supervisor , UBM, 2000 – 2003

Service Project: DFW Airport Terminal Skylink B

Manager, Gylan Building Services, 1997 – 2000

Service Project: Southern Methodist University

Crew Leader, Tidy Enterprise, 1991 - 1997

Service Project: City of Dallas



## **Oriental Building Services Personnel Recruitment and Hiring Practices**

OBS recruitment and hiring practices typically following the law and contract requirement

1. OBS recruits employees from the list of people that are friends, family, walk-in and referral.
2. To apply the applicant must have two from of acceptable picture I.D. with them at the time of apply for the job opening.
3. The applicant must be legal age of 18 year old and must have proof of legally to work in US.
4. Upon complete of application, interviewer will make copy of applicant's acceptable documentation (Driver's License, Social Security Card, Aliens Card and Authorized to Work Card etc.)
5. Before the applicant are hire, company will conduct background check and drug test as require by all contract and call Social Security office to confirm on applicant's Social Security number.
6. Upon pass of background check and social security number check. Applicant return to office to completing all required documents (I-9, W-4, etc.)
7. Upon all documents are completed, applicant's application will submit to contracting office for approve before start working at the location.
8. After the hire payroll department have 3 day to E-Verify the new employee from the hiring date.
9. After application approve, applicant will start 20-hour orientation and training.
10. The new employee finished the training, will be on probation for the first working days, and the first two-week they will work with company's supervisor.

The recruitment and hiring practices of OBS will be update from time to time to comply with the law and contract requirement.



## **Workforce Recruitment Program**

The Workforce Recruitment Program for Oriental Building Services, Inc. is a resource for federal agencies and private businesses nationwide to identify qualified temporary and permanent employees from a variety of fields. Applicants are highly motivated experienced individual eager to prove their abilities in the workforce.

### **Program starter**

- Job candidates pre-screened through face-to-face interviews
- Information about each applicant's qualifications
- Referral pools tailored to specific job requirements
- Access to candidates across the nation, by state or job category
- Flexibility in hiring for summer internships or permanent positions
- Opportunity to identify outstanding individual for permanent staffing needs
- Freedom to conduct independent interviews after referrals are made

And all of these services are done in house

### **What can part time person does for OBS**

- Undertake special projects postponed for lack of time or resources
- Assist permanent staff with key projects
- Share specialized knowledge and innovative technical skills
- Assume responsibilities of staff on vacation or leave of absence
- Prove that qualified people with disabilities make excellent employees
- Contribute in a wide variety of areas, including day to day operation, communications, equipments services, quality assurance program, and administrative support.



## **How Program Work**

Project manager conduct personal interviews with interested individual on site or at our office. From these interviews, a database is compiled containing information on each individual seeking temporary or permanent job. The Project manager interview comments are included in each individual's profile. Job seekers in the database are categorized by job interest, work experience, geographic location, and many other factors. Job site manager are free to conduct independent interviews with individual who are identified as their potential job candidates, qualify individual or individuals will refer to human resource perform hiring procedures.





## TRAINING PROGRAM SUMMARY

The training program at Oriental Building Services is very detailed and comprehensive. All new employees go through five steps of training before he or she is permanently assigned to the building. The five steps are classroom training, video training, first aid, chemical, equipment, safety, hands on training and green cleaning and products. We use the **3M™** Service, Maintenance, Analysis, Resource, Training (**S.M.A.R.T.**) Program. This program allow OBS to customize the training for each project or facilities, the employees will have first hand training before they step foot in to the facilities. It allow OBS to customize to the point an employees will know what the same office, trouble area, or restrooms, look like and what step, tool and chemical to use. It also allows OBS to implement proven green cleaning methods in all facility and to combine any facilities owner's maintenance schedules into the training. For any customers that are working towards Green Sealed or Leadership in Energy and Environmental Design **L.E.E.D** certifications, we will provide a green care system (green cleaning procedures & products) that will help you earn points to getting that certification.

**Supervisor Training:** The supervisor will receive ongoing skill development training as needed. Training programs available for Supervisors will include:

- ✓ Supervisory Skills 101
- ✓ Managing Change
- ✓ Building Productivity through Mutual Respect
- ✓ Eliminating Un-lawful harassment in the workplace
- ✓ Conducting performance reviews
- ✓ Hiring and Firing procedures (Conducting Interviews)
- ✓ Building Productive Teams

(Note: All basic employees training will be available to supervisors also)

**Basic Employee Training:**

**1. Classroom Training**

- ✓ General Cleaning
- ✓ Floor Care Task
- ✓ Housekeeping
- ✓ Hard Floor Care
- ✓ Carpet Care
- ✓ Disinfectants Tips and information
- ✓ Restroom Cleaning
- ✓ Office Cleaning
- ✓ MSDS Information
- ✓ Specialized Cleaning



**Training Facility**

**2. 3M™ Video Training (English and Spanish)**

- ✓ Commercial Care
- ✓ Restroom Care Procedures
- ✓ Twist and Fill
- ✓ Working Safety
- ✓ Equipment
- ✓ Safe Cleaning



**3M Green Seal Products**

**3. First Aid, Chemicals, Equipments, Safety**

- ✓ Basis first aid
- ✓ Safe use of chemicals
- ✓ Understanding equipment
- ✓ Blood borne Pathogen
- ✓ Hazard program
- ✓ Asbestos awareness Training



**Environmental  
Friendly Equipment**

#### **4. Green Cleaning**

- ✓ Building Expectations
- ✓ Green Cleaning Basics
- ✓ Custodial Duty
- ✓ Green Clean Procedures
- ✓ How to evaluate Green Clean Products
- ✓ List of Environmental Issues
- ✓ Traditional versus Green Products
- ✓ Understanding the impact of Cleaning Green



#### **5. Hand on Training**

A supervisor works with the trainee and showing actual cleaning procedure and answering all questions. During this time, he or she is obligate to take note on and special instruction, such as any door to be locked after cleaning turning of light, alarm-setting procedures. Onsite training will take up to 2 weeks before the trainee works on their own.

**Training Review and Development:** Current training material will be reviewed to assure all aspects needed for job performance are covered. Training will be evaluated on the following basis:

- Compliance to contract requirements
- Compliance to current contract requirements to delivery requirement  
(Example: Annual or Quarterly training)
- Documentation of completed training (Training Completion Form)
- Documentation filed in appropriate place

**Additional training will be developed and delivered by the Project Manager**



## **COMPANY SAFETY POLICY**

Responsibility to Injury and Illness Prevention Program (IIPP) has been delegated throughout all levels of the company, from management to employees. The following is an overview of that policy.

### **Executive Management Safety Responsibilities**

The owner of Oriental Building Services has the ultimate responsibility for the safety and health of company personnel and must ensure that company operations are conducted in accordance with the safety standards and guidelines. Executives Management's attention will focus on the strategic direction of the company's IIPP and overall management of the Injury and Illness Prevention Program. As such, Executive Management will establish and direct and IIPP that will provide:

1. Statements of policy and responsibility for the Company's total IIPP.
2. Identification of safety and health hazards.
3. Codes for safe practices.
4. Inspection, investigation systems and corrective actions.
5. Training programs.
6. Communications systems.
7. Record keeping.

### **Safety Coordinator's Responsibilities**

1. The Owner of Oriental Building Services has an appointed Safety Coordinator and will monitor his/her activities to ensure an effective program.
2. The Safety Coordinator develops and administers the Company's IIPP in order to achieve the goal of a totally safe workplace.
3. The Safety Coordinator has the authority to implement immediate action to correct hazardous conditions, which pose a threat of death or serious injury.
4. The Safety Coordinator will liaison with federal, state and local safety officials, insurance company safety specialists and safety/management consultants.
5. The Safety Coordinator will be the Chairperson of the Safety Study Group.
6. Review claim files to recommend and institute loss control prevention.
7. Provide safety training to the Project Manager, Supervisors and employees.



8. Perform Safety/Loss Control audits and inspections.
9. Perform Job Safety Analysis (JSA).
10. Implement employee safety incentive and award programs.
11. Enforce employee safety infraction disciplinary procedures.
12. Investigate all major accidents.
13. Coordinate with Project Manager the investigation and corrective action for minor accidents.
14. Coordinate with Project Manager and Safety Study Group the investigation and corrective action for major accidents.
15. Monitor and disseminate information company-wide regarding new safety laws, regulations and standards.
16. Perform safety inspections.
17. Maintain files and records of IIPP.

#### **Safety Orientation, Education & Training**

The Preliminary Safety Training Plan is presented under Subsection. This plan includes a complete agenda for safety training prior to job commencement as well as a refresher, OFT, and new hire training. New hires will be trained in their particular workstations in safety procedures and practices before commencing work. They will receive instruction in all other safety matters within thirty days.

#### **Industrial Safety Program**

The IIPP is an essential part of the Department of Reclamation Services Industrial Safety Program. The overall goal is to reduce the probability of accidents from occurring. Additionally, we will ensure conformity to the current edition of Occupations Safety and Health Administration (OSHA), and National Fire Codes.

#### **Hazard Reporting Procedures and Follow-On Corrective Action**

Any accident, no matter how minor, will be reported to the on-site manager by the assigned supervisor. The Supervisor will conduct an inspection of the accident scene and interview the employees who witnessed or were associated with the said accident. As part of an accident report, a brief statement will be taken and signed by the employees involved and attached to the accident report. After an accident report has been filed with the project office, E&A's on-site manager will notify our insurance carrier by mail with a complete follow-up of circumstances surrounding the accident and a duplicate to the Home Office.



Following notification of the insurance carrier and the home office, our manager will complete all applicable accident investigation reports required by the contracting officer as required by OSHA standards.

A listing of accident reporting procedures will be posted on the employee bulletin board in the project office. Along with his investigation, the on-site manager will file a corrective or preventative action notice with the Project Manager and deliver a duplicate to the Home Office. Posted alongside the accident reporting procedures on the employee bulletin board will be the name, address and telephone of the local company physician.

Pending any changes in the current status of Department of Reclamation Services on-going project operations, our on-site manager may designate a different qualified local company physician and submit written notification to the Government contracting officer, including name, office location and home/work telephone numbers.

In the event of an on-the-job accident/injury, the injured employee will be transported to the nearest emergency medical treatment center for treatment. E&A currently maintains an Accident Prevention Safety Program, which can be updated or revised upon request of the installation of the Project Manager.

#### **Accident Record for the Past Years**

Throughout Oriental Building Service's history, safety has been considered as high a priority as any other organizational function. Consequently, Oriental Building Services has developed and implemented methods to aid in minimizing the probability of accidents. Over the last two years, accidents have been kept to an average of 1 per year, none of which was considered to be major.



## QUALITY CONTROL PROGRAM

We've structured our Quality Control standards and procedures to always meet and very often exceed Government quality assurance expectations. Our Quality Control program and approach has been implemented on numerous Government Custodial/Janitorial contracts. The success of the program has provided Oriental Building Services Management "OBS" with the confidence to expand our Quality Control applications and objectives to evolve with client requests. Four elements are key to effective Quality Control administration:

1. **TRAINING** - For a thorough understanding of quality objectives and requirements, periodic refresher classes keep quality performance in the minds of our employees.
2. **DAILY SUPERVISION** - By a qualified management team to ensure proper adherence to contract quality requirements.
3. **SCHEDULING** - The judicious application of resources in the right area at the right time is the best assurance of quality.
4. **INSPECTION** - Periodic and unannounced checks for adherence to define Quality Control policy by both the management team and Government inspectors to predict potential deviations, as well as, to document and correlate improvements.

The following paragraphs present an outline of our Quality Control practices:

- An efficient **Inspection System**
- Timely **Deficiency Identification**
- **Quality Control Documentation and Enforcement**
- **Government Communication Interfaces**
- A qualified **Organization and Structure**
- A responsive **Customer Comment Program**
- Steps to implement **Corrective Action**
- **Recommendation Program** with the appropriate provisions for:
  - ◆ reporting mechanisms
  - ◆ complaint investigation
  - ◆ preventive measures
  - ◆ synopsis of complaints and steps taken for improvement



**Inspection Program** - The following major areas of concern are considered routine inspection items:

- **Employee Personal Hygiene** - Cleanliness of hands, arms, face, hair, uniforms, proper use of hair restraints, gloves, and associated sanitary protections.
- **Safety** - The safe use of janitorial and custodial equipment, insure the proper safety procedures are in place to include the use of wet floor caution signs but not limited to constant inspection of floor conditions, walls, ceilings to preclude accidents and assure dust less cleaning methods.
- **Janitorial & Custodial Operations** - We shall insure that quality and efficiency of sweeping, mopping, dusting, etc. service display cases, walls, wall hangings, floor and entryways, proper ventilation, lighting, toilet and lavatory facilities.
- **Property & Equipment Maintenance** - Check on all exterior and interior maintenance responsibilities falling under the service contract requirements, snow and ice removal from entrance/exit walkways, proper trash disposal and inspection of lighting fixtures (both interior and exterior).
- **Employee Conduct & Attitude** - Checks for the practice of the proper code and conduct in employee/customer relations including decorum, respect, politeness, and responsiveness to customer needs.

**Inspection Schedule** - Our Project Manager and/or Supervisor will conduct daily or bi-daily unscheduled inspections of all contract functional areas to assure continuing compliance with the PWS in conjunction with the Government QAE. Additionally, weekly inspections will occur on a scheduled basis to alert deficiencies that continue for more than one or two days. As a result, problems can be "nipped in the bud" before they affect overall performance or can spill over into other functional areas.

After inspection, the Project Manager will document all deficiencies on Oriental Building Services forms. A copy of these completed forms will be retained in each facility and one will be given to the affected functional area Supervisor. The affected employee will be required to sign the deficiency report, acknowledging the deficiency and the corrective actions to be taken. If the problem persists beyond the maximum two-hour time limit after notification, a subsequent deficiency report will be filed with the Project Manager for immediate remedial action.

The Project Managers will prepare a synopsis report of all deficiencies and associated corrections on a monthly basis. Copies of the report will then be given to the Project Manager, Corporate Operations  
Oriental Building Services





Manager, and the Contracting Officer. A copy of the monthly report will be filed in each facility's QUALITY CONTROL records for review in the event of a recurrence.

Our Corporate Operations Manager will conduct random site visits for spot checks and to review on-site project operations throughout the term of the contract. Subsequent inspections will be scheduled during the first and third quarters of performance for each contract year. Should circumstance require, more frequent inspections will be conducted as determined by persisting deficiencies, or at the request of the Contracting Officer. If required, the Operations Manager will conduct additional or remedial QUALITY CONTROL training of the on-site project management staff and affected employees.

**Corrective Action** - The Project Manager will document his/her findings in a QUALITY CONTROL Deficiency/Correction Report and instruct the Supervisors of the affected area to take corrective action for resolution of the problem within two hours or within the minimum reasonable time period to adequately correct the deficiency.

The Project Manager will then require the Supervisors to initial the deficiency report, acknowledging the problem(s) identified. When the deficiency has been corrected and re-inspected, the Project Manager will complete the corrective action portion of the deficiency form. If unresolved, the deficiency will be escalated to an official reprimand of the employee(s) responsible. The Project Manager will then perform random spot-checks of the subject area to verify adherence to quality standards.

Each Supervisor will submit a monthly Quality Control Inspection Report to the Project Manager after each detailed inspection. The Project Manager will complete and file the Monthly QC Inspection Summary in the Project Office and send a copy to the Home Office.

The Corporate Operations Manager will also conduct unannounced inspections of all on-site project operations, providing an independent quality control function. During the Operations Manager's visit, a discussion of quality levels with the Project Manager and Supervisors will provide further corporate oversight of the contract. Should any problem persist, the Operations Manager will conduct refresher training of the affected project staff and employees. If despite additional training, directives for correction or pronounced deficiencies persist, the Operations Manager is delegated the authority to dismiss the deficient employee(s) and replace them. Notification to the Project Manager and the Government QAE will be made.

**Government Communication Interfaces** - Quality complaints and suggestions for improvement at the customer level will be handled in accordance with Government specifications and coordinated through the



customer Complaint and Improvement Recommendation Program. Official communications between Government Contract personnel and the project office will adhere to all contract terms and conditions. Where necessary or desired, the Contracting Officer and our Contract Manager can have special "one-on-one" meetings. Our Project Manager is delegated the necessary authority and access to executive management to fully commit the company. We further propose quarterly roundtable forums to be attended by the Contracting Officer and his/her designees, our Project Manager, Supervisors and corporate Operations Manager. Through this open discussion, a forecast of impending quality decisions can be discussed and problem areas isolated before they impact the project. As a general rule, however, deficiencies discovered by the Government should be delivered in writing to the Project Manager for immediate corrective action.

**Quality Control Documentation and Enforcement** - OBS has several standard forms to document quality control inspection, enforcement, deficiency and corrective actions reports. Further documentation practices will be coordinated through the Customer Complaint/Improvement Program. All project quality control records will be available to the Government for review throughout the term of the contract. The Project Manager will keep the following reports on file in the project office for review during normal business hours:

- Completed Quality Control Inspection forms for all functional areas, detailing deficiencies and corrective actions taken.
- Completed Operations Managers inspection evaluations after surprise inspections, including corporate directives for enforcing corrective actions.
- All weekly deficiency/correction inspection reports from Operations Manager.
- Completed Customer Comment Forms.
- All monthly synopsis reports to the Operations Manager and Contracting Officer, listed identified deficiencies/complaints and the corrective action taken.

**Customer Comment Program** – OBS firmly believes in a strong contractor-consumer interface for identifying problems. Solutions to some of the simplest or toughest problems may be very obvious to the customer, but we may be "too close to the trees to see the forest." To facilitate this program, we will make a Customer Comment Form available at various places throughout the work areas. This will make the forms readily available to all customers. Additionally, our Project Manager and Supervisors will be highly visible during the day-to-day operations. They will be available to receive customer comments and complaints. All Customer Comment Sheets received will be delivered directly to the Project Manager. All Comment Sheets will be serialized, logged and maintained in a file in the Project Office for Government review.



All complaints will be carefully investigated and timely solutions will be implemented. If the customer chooses to give his/her name and telephone number, we will provide feedback to them regarding the corrective action taken to alleviate their complaint.

**Employee Training/Qualification** - In addition to the OBS initial and follow-on training we will ensure our employees attend additional company sponsored training based on Government requirements. In all cases, OBS will perform initial and refresher training. We will maintain training folders on all employees and ensure all training, briefings, and physical examinations are properly recorded. We will forward a list of employees and training they have received to the Contracting Officer Representative if required.

FINANCIAL STATEMENT

ORIENTAL BUILDING SERVICES, INC

**Confidential**

**Confidential**

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## ACCOUNTANT'S FINANCIAL REPORT

BOARD OF DIRECTORS  
ORIENTAL BUILDING SERVICES, INC  
2526 MANANA DR. #208  
DALLAS, TX 75220

I have compiled the accompanying statement assets, liabilities, and equity-cash basis of Oriental Building Services Inc. as of June 30, 2012 and related statements of revenues, expenses, and retained earnings-cash basis for the year then ended, in accordance with Statements on Standards for Accounting and Review Services issued by the American Institute of Certified Public Accountants. The financial statements have been prepared on the cash basis of accounting, which is a comprehensive basis of accounting other than generally accepted accounting principles.

A compilation is limited to presenting in the form of financial statements information that is the representation of management. I have not audited or reviewed the accompanying financial statements and, accordingly, do not express an opinion or any other form of assurance on them.

The management has elected to omit substantially all the disclosures ordinarily included in financial statements prepared on the cash basis of accounting. If omitted disclosures were included in the financial statements, they might influence the user's conclusions about the Company's assets, liabilities, equity, revenues, and expenses. Accordingly, these financial statements are not designed for those who are not informed about such matters.

October 09, 2012

  
Yil Han-C P A

Confidential

ORIENTAL BUILDING SERVICES, INC  
INCOME STATEMENT  
Six Months Ended June 30, 2012

	YTD	YTD %
REVENUE :		
Revenue	1,695,776	100%
	-	-
Gross Revenue	1,695,776	100%
OPERATING EXPENSES:		
Advertising & Selling	750	0%
Business Bond Fee	7,982	0%
Contract Labor & Commission	879,752	52%
Depreciation & Amortization	36,898	2%
Freight & Vehicle	34,822	2%
Insurance	23,301	1%
Interest Expenses	-	0%
Legal & Professional	5,657	0%
Office Expenses	14,270	1%
Repair	5,097	0%
Rent	10,700	1%
Supplies	152,620	9%
Salaries & Payroll costs	327,697	19%
Taxes	40,567	2%
Meals & Entertainment	5,191	0%
Telephone	-	0%
Travel	2,500	
Utilities	7,824	0%
Other Expenses	6,695	0%
Total Operating Expenses	1,562,323	92%
Net Income From Operations	133,453	8%
Non Operating Income <Expenses>		
Net Income Before Taxes	133,453	8%
Income Taxes		
Net Income <Loss>	133,453	8%

ORIENTAL BUILDING SERVICES, INC  
BALANCE SHEET  
AS OF JUNE 30, 2012

ASSETS

Current Assets :	
Cash	375,804
Savings/Marketable Securities	-
Accounts Receivable	337,678
Inventory	-
Prepaid Expenses	-
Total Current Assets	<u>713,482</u>
Investments:	-
Investments	-
Total Investments	-
Fixed Assets :	-
Land & Buildings	-
Machinery & Equipment	621,515
Automobiles & Trucks	101,650
Furniture & Fixtures	5,000
Leasehold Improvements	-
Accumulated Depreciation	(466,397)
Total Fixed Assets	<u>261,768</u>
Other Assets :	-
Other Assets - Goodwill	-
Other Assets - Deposits	-
Total Other Assets	-
Total Assets	<u><u>975,250</u></u>

ORIENTAL BUILDING SERVICES, INC  
BALANCE SHEET  
AS OF JUNE 30, 2012

LIABILITIES & EQUITY

Current Liabilities :	
Notes Payable - Current	-
Accounts Payable	-
Taxes Payable	-
Accrued Expenses	-
Current Portion Long Term Debt	-
Total Current Liabilities	-
Long Term Debt :	
Long Term Debt	-
Less Current Portion	-
Deferred Income Taxes	-
Total Long Term Debt	-
Total Liabilities	-
Equity :	
Capital	10,000
Additional Capital <Drawing>	346,792
Retained Earnings	485,005
Current Year Income <Loss>	133,453
Total Equity	975,250
Total Liabilities & Equity	975,250



**ORIENTAL BUILDING SERVICES INC**  
**Confidential**  
**FINANCIAL STATEMENT**

**DECEMBER 31, 2011**

**Confidential**

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## ACCOUNTANT'S FINANCIAL REPORT

To the Management  
Oriental Building Services Inc.  
2526 Manana Dr. Ste 208  
Dallas, TX 75220-1242

I have reviewed the accompanying statement of financial position of Oriental Building Services Inc. as of December 31, 2011 and related statements of activities for the year ended, in accordance with Statements on Standards for Accounting and Review Services issued by the American Institute of Certified Public Accountants. All information included in these financial statements is the representation of the management of Oriental Building Services Inc.

A review consists principally of inquiries of company personnel and analytical procedures applied to financial data. It is substantially less in scope than an audit in accordance with generally accepted auditing standards, the objective of which is the expression of an opinion regarding the financial statements taken as a whole. Accordingly, I do not express such an opinion.

Based on my review, I am not aware of any material modifications that should be made to the accompanying financial statements in order for them to be in conformity with generally accepted accounting principles.

July 20, 2012

  
Yil H. Han-C.P.A.  
2828 Forest LN. #1103  
Dallas, TX 75234

ORIENTAL BUILDING SERVICES, INC  
INCOME STATEMENT  
Twelve Months Ended December 31, 2011

	YTD	YTD %
REVENUE :		
Revenue	2,903,904	100%
	-	-
Gross Revenue	<u>2,903,904</u>	<u>100%</u>
OPERATING EXPENSES:		
Advertising & Selling	-	0%
Business Bond Fee	27,672	0%
Contract Labor & Commission	1,252,042	43%
Depreciation & Amortization	30,606	1%
Freight & Vehicle	23,298	1%
Insurance	42,911	1%
Interest Expenses	-	0%
Legal & Professional	11,645	0%
Office Expenses	40,912	1%
Repair	12,474	0%
Rent	20,600	1%
Supplies	217,260	7%
Salaries & Payroll costs	809,870	28%
Taxes	112,159	4%
Meals & Entertainment	10,615	0%
Telephone	9,059	0%
Travel	8,235	
Utilities	28,113	1%
Other Expenses	88,406	3%
Total Operating Expenses	<u>2,745,877</u>	<u>93%</u>
Net Income From Operations	158,028	5%
Non Operating Income <Expenses>	11,500	
Net Income Before Taxes	<u>169,528</u>	<u>6%</u>
Income Taxes		0%
Net Income <Loss>	<u><u>169,528</u></u>	<u><u>6%</u></u>

ORIENTAL BUILDING SERVICES, INC  
BALANCE SHEET  
AS OF DECEMBER 31, 2011

ASSETS

Current Assets :	
Cash	314,010
Savings/Marketable Securities	-
Accounts Receivable	292,468
Inventory	-
Prepaid Expenses	-
Total Current Assets	<u>606,478</u>
Investments:	-
Investments	-
Total Investments	-
Fixed Assets :	-
Land & Buildings	-
Machinery & Equipment	584,617
Automobiles & Trucks	101,650
Furniture & Fixtures	5,000
Leasehold Improvements	-
Accumulated Depreciation	(414,319)
Total Fixed Assets	<u>276,948</u>
Other Assets :	-
Other Assets - Goodwill	-
Other Assets - Deposits	-
Total Other Assets	-
Total Assets	<u><u>883,426</u></u>

ORIENTAL BUILDING SERVICES, INC  
BALANCE SHEET  
AS OF DECEMBER 31, 2011

LIABILITIES & EQUITY

Current Liabilities :	
Notes Payable - Current	-
Accounts Payable	-
Taxes Payable	-
Accrued Expenses	-
Current Portion Long Term Debt	-
Total Current Liabilities	-
Long Term Debt :	
Long Term Debt	41,629
Less Current Portion	-
Deferred Income Taxes	-
Total Long Term Debt	41,629
Total Liabilities	<u>41,629</u>
Equity :	
Capital	10,000
Additional Capital <Drawing>	346,792
Retained Earnings	315,477
Current Year Income <Loss>	169,528
Total Equity	<u>841,797</u>
Total Liabilities & Equity	<u><u>883,426</u></u>

ORIENTAL BUILDING SERVICES INC  
NOTES TO FINANCIAL STATEMENTS  
December 31, 2011

NOTE 1-SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Business Activities

Oriental Building Services, Inc is engaged in janitorial services in Dallas and Fort Worth metropolitan area.

The company recognizes revenues from janitorial contracts with building owners and/or managements to clean the buildings. The business was labor oriented. Labor costs were major expenses, which consisted of contract labor (43%) and wages (28%). Supplies were (7%) of all the expenses.

Depreciation

The company equipment is carried at cost and depreciated using primarily double declining balance method which elects to treat all of the cost of certain qualifying equipment as capital expenditure.

Cash

All cash is maintained in a company checking account. The cash balance at banking institutions may, at time, exceed the Federal Deposit Insurance Corporation insured limit of \$250,000.00 per account.

Use of Estimates

The preparation of financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions that affect certain reported amounts and disclosures. As such, actual results may differ from those estimates.

NOTE 2-ACCOUNTS RECEIVABLE

At December 31, 2011, all accounts receivables were considered to be collectible by management, and therefore, no allowance for bad debts was necessary.

NOTE 3-LONG TERM DEBTS & SHORT TERM DEBTS

No long term debts and short term debts exist as of December 31, 2011.

## ACCOUNTANT'S FINANCIAL REPORT

To the Management  
Oriental Building Services Inc.  
2526 Manana Dr. Ste 208  
Dallas, TX 75220-1242

I have reviewed the accompanying statement of financial position of Oriental Building Services Inc. as of December 31, 2010 and related statements of activities for the year ended, in accordance with Statements on Standards for Accounting and Review Services issued by the American Institute of Certified Public Accountants. All information included in these financial statements is the representation of the management of Oriental Building Services Inc.

A review consists principally of inquiries of company personnel and analytical procedures applied to financial data. It is substantially less in scope than an audit in accordance with generally accepted auditing standards, the objective of which is the expression of an opinion regarding the financial statements taken as a whole. Accordingly, I do not express such an opinion.

Based on my review, I am not aware of any material modifications that should be made to the accompanying financial statements in order for them to be in conformity with generally accepted accounting principles.

November 4, 2011

  
Yil H. Han-C.P.A.  
2828 Forest LN. #1103  
Dallas, TX 75234

ORIENTAL BUILDING SERVICES, INC  
INCOME STATEMENT  
Twelve Months Ended December 31, 2010

	YTD	YTD %
<b>REVENUE :</b>		
Revenue	2,570,450	100%
	-	-
Gross Revenue	<u>2,570,450</u>	<u>100%</u>
<b>OPERATING EXPENSES:</b>		
Advertising & Selling	1,100	0%
Business Bond Fee	32,681	0%
Contract Labor & Commission	942,408	37%
Depreciation & Amortization	9,682	0%
Freight & Vehicle	32,864	1%
Insurance	35,364	1%
Interest Expenses	-	0%
Legal & Professional	34,750	1%
Office Expenses	23,761	1%
Repair	23,781	1%
Rent	41,208	2%
Supplies	207,285	8%
Salaries & Payroll costs	893,137	35%
Taxes	89,282	3%
Meals & Entertainment	10,210	0%
Telephone	13,113	1%
Travel	9,527	0%
Utilities	7,488	0%
Other Expenses	7,160	0%
Total Operating Expenses	<u>2,414,801</u>	<u>92%</u>
Net Income From Operations	155,649	6%
Non Operating Income <Expenses>		
Net Income Before Taxes	<u>155,649</u>	<u>6%</u>
Income Taxes		0%
Net Income <Loss>	<u>155,649</u>	<u>6%</u>



ORIENTAL BUILDING SERVICES, INC  
BALANCE SHEET  
AS OF DECEMBER 31, 2010

ASSETS

Current Assets :	
Cash	217,263
Savings/Marketable Securities	-
Accounts Receivable	281,462
Inventory	-
Prepaid Expenses	-
Total Current Assets	<u>498,725</u>
Investments:	-
Investments	-
Total Investments	-
Fixed Assets :	-
Land & Buildings	-
Machinery & Equipment	533,991
Automobiles & Trucks	51,500
Furniture & Fixtures	5,000
Leasehold Improvements	-
Accumulated Depreciation	(398,693)
Total Fixed Assets	<u>191,798</u>
Other Assets :	-
Other Assets - Goodwill	-
Other Assets - Deposits	-
Total Other Assets	-
Total Assets	<u><u>690,523</u></u>

ORIENTAL BUILDING SERVICES, INC  
BALANCE SHEET  
AS OF DECEMBER 31, 2010

LIABILITIES & EQUITY

Current Liabilities :	
Notes Payable - Current	0
Accounts Payable	18,054
Taxes Payable	0
Accrued Expenses	0
Current Portion Long Term Debt	0
Total Current Liabilities	<u>18054</u>
Long Term Debt :	
Long Term Debt	-
Less Current Portion	-
Deferred Income Taxes	-
Total Long Term Debt	<u>-</u>
Total Liabilities	<u>18,054</u>
Equity :	
Capital	10,000
Additional Capital <Drawing>	346,792
Retained Earnings	159,828
Current Year Income <Loss>	155,649
Total Equity	<u>672,269</u>
Total Liabilities & Equity	<u><u>690,323</u></u>

ORIENTAL BUILDING SERVICES INC  
NOTES TO FINANCIAL STATEMENTS  
December 31, 2010

NOTE 1-SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Business Activities

Oriental Building Services, Inc is engaged in janitorial services in Dallas and Fort Worth metropolitan area.

The company recognizes revenues from janitorial contracts with building owners and/or managements to clean the buildings. The business was labor oriented. Labor costs were major expenses, which consisted of contract labor (37%) and wages (35%). Supplies were( 8%) of all the expenses.

Depreciation

The company equipment is carried at cost and depreciated using primarily double declining balance method which elects to treat all of the cost of certain qualifying equipment as capital expenditure.

Cash

All cash is maintained in a company checking account. The cash balance at banking institutions may, at time, exceed the Federal Deposit Insurance Corporation insured limit of \$250,000.00 per account.

Use of Estimates

The preparation of financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions that affect certain reported amounts and disclosures. As such, actual results may differ from those estimates.

NOTE 2-ACCOUNTS RECEIVABLE

At December 31, 2010, all accounts receivables were considered to be collectible by management, and therefore, no allowance for bad debts was necessary.

NOTE 3-LONG TERM DEBTS & SHORT TERM DEBTS

No long term debts and short term debts exist as of December 31, 2010.

#### NOTE 4-OTHER

These financial statements reflect combination of Oriental Building Services Co. and Oriental Building Services, Inc. For the two companies are engaged in the same janitorial business. Oriental Building Services, Inc was formed and has been doing janitorial service business as well as Oriental Building Service Co. In the near future Oriental Building Services Co. is going to cease from doing business and replaced by Oriental Building Services, Inc.

# Confidential

# Confidential

# Major Equipments List

## City of Denton

No.	Building	Vacuum Cleaner	Back Pak Vacuum	Buffer Low	Buffer High	Carpet Extractor	Trash Cart	Maid Cart	Mop Bucket	Dust Mop	Floor Sign	Broom	Dust Pan	Wet/dry Vacuum	Window Set	Garage Sweeper	Automatic Scrubber
	Animal Adoption & Services Center	1					1		2	1	4	1	1	1	1		
1	Airport Control Tower	1					1		1	1	1	1	1			1	
2	Airport Terminal Building		1	1			1		2	1	2	1	1	1	1	1	1
3	American Legion North & South	1					1		2	1	2	1	1		1		
4	American Legion North & South	1					1		2	1	2	1	1		1		
5	Animal Services	1				1			2	1	2	1	1	1	1		
6	Chiller Tower	Roving crew will provide services and full set of equipment for this facility															
7	Main City Hall	1	1	1			2		3	3	5	2	2		1		
8	City Hall East	4	2	1	1	1	4	1	6	4	10	5	5	1	1	1	1
9	City Hall West	1	1				2		3	2	5	2	2		1		1
10	Civic Center	1	1	1			2	1	3	2	4	2	2		1	1	
11	Denia Rec. Center	1					1		2	2	2	2	2		1		
12	DME - Admin.	1					1		2	2	3	1	1				
13	DME - Engineer & Syst. Operations	1					1		2	2	3	1	1				
14	DME - System Ops.	1	1	1			1		2	2	3	2	1		1		
15	Facilities Management	1					1		2	2	2	2	2		1	1	
16	Fire Central (Station #1)	1					1		2	1	2	1	1		1	1	
17	Freet Services	1					1		1	1	1	1	1				
18	Goldfield Tennis Center	Roving crew will provide services and full set of equipment for this facility															
19	Joint Training Facility	1					2		2	2	3	1	1		1		
20	Emily Fowler Library	1	1	1		1	2		2	2	4	1	1		1	1	
21	North Branch Library	1	1	1		1	2		2	2	4	1	1		1	1	
22	South Branch Library	1	1	1			1		2	2	4	1	1		1	1	
23	MLK Jr. Rec. Center	1	1	1			1	1	3	3	4	2	2	1	1	1	1
24	Nature Center	Roving crew will provide services and full set of equipment for this facility															
25	North Lake Annex	1					1		1	1	2	1	1				
26	North Lake Rec. Center	1	1	1	1		2		3	3	4	3	3	1	1	1	
27	Senior Center	1		1			2		2	2	2	1	1		1	1	
28	Service Center/Utilities	Roving crew will provide services and full set of equipment for this facility															
29	Solid Waste	1		1			1		1	1	1	1	1		1	1	
30	Solid Waste HCC	1					1		1								
31	Solid Waste Scale House	1					1		1								
32	Traffic Control	Roving crew will provide services and full set of equipment for this facility															
	<b>Total:</b>	<b>30</b>	<b>12</b>	<b>12</b>	<b>2</b>	<b>4</b>	<b>38</b>	<b>3</b>	<b>59</b>	<b>47</b>	<b>81</b>	<b>39</b>	<b>38</b>	<b>6</b>	<b>21</b>	<b>12</b>	<b>4</b>

## Description of Equipment

Vacuum Cleaner	: Commercial Up-Right, Sanitaire 12"(HEPA Filter & Dual Motor – 0.3 mic.)
Back Pak Vacuum	: Pro-Team Disposable Filter Bag
Buffer Machine	: 20" 175 RPM Low speed & 1500 RPM Hi-Speed
Wet/Dry Vacuum	: 15 gal commercial/Water Lift, Auto overflow
Space Pile Brush Lifter	: Certified 3500 RPM / Vegetable Fiber Brush
Automatic Scrubber	: 20" Battery Scrubber
System Dispensers	: 3M Compact dispenser
Mop Bucket	: 3" Casters, 35-38qt. Plastic Rubbermaid
Window Squeegee	: 12" & 18" Brass Channel and handle, Fixture Single Blade
Dust Pan	: Lobby Style 12" , self- Closing lid
Hot Water Extract	: Ultimate Galaxy Heated Extractor / 12gl. 100PSI
Broom	: Toy #1 Corn Straw and Street 16x3.5 Blk. Polypropylene Bristles
Garage Sweeper	: Hoover, 9" 2 brush Out Door Sweeper
Carpet Spotter (Portable)	: 3.5 gl, 60 p.s.i. for deep cleaning
Carpet Dryer	: 2 Speed air mover, 3/4 hp with handle/wheels
Tilt Truck	: 750 lb & 450 lb. 4 wheel, Rubber Maid
Etc..	: Spray Gun & Bottle 16oz, Putty knife,

# Material and Chemical List

## GREEN SEAL PRODUCT

No.	Item	Manufacture & Product #	Description
1	Toilet Bowl Cleaner (Non Acid)	3M - 920160	Disinfectant non Acid 1qt.
2	Carpet Shampoo	Host - 998150	Dry Carpet Cleaner
3	A-jax Cleaner	JWX	
4	Bleach	CSG 1100202	TRU Rite Bleach
5	Stainless Steel Cleaner	APR	Oil Base 15oz
6	Stainless Steel Cleaner	Carroll "AQUA STEEL"	Water Base 18oz
7	Vandalism Mark Remover	MISTY	16oz Spray Can
8	Chewing Gum & Wax Remover	Unisource & Misty	6oz Spray can
9	Cleaner Degreaser Disinfectant	Clorox 409	Formula 409 / 1qt. Spray bottle
10	Damp Mop Cleaner	Spartan	Detergent Concentrate 1gl.
11	Multi-Purpose Cleaner	Procter & Gamble	Mr. Clean - Antibacterial 1gl.
12	Air Fragrance	MISTY	Dry Deodorizers - Cinna-Fresh
13	Window Cleaner	3M - 920157	Glass & Window Cleaner
14	Stain & Odor Remover	Butcher's - 429110	Break Down Ordor Eliminator
15	Stripper	Butcher's - 10036578	#73 G-Floor Stripper
16	Wax	Butcher's - 10036548	G-Force Floor Finish
17	Spray Buff (Restorer)	Johnson SNAPBACK	Floor Polish when Spray Buff
18	Furniture Polish	AFL	Duosheen , Aerosol 17oz
19	All Purpose Cleaner	3M - 920166	Neutral All Purpose Cleaner
20	Disinfectant Cleaner	Procter & Gamble	Spic & Span,
21	Carpet Shampoo	Johnson	GS-37 Carpet Cleaner
22	LIME Remover	RNC - Easy Off	1gl Size

Material Safety Data Sheet are keeping at Janitorial closets



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

06/26/2012

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Phone: 972-671-9105 Fax: 972-671-9804

**GRAYHAWK INSURANCE & RISK MANAGEMENT**  
1740 NORTH COLLINS, SUITE 200  
RICHARDSON TX 75080

CONTACT NAME: GRAYHAWK INSURANCE &amp; RISK MANAGEMENT

PHONE (A/C, No, Ext): 972-671-9105

FAX (A/C, No): 972-671-9804

E-MAIL ADDRESS:

INSURER(S) AFFORDING COVERAGE

NAIC #

INSURER A : TRAVELERS LLOYDS INSURANCE CO

INSURER B : THE TRAVELERS INDEMNITY COMPANY

INSURER C :

INSURER D :

INSURER E :

INSURER F :

INSURED

**ORIENTAL BUILDING SERVICES, INC.**  
2526 MANANA DR. SUTE 208  
DALLAS, TX 75220

## COVERAGES

CERTIFICATE NUMBER: 62232

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADD'L INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	GENERAL LIABILITY			PACP6178X697	03/10/12	03/10/13	EACH OCCURRENCE	\$ 1,000,000
	X COMMERCIAL GENERAL LIABILITY						DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 300,000
	CLAIMS-MADE X OCCUR						MED. EXP (Any one person)	\$ 5,000
							PERSONAL & ADV INJURY	\$ 1,000,000
							GENERAL AGGREGATE	\$ 2,000,000
							PRODUCTS - COMP/OP AGG	\$ 2,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER:							\$
	POLICY	PRO-JECT	LOC					\$
B	AUTOMOBILE LIABILITY			BA6178X777	03/10/12	03/10/13	COMBINED SINGLE LIMIT (Ea accident)	\$ 1,000,000
	X ANY AUTO						BODILY INJURY (Per person)	\$
	ALL OWNED AUTOS	<input type="checkbox"/>	SCHEDULED AUTOS				BODILY INJURY (Per accident)	\$
	HIRED AUTOS	<input type="checkbox"/>	NON-OWNED AUTOS				PROPERTY DAMAGE (per accident)	\$
B	X UMBRELLA LIAB		OCCUR	CUP6179X288	03/10/12	03/10/13	EACH OCCURRENCE	\$ 10,000,000
	EXCESS LIAB		CLAIMS-MADE				AGGREGATE	\$ 10,000,000
	DED X RETENTION \$		10,000					\$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY			UB3678T743	03/10/12	03/10/13	X WC STATUTORY LIMITS OTH ER	\$
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED?		Y/N				E.L. EACH ACCIDENT	\$ 1,000,000
	(Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		N/A				E.L. DISEASE-EA EMPLOYEE	\$ 1,000,000
							E.L. DISEASE-POLICY LIMIT	\$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

CERTIFICATE HOLDER IS PROVIDED ADDITIONAL INSURED STATUS ON THE GENERAL LIABILITY AND AUTO LIABILITY POLICIES BY A BLANKET AUTOMATIC ADDITIONAL INSURED PROVISION THAT PROVIDES ADDITIONAL INSURED STATUS AND ARE PROVIDED A WAIVER OF SUBROGATION FOR GENERAL LIABILITY, AUTO LIABILITY, AND WORKERS COMPENSATION PER THE BLANKET WAIVER OF SUBROGATION ENDORSEMENTS ATTACHED TO THE POLICIES ONLY WHEN THERE IS A WRITTEN CONTRACT BETWEEN THE NAMED INSURED AND THE CERTIFICATE HOLDER.

## CERTIFICATE HOLDER

## CANCELLATION

FOR INFORMATION PURPOSES ONLY

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

Attention:

Gary Johnson





## COMPANY RULES AND REGULATIONS

1. All employees are expected to report to work on time everyday.
2. Employees are expected to call our office during office hours if they will be late or absent. Failure to comply may lead to termination.
3. Accidents, property damage, or injury must e reported immediately to the employee's supervisor.
4. Employee must stay in their assigned work areas. They are not allowed to visit other work areas unless instructed by their supervisor.
5. Radios, TV's or other personal entertainment devises are not allowed in the work areas.
6. Use of client's telephones is prohibited.
7. Employees are required to wear leather shoes, which are in good addition. No sandal, slippers, torn tennis shoes or high heels are allowed.
8. Doors are to remain locked unless directed by a supervisor.
9. Uniforms must be worn at all times.
10. Turn on lights only in the area you are cleaning. Turn off when finished.
11. Employees may be required to take truth verification test.
12. Lock all doors and windows normally kept locked by clients after cleaning assigned area.
13. A doctor's excuse may be requested if more than three work days are missed due to illness.
14. Keep janitors closets and equipment neat and in good order at all times.
15. If there is evidence of a robbery upon entering a building, report to security or police before start working.
16. Do not bring unauthorized persons with you into any the buildings. This includes wives and children.



PHOTOGRAPH  
OF  
DAILY UNIFORM & WINTER JACKET





# Janitorial Presentation for



# Content

1. **Company History**
2. **Company's Mission Statement**
3. **Our Commitments**
4. **Executive Management Team**
5. **Start up/Transition Plan 1**
6. **Start up/Transition Plan 2**
7. **Hiring Practices**
8. **Training**
9. **Cleaning Method**
10. **Supplies**
11. **Equipments 1-2**
12. **Uniform**
13. **Customer Base / Experience**
14. **Services**
15. **Percentage Resources – Personnel**
16. **Contact**

# **Oriental Building Services, Inc.**

**Mr. Sang Gye found Oriental Building Services, Inc. in 1992. He has been providing full spectrum of janitorial services to businesses, corporation, and government entities in Texas for 20 years. Home office & warehouse is located:**

**2526 Manana Dr. suite 208**

**Dallas, TX 75220**

**Office: 469-522-0001**

**Fax: 469-522-0003**

# **Company's Mission**

**Using the most effective technology, high quality products and knowledgeable personnel, creating the cleanest building environment for customers and communities, without increasing their cost.**

# **Our Commitment**

**At Oriental Building Services, we stand ready to custom design the most cost-efficient cleaning program to fit each building and project need. Our management team and employees are committed to respond “twenty-four” hours a day, seven days a week, three hundred sixty five days a year, to maintain consistent quality service and coverage for each building and project like you are the only customer.**

# Management Team

## **Sang Gye, President**

Sang Gye, holds a business degree from Dan-Kook University in Seoul, Korea. He came to United States in 1985. Started working as a supervisor for B.P.A. Inc. Responsible for 22 janitors and 5 building, 1989 H.B.M. Services Corp. as a operations manager, responsible for two route supervisor and 4 building, 1990 Oriental Building Services, Project manager, later became owner/president of the business.

## **Nixon Shum, Vice President**

Nixon joined Oriental Building Services in 2000, after many year in the restaurant and finance industry. He brings along the experience he have on how to keep a clean restaurant and customer services, to join OBS as a project manager. Promoted through the ranks as Vice president by developing new training program, customers services and improve employees productive.

## **U Chu Kim, Vice President/ Quality Control**

Mr. Kim joined Oriental Building Services in 2000. After 15 years as Quality engineering specialist with Lockheed Martin Tactical Aircraft System, he is a certified green belt & six sigma by international organization for standardization (ISO). He bring along the experience he have as QES with Lockheed Martin, and help develop the quality control program at Oriental Building Services.

## **Andrew Kim, Director of Development**

Andrew came to Oriental Building Services in 2003 as project and development manager. After 3 years with Tidy Enterprise as Operation manager at the DFW Airport Terminal B. He brings to the company many years of experience. He will be a very valuable team member for all future development and Operation.



# Start Up/Transition Plan

The Project Manager will be responsible for insuring documentation is provided to City of Denton Representative to insure compliance with requirements. Upon notice of award, Project team will set up a Phase-in Schedule. Start weekly reporting with City Representative, by phone, fax or email on phase-in progress. Two week before start of contract, project manager will introduce his team to the City Representative, and will keep daily communication if necessary with City representative on Phase-in progress.

We intend to hire qualify associates currently performing on this contract as well as qualified associates from the economy. We will do whatever it takes to insure a smooth transition. Therefore the separation between the current contract and new contract will be seamless.

# Start Up/Transition Plan

1. Fill any vacant positions listed
2. Train any associates not working on the current contract on scope of work, safety procedures, quality control, communication procedures with OBS management and supervisory staff, time sheets, forms, courtesy, accident reporting, security, and other topics requested by the city. Note: All associates working on the current contract that is not trained during the Phase-in period will be train immediately before contract begins. Training will repeat every 6 month
3. Purchase equipment
4. Purchase Supplies
5. Provide all appropriate documentation to the city representative the items listed, which includes but not limited to the, Staff assignment and building, Background Check, MSDS, Security approvals and access, Inventory of equipment and Supplies, and Certifications.

# Employee Hiring Practices

Oriental Building Services recruitment and hiring practices typically follow the law and contract requirement.

1. To apply the applicant must have two form of acceptable picture I.D.
2. The applicant must be legal age of 18 year old.
3. Upon Complete of application, interviewer will make a copy of applicants acceptable documentation.
4. Before the applicant are hire, company will conduct background check and employment eligibility as required by all contract.
5. Upon hiring within three days, we will submit the applicants information to for (E-Verify).
6. Once hired the employee will start 2 hour orientation and training.
7. Once the new employee finished the training, they will be on probation for the first 90 working days, and the first 2 week they will work with company's supervisor staff.

The recruitment and hiring practices of Oriental Building Services, Inc. will be updated from time to time to comply with the law and contract.



Texas Department of Public Safety  
Criminal History Search

USER: nshum@cbarsa.net (1163448,1343604) SERVER: DPSWEB8 DATE:4/8/2013 4:04:43 PM LANG:ENGLISH (UNITED STATES)



Search #9423736

Search Criteria

- Searched for
- Searched on

No Matching Records

There are no records matching your search criteria as of the date and time of this specific search. This includes the Criminal History File, Sex Offender Registration and Name Based Files.

A search of the Texas Conviction Database will not provide a definitive match or no-match. Results may or may not be related to the individual that has been searched. Further review of these records is necessary to determine if a possible match exists. The only way a positive match can be obtained is through the submission of fingerprints.

[How To Search The Criminal History Database](#)

BSO - SSN Verification Results

Page 1 of 1

Social Security Online

Business Services Online

www.socialsecurity.gov  
Navigation | Logout

BSO Main Menu | BSO Information | Contact Us | Keyboard



Social Security Number Verification System  
(SSNVS)

[SSNVS Help](#)

SSN Verification Results

Employer's EIN: 205158539 Name: RIM LEE  
Records Submitted: 1  
Verified Records: 1

The following table displays your submitted results. The first column indicates if the submitted record verified, failed or employee is deceased. The first five digits of the SSN will be masked for verified records and records with a verification results code of 3 or 6.

- [Verify More SSNs](#)
- [Why Are Some SSNs Masked?](#)
- [Field Office Locator](#)

- **Failed** - Data does not match Social Security Administration's records. Select [What to do if an SSN Fails to Verify](#) for more information.
- **Deceased** - Data matches Social Security Administration's records, and our records indicate that the person is deceased. For more information, please contact our general SSA information line at 1-800-772-1213 (TDD/TTY 1-800-325-0778) or your local Social Security field office. Select [Field Office Locator](#) to find the office nearest you.
- **Verified** - Data matches Social Security Administration's records.

Results	SSN	First Name	Middle Name	Last Name	Suffix	Date of Birth	Verification Results
Verified	XXXXX					XXXXXXXXXX	-

Have a question? Call 1-800-772-6270 Mon. - Fri. 7AM to 7PM Eastern Time to speak with Employer Customer Service personnel. For TDD/TTY call 1-800-325-0778.



Texas Department of Public Safety  
Criminal History Search

USER: ashlee@oharens.net (134248, 134388) SERVER: DPSWEB6 DATE: 6/12/2013 3:00:16 PM LANG: ENGLISH (UNITED STATES)



Search #9699159

Search Criteria

- Searched for
- Searched on 6/12/2013

Search Results

1 results

Photo	SID	Match Type	Match	Sex	Race	Result
	05182216	SOUNDEX PARTIAL DOB		F	W	<a href="#">Preview</a>

# Training

The training program at Oriental Building Services, Inc. is very detailed and comprehensive. All new employees go through three steps training before he or she is permanently assigned to the building. The three steps are classroom training, video and hands on training. We use the 3M Service, Maintenance, Analysis, Resource, Training (S.M.A.R.T.) program. This program allow OBS to customize the training for each project of facilities. Employees will know what the same office, trouble area, or restrooms, look like and what step, tool and chemical to use. It also allows OBS to combine any facilities owner's maintenance schedules in to the training. The training will be repeat every six month.

# 3 Step Training

1. Classroom Training



2. Video Training  
(English & Spanish)



3. First Aid, Chemicals,  
Equipments, Safety



# Cleaning Method

## Team Cleaning

concept long-held traditions and standards to create a process that focuses on cleaning for health with maximum productivity. Traditionally, a person works within a specific area or zone and performs every function of cleaning. The results: a higher margin of error, equipment is needed for every zone. and training is more complicated.

Team Cleaning is a concept designed to address these problems, and the results are

- Higher quality of cleaning performed in less time
- Easier job training, supervision, and absentee replacement
- More cooperative attitude among workers
- Much less equipment is needed

Four types of specialists concentrate on defined tasks such as light duty and trash, vacuuming, restrooms, and utility work. The advantages over zone cleaning are monumental.

A building with eight floors assigned to eight different workers required eight complete sets of equipment, and resulted in eight different levels of quality. Management wanted to maintain consistent quality while simplifying the work process.

**Is a prefer cost saving cleaning method for all our customer.**



# Supplies

- Oriental Choose the most environment friendly product.
- Procter & Gamble Cleaning Chemical Management System
  - \* California code of regulations VOC standards
- Spic & Span Disinfect All Purpose & Glass Cleaner
- Comet Disinfecting, Sanitizing Bathroom Cleaner
- Mr. Clean Finished Floor Cleaner



**Dilution System**

**Spic  
AND  
Span**



**Disinfecting All-Purpose Spray  
&  
Glass Cleaner**

**Comet**



**Disinfecting - Sanitizing  
Bathroom Cleaner**

**Mr. Clean**



**Finished Floor  
Cleaner**



# Environmental Friendly Equipment

Pro-Team Hepa Backpack Vacuum



Sealed Hepa Filter Sanitaire Upright Vacuum

IPC Eagle SmartVac 464



Electric Floor Burnisher w/Dust Control

# High Production Equipments

## 15 gallon Carpet Extractor



- Cord-free (1510) and cord-electric (1530) operation along with a compact size provides maximum mobility.
- Extra-large, 21 gal / 79 L (1510) and 30 gal / 114 L (1530) recovery tanks extends cleaning time for both the 1510 and 1530.
- 22 in / 559 mm cleaning path covers up to 4500 ft<sup>2</sup> / 418 m<sup>2</sup> per hour
- Tennant's durable, polyethylene body construction.

## 1510/1530 Walk Behind Carpet Extractors



# Uniform



# Customer Base / Experience

The experience we have obtained from our many on-going, current and past contacts, shows we are capable of implementing all aspects of this project. Further, it shows we are capable of performing this contract as well. Our experience with performing multi-discipline/multi-projects simultaneously is well founded. Here is a list of recent, past and current contracts, which are similar in nature:

City of Dallas

City of Arlington

City of Plano

City of Ft. Worth

Dallas County

DFW Airport

Texas Workforce Commission

# Services

- Professional Custodial Services
- Commercial Building Custodial Services
- Apt./Dorm/Condo Cleaning and Porter
- Education Facilities Custodial Services
- Hospital Custodial Services
- Minor & General Maintenance
- Landscaping/Grounds Keeping
- Parking Lot Sweeping
- Garage Maintenance
- Window Washing/Power Washing
- Marble and Terrazzo maintenance and resurfacing
- Carpet & Floor Care Services



# Percentage Resources - Personnel

<b>On-Site Staffs</b>	<b>Total Personnel</b>	<b>Total Personnel 167</b>
<b>1 Site Manager</b>	<b>1</b>	<b>.6%</b>
<b>1 Supervisor</b>	<b>1</b>	<b>.6%</b>
<b>1 Day Porter</b>	<b>1</b>	<b>.6%</b>
<b>3 Crew Leader</b>	<b>3</b>	<b>1.79%</b>
<b>15 Night Cleaning Specialists</b>	<b>15</b>	<b>8.93%</b>
<b>3 Floor Tech</b>	<b>3</b>	<b>1.79%</b>
<b>Off-Site Staffs</b>		
<b>Vice President</b>	<b>1</b>	<b>.6%</b>
<b>Dir. Of Development</b>	<b>1</b>	<b>.6%</b>
<b>Dir. Of Quality &amp; Safety</b>	<b>1</b>	<b>.6%</b>
<b>Equipment &amp; Maint. Manager</b>	<b>1</b>	<b>.6%</b>
<b>Office Manager</b>	<b>1</b>	<b>.6%</b>
<b>Total Percentage Committed to Project</b>		<b>17.31 %</b>

# **Thank you**

**Thank you for the opportunity to submit this proposal and presentation. If the City of Denton have any additional question.**

**Please contact**

**Nixon Shum**

**Vice President**

**Oriental Building Services, Inc.**

**at**

**469-522-0001**

**[nshum@obsusa.net](mailto:nshum@obsusa.net)**



**CITY OF DENTON YEARLY COSTS**

**Annual**

**Monthly  
(Annual Costs  
Divided By 12)**

TOTAL STAFFING COSTS	\$ <u>390,434.96</u>	\$ <u>32,536.25</u>
EQUIPMENT COSTS	\$ <u>10,800.00</u>	\$ <u>900.00</u>
MATERIALS/ SUPPLIES COSTS	\$ <u>-</u>	\$ <u>-</u>
WORKER COMP, BUSINESS INSURANCE/BONDING	\$ <u>32,015.67</u>	\$ <u>2,667.97</u>
ADMINISTRATIVE OVERHEAD	\$ <u>6,600.00</u>	\$ <u>550.00</u>
OTHER COST & EXPENSES(Gas, Uniform, Phone, Background)	\$ <u>7,200.00</u>	\$ <u>600.00</u>
EXPECTED PROFIT	\$ <u>42,000.00</u>	\$ <u>3,500.00</u>
<hr/>		
TOTAL ANNUAL & MONTHLY COSTS	\$ <u>489,050.6320</u>	\$ <u>40,754.22</u>

**CITY OF DENTON VARIOUS LOCATIONS - First Year Staffing Costs**

TYPE POSITION (S)	Number Employees Required	*Total Yearly Hours	Hourly Rate	Yearly Salary	1.43% State Unempl	0.8% Federal Unempl	6.20% Social Security	1.45% Medicare
Supervisor (Night)	1	1,560	14.00	21840.00	312.31	72.00	1354.08	316.68
Lead Worker (Night)	3	6,240	8.00	49920.00	713.86	216.00	3095.04	723.84
Floor Worker (Night)	3	3,900	8.50	33150.00	474.05	216.00	2055.30	480.68
Cleaners (Day)	1	1,926	8.00	15408.00	220.33	72.00	955.30	223.42
Cleaner (Evening)	15.57	32,386	7.25	234795.60	3357.58	1121.04	14557.33	3404.54
<b>Subtotals</b>	<b>23.57</b>	<b>46,012</b>		<b>\$ 355113.60</b>	<b>\$ 5078.12</b>	<b>\$ 1697.04</b>	<b>\$ 22017.04</b>	<b>\$ 5149.15</b>
				a	b	c	d	e

TYPE POSITION(S)	Training	Uniforms	ID Badges	Pagers	Other Costs/Benefits - Please Specify	
	Cost	Cost	Cost	Cost	Type	Cost
Supervisor (Night)	N/A	60.00	0.00	0.00		0.00
Lead Worker (Evening)	N/A	180.00				
Floor Worker (Night)	N/A	180.00		N/A		
Cleaners (Day)	N/A	60.00		N/A		
Cleaners (Night)	N/A	900.00	0.00	N/A		
<b>Subtotals</b>	<b>\$ N/A</b>	<b>\$ 1380.00</b>	<b>\$ 0.00</b>	<b>\$ 0.00</b>		<b>\$ 0.00</b>
	f	g	h	i		j

Total Yearly Compensation To Project Manager - Include All Overhead Costs

\$ 0.00  
k

**TOTAL COST (Total of lines a,b,c,d,e,f,g,h,i,j,k and l.)**

\$ 390,434.96  
l

**AGENDA INFORMATION SHEET****AGENDA DATE:** November 19, 2013**DEPARTMENT:** Police**ACM:** Jon Fortune

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**SUBJECT**

Consider adoption of an ordinance of the City of Denton authorizing an agreement between the City of Denton, Texas and the Children's Advocacy Center for Denton County, Incorporated for providing aid to the City of Denton Police Department in the investigation of child abuse cases; providing client and clinical services to victims of child abuse and non-offending family members; providing for the expenditure of funds in the amount of \$119,141 therefor; and providing for an effective date.

**BACKGROUND**

The Children's Advocacy Center for Denton County (CACDC) is a non-profit agency that assists the Denton Police Department with the investigation and prosecution of child abuse cases in Denton County. CACDC uses a team approach to consolidate law enforcement, Child Protective Services, prosecutors, therapists and volunteers in one location which helps to minimize the trauma experienced by victims of child abuse. CACDC also provides free counseling services to abused children and their family members. This collaborative approach has become the gold standard for investigating child abuse. The CACDC does not bill law enforcement for its services, but rather makes an annual request that participating municipalities consider allocating their "fair share" of funding based on the percentage of CACDC services received.

On September 17, 2013, as part of the 2013-14 budget process, the Denton City Council formally approved an allocation of \$119,141 which was an amount equal to the "fair share" calculation provided by CACDC for fiscal year 2013-14. This amount exceeds \$100,000 therefore Council is required to consider an ordinance approving the annual contract between CACDC and the Denton Police Department.

**RECOMMENDATION**

Staff recommends that Council approve the ordinance as written.

**PRIOR ACTION/REVIEW**

On September 17, 2013 City Council formally approved an allocation of \$119,141 as part of the 2013-14 budget process.

**FISCAL IMPACT**

Subject to this Agreement the funds were allocated as part of the fiscal year 2013–14 budget process. The funds will continue to be administered by the Denton Police Department.

Respectfully submitted,



Lee Howell  
Chief of Police

Prepared by:



Lenn Carter, Captain

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF DENTON AUTHORIZING AN AGREEMENT BETWEEN THE CITY OF DENTON, TEXAS AND THE CHILDREN'S ADVOCACY CENTER FOR DENTON COUNTY, INCORPORATED FOR PROVIDING AID TO THE CITY OF DENTON POLICE DEPARTMENT IN THE INVESTIGATION OF CHILD ABUSE CASES; PROVIDING CLIENT AND CLINICAL SERVICES TO VICTIMS OF CHILD ABUSE AND NON-OFFENDING FAMILY MEMBERS; PROVIDING FOR THE EXPENDITURE OF FUNDS IN THE AMOUNT OF \$119,141 THEREFOR; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Children's Advocacy Center for Denton County, Incorporated, a Texas non-profit corporation, (the "Organization") aids the City of Denton Police Department of investigation of child abuse cases and provides client and clinical services to victims of child abuse and non-offending families members from the City of Denton, Texas (the "Program"); and

WHEREAS, the Organization and the City of Denton desire to enter into an agreement to provide for the continuance of the Program which agreement is substantially in the same form as the agreement attached hereto and made a part hereof by reference (the "Public Service Agreement"); and

WHEREAS, the Program is a part of the City's community development program as authorized by Chapter 373 of the Local Government Code and it helps to eliminate conditions detrimental to the public health and safety by providing opportunities and services to low to moderate persons in Denton that would otherwise not be available; and

WHEREAS, the Program and the Public Service Agreement are necessary to preserve and protect the public health and safety of the City's residents by helping to insure that assistance is provided to aid in the investigation of child abuse cases and that victims of child abuse and non-offending families members have adequate client and clinical services; and

WHEREAS, City Council finds that if the Program and the Public Service Agreement are not available, families would be at risk of further abuse and trauma, thereby creating a substantial health and safety risk for citizens of Denton; and

WHEREAS, the Program is supervised and administered by professional personnel which maintain licenses as counselors or social workers; and

WHEREAS, City Council finds that the Public Service Agreement and the expenditures provided for in the Agreement are exempt from competitive bidding as a procurement necessary to preserve or protect the public health or safety of the City's residents under Section 252.022(a)(2) of the Local Government Code and as a procurement for professional services under Section 252.022(a)(4) of the Local Government Code; and

WHEREAS, the City Council of the City of Denton hereby finds that the Program and the Public Service Agreement serve important municipal and public purposes and are in the public interest; NOW, THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The findings set forth in the preamble of this ordinance are incorporated by reference into the body of this ordinance as if fully set forth herein.

SECTION 2. The City Manager, or his designee, is hereby authorized to execute the Public Service Agreement and to carry out the duties and responsibilities of the City under the Public Service Agreement, including the expenditure of funds not to exceed \$119,141, as provided in the Public Agreement.

SECTION 3. This ordinance shall become effective immediately upon its passage and approval.

PASSED AND APPROVED this the \_\_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
MARK A. BURROUGHS, MAYOR

ATTEST:  
JENNIFER WALTERS, CITY SECRETARY

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

APPROVED AS TO LEGAL FORM:  
ANITA BURGESS, CITY ATTORNEY

BY: Stephanie M. Berry

**2013-2014 SERVICE AGREEMENT BETWEEN THE  
CITY OF DENTON, TEXAS AND  
CHILDREN'S ADVOCACY CENTER FOR DENTON COUNTY, INCORPORATED**

This Agreement is hereby entered into by and between the CITY of Denton, Texas, a Texas municipal corporation, acting by and through its City Manager, hereinafter referred to as "CITY", and **Children's Advocacy Center for Denton County, Incorporated**, 1854 Cain Drive, Lewisville, TX 75077, hereinafter referred to as "ORGANIZATION";

WHEREAS, the Denton Police Department has reviewed the proposal for services and has determined that ORGANIZATION performs an important service for the residents of Denton without regard to race, religion, color, age or national origin, and recommends the purchase of services; and

WHEREAS, CITY has determined that the proposal for services merits assistance and can provide needed services to citizens of CITY and has provided funds in its budget for the purpose of paying for contractual services; and

WHEREAS, CITY has designated the Denton Police Department with assistance from the Community Development Division as the department responsible for the administration of this Agreement and all matters pertaining thereto; and

NOW, THEREFORE, the parties hereto agree, and by the execution hereof are bound to the mutual obligations and to the performance and accomplishment of the conditions hereinafter described.

**1. TERM**

This Agreement shall commence on or as of October 1, 2013, and shall terminate on September 30, 2014, unless sooner terminated in accordance with Section 25 "Termination".

**2. RESPONSIBILITIES**

ORGANIZATION hereby accepts the responsibility for the performance of all services and activities described in the Scope of Services attached hereto as Exhibit A, and incorporated herein by reference, in a satisfactory and efficient manner as determined by CITY, in accordance with the terms herein. CITY will consider ORGANIZATION's executive officer to be ORGANIZATION's representative responsible for the management of all contractual matters pertaining hereto, unless written notification to the contrary is received from ORGANIZATION, and approved by CITY.

The Denton Chief of Police or designee will be CITY's representative responsible for the administration of this Agreement.

The ORGANIZATION certified that the beneficiaries of the activities to be provided MUST reside in the City of Denton. Eligibility documentation must be included in each client's file.

**3. OBLIGATIONS OF ORGANIZATION**

In consideration of the receipt of funds from CITY, ORGANIZATION agrees to the following terms and conditions:

- A. One Hundred and Nineteen Thousand and One Hundred and Forty-One Dollars (\$119,141.00) may be paid to ORGANIZATION by CITY, and the only expenditures reimbursed from these funds, shall be those in accordance with the project budget, attached hereto as Exhibit B and incorporated herein by reference, for those expenses listed in the scope of services as provided herein. ORGANIZATION shall not utilize these funds for any other purpose.
- B. It will establish, operate, and maintain an account system for this program that will allow for a tracing of funds and a review of the financial status of the program.
- C. It will permit authorized officials of CITY to review its books at any time.
- D. It will reduce to writing all of its rules, regulations, and policies and file a copy with CITY's Police Department along with any amendments, additions, or revisions whenever adopted.

- E. It will not enter into any contracts that would encumber CITY funds for a period that would extend beyond the term of this Agreement.
- F. It will promptly pay all bills when submitted unless there is a discrepancy in a bill; any errors or discrepancies in bills shall be promptly reported to the Denton Police Department or their appointed representative in Community Development.
- G. It will appoint a representative who will be available to meet with CITY officials when requested.
- H. It will indemnify and hold harmless CITY from any and all claims and suits arising out of the activities of ORGANIZATION, its employees, and/or contractors.
- I. It will submit to CITY copies of year-end audited financial statements.

#### 4. COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS

- A. ORGANIZATION shall comply with all applicable federal laws, laws of the State of Texas and ordinances of the City of Denton.

#### 5. REPRESENTATIONS

- A. ORGANIZATION assures and guarantees that it possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution or action passed or taken, to enter into this Agreement.
- B. The person or persons signing and executing this Agreement on behalf of ORGANIZATION, do hereby warrant and guarantee that he, she, or they have been fully authorized by ORGANIZATION to execute this Agreement on behalf of ORGANIZATION and to validly and legally bind ORGANIZATION to all terms, performances and provisions herein set forth.
- C. CITY shall have the right, at its option, to either temporarily suspend or permanently terminate this Agreement if there is a dispute as to the legal authority of either ORGANIZATION or the person signing the Agreement to enter into this Agreement. ORGANIZATION is liable to CITY for any money it has received from CITY for performance of the provisions of this Agreement if CITY has suspended or terminated this Agreement for the reasons enumerated in this Section.
- D. ORGANIZATION agrees that the funds and resources provided ORGANIZATION under the terms of this Agreement will in no way be substituted for funds and resources from other sources, nor in any way serve to reduce the resources, services, or other benefits which would have been available to, or provided through, ORGANIZATION had this Agreement not been executed.

#### 6. PERFORMANCE BY ORGANIZATION

ORGANIZATION will provide, oversee, administer, and carry out all of the activities and services set out in the SCOPE OF SERVICES, attached hereto and incorporated herein for all purposes as Exhibit A, utilizing the funds described in Exhibit B, attached hereto and incorporated herein for all purposes and deemed by both parties to be necessary and sufficient payment for full and satisfactory performance of the program, as determined solely by CITY and in accordance with all other terms, provisions and requirements of this Agreement.

No modifications or alterations may be made in the Scope of Services without the prior written approval of the City's Chief of Police.

#### 7. PAYMENTS

- A. Payments to ORGANIZATION. CITY shall pay to ORGANIZATION a maximum amount of money not to exceed **One Hundred and Nineteen Thousand and One Hundred and Forty-One Dollars (\$119,141.00)** for services rendered under this Agreement. CITY will pay these funds on a reimbursement basis to ORGANIZATION within 15 days after CITY has received supporting documentation. ORGANIZATION's failure to request reimbursement on a timely basis may jeopardize present or future funding.
- B. Excess Payment. ORGANIZATION shall refund to CITY within ten working days of CITY's request, any sum of money which has been paid by CITY and which CITY at any time thereafter determines:
  - 1. has resulted in overpayment to ORGANIZATION; or
  - 2. has not been spent strictly in accordance with the terms of this Agreement; or



3. is not supported by adequate documentation to fully justify the expenditure.
- C. ORGANIZATION's reimbursement request for any one month period will not exceed one-tenth (1/10) of any budgeted line items for costs as specified in Exhibit B.
- D. Deobligation of Funds/Reversion of Assets. In the event that actual expenditures deviate from ORGANIZATION's provision of a corresponding level of performance, as specified in Exhibit A, CITY hereby reserves the right to reappropriate or recapture any such under expended funds. If CITY finds that ORGANIZATION is unwilling and/or unable to comply with any of the terms of this Contract, CITY may require a refund of any and all money expended pursuant to this Contract by ORGANIZATION, as well as any remaining unexpended funds which shall be refunded to CITY within ten working days of a written notice to ORGANIZATION to revert these financial assets. The reversion of these financial assets shall be in addition to any other remedy available to CITY either at law or in equity for breach of this Contract.
- E. Contract Close Out. ORGANIZATION shall submit the contract close out package to CITY, together with a final expenditure report, for the time period covered by the last invoice requesting reimbursement of funds under this Agreement, within 15 working days following the close of the contract period. ORGANIZATION shall utilize the form agreed upon by CITY and ORGANIZATION.

## **8. WARRANTIES**

ORGANIZATION represents and warrants that:

- A. All information, reports and data heretofore or hereafter requested by CITY and furnished to CITY, are complete and accurate as of the date shown on the information, data, or report, and, since that date, have not undergone any significant change without written notice to CITY.
- B. Any supporting financial statements heretofore requested by CITY and furnished to CITY, are complete, accurate and fairly reflect the financial condition of ORGANIZATION on the date shown on said report, and the results of the operation for the period covered by the report, and that since said date, there has been no material change, adverse or otherwise, in the financial condition of ORGANIZATION.
- C. No litigation or legal proceedings are presently pending or threatened against ORGANIZATION.
- D. None of the provisions herein contravene or are in conflict with the authority under which ORGANIZATION is doing business or with the provisions of any existing indenture or agreement of ORGANIZATION.
- E. ORGANIZATION has the power to enter into this Agreement and accept payments hereunder, and has taken all necessary action to authorize such acceptance under the terms and conditions of this Agreement.
- F. None of the assets of ORGANIZATION is subject to any lien or encumbrance of any character, except for current taxes not delinquent, except as shown in the financial statements furnished by ORGANIZATION to CITY.
- G. Each of these representations and warranties shall be continuing and shall be deemed to have been repeated by the submission of each request for payment.

## **9. COVENANTS**

- A. During the period of time that payment may be made hereunder and so long as any payments remain unliquidated, ORGANIZATION shall not, without the prior written consent of the Community Development Administrator or her authorized representative:
  1. Mortgage, pledge, or otherwise encumber or suffer to be encumbered, any of the assets of ORGANIZATION now owned or hereafter acquired by it, or permit any pre-existing mortgages, liens, or other encumbrances to remain on, or attached to, any assets of ORGANIZATION which are allocated to the performance of this Agreement and with respect to which CITY has ownership hereunder.
  2. Sell, assign, pledge, transfer or otherwise dispose of accounts receivables, notes or claims for money due or to become due.
  3. Sell, convey, or lease all or substantial part of its assets.
  4. Make any advance or loan to, or incur any liability for any other firm, person, entity or corporation as guarantor, surety, or accommodation endorser.

5. Sell, donate, loan or transfer any equipment or item of personal property purchased with funds paid to ORGANIZATION by CITY, unless CITY authorizes such transfer.

## **10. ALLOWABLE COSTS**

- A. Costs shall be considered allowable only if incurred directly and specifically in the performance of and in compliance with this Agreement and in conformance with the standards and provisions of Exhibits A and B.
- B. Approval of ORGANIZATION's budget, Exhibit B, does not constitute prior written approval, even though certain items may appear herein. CITY's prior written authorization is required in order for the following to be considered allowable costs:
  1. Encumbrances or expenditures during any one month period which exceeds one-tenth 1/10 of the total budget as specified in Exhibit B.
  2. CITY shall not be obligated to any third parties, including any subcontractors of ORGANIZATION, and CITY funds shall not be used to pay for any contract service extending beyond the expiration of this Agreement.
  3. Out of town travel.
  4. Any alterations or relocation of the facilities on and in which the activities specified in Exhibit A are conducted.
  5. Any alterations, deletions or additions to the Personnel Schedule incorporated in Exhibit B.
  6. Costs or fees for temporary employees or services.
  7. Any fees or payments for consultant services.
  8. Fees for attending out of town meetings, seminars or conferences.

Written requests for prior approval are ORGANIZATION's responsibility and shall be made within sufficient time to permit a thorough review by CITY. ORGANIZATION must obtain written approval by CITY prior to the commencement of procedures to solicit or purchase services, equipment, or real or personal property. Any procurement or purchase which may be approved under the terms of this Agreement must be conducted in its entirety in accordance with the provisions of this Agreement.

- C. Expenditures will not be reimbursed to ORGANIZATION for the purchase of real property or equipment. These are not allowable costs under this agreement.

## **11. MAINTENANCE OF RECORDS**

- A. ORGANIZATION agrees to maintain records that will provide accurate, current, separate, and complete disclosure of the status of the funds received under this Agreement, in compliance with the provisions of Exhibit B, attached hereto, and with any other applicable Federal and State regulations establishing standards for financial management. ORGANIZATION's record system shall contain sufficient documentation to provide in detail full support and justification for each expenditure. Nothing in this Section shall be construed to relieve ORGANIZATION of fiscal accountability and liability under any other provision of this Agreement or any applicable law. ORGANIZATION shall include the substance of this provision in all subcontracts.
- B. ORGANIZATION agrees to retain all books, records, documents, reports, and written accounting procedures pertaining to the operation of programs and expenditures of funds under this Agreement for five years.
- C. Nothing in the above subsections shall be construed to relieve ORGANIZATION of responsibility for retaining accurate and current records, which clearly reflect the level and benefit of services, provided under this Agreement.
- D. At any reasonable time and as often as CITY may deem necessary, the ORGANIZATION shall make available to CITY, or any of their authorized representatives, all of its records and shall permit CITY, or any of their authorized representatives to audit, examine, make excerpts and copies of such records, and to conduct audits of all contracts, invoices, materials, payrolls, records of personnel, conditions or employment and all other data requested by said representatives.

## **12. REPORTS AND INFORMATION**

At such times and in such form as CITY may require, organization shall furnish such statements, records, data and information as CITY may request and deem pertinent to matters covered by this Agreement.

ORGANIZATION shall submit quarterly beneficiary and financial reports to CITY no less than once each three months. The beneficiary report shall detail client information, including race, income, female head of household and other statistics required by CITY. The financial report shall include information and data relative to all programmatic and financial reporting as of the beginning date specified in Section 1 of this Agreement.

Unless the CITY has granted a written exemption, ORGANIZATION shall submit an audit conducted by independent examiners with ten days after receipt of such.

### **13. MONITORING & EVALUATION**

ORGANIZATION agrees to participate in an implementation and maintenance system whereby the services can be continuously monitored. ORGANIZATION agrees that CITY may carry out monitoring and evaluation activities to ensure adherence by ORGANIZATION to the Scope of Services, and Program Goals and Objectives, which are attached hereto as Exhibit A, as well as other provisions of this Agreement. ORGANIZATION agrees to cooperate fully with CITY and provide data determined by CITY to be necessary for CITY to effectively fulfill its monitoring and evaluation responsibilities. ORGANIZATION agrees to cooperate in such a way so as not to obstruct or delay CITY in such monitoring and to designate one of its staff to coordinate the monitoring process as requested by CITY staff. ORGANIZATION agrees to make available its financial records for review by CITY at CITY's discretion. In addition, ORGANIZATION agrees to provide CITY the following data and reports, or copies thereof:

- A. All external or internal audits. ORGANIZATION shall submit a copy of the annual independent audit to CITY within ten days of receipt.
- B. All external or internal evaluation reports.
- C. Quarterly performance/beneficiary reports to be submitted in January, April, July and September, to include such information as requested by the CITY including but not limited to: number of persons or households assisted, race, gender, disability status and household income. Beneficiary reports shall be due to CITY within 15 working days after the completion of each quarter.
- D. ORGANIZATION agrees to submit no less than once each three months financial statements. Each statement shall include current and year-to-date period accounting of all revenues, expenditures, outstanding obligations and beginning and ending balances. Financial reports shall be due to CITY within 15 working days after the completion of each quarter.
- E. An explanation of any major changes in program services.
- F. To comply with this section, ORGANIZATION agrees to maintain records that will provide accurate, current, separate, and complete disclosure of the status of funds received and the services performed under this Agreement. ORGANIZATION's record system shall contain sufficient documentation to provide in detail full support and justification for each expenditure. ORGANIZATION agrees to retain all books, records, documents, reports, and written accounting procedures pertaining to the services provided and expenditure of funds under this Agreement for the period of time and under the conditions specified by the CITY.
- G. Nothing in the above subsections shall be construed to relieve ORGANIZATION of responsibility for retaining accurate and current records, which clearly reflect the level and benefit of services, provided under this Agreement.

### **14. DIRECTORS' MEETINGS**

During the term of this Agreement, ORGANIZATION shall deliver to CITY copies of all notices of meetings of its Board of Directors, setting forth the time and place thereof. Such notice shall be delivered to CITY in a timely manner to give adequate notice, and shall include an agenda and a brief description of the matters to be discussed. ORGANIZATION understands and agrees that CITY's representatives shall be afforded access to all meetings of its Board of Directors.

Minutes of all meetings of ORGANIZATION's governing body shall be available to CITY within ten days after Board approval.

## 15. INSURANCE

- A. ORGANIZATION shall observe sound business practices with respect to providing such bonding and insurance as would provide adequate coverage for services offered under this Agreement.
- B. The premises on and in which the activities described in Exhibit A are conducted, and the employees conducting these activities, shall be covered by premise liability insurance, commonly referred to as "Owner/Tenant" coverage with CITY named as an additional insured. Upon request of ORGANIZATION, CITY may, at its sole discretion, approve alternate insurance coverage arrangements.
- C. ORGANIZATION will comply with applicable workers' compensation statutes and will obtain employers' liability coverage where available and other appropriate liability coverage for program participants, if applicable.
- D. ORGANIZATION will maintain adequate and continuous liability insurance on all vehicles owned, leased or operated by ORGANIZATION. All employees of ORGANIZATION who are required to drive a vehicle in the normal scope and course of their employment must possess a valid Texas driver's license and automobile liability insurance. Evidence of the employee's current possession of a valid license and insurance must be maintained on a current basis in ORGANIZATION's files.
- E. Actual losses not covered by insurance as required by this Section are not allowable costs under this Agreement, and remain the sole responsibility of ORGANIZATION.
- F. The policy or policies of insurance shall contain a clause which requires that City and ORGANIZATION be notified in writing of any cancellation or change in the policy at least 30 days prior to such change or cancellation.

## 16. CIVIL RIGHTS / EQUAL OPPORTUNITY AND COMPLIANCE WITH LAWS

- A. ORGANIZATION shall comply with all applicable equal employment opportunity and affirmative action laws or regulations. The ORGANIZATION shall not discriminate against any employee or applicant for employment because of race, color, creed, religion, national origin, gender, age or disability. The ORGANIZATION will take affirmative action to insure that all employment practices are free from such discrimination. Such employment practices include but are not limited to the following: hiring, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay or other forms of compensation and selection for training, including apprenticeship.
- B. ORGANIZATION shall comply with all applicable equal employment opportunity and affirmative action laws or regulations. The ORGANIZATION agrees to comply with Title VI of the Civil Rights Act of 1964 as amended, Title VIII of the Civil Rights Act of 1968 as amended, Section 104(b) and Section 109 of Title 1 of the Housing and Community Development Act of 1974 as amended, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Executive Order 11063 and Executive Order 11246 as amended by Executive Orders 11375 and 12086.
- C. ORGANIZATION will furnish all information and reports requested by the CITY, and will permit access to its books, records, and accounts for purposes of investigation to ascertain compliance with local, state and Federal rules and regulations.
- D. In the event of ORGANIZATION's non-compliance with the non-discrimination requirements, CITY may cancel or terminate the Agreement in whole or in part, and ORGANIZATION may be barred from further contracts with CITY.

## 17. PERSONNEL POLICIES

Personnel policies shall be established by ORGANIZATION and shall be available for examination. Such personnel policies shall:

- A. Be no more liberal than CITY's personnel policies, procedures, and practices, including policies with respect to employment, salary and wage rates, working hours and holidays, fringe benefits, vacation and sick leave privileges, and travel; and
- B. Be in writing and shall be approved by the governing body of ORGANIZATION and by CITY.

## **18. CONFLICT OF INTEREST**

- A. ORGANIZATION covenants that neither it nor any member of its governing body presently has any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. ORGANIZATION further covenants that in the performance of this Agreement, no person having such interest shall be employed or appointed as a member of its governing body.
- B. ORGANIZATION further covenants that no member of its governing body or its staff, subcontractors or employees shall possess any interest in or use his/her position for a purpose that is or gives the appearance of being motivated by desire for private gain for himself/herself, or others; particularly those with which he/she has family, business, or other ties.
- C. No officer, member, or employee of CITY and no member of its governing body who exercises any function or responsibilities in the review or approval of the undertaking or carrying out of this Agreement shall participate in any decision relating to the Agreement which affects his or her personal interest or the interest in any corporation, partnership, or association in which he or she has a direct or indirect interest.

## **19. NEPOTISM**

ORGANIZATION shall not employ in any paid capacity any person who is a member of the immediate family of any person who is currently employed by ORGANIZATION, or is a member of ORGANIZATION's governing board. The term "member of immediate family" includes: wife, husband, son, daughter, mother, father, brother, sister, in-laws, aunt, uncle, nephew, niece, stepparent, stepchild, half-brother and half-sister.

## **20. PUBLICITY**

- A. Where such action is appropriate, ORGANIZATION shall publicize the activities conducted by ORGANIZATION under this Agreement. In any news release, sign, brochure, or other advertising medium, disseminating information prepared or distributed by or for ORGANIZATION, the advertising medium shall state that City of Denton funding has made the services possible.

## **21. CHANGES AND AMENDMENTS**

- A. Any alterations, additions, or deletions to the terms of this Agreement shall be by written amendment executed by both parties, except when the terms of this Agreement expressly provide that another method shall be used.
- B. ORGANIZATION may not make changes to the budget set forth in Exhibit B without prior written approval of the Police Chief. ORGANIZATION shall request, in writing, the budget revision in a form prescribed by CITY, and such request for revision shall not increase the total monetary obligation of CITY under this Agreement. In addition, budget revisions cannot significantly change the nature, intent, or scope of the program funded under this Agreement.
- C. ORGANIZATION will submit revised budget and program information, whenever the level of funding for ORGANIZATION or the program(s) described herein is altered according to the total levels contained in any portion of Exhibit B.
- D. It is understood and agreed by the parties hereto that changes in the State, Federal or local laws or regulations pursuant hereto may occur during the term of this Agreement. Any such modifications are to be automatically incorporated into this Agreement without written amendment hereto, and shall become a part of the Agreement on the effective date specified by the law or regulation.
- E. CITY may, from time to time during the term of the Agreement, request changes in Exhibit A which may include an increase or decrease in the amount of ORGANIZATION's compensation. Such changes shall be incorporated in a written amendment hereto, as provided in Subsection A of this Section.
- F. Any alterations, deletions, or additions to the Contract Budget Detail incorporated in Exhibit B shall require the prior written approval of CITY.
- G. ORGANIZATION agrees to notify CITY of any proposed change in physical location for work performed under this Agreement at least 30 calendar days in advance of the change.
- H. ORGANIZATION shall notify CITY of any changes in personnel or governing board composition.

- I. It is expressly understood that neither the performance of Exhibit A for any program contracted hereunder nor the transfer of funds between or among said programs will be permitted.

## **22. SUSPENSION OF FUNDING**

Upon determination by CITY of ORGANIZATION's failure to timely and properly perform each of the requirements, time conditions and duties provided herein, CITY, without limiting any rights it may otherwise have, may, at its discretion, and upon ten working days written notice to ORGANIZATION, withhold further payments to ORGANIZATION. Such notice may be given by mail to the Executive Officer and the Board of Directors of ORGANIZATION. The notice shall set forth the default or failure alleged, and the action required for cure.

The period of such suspension shall be of such duration as is appropriate to accomplish corrective action, but in no event shall it exceed 30 calendar days. At the end of the suspension period, if CITY determines the default or deficiency has been satisfied, ORGANIZATION may be restored to full compliance status and paid all eligible funds withheld or impounded during the suspension period. If however, CITY determines that ORGANIZATION has not come into compliance, the provisions of Section 25 may be effectuated.

## **23. TERMINATION**

- A. CITY may terminate this Agreement for cause under any of the following reasons or for other reasons not specifically enumerated in this paragraph:
  1. ORGANIZATION's failure to attain compliance during any prescribed period of suspension as provided in Section 24.
  2. ORGANIZATION's failure to materially comply with any of the terms of this Agreement.
  3. ORGANIZATION's violation of covenants, agreements or guarantees of this Agreement.
  4. Termination or reduction of funding by the City of Denton.
  5. Finding by CITY that ORGANIZATION:
    - a. is in such unsatisfactory financial condition as to endanger performance under this Agreement;
    - b. has allocated inventory to this Agreement substantially exceeding reasonable requirements;
    - c. is delinquent in payment of taxes, or of costs of performance of this Agreement in the ordinary course of business.
  6. Appointment of a trustee, receiver or liquidator for all or substantial part of ORGANIZATION's property, or institution of bankruptcy, reorganization, rearrangement of or liquidation proceedings by or against ORGANIZATION.
  7. ORGANIZATION's inability to conform to changes required by Federal, State and local laws or regulations as provided in Section 4, and Section 2, of this Agreement.
  8. The commission of an act of bankruptcy.
  9. ORGANIZATION's violation of any law or regulation to which ORGANIZATION is bound or shall be bound under the terms of the Agreement.

CITY shall promptly notify ORGANIZATION in writing of the decision to terminate and the effective date of termination. Simultaneous notice of pending termination maybe made to other funding source specified in Exhibit B.

- B. CITY may terminate this Agreement for convenience at any time. If CITY terminates this Agreement for convenience, ORGANIZATION will be paid an amount not to exceed the total of accrued expenditures as of the effective date of termination. In no event will this compensation exceed an amount which bears the same ratio to the total compensation as the services actually performed bears to the total services of ORGANIZATION covered by the Agreement, less payments previously made.
- C. ORGANIZATION may terminate this Agreement in whole or in part by written notice to CITY, if a termination of outside funding occurs upon which ORGANIZATION depends for performance hereunder. ORGANIZATION may opt, within the limitations of this Agreement, to seek an alternative funding source, with the approval of CITY, provided the termination by the outside funding source was not occasioned by a

breach of contract as defined herein or as defined in a contract between ORGANIZATION and the funding source in question.

ORGANIZATION may terminate this Agreement upon the dissolution of ORGANIZATION's organization not occasioned by a breach of this Agreement.

- D. Upon receipt of notice to terminate, ORGANIZATION shall cancel, withdraw or otherwise terminate any outstanding orders or subcontracts, which relate to the performance of this Agreement. CITY shall not be liable to ORGANIZATION or ORGANIZATION's creditors for any expenses, encumbrances or obligations whatsoever incurred after the termination date listed on the notice to terminate referred to in this paragraph.
- E. Notwithstanding any exercise by CITY of its right of suspension or termination, ORGANIZATION shall not be relieved of liability to CITY for damages sustained by CITY by virtue of any breach of the Agreement by ORGANIZATION, and CITY may withhold any reimbursement to ORGANIZATION until such time as the exact amount of damages due to CITY from ORGANIZATION is agreed upon or otherwise determined.

#### **24. NOTIFICATION OF ACTION BROUGHT**

In the event that any claim, demand, suit or other action is made or brought by any person(s), firm corporation or other entity against ORGANIZATION, ORGANIZATION shall give written notice thereof to CITY within two working days after being notified of such claim, demand, suit or other action. Such notice shall state the date and hour of notification of any such claim, demand, suit or other action; the names and addresses of the person(s), firm, corporation or other entity making such claim, or that instituted or threatened to institute any type of action or proceeding; the basis of such claim, action or proceeding; and the name of any person(s) against whom such claim is being made or threatened. Such written notice shall be delivered either personally or by mail.

#### **25. INDEMNIFICATION**

- A. It is expressly understood and agreed by both parties hereto that CITY is contracting with ORGANIZATION as an independent contractor and that as such, ORGANIZATION shall save and hold CITY, its officers, agents and employees harmless from all liability of any nature or kind, including costs and expenses for, or on account of, any claims, audit exceptions, demands, suits or damages of any character whatsoever resulting in whole or in part from the performance or omission of any employee, agent or representative of ORGANIZATION.
- B. ORGANIZATION agrees to provide the defense for, and to indemnify and hold harmless CITY its agents, employees, or contractors from any and all claims, suits, causes of action, demands, damages, losses, attorney fees, expenses, and liability arising out of the use of these contracted funds and program administration and implementation except to the extent caused by the willful act or omission of CITY, its agents or employees.

#### **26. NON-RELIGIOUS ACTIVITIES**

The ORGANIZATION will provide all services under this Agreement in a manner that is exclusively non-religious in nature and scope. There shall be no religious services, proselytizing, instruction or any other religious preference, influence or discrimination in connection with providing the services hereunder.

#### **27. MISCELLANEOUS**

- A. ORGANIZATION shall not transfer, pledge or otherwise assign this Agreement or any interest therein, or any claim arising thereunder, to any party or parties, bank, trust company or other financial institution without the prior written approval of CITY.
- B. If any provision of this Agreement is held to be invalid, illegal, or unenforceable, the remaining provisions shall remain in full force and effect and continue to conform to the original intent of both parties hereto.
- C. All reports, documents, studies, charts, schedules, or other appended documentation to any proposal, content of basic proposal, or contracts and any responses, inquiries, correspondence and related material submitted by ORGANIZATION shall become the property of CITY upon receipt.
- D. Debarment: ORGANIZATION certifies that they are not listed on the Excluded Parties List System (EPLS), which list the debarred, suspended or otherwise excluded from or ineligible for participation in federal assistance programs under Executive Order 12549 and 24 CFR Part 24.

- E. In no event shall any payment to ORGANIZATION hereunder, or any other act or failure of CITY to insist in any one or more instances upon the terms and conditions of this Agreement constitute or be construed in any way to be a waiver by CITY of any breach of covenant or default which may then or subsequently be committed by ORGANIZATION. Neither shall such payment, act, or omission in any manner impair or prejudice any right, power, privilege, or remedy available to CITY to enforce its rights hereunder, which rights, powers, privileges, or remedies are always specifically preserved. No representative or agent of CITY may waive the effect of this provision.
- F. This Agreement, together with referenced exhibits and attachments, constitutes the entire agreement between the parties hereto, and any prior agreement, assertion, statement, understanding or other commitment antecedent to this Agreement, whether written or oral, shall have no force or effect whatsoever; nor shall an agreement, assertion, statement, understanding, or other commitment occurring during the term of this Agreement, or subsequent thereto, have any legal force or effect whatsoever, unless properly executed in writing, and if appropriate, recorded as an amendment of this Agreement.
- G. In the event any disagreement or dispute should arise between the parties hereto pertaining to the interpretation or meaning of any part of this Agreement or its governing rules, codes, laws, ordinances or regulations, CITY as the party ultimately responsible, will have the final authority to render or to secure an interpretation.
- H. For purposes of this Agreement, Any notice or other written instrument required or permitted to be delivered under the terms of this Agreement shall be deemed to have been delivered, whether actually received or not, when deposited in the United States mail, postage prepaid, registered or certified, return receipt requested, addressed to ORGANIZATION or CITY, as the case may be, at the following addresses:

**CITY**  
 City Manager  
 City of Denton  
 215 E. McKinney  
 Denton, Texas 76201

**ORGANIZATION**  
 Children's Advocacy Center for Denton County, Inc.  
 Attn: Executive Director  
 1854 Cain Drive  
 Lewisville, TX 75077

- I. This Agreement shall be interpreted in accordance with the laws of the State of Texas and venue of any litigation concerning this Agreement shall be in a court competent jurisdiction sitting in Denton County, Texas.

IN WITNESS WHEREOF, the parties do hereby affix their signatures and enter into this Agreement as of the \_\_\_\_\_ day of \_\_\_\_\_, 2013.

CITY OF DENTON

BY: \_\_\_\_\_  
 GEORGE C. CAMPBELL, CITY MANAGER

ATTEST:  
 JENNIFER WALTERS, CITY SECRETARY

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

APPROVED AS TO LEGAL FORM:  
 ANITA BURGESS, CITY ATTORNEY

BY: Stephanie M. Berry





## **Exhibit A Scope of Services**

The Scope of Services under this Agreement shall be as follows:

### **SECTION I - ACTIVITY**

ORGANIZATION shall provide services to minimize the trauma of child abuse to the children and non-offending family members by offering victim services that include client and clinical services. Client Services provide justice and support by coordinating the investigative process among the Denton Police Department and partner agencies and by assisting families with crime victim services. The Clinical Services program provides specialized and comprehensive clinical services.

Beneficiaries of the services to be provided hereunder must reside in the city of Denton and ORGANIZATION shall provide services to child victims and their non-offending family members.

### **SECTION II – SERVICES**

In order to complete the agreed upon activity ORGANIZATION shall provide the following services to child abuse victims, or children who have witness a violent crime, and non-offending family members:

- Provide facility and staff to coordinate the investigative process among the Denton Police Department and partner agencies and to conduct:

Client Services:

- on-site forensic interview and assessments
- multidisciplinary case reviews to insure coordination and progress of investigations by partner agencies
- social service referrals and assistance with victim compensation
- social histories and support
- liaison between the families and investigative agencies
- referrals to community resources, and seasonal assistance programs

Clinical Services:

- individual, group, play and pet therapy
- crisis counseling
- consultation with the multidisciplinary team
- court preparation services
- psychological testing

### **SECTION III – UNIT OF SERVICE**

A unit of service will be the tool by which the CITY and the ORGANIZATION can measure performance under this agreement. A unit of service shall be defined as client or clinical service for a child victim or non-offending family members including but not limited to the services as described in Section II – Services.

### **SECTION IV – GOALS**

ORGANIZATION shall provide not less than 2,250 units of service to city of Denton residents during the contract year. The total number of units of service required constitutes the performance target for the ORGANIZATION under this Agreement. The ORGANIZATION will provide services to approximately 300 children ages zero to seventeen and non-offending family members during the term of this Agreement.

ORGANIZATION shall provide the services listed in this Agreement within the monetary limits contained in Exhibit B, entitled “Budget”, attached hereto and incorporated by reference herein. In no event shall compensation to the ORGANIZATION exceed the lesser of the ORGANIZATION’S costs attributable to the work performed as stated herein, or sum of **One Hundred Nineteen Thousand One Hundred and Forty One Dollars (\$119,141.00)**.

## **SECTION V – OUTCOMES**

### **Direct Service Outcome**

The services provided as the terms of this agreement will assist the ORGANIZATION in providing comprehensive services to child abuse victims, or children who have witness a violent crime, and non-offending family members. The expected benefits of the ORGANIZATION'S delivery of comprehensive services will provide a reduction in trauma and promotion of emotional healing through:

- ORGANIZATION will serve at least 275 city of Denton clients and at least 70% of those referred for counseling will receive counseling services.
- At least 20% of children served will continue in The Advocacy Center's clinical program.

### **Community Outcome**

Children's Advocacy Center for Denton County assists the City of Denton in improving availability and accessibility of services promoting strong, supportive relationships for families, neighborhoods, and communities to promote a suitable living environment., as outlined in the 2010-2014 City of Denton Consolidated Plan. The Children's Advocacy Center for Denton County provides services necessary to (1) expand the current system of case coordination and centralize information among service providers and (2) continue allocation of scarce resources to meet urgent community needs. Children's Advocacy Center for Denton County benefits the citizens of the City of Denton and supports a coordinated effort to maximize community resources by:

- Working in conjunction with the Denton Police Department, Child Protective Services, and appropriate service providers on the investigation and prosecution of cases.
- Promoting collaboration between agencies through the use of their facilities for interviews, office space, case reviews, and other services.
- Offering a variety of therapy sessions to assist victims and non-offending family members in the emotional healing process.

**Exhibit B  
Budget**

<b>Allowable Expenditure</b>	<b>Budget Amount</b>
Fee for Service \$45.00 per 2,250 units of direct service	\$119,141.00
<b>Total</b>	<b>\$119,141.00</b>

Children's Advocacy Center for Denton County will be reimbursed monthly on a fee for service basis for services provided to residents of the city of Denton. Fees for particular services are described above.

**AGENDA INFORMATION SHEET**

**AGENDA DATE:** November 19, 2013

**DEPARTMENT:** Parks and Recreation Department



**ACM:** John Cabrales, Jr.

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**SUBJECT**

Consider adoption of an ordinance approving a sponsorship in an amount not to exceed \$13,000 of in-kind services and supplies for the 25<sup>th</sup> Annual Denton Holiday Lighting Festival to be held on Downtown Square on December 6, 2013; and providing an effective date.

**BACKGROUND**

The Holiday Lighting Festival Association requests the City participate as a sponsor at the same level as previous years. Parks and Recreation has provided in-kind resources including staff to set up and deliver equipment, assist with litter control; and, paid rental for tables and chairs for vendors and, since 2007, paid for barricades for street closures. The City has provided two Police officers during the event at no charge. The Denton Holiday Lighting Festival Association receives \$7,640 in Hotel/Motel Occupancy Tax (HOT) funds and approximately \$5,038 from the General Fund for a total of \$12,678, for which the City is recognized as a sponsor at a level equal to the in-kind value.

The Festival is organized by the Denton Holiday Lighting Festival Association and anticipates approximately 10,000 attendees and 25 vendor booths.

**PRIOR ACTION/REVIEW**

This is the 25<sup>th</sup> Annual Denton Holiday Lighting Festival and the City has provided support for each.

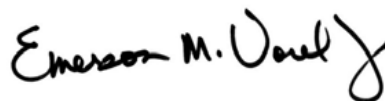
**FISCAL INFORMATION**

Estimated costs to provide the requested in-kind services and resources are \$13,000.

**EXHIBITS**

1. In-Kind Services and Resources 2012 and Proposed 2013
2. Proposed Ordinance

Respectfully submitted:



Emerson Vorel, Director

Prepared by:



Janie McLeod  
Community Events Coordinator

## HOLIDAY LIGHTING

**In-Kind Services and Resources 2012 and Proposed 2013**

<b>2012</b>	Actual		<b>2013</b>	Proposed
Police – security - overtime	\$1,104		Police – security - overtime	\$1,104
Park staff during event - overtime	\$1,808		Park staff during event - overtime	\$1,808
Rental of tables & chairs, supplies	\$926		Rental of tables & chairs, supplies	\$926
Rental of barricades	\$1,200		Rental of barricades	\$1,200
Total In-Kind Services	\$5,038		Total In-Kind Services	\$5,038
HOT Funds	\$7,640		HOT Funds	\$7,640
<b>Grand Total</b>	<b>\$12,678</b>		<b>Grand Total</b>	<b>\$12,678</b>

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE APPROVING A CITY SPONSORSHIP IN AN AMOUNT NOT TO EXCEED \$13,000.00 OF IN-KIND SERVICES AND SUPPLIES FOR THE 25TH ANNUAL DENTON HOLIDAY LIGHTING FESTIVAL TO BE HELD ON DOWNTOWN SQUARE ON DECEMBER 6, 2013; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Denton Holiday Lighting Festival is requesting the City of Denton to participate as a sponsor, at the same level as in previous years, for the event to be held on the Downtown Square on December 6, 2013; and

WHEREAS, the City of Denton has sponsored up to \$13,000.00 of in-kind services and supplies for the 2012 event which included Police, park staff and the use of park equipment, rental of barricades, tables and chairs; and

WHEREAS, in exchange for the said support the City of Denton was considered to be an event sponsor of the said event at a sponsorship level equal to the value of the in-kind service tendered; and

WHEREAS, the City Council finds that it is in the public interest and benefit to the citizens of the City of Denton to participate as a sponsor at a level not to exceed \$13,000.00 of in-kind services for the event to be held on the Downtown Square on December 6, 2013; NOW, THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The City Council finds that it is in the public interest and benefit to the citizens of the City of Denton to participate as a sponsor at a level not to exceed \$13,000.00 of in-kind services and supplies, including but not limited to Police, park staff and the use of park equipment, rental of barricades, tables and chairs, and the said participation is hereby approved.

SECTION 2. This ordinance shall be effective immediately upon its passage and approval.

PASSED AND APPROVED this the \_\_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
MARK A. BURROUGHS, MAYOR

ATTEST:  
JENNIFER WALTERS, CITY SECRETARY

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

APPROVED AS TO LEGAL FORM:  
ANITA BURGESS, CITY ATTORNEY

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



**AGENDA INFORMATION SHEET****AGENDA DATE:** November 19, 2013**DEPARTMENT:** Denton Municipal Electric**ACM:** Howard Martin, 349-8232

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**SUBJECT**

Second Reading of an ordinance authorizing execution of a franchise agreement with the City of Denton, acting through its electric utility, granting a franchise to maintain, and operate facilities within the City of Corinth for the delivery and sale of electricity; providing for the payment of a fee for the use of the public rights-of-way; providing that such fee shall be in lieu of other charges; setting forth the term of the franchise; and providing an effective date.

**BACKGROUND**

The prior City of Corinth Agreement expired May 31, 2012. The City of Corinth's City Council approved a new Agreement on September 19, 2013. The proposed fifteen year Agreement provides that Denton Municipal Electric Utility (DME) will pay the City of Corinth four percent (4%) of its gross revenue from the sale of electric power and energy at retail within the corporate limits of the City of Corinth as full payment for the right and privilege of using and occupying the public right-of-way. The first payment was due on August 1, 2013 and subsequent payments will be made on or before August 1 of each year thereafter. The attached Agreement will expire May 21, 2028.

**RECOMMENDATION**

Staff recommends approval of the Agreement at December 3, 2013 City Council Meeting.

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

On November 5, 2013 the City Council heard the first reading of this Agreement.

**DATE SCHEDULED FOR COUNCIL APPROVAL**

The City Charter requires three readings of a franchise ordinance. Therefore the Agreement will be read again at the December 3<sup>rd</sup> City Council meeting. The Council will vote on approval of the Agreement at the December 3, 2013 meeting.

**FISCAL INFORMATION**

The annual City of Corinth franchise fee payment will be approximately \$8,500. As electric sales within the City of Corinth and/or electric rates change the fee will correspondingly change.

**EXHIBIT**

1. City of Corinth Ordinance No. 13-09-19-21 and Franchise Agreement Between the City of Corinth, Texas and The City of Denton, Texas, Municipal Electric Utility

Respectfully submitted:

A handwritten signature in black ink that reads "Phil Williams". The signature is written in a cursive style with a large initial "P" and a long, sweeping underline.

Phil Williams  
General Manager,  
Denton Municipal Electric

Prepared by:  
Mary Dickinson  
Budget Manager

# EXHIBIT 1

ORDINANCE NO. 2013-\_\_\_\_\_

AN ORDINANCE AUTHORIZING EXECUTION OF A FRANCHISE AGREEMENT WITH THE CITY OF DENTON, ACTING THROUGH ITS ELECTRIC UTILITY, GRANTING A FRANCHISE TO MAINTAIN, AND OPERATE FACILITIES WITHIN THE CITY OF CORINTH FOR THE DELIVERY AND SALE OF ELECTRICITY; PROVIDING FOR THE PAYMENT OF A FEE FOR THE USE OF THE PUBLIC RIGHTS-OF-WAY; PROVIDING THAT SUCH FEE SHALL BE IN LIEU OF OTHER CHARGES; SETTING FORTH THE TERM OF THE FRANCHISE; PROVIDING FOR THE RATIFICATION AND RETROACTIVE APPROVAL OF SAID AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, on the 15th day of July, 1997 the City Council approved a Franchise Agreement by and between the City of Corinth, Texas and the City of Denton, Texas Municipal Electric Utility (the "Prior Agreement"), by Ordinance No. 97-206; and

WHEREAS, the fifteen-year term provided for in the Prior Agreement has now expired; the City of Denton, Texas has since that time also renamed its municipal electric utility, as Denton Municipal Electric; and both the City of Corinth, Texas and the City of Denton, Texas desire to adopt a new Franchise Agreement, and have its approval to be retroactively effective as of July 15, 2012; and

WHEREAS, the City of Denton, Texas continues to supply electric services using the public rights-of-way of the City of Corinth, Texas; and the Corinth City Council by its Ordinance No. 13-09-19-21 has approved the new Franchise Agreement on the 21<sup>st</sup> day of September, 2013, a copy of which ordinance is attached hereto as well; and the Denton City Council accordingly finds that the new Franchise Agreement, should be in all things approved; NOW, THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1: The recitations contained in the preamble hereto are true and correct and are incorporated herewith as a part of this Ordinance.

SECTION 2: The City Manager is hereby authorized to execute the "Franchise Agreement between the City of Corinth, Texas and the City of Denton, Texas Municipal Electric Utility" (the "Agreement"), in substantially the form of the Agreement which is attached hereto as Exhibit "A" and which is incorporated herewith by reference.

SECTION 3: This Agreement is retroactively effective and approved as of July 15, 2012, the date of expiration of the previous Franchise Agreement.

SECTION 4: The expenditure of funds as provided for in the attached Agreement is hereby authorized.

SECTION 5: The remainder of this ordinance shall become effective upon its passage and approval.

PASSED AND APPROVED this the \_\_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
MARK A. BURROUGHS, MAYOR

ATTEST:  
JENNIFER WALTERS, CITY SECRETARY

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

APPROVED AS TO LEGAL FORM:  
ANITA BURGESS, CITY ATTORNEY



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

The City of Denton, Texas, acting herein by its duly-constituted City Council, hereby declares the foregoing Ordinance passed on first reading on the 5<sup>th</sup> day of November, 2013; and passed on second reading on the 19<sup>th</sup> day of November, 2013; and passed on third reading on the 3<sup>rd</sup> day of December, 2013; and being finally effective as of the 3<sup>rd</sup> day of January, 2014.

/s/\_\_\_\_\_  
Mark Burroughs, Mayor

/s/\_\_\_\_\_  
Pete Kamp, Mayor-Pro-Tem

/s/\_\_\_\_\_  
Dalton Gregory, Council Member, Place 2

/s/\_\_\_\_\_  
Jim Engelbrecht, Council Member, Place 3

/s/\_\_\_\_\_  
James King, Council Member, Place 6

/s/\_\_\_\_\_  
Kevin Roden, Council Member, Place 1

/s/\_\_\_\_\_  
Joey Hawkins, Council Member, Place 4

The above and foregoing ordinance was read, adopted on first reading and passed to second reading by the following votes, this the 5<sup>th</sup> day of November, 2013, at a regular session of the City Council.

Mark Burroughs, Mayor, voting

Pete Kamp, Mayor-Pro-Tem, voting

Dalton Gregory, Council Member, voting

Jim Engelbrecht, Council Member, voting

James King, Council Member, voting

Kevin Roden, Council Member, voting

Joey Hawkins, Council Member, voting

The above and foregoing ordinance as read, adopted on second reading and passed to third reading by the following votes, this the 19<sup>th</sup> day of November, 2013, at a regular session of the City Council.

Mark Burroughs, Mayor, voting

Pete Kamp, Mayor-Pro-Tem, voting

Dalton Gregory, Council Member, voting

Jim Engelbrecht, Council Member, voting

James King, Council Member, voting

Kevin Roden, Council Member, voting

Joey Hawkins, Council Member, voting

The above and foregoing ordinance was read, adopted on third reading and passed by the following votes, this the 3<sup>rd</sup> day of December, 2013, at a regular session of the City Council.

Mark Burroughs, Mayor, voting.

Pete Kamp, Mayor-Pro-Tem, voting

Dalton Gregory, Council Member, voting

Jim Engelbrecht, Council Member, voting

James King, Council Member, voting

Kevin Roden, Council Member, voting

Joey Hawkins, Council Member, voting

STATE OF TEXAS            §  
  §  
COUNTY OF DENTON       §

I, Jennifer Walters, City Secretary of the City of Denton, Texas, do hereby certify that the above and foregoing is a true and correct copy of the Franchise Agreement Ordinance between the City of Denton, Texas and the City of Corinth, Texas. The same is now recorded as Ordinance Number 2013-\_\_\_\_\_ in the Ordinance Records of the City of Denton, Texas.

WITNESS MY HAND this the \_\_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
Jennifer Walters, City Secretary

(SEAL)

\* \* \* \* \*

ACCEPTANCE

WHEREAS, the City Council of the City of Denton, Texas, did on the 3<sup>rd</sup> day of December, 2013, enact an Ordinance entitled:

AN ORDINANCE AUTHORIZING EXECUTION OF A FRANCHISE AGREEMENT WITH THE CITY OF DENTON, ACTING THROUGH ITS ELECTRIC UTILITY, GRANTING A FRANCHISE TO MAINTAIN, AND OPERATE FACILITIES WITHIN THE CITY OF CORINTH FOR THE DELIVERY AND SALE OF ELECTRICITY; PROVIDING FOR THE PAYMENT OF A FEE FOR THE USE OF THE PUBLIC RIGHTS-OF-WAY; PROVIDING THAT SUCH FEE SHALL BE IN LIEU OF OTHER CHARGES; SETTING FORTH THE

TERM OF THE FRANCISE; PROVIDING FOR THE RATIFICATION AND RETROACTIVE APPROVAL OF SAID AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, said Ordinance was on the 3<sup>rd</sup> day of December, 2013, duly approved and subscribed by the Mayor of said City, and the seal of said City was thereto affixed and attested to by the City Secretary;

NOW, THEREFORE, the City of Corinth, Texas, hereby in all respects ACCEPTS, APPROVES AND AGREES TO said Ordinance, and the same shall constitute and be a binding contractual obligation of the City of Corinth, Texas, and of the City of Denton, Texas, without waiver of any other remedy by the City of Corinth, Texas, or the City of Denton, Texas, and the City of Corinth, Texas does hereby file this, its written acceptance, with the City Secretary of the City of Denton, Texas, in her office.

DATED this the \_\_\_\_ day of \_\_\_\_\_, 201\_\_.

THE CITY OF CORINTH, TEXAS

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

ATTEST:

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

\* \* \* \* \*

ACCEPTANCE FILED in the Office of the City Secretary of the City of Denton, Texas, this the \_\_\_\_ day of \_\_\_\_\_, 201\_\_.

\_\_\_\_\_  
Jennifer Walters, City Secretary

ORDINANCE NO. 13-09-19-21

**AN ORDINANCE AUTHORIZING EXECUTION OF A FRANCHISE AGREEMENT WITH THE CITY OF DENTON, ACTING THROUGH ITS ELECTRIC UTILITY, GRANTING A FRANCHISE TO MAINTAIN, AND OPERATE FACILITIES WITHIN THE CITY OF CORINTH FOR THE DELIVERY AND SALE OF ELECTRICITY; PROVIDING FOR THE PAYMENT OF A FEE FOR THE USE OF THE PUBLIC RIGHTS-OF-WAY; PROVIDING THAT SUCH FEE SHALL BE IN LIEU OF OTHER CHARGES; SETTING FORTH THE TERM OF THE FRANCHISE; AND PROVIDING AN EFFECTIVE DATE.**

WHEREAS, the City of Denton, Texas, through its Electric Utility, supplies electric services through the public rights-of-way of the City of Corinth to residents of Corinth; and

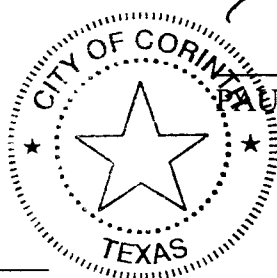
WHEREAS, the franchise Agreement between the City of Denton and the City of Corinth having expired and both parties desiring to adopt a new franchise; **NOW, THEREFORE,**

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

SECTION I. That the Mayor is hereby authorized to execute, on behalf of the City, a Franchise Agreement with the City of Denton, Texas Municipal Electric Utility (the "Agreement") granting a franchise and providing for the payment of a franchise fee in connection with the furnishing of electric service by the City of Denton Municipal Electric Utility to customers in the City of Corinth, Texas. A copy of the Agreement is attached hereto and incorporated by reference herein.

SECTION II. That this ordinance and the Agreement shall become effective as provided by Article XI of the City Charter of the City of Corinth, and Denton's acceptance shall be evidenced by its approval and execution of the Agreement.

**PASSED AND APPROVED** this the 11 day of September 2013.



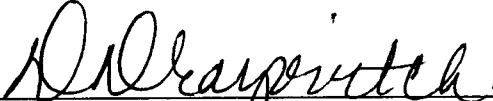
*Paul Ruggiere*  
\_\_\_\_\_  
PAUL RUGGIERE, MAYOR

ATTEST:

*Kim Pence*  
\_\_\_\_\_  
KIM PENCE, CITY SECRETARY



APPROVED AS TO LEGAL FORM:

  
\_\_\_\_\_  
DEBRA A. DRAYOVITCH, CITY ATTORNEY

**FRANCHISE AGREEMENT BETWEEN THE CITY OF CORINTH, TEXAS AND THE CITY  
OF DENTON, TEXAS MUNICIPAL ELECTRIC UTILITY**

THIS AGREEMENT, made and entered into by and between the City of Corinth, Texas, hereinafter called "CITY", 3300 Corinth Parkway, Corinth, Texas 76208, and the City of Denton, Texas, as owner of Denton Municipal Electric Utility, hereinafter called "DMEU", 215 East McKinney Street, Denton, Texas 76201.

WITNESSETH

WHEREAS, DMEU is operating an electric distribution system, including poles, wires, transformers, meters, and other appurtenances within the City of Corinth, Texas; and

WHEREAS, the Franchise Agreement between the CITY and the DMEU has expired, and it is the desire of the CITY and DMEU to enter into Franchise Agreement to provide for the use and occupancy of the present and future streets, alleys, highways, public utility easements, parks and other public property within the CITY (hereinafter the "Public Right-of-Way");

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, and the mutual benefits to be derived therefrom, the parties hereto agree as follows:

1. That DMEU, its successors or assigns, shall pay annually four percent (4%) of its gross revenues from the sale of electric power and energy at retail within the corporate limits of the CITY as full payment for the right and privilege of using and occupying the Public Right-of-Way of the CITY of Corinth, Texas.. The first payment shall be due on August 1, 2013 and subsequent payments shall be made on or before August 1 of each year thereafter. Each payment shall be based on the gross receipts from the retail sale of electricity within the corporate limits of CITY during the twelve (12) month period ending May 30 next preceding the payment, and shall be payment for the aforesaid right and privilege during the twelve (12) month period beginning with August 1 of the year in which the payment is made. The first payment is based on the revenue collected by DMEU during the twelve month period beginning June 1, 2012 and ending May 31, 2013. This payment, and this Agreement, covers the street rental agreement period of August 1, 2012 through July 31, 2013, and provides for subsequent payments to be rendered by DMEU as previously stated. DMEU shall provide a complete report in support of its calculations with respect to each such payment and, upon the CITY's written request, shall, within a reasonable time, provide and allow inspection of all necessary books and records of DMEU. The CITY and DMEU each agree that this Agreement shall operate in such a manner as to provide for the continuous payment of franchise payments to the CITY, despite the fact that the previous Franchise Agreement, had inadvertently expired.

2. CITY agrees to accept such payment as full compensation to be paid by DMEU for the privilege of using and occupying the streets, alleys, highways, easements, parks, and other public places within the present and future territorial limits of CITY, while this Agreement is in effect, in lieu of and shall be accepted as payment for all of DMEU's obligations to pay occupation taxes, assessments, municipal charges, fees, rentals, pole rentals, wire taxes, license and inspection fees or charges, administrative and processing fees, utility easement taxes, franchise taxes, street taxes, street or alley rentals and all other charges, levies, fees, rentals and taxes of every kind, except ad valorem taxes, sales taxes, and special taxes and assessments for public improvements.

3. That DMEU shall, to the extent permitted by law, indemnify and save whole and harmless the CITY and all of its officers, agents, and employees from any and all claims for injury or damage to

persons or property occasioned by, or arising out of the construction, maintenance, operation, or repair of the generation, transmission, or distribution system, or by the conduct of business in the CITY. Provided, however, nothing herein shall be construed to indemnify the CITY against the CITY's own negligence or fault. It is understood that it is not the intention of the parties hereto to create liability for the benefit of third parties, but that this Agreement shall be solely for the benefit of the parties hereto.

4. That all poles to be placed shall be of sound material and reasonably straight, and shall be so set that they will interfere as little as practicable with the ordinary travel on alleys, streets or sidewalks or with the flow of water to any gutter or drain. The location and route of all poles, stubs, guys, anchors, conduits and cables to be placed and constructed by the DMEU in the construction and maintenance of its electric utility distribution system in the CITY, shall comply with all pertinent requirements of the National Electrical Safety Code and all rules and guidelines that have been properly promulgated by the CITY which are not inconsistent with this Agreement, and as may be authorized by State or Federal law.

5. That in any future construction, in new developments, lateral and service distribution lines and wires shall be placed or constructed underground in all areas designated in advance of construction by the CITY for all electric utilities in the plat approval process or by zoning ordinances. In such designated areas, distribution feeder lines may be overhead and transformers and similar equipment may be pad-mounted. The City Council of Corinth or the City Manager thereof, acting on their behalf, may upon petition by DMEU, waive the requirement of underground installation if good cause is shown for such exemption. As used in this section:

"Feeder lines" shall mean those electric lines that emanate from substations to distribute power throughout an area.

"Lateral lines" shall mean those electric lines that emanate from a feeder line and are used to distribute power to smaller areas of electric consumers. These electric lines are normally connected to a feeder line through a sectionalizing device such as a fuse or disconnect switch.

"Service lines" shall mean those electric lines which, through a transformer, connect a lateral line to a customer's service entrance.

6. DMEU shall provide reasonable notice to the City of planned work within the Public Right-of-Way and shall, except in cases of emergency conditions or work incidental in nature, obtain a permit if required by the City's ordinances before commencing work. DMEU shall notify the City as soon as practicable regarding work performed under emergency conditions.

7. The City reserves the right to lay and permit to be laid, power, sewer, gas, water, and other pipe lines or cables and conduits, and to do and permit to be done, any underground and overhead work that may be deemed necessary or proper by the City in, across, along, over and under any Public Right-of-Way occupied by DMEU, and to change any curb or sidewalk or the grade of any street. In permitting this work to be done, the City shall not be liable to the DMEU for any resulting damage to DMEU's facilities. City shall notify DMEU in a reasonable time of any projects that will affect DMEU's facilities located in the Public Right-of-Way. When required to by City to remove or relocate its facilities located within Public Right-of-Way that are in conflict with the City project, DMEU shall do so, at its expense, as soon as practically possible with respect to the scope of the project, unless such work is for the primary purpose of beautification or to accommodate a private developer. Facilities are deemed to be in conflict to the extent that the proposed City facilities are determined by DMEU to be inconsistent with electric distribution industry standard safe operating practices for existing facilities.

8. DMEU shall submit engineering plans of those projects involving significant construction in a Public Right-of-Way to the City for review prior to construction and promptly after completion of construction shall provide to the City accurate and complete "as-built" plans showing the nature and specific location of all work done.

9. The location of all facilities of DMEU shall be subject to approval by the City Manager or the Manager's designated representative prior to construction; provided however, said approval shall not be unreasonably withheld. In the event of a conflict between the location of the facilities of DMEU and the location of the facilities of City or other utility franchisees within the Public Right-of-Way that cannot be resolved, the City Manager shall resolve the conflict and determine the location of the respective facilities. DMEU shall not interfere with power, telephone, cable or water facilities, sanitary or storm sewer facilities or other municipal or public use of the Public Right-of-Way. DMEU has the right to request City Council review of any actions concerning DMEU's use of the Public Rights-of-Way.

10. DMEU shall be responsible for promptly repairing and restoring, to as good condition as before the commencement of the DMEU's work, all Public Right-of-Way within a reasonable time after the completion of the work. Such repairs shall be maintained because of defective workmanship by DMEU for two) years from the date of repairs and restoration. No such street, alley, highway, or public place shall be encumbered for a longer period than shall be reasonably necessary to execute work. It is understood that it is not the intention of the parties hereto to create any liability for the benefit of third parties, but that this Agreement shall be solely for the benefit of the parties hereto.

11. Nothing herein shall enlarge, diminish, amend, affect or otherwise prejudice any certificate of convenience and necessity granted to either CITY or DMEU.

12. DMEU's property and operations within the corporate limits of CITY shall be subject to such reasonable rules and regulations of CITY as may be authorized by applicable law for the protection of the general public. DMEU shall comply with all rules and regulations of CITY generally in effect to the extent that same are valid and authorized by applicable state or federal law. Charges for installation or maintenance of street lighting, including extension costs charged to developers, shall be in accordance with DMEU's tariffs.

13. This Agreement supersedes and cancels any and all prior agreements between CITY and DMEU relating to the matters herein set forth, and is the entire agreement of the parties.

14. This Agreement shall terminate on May 31, 2028.

15. This Agreement is executed in duplicate originals. Any notices required or desired to be given from one party to the other party to this ordinance shall be in writing and shall be sent to the addresses set forth in the preamble of this Agreement.

IN WITNESS WHEREOF, the City of Corinth, Texas has caused this Agreement to be executed by its duly authorized Mayor; and the City of Denton, Texas has caused this Agreement to be executed by its duly authorized City Manager on this the \_\_\_\_ day of \_\_\_\_\_, 2013.

"DMEU"

CITY OF DENTON, TEXAS  
A Texas Municipal Corporation

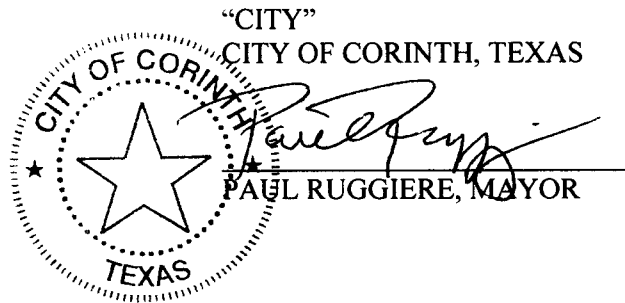
By: \_\_\_\_\_  
GEORGE C. CAMPBELL, CITY MANAGER

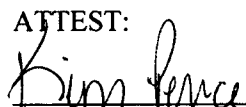
ATTEST:  
JENNIFER WALTERS, CITY SECRETARY

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

APPROVED AS TO LEGAL FORM:  
ANITA BURGESS, CITY ATTORNEY

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



ATTEST:  
  
KIM PENCE, CITY SECRETARY



# CITY OF CORINTH

## COUNCIL AGENDA ITEM

<b>AGENDA TYPE</b> <input type="checkbox"/> Regular <input type="checkbox"/> Special <input checked="" type="checkbox"/> Consent <input type="checkbox"/> Workshop <input type="checkbox"/> Executive <input type="checkbox"/> Public Hearing	Reviewed by Finance <input checked="" type="checkbox"/> Yes <input type="checkbox"/> Not Applicable	Reviewed by Legal <input checked="" type="checkbox"/> Yes <input type="checkbox"/> Not Applicable
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<b>Council Meeting Date: September 19, 2013</b>	Department: Finance
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Dept Head: Lee Ann Bunselmeyer	Dept Head Signature: <i>Lee Ann Bunselmeyer</i>
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Agenda Item Coordinator/Phone/Ext. #: 940-498-3221

City Manager Reviewed/Approval: *[Signature]* Initials *LB* Date *9/11/13*

**ACTION REQUESTED:**  ORDINANCE # \_\_\_\_\_  RESOLUTION # \_\_\_\_\_  APPROVAL  
 CHANGE ORDER  AGREEMENT  APPROVAL OF BID  AWARD OF CONTRACT  
 CONSENSUS  OTHER \_\_\_\_\_

**AGENDA CAPTION**

Consider approval of ordinance authorizing execution of a franchise agreement with the City of Denton, acting through its electric utility, granting a franchise to maintain and operate facilities within the City of Corinth for the delivery and sale of electricity; providing for the payment of a fee for the use of the public rights-of-way; providing that such fee shall be in lieu of other charges; setting forth the term of the franchise; and providing an effective date.

**FINANCIAL SUMMARY**

N/A  GRANT FUNDS  OPERATING EXPENSE  REVENUE  CIP  BUDGETED  NON-BUDGETED

FISCAL YEAR:	PRIOR YEAR	CURRENT YEAR	FUTURE YEAR(S)	TOTALS
Proposed Revenue Amount	\$8,638	\$8,500	\$8,500	

**FUND(S) TO BE USED:** General  \$ \$8,500 Utility  \$ \_\_\_\_\_ Special  \$ \_\_\_\_\_

**BACKGROUND/SUMMARY OF ITEM**

The proposed fifteen year agreement provides that Denton Municipal Electric Utility (DMEU) will pay the City of Corinth four percent (4%) of its gross revenues from the sale of electric power and energy at retail within the corporate limits of the City as full payment for the right and privilege of using and occupying the Public Right-of-Way. The first payment was due on August 1, 2013 and subsequent payments will be made on or before August 1 of each year thereafter. The franchise agreement will expire May 31, 2028.

The following Notice of Franchise was published in the Denton Record Chronicle on August 19, 2013.

The City of Corinth intends to adopt an ordinance granting a franchise to the City of Denton, Texas to use the City streets and rights-of-way for the purpose of maintaining and operating equipment and power poles to deliver and supply electricity to customers within the City.

**STAFF OPTIONS & RECOMMENDATION**

Staff recommends approval of the Franchise Agreement with the City of Denton.

List of Supporting Documents/Exhibits Attached:  1- Franchise agreement between the City of Corinth and the City of Denton.	Prior Action/Review by Council, Boards, Commissions or Other Agencies:
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**AGENDA INFORMATION SHEET****AGENDA DATE:** November 19, 2013**DEPARTMENT:** Airport**ACM:** Jon Fortune

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**SUBJECT**

Consider adoption of an ordinance approving a First Amendment to a Commercial Operator Airport Lease Agreement between the City of Denton, Texas and Nebrig Properties, L.P. for assignment to Sykes-Vaughan Investments, LLC; and providing an effective date. (Council Airport Committee recommends approval 3 - 0)

**BACKGROUND**

Airport Staff received a request from Nebrig Properties, L.P. on October 30, 2013 to transfer the property lease at 4849 Spartan Drive to Sykes-Vaughan Investments, LLC. In addition to the transfer of the property lease, the parties requested certain amendments to the terms and conditions of the lease. The lease amendment includes the following provisions:

1. The term of the lease is changed to match an existing lease of property for Sykes-Vaughan Investments, LLC. The Nebrig Properties, L.P. lease commenced on September 17, 2013 and included a primary term of thirty-three (33) years. The term of the original lease was changed to conform to an existing lease agreement for Fixed Base Operator Services to Sykes-Vaughan Investments, LLC at Denton Enterprise Airport. The amended lease term is for thirty-five (35) years and four (4) months beginning November 19, 2013 and ending March 1, 2049;
2. The amended lease includes additional rights of the Lessee, Sykes-Vaughan Investments, LLC, to conduct business similar to the activities authorized in their existing Fixed Base Operator Lease. The additional business activity includes aircraft sales, fixed-wing and rotor flight training, operation of charter air transportation, aircraft ramp services, and aircraft fueling services; and
3. The terms of the amended lease clarify that the current tenant, Nebrig Properties, L.P. has no ongoing right or obligation to re-assume the lease if the new tenant defaults.

This property is the location of a 14,000 square foot hangar originally built in 2001 and owned by Alan Ritchey, Inc. This hangar was sold to Nebrig Properties, L.P. in September of 2013 and is now being sold to Sykes-Vaughan Investments, LLC. The location is south across Spartan Drive from the US Aviation Group Flight Academy and Fixed Base Operator facility. The lot is 48,600 square feet and will make the total property leased to Sykes-Vaughan, LLC at Denton Enterprise Airport 486,998 square feet.

**FISCAL INFORMATION**

The current lease rate for the property to be transferred to Sykes-Vaughan Investments, LLC is \$12,842 annually (\$0.264/square foot). Airport staff recommends maintaining the existing lease rate for the Nebrig Properties, L.P. property requested to be transferred to Sykes-Vaughan Investments, LLC.

**EXHIBITS**

Ordinance  
First Amendment to the Lease

Respectfully submitted:



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Quentin Hix, Director of Aviation



ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE APPROVING A FIRST AMENDMENT TO A COMMERCIAL OPERATOR AIRPORT LEASE AGREEMENT BETWEEN THE CITY OF DENTON, TEXAS AND NEBRIG PROPERTIES, L.P. FOR ASSIGNMENT TO SYKES-VAUGHAN INVESTMENTS, LLC; AND, PROVIDING AN EFFECTIVE DATE.

WHEREAS, on September 17, 2013, the City of Denton, Texas (hereinafter the "City") entered into that certain Airport Lease Agreement (hereinafter the "Agreement") with Nebrig Properties, L.P. to lease property located at 4849 Spartan Drive, Denton, Texas as approved by Ordinance 2013-258 as subsequently amended; and,

WHEREAS, on October 30, 2013, the City received a request from Nebrig Properties, L.P. to consider a Lease Assignment of Pad Site At Denton Airport to Sykes-Vaughan Investments, LLC; and,

WHEREAS, certain amendments to the Airport Lease Agreement in substantially the form attached hereto and made a part hereof (hereinafter the "Amendment") are necessary to effect a transfer to the Sykes-Vaughan Investments, LLC; and,

WHEREAS, at a meeting on November 11, 2013 the City of Denton Council Airport Committee recommended approval of said Amendment; NOW, THEREFORE,

THE COUNCIL OF THE CITY OF DENTON, TEXAS HEREBY ORDAINS:

SECTION 1. The City Manager or his designee is hereby authorized to execute an Amendment of the Airport Lease Agreement between the City and Nebrig Properties, L.P. to assign the Agreement to Sykes-Vaughan Investments, LLC in substantially the form of the Amendment which is attached to and made a part of this ordinance for all purposes.

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

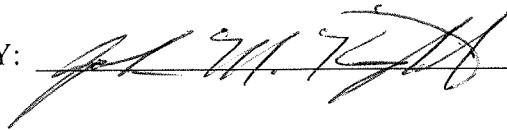
PASSED AND APPROVED this the \_\_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
MARK A. BURROUGHS, MAYOR

ATTEST:  
JENNIFER WALTERS, CITY SECRETARY

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

APPROVED AS TO LEGAL FORM:  
ANITA BURGESS, CITY ATTORNEY

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

FIRST AMENDMENT TO THE AIRPORT LEASE AGREEMENT  
WITH NEBRIG PROPERTIES, L.P. FOR 4849 SPARTAN DRIVE, DENTON, TEXAS

STATE OF TEXAS           §  
  §                   KNOW ALL MEN BY THESE PRESENTS:  
COUNTY OF DENTON    §

This First Amendment is made and executed to be effective as of the 19th day of November, 2013 to that certain Airport Lease Agreement between the City of Denton, Texas, a municipal corporation, hereinafter referred to as "Lessor" and Nebrig Properties, L.P., hereinafter referred to as "Lessee" which was executed to be effective as of the 17th day of September 2013, hereinafter referred to as "Base Lease".

WITNESSETH:

WHEREAS, the Lessor and Lessee wish to amend the Base Lease to transfer ownership of the Base Lease to Sykes-Vaughan Investments LLC, hereinafter referred to as "Lessee-Assignee" and to make certain other changes to the Base Lease;

NOW, THEREFORE, for and in consideration of the promises and the mutual covenants contained in this Agreement, the parties agree to amend the Base Lease as follows:

SECTION 1. Nebrig properties, L.P. as original Lessee hereby assigns all of Lessee-Assignor's rights and responsibilities associated with the Base Lease to Sykes-Vaughan Investments, LLC as Lessee of record.

SECTION 2. Sykes-Vaughan Investments, LLC assumes Lessee-Assignor's rights and responsibilities associated with the Base Lease to be operated as a part of their business providing Fixed Base Operator service under the Airport Lease Agreement first approved by Ordinance 2009-018 dated January 6, 2009.

SECTION 3. Section III. "Term", Section IV. D., "Other Payments To Lessor", Section V. A. "Rights And Obligations Of lessee" and Section XV. D. "Notice" are hereby amended as follows:

III. TERM

The term of this Agreement which was originally for a period of thirty (33) years commencing on the 17<sup>th</sup> day of September, 2013, is amended effective November 19, 2013 to be for a term of thirty-five (35) years and four (4) months continuing through the 1<sup>th</sup> day of March 2049 in conformance with the maximum lease period of the Sykes-Vaughan Investments, LLC lease dated January 9, 2009 as approved by City of Denton Ordinance 2009-018 as subsequently amended.

#### IV. PAYMENTS, RENTALS AND FEES

Lessee covenants and agrees to pay Lessor, as consideration for this Lease Agreement, the following payments, rentals and fees:

##### D. OTHER PAYMENTS TO LESSOR.

1. Hangar and Tie-Down Fees. Lessee shall pay Lessor a percentage of all hangar and tie-down rentals and fees collected by Lessee from persons renting facilities on the Leased Premises. Such fees shall be equal to:

- a. 10% of all hangar and tie-down fees through November 30, 2009.
- b. 11% of all hangar and tie-down fees through November 30, 2019.
- c. 12% of all hangar and tie-down fees through the end of the Lease Term.

All such fees shall be paid monthly to Lessor on or before the 15<sup>th</sup> day of each month during the Lease Term. The fees shall be accompanied by records showing the date and location on the Airport where the aircraft was hangared or parked and the tail number, or side number, of the aircraft.

#### V. RIGHTS AND OBLIGATIONS OF LESSEE

A. USE OF LEASED PREMISES. Lessee is granted the non-exclusive privilege to engage in or provide the following on the Leased Premises:

1. The right and privilege to engage in commercial aviation activities as defined in Ordinance 2009-018 dated January 9, 2009, to include operation as a part of the Fixed Base Operator service conducted by Sykes-Vaughan Investments, LLC.

#### XV. MISCELLANEOUS PROVISIONS

D. NOTICE. Any notice given by one party to the other in connection with this Lease Agreement shall be in writing and shall be sent by certified mail, return receipt requested, with postage fees prepaid or via facsimile as follows:

1. If to Lessor, addressed to:  
Director of Aviation  
Denton Enterprise Airport  
5000 Airport Road  
Denton, Texas 76207  
FAX 940-349-7289



2. If to Lessee, addressed to:  
Mike Sykes, President/CEO  
Sykes-Vaughan Investments, LLC  
4850 Spartan Drive  
Denton, Texas 76207  
FAX 940-381-5383

SECTION 4. Save and except as amended hereby, all the remaining clauses, sentences, paragraphs, sections and subsections of the Base Lease shall remain in full force and effect and shall fully apply to the additional property and improvements and expanded Leased Premises resulting from this First Amendment of the Base Lease.

IN WITNESS WHEREOF, the parties have executed this Lease Agreement as of the effective date first above written.

CITY OF DENTON, TEXAS, LESSOR

BY: \_\_\_\_\_  
GEORGE C. CAMPBELL, CITY MANAGER

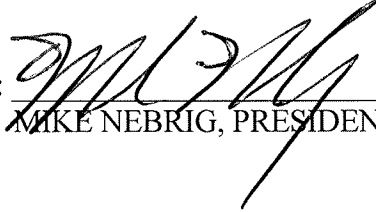
ATTEST:  
JENNIFER WALTERS, CITY SECRETARY

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

APPROVED AS TO LEGAL FORM:  
ANITA BURGESS, CITY ATTORNEY

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

DREWCY INC., GENERAL PARTNER  
NEBRIG PROPERTIES, L.P.

BY:   
MIKE NEBRIG, PRESIDENT

SYKES-VAUGHAN INVESTMENTS, LLC

BY:   
MIKE SYKES, PRESIDENT/CEO

ACKNOWLEDGMENTS

THE STATE OF TEXAS §

COUNTY OF DENTON §

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2013, by George C. Campbell, City Manager of the City of Denton, Texas, on behalf of said municipality.

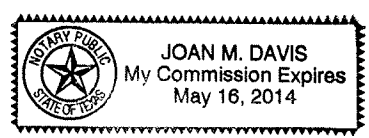
\_\_\_\_\_  
NOTARY PUBLIC, STATE OF TEXAS

THE STATE OF TEXAS §

COUNTY OF DENTON §

This instrument was acknowledged before me on the 11<sup>th</sup> day of November, 2013, by Mike Nebrig, President of Nebrig Properties, L.P. on behalf of said company.

  
NOTARY PUBLIC, STATE OF TEXAS

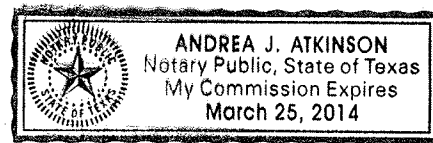


THE STATE OF TEXAS §

COUNTY OF DENTON §

This instrument was acknowledged before me on the 11 day of November, 2013 by Mike Sykes, President/CEO for Sykes-Vaughan Investments, LLC on behalf of said company.

  
\_\_\_\_\_  
NOTARY PUBLIC, STATE OF TEXAS



**LEASE ASSIGNMENT OF PAD SITE AT DENTON  
ENTERPRISE AIRPORT KNOWN AS 4849 SPARTAN DRIVE**

DATE: October 30, 2013

ASSIGNOR: Nebrig Properties, L.P.

ASSIGNEE: Sykes-Vaughan Investments, LLC

LEASE: Date: 17 SEPT 2013  
Landlord: City of Denton  
Tenant: Nebrig Properties, L.P.

Assignor assigns to Assignee Tenant's interest in the lease.

A. Assignee Agrees To:

1. Assume Tenant's Obligations under the lease.
2. Accept the premises in their present "as is" condition.
3. Complete all title transfer obligations of property improvements from Assignor prior to this assignment becoming effective.

B. Landlord consents to this assignment and agrees that:

1. Nebrig Properties, L.P. assigns all rights and responsibilities under their ground lease to Sykes-Vaughan Investments, LLC;
2. Sykes-Vaughan Investments, LLC assumes sole responsibility for performance of terms and conditions of the ground lease;
3. Sykes-Vaughan Investments, LLC assumes Lessee-Assignor's rights and responsibilities associated with the Base Lease to be operated as a part of their business providing Fixed Base Operator service under the Airport Lease Agreement first approved by Ordinance 2009-018 dated January 6, 2009.;
4. The term of the lease shall be concurrent with the Sykes-Vaughan FBO lease.;

C. Assignor agrees that:

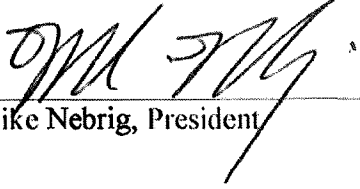
1. Assignment of lease shall become effective on the same date as ownership transfer of improvements on leased property;

PREVIOUS ASSIGNMENTS:

Original Date of Lease between City of Denton and Nebrig Properties, L.P.: 17 SEPT 2013



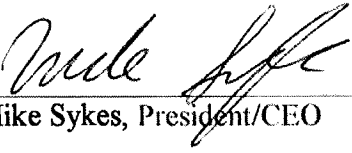
Nebrig Properties, L.P., Assignor:



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Mike Nebrig, President

Sykes-Vaughan Investments, LLC, Assignee:



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Mike Sykes, President/CEO

Consent by City of Denton, Landlord:

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George C. Campbell, City Manager

## AGENDA INFORMATION SHEET

**AGENDA DATE:** November 19, 2013  
**DEPARTMENT:** Planning and Development  
**ACM:** John Cabrales



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### **SUBJECT**

Consider adoption of an ordinance of the City of Denton, Texas, regarding an Interlocal Agreement between the Denton County Transportation Authority ("DCTA") and the City of Denton, Texas ("City"), to evidence the City's and DCTA's agreement regarding the planting of replacement trees by DCTA in relation to the Community Enhancement Project in the project area along and/or within the trail easement so that DCTA can meet the City of Denton Development Code's tree mitigation requirements relating to development of the DCTA Bus Operation and Maintenance Facility, and declaring an effective date.

### **BACKGROUND**

In order to construct their Bus Operations and Maintenance (O&M) Facility, at the property located at Teasley Lane, south of Kerley Street, DCTA removed approximately 846 inches of Protected Trees from the subject property. Pursuant to §35.13.7.A of the Denton Development Code (DDC), DCTA is required to fully mitigate the removal of Protected Trees at a 1:2 ratio by either planting replacement trees or by paying into the City Tree Fund at an amount of \$125 per caliper inch.

### **DISCUSSION**

Due to construction of the Bus O&M Facility, the amount of lot coverage, and various easements on site, planting of new trees and other landscaping requirements pursuant to §35.13.7.C of the DDC, there was minimal open space to accommodate the planting of all 1,692 (846 multiplied by 2) caliper inches of replacement trees on the subject property. If DCTA was not able to plant any of the 1,692 caliper inches of replacement trees on the property, DCTA would have been required to pay \$211,500 to the City Tree Fund. After working with staff, it was determined that DCTA was able to plant approximately 148 caliper inches of replacement trees on the property, leaving a balance of 1,544 caliper inches to be mitigated. This equates to \$193,000 that must be paid to the City Tree Fund.

However, rather than pay the total \$193,000 into the City Tree Fund, the City agrees through a proposed Interlocal Agreement, to allow DCTA to plant as many of the remaining 1,544 caliper inches of replacement trees as possible adjacent to the Bus O&M Facility property. This area, also known as the Community Enhancement Project Area, is DCTA's project within a portion of the DCTA Rail Corridor. It is intended to provide screening and noise mitigation within the SE Denton portion of the DCTA Rail Corridor.

As a good faith gesture, DCTA paid \$10,000 into the City Tree Fund while the City and DCTA negotiated the specifics of the Interlocal Agreement.

Since April, staff has been working with DCTA and their consultants and reviewing their planting plans. This includes planting plans for the proposed Bus O&M Facility and the Community Enhancement Project Area. Based on the plans submitted, DCTA is proposing to plant 148 inches within the Bus O&M Facility property and 456 inches within the Community Enhancement Project Area.

According to DCTA, they will not be able to plant the 456 inches of replacement trees within the Community Enhancement Project Area prior to their request for the issuance of a Certificate of Occupancy for the Bus O&M Facility. In order to keep DCTA's schedule to occupy the Bus O&M Facility, both the City and DCTA have agreed through the proposed Interlocal Agreement that DCTA will pay \$183,000 into the City Tree Fund prior to receiving a Certificate of Occupancy, see calculation below.

Total Replacement Tree (Inches) Required	Total Replacement Tree (Inches) That will be Planted Prior to Issuance of Certificate of Occupancy	Remaining Replacement Tree (Inches)	Remaining Replacement Tree (Inches) multiplied by \$125	Remaining Replacement Tree (Inches) multiplied by \$125 minus \$10,000 previously paid by DCTA
1692	148	1544	\$193,000	\$183,000

Once DCTA has completed planting all the trees in their Community Enhancement Project Area, then the total amount of caliber inches mitigated will be credited at the \$125 per inch and a reimbursement check will be given to DCTA for this amount. This Interlocal Agreement allows DCTA to lower the amount that they have to pay into the Tree Fund, while improving the DCTA Rail Corridor in South East Denton with the additional planting of trees. Staff recommends approval of the ordinance authorizing this Interlocal Agreement.

**OPTIONS**

1. Adopt the Ordinance as proposed for an Interlocal Agreement with DCTA.
2. Adopt the Ordinance as proposed for an Interlocal Agreement with DCTA with revisions.
3. Decline the adoption of the Ordinance for the proposed Interlocal Agreement with DCTA.

**EXHIBITS**

1. Draft DCTA Denton Interlocal Agreement Tree Mitigation
2. Draft Ordinance

Respectfully submitted:



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Brian Lockley, AICP, CPM  
Planning and Development, Director

Prepared by:



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Ron Menguita, AICP  
Development Review Committee Administrator

Exhibit 1  
Draft DCTA Denton Interlocal Agreement Tree Mitigation

**STATE OF TEXAS**                   §   **INTERLOCAL COOPERATION AGREEMENT**  
  §   **REGARDING TREE PROJECT**  
**COUNTY OF DENTON**           §

This Interlocal Cooperation Agreement (the “Agreement”) is made and entered as of the Effective Date between **Denton County Transportation Authority** (“DCTA”) and the **City of Denton** (“City”)(collectively referred to as the “Parties”), acting by and through their authorized representatives.

**RECITALS**

**WHEREAS**, DCTA owns and is developing the Property (as defined below) for the DCTA’s Bus Operations and Maintenance Facility (“the Facility”); and

**WHEREAS**, in order to develop the Facility in the manner most effective for DCTA and the public served by DCTA, DCTA has removed from the Property approximately 846 Inches Diameter Breast Height (dbh) of trees, which the City has determined to be Protected Trees; and

**WHEREAS**, pursuant to DDC §35.13.7.A, DCTA is required to either fully mitigate the removal of Protected Trees as part of the development of the Property by planting Replacement Trees in a quantity that substantially equals the number of Caliper Inches of Protected Trees removed by DCTA, or pay funds into the City Tree Fund; and

**WHEREAS**, the area of the Property is insufficient to accommodate (i) the improvements to be constructed in relation to development of the Facility,(ii) new trees and other landscaping required by City pursuant to DDC §35.13.7.C, and (iii) the planting of 1,692 Caliper Inches of Replacement Trees on the Property; and

**WHEREAS**, in accordance with City’s Development Review Fee Schedule, DCTA must pay \$211,500 to the City Tree Fund if DCTA were to plant no Replacement Trees at any location; and

**WHEREAS**, DCTA has determined that it is able to plant approximately 148 Caliper Inches of Replacement Trees on the Facility Property, leaving a balance of 1,544Caliper Inches to be mitigated; and

**WHEREAS**, DCTA has considered, but not yet authorized commencement of, the Community Enhancement Project; and

**WHEREAS**, if DCTA did not implement the Community Enhancement Project, the City could use funds to pay for the costs of planting trees within the Project Area, which includes a portion of City’s Hike and Bike Trail located within the Trail Easement; and

**WHEREAS**, Chapter 791 of the Texas Government Code (“the Interlocal Cooperation Act”) authorizes local governments to enter into agreements to perform governmental functions and services which both entities are legally authorized to perform individually; and

**WHEREAS**, DCTA and City are each a “local government” as defined by the Interlocal Cooperation Act and are authorized to enter this Agreement pursuant to the Interlocal Cooperation Act.

**NOW THEREFORE**, for and in consideration of the promises and the mutual covenants set forth in this Agreement, and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

### **Article I Purpose**

The purpose of this Agreement is to evidence the Parties’ agreement regarding the planting of trees by DCTA in relation to the Community Enhancement Project in the Project Area along and/or within the Trail Easement so that DCTA can meet the City of Denton Development Code’s Tree Mitigation requirements relating to development of the Facility on the Property.

### **Article II Definitions**

For purposes of this Agreement, the following terms, phrases and words shall have the meanings given herein unless the context clearly indicates otherwise:

“Caliper” and “Caliper Inches” shall have the meaning and be determined as set forth in DDC §35.23.2.

“dbh” shall have the meaning to be determined as set forth in DDC §35.23.2

“City” means the City of Denton, a Texas home rule municipality.

“City’s Hike and Bike Trail” means the pedestrian and bicycle trail constructed by DCTA and owned, operated, and maintained by City within the Trail Easement.

“City Tree Fund” means the City fund established by City pursuant to enactment of DDC §35-13-7.A.7.e.

“DART” means Dallas Area Rapid Transit, a regional transportation authority created pursuant to Chapter 452 of the Texas Transportation Code.

“DDC” means the Denton Development Code, as amended, as set forth in Chapter 35 of the Code of Ordinances of the City of Denton, Texas.

“DCTA” means the Denton County Transportation Authority, a coordinated county transportation authority created pursuant to Chapter 460 of the Texas Transportation Code.

“DCTA Rail Corridor” means the former Missouri-Kansas-Texas rail corridor from Mile Post 742.42 in the City of Carrollton, Texas, to Mile Post 721.53 in the City of Denton, Texas, which is presently owned by DART within which DCTA is operating, and maintaining a public rail transportation system pursuant to that certain *Transportation and Access Agreement and Easement* dated and effective May 25, 2010, between DCTA and DART (“the DART Agreement”).

“Effective Date” means the last date this Agreement bears the signatures of authorized representatives of each of the Parties.

“Expiration Date” means the date all Parties have completed their respective obligations as set forth in this Agreement.

“Force Majeure” means any contingency or cause beyond the reasonable control of a Party including, without limitation, acts of God or the public enemy, war, riot, civil commotion, insurrection, government or de facto governmental action (unless caused by acts or omissions of the party), fires, explosions, rain or other weather delays, floods, strikes, slowdowns or work stoppages.

“Letter Agreement” means that certain Letter of Agreement dated December 7, 2012, signed by John Cabrales, Jr., City’s Assistant City Manager, on behalf of City and James Cline, Jr., President, on behalf of DCTA, a true and correct copy of which is attached hereto as Exhibit “A” and incorporated herein by reference.

“Planting Deadline” means the second (2<sup>nd</sup>) anniversary of the issuance by City to DCTA of a certificate of occupancy authorizing the use and occupancy of the Facility or any part thereof.

“Project Area” means the area within the Trail Easement between Prairie Street and Shady Shores where said streets intersect the DCTA Rail Corridor.

“Property” means the real property owned by DCTA in the City of Denton and described as Lot 6A, Block B, Shady Oaks Industrial Park approved by City’s Planning and Zoning Commission on November 28, 2012.

“Protected Trees” shall have the same meaning given to that phrase in DDC §35.13.7.A.5.a. as of the Effective Date.

“The Quitclaim” means that certain Quitclaim from Denton to DART dated March 9, 2010, filed as Instrument No. 2010-43179 in the Official Public Records of Denton County, Texas.

“Replacement Trees” means trees which, if planted, may be counted as satisfying the tree mitigation standards set forth in DDC §35.13.7.A.7.

“South Denton Community Enhancement Project” or “the Enhancement Project” means DCTA’s project within a portion of the DCTA Rail Corridor intended to provide screening and noise mitigation for certain properties with the southern portion of City’s incorporated limits located adjacent to the DCTA Rail Corridor.

“The Trail Easement” shall have the meaning given to that phrase in the Quitclaim.

### **Article III Term**

The term of this Agreement shall begin on the Effective Date, and shall continue until the Expiration Date, unless sooner terminated as provided herein.

### **Article IV DCTA Tree Mitigation Obligation**

**4.1 General Representations.** The Parties understand, acknowledge and agree that:

(a) DCTA’s plans for development of the Property with the Facility will result in (i) the removal of 1,692 inches dbh of Protected Trees; and

(b) The area of the Property is too small to be developed as intended and concurrently provide sufficient area for the planting of 1,692 Caliper Inches of Replacement Trees; and

(c) In accordance with DDC §35.13.7.A.7.A, DCTA intends to plant 148 Caliper Inches of Replacement Trees on the Property, resulting in a net reduction of 1,544 Caliper Inches of Protected Trees from the Property; and

(d) In accordance with DDC §35.13.7.A, based on the net reduction in dbh Inches of Protected Trees resulting from DCTA’s development of the Property, DCTA must, in lieu of planting Replacement Trees on the Property, pay into the City Tree Fund an amount equal to \$125 per Inch, less the 148 Caliper Inches planted by DCTA on the Property.

(e) Although subject to the terms and conditions of The Quitclaim, the Trail Easement constitutes public property.

**4.2 Credit for Enhancement Program Trees.** City agrees to allow DCTA to use funds which DCTA would otherwise be required to pay to the City Tree Fund to be used to plant trees in and adjacent to the City’s Hike and Bike Trail within the Project Area, subject to the following:

(a) The trees to be planted must satisfy the standards set forth in DCD §35.13.7.A.7;

(b) DCTA agrees to submit to the City’s Development Review Committee for review, comment, and approval DCTA’s plans and specifications for the location and species of trees to be planted pursuant to this Section 4.2, which review, comment, and approval shall not



be unreasonably withheld, delayed, or denied. All submittals shall be reviewed in accordance with the development process and DCTA shall provide responses to City comments in a timely manner to avoid the delay of any approvals.

(c) Notwithstanding DCTA's actual expenditure for the purchase and planting of trees in the Project Area pursuant to this Section 4.2, City agrees to credit toward DCTA's obligation to pay funds to the City Tree Fund the amount of \$125 for each Caliper Inch of trees planted in the Project Area in accordance with City's *Development Review Fee Schedule* in effect on the Effective Date; and

(d) In the event DCTA is unable to plant a sufficient number of trees in both the Project Area and on the Property to mitigate and replace the 1,692 dbh Inches of Protected Trees removed from the Property, DCTA agrees to pay to the City Tree Fund an amount equal to \$125 times the number of Caliper Inches of trees not replaced. By way of example, if DCTA is only able to plant 1500 Caliper Inches of Replacement Trees on the Property and/or in the Project Area, DCTA agrees to pay an additional amount of \$14,000 to the City Tree Fund (192 Caliper Inches x \$125 = \$24,000 which, after crediting \$10,000 previously paid, results in an underpayment to the City Tree Fund of \$14,000.

**4.3 Prior Payment Credit; Refund.** City acknowledges that DCTA has previously paid \$10,000 into the City Tree Fund in accordance with the Letter Agreement. City agrees that the previous payment to the City Tree Fund made by DCTA shall be credited toward the payment into the City Tree Fund required of DCTA pursuant to Section 4.2, above. City further agrees that for each Caliper Inch of Replacement Trees planted on the Property and/or the Project Area by DCTA pursuant to this Agreement in excess of 1,612 Caliper Inches, City shall refund to DCTA from the City Tree Fund the amount of \$125, up to an amount not to exceed \$10,000. City agrees to refund said amount not later than 30 days after receipt of a notice from DCTA requesting such payment.

**4.4 Deadline for Completion of Tree Mitigation Obligations/City Tree Fund Payment.** DCTA shall pay any amount required to be paid to the City Tree Fund pursuant to Section 4.2, above, prior to receiving from the City a Certificate of Occupancy for any portion of the Facility. DCTA understands, acknowledges, and agrees that notwithstanding having completed all requirements under applicable City ordinances and regulations relating to the construction of the Facility that would otherwise entitle DCTA to receive a certificate of occupancy from City for use of the Facility, City shall not be obligated to grant to DCTA a certificate of occupancy for use of the Facility until DCTA has paid into the City Tree Fund the amounts required by Section 4.2, above.

**4.5 Reimbursement of City Tree Funds After Issuance of Certificate of Occupancy.** Notwithstanding City's issuance of a certificate of occupancy to DCTA for the Facility following the payment by DCTA of the required amount of funds to the City Tree Fund, City agrees to reimburse DCTA for Replacement Trees planted by DCTA on or before the Planting Deadline on the Property or in the Project Area in accordance with the plans and specifications approved by City pursuant to Section 4.2(b) and (c), above. The foregoing reimbursement shall be at the same rate as set forth in Section 4.2(d), above, but, in no case, shall

the total amount of reimbursement to DCTA exceed the total amount of funds paid by DCTA into the City Tree Fund. City shall not be obligated to honor (i) any request for reimbursement related to the planting of Replacement Trees after the Planting Deadline, or (ii) any request for reimbursement delivered by DCTA to City later than the 180<sup>th</sup> day after the Planting Deadline. Any funds (i) paid by DCTA to the City Tree Fund pursuant to this Agreement relating to development of the Facility and (ii) for which reimbursement has not been requested by DCTA before the 181<sup>st</sup> day after the Planting Deadline shall become City's funds free and clear of any reimbursement obligation set forth in this Agreement subject to use and administration by City as set forth in DCD §35.13.7.A.7.e.

**4.6 Requests for Reimbursement.** All requests made by DCTA to the City for reimbursement from the City Tree Fund pursuant to this Agreement shall be delivered to Brian Lockley, Director of Planning and Development and accompanied by a statement or report setting forth (i) the date of planting of the Replacement Trees for which reimbursement is sought, (ii) the total Caliper Inches of the Replacement Trees for which reimbursement is sought, and (iii) a general description of the location of where the Replacement Trees were planted. City agrees to pay DCTA the amount of the requested reimbursement not later than thirty (30) days after the delivery of the request for reimbursement. DCTA may make, and City shall honor and pay, more than one request for reimbursement; provided, however, DCTA shall not make more than one request for reimbursement during any calendar month, nor shall DCTA deliver to City a request for reimbursement more frequently than once in any thirty (30) day period.

**4.7 Replacement of Dead/Damaged Trees – No Reimbursement.** DCTA shall not be entitled to reimbursement of any funds from the City Tree Fund pursuant to this Agreement for Replacement Trees planted by DCTA which are planted to replace Replacement Trees that have died or been damaged or destroyed through natural or man-made causes.

## **Article V Miscellaneous**

**5.1 Entire Agreement.** This Agreement constitutes the sole and only agreement between the parties and supersedes any prior understandings written or oral agreements between the parties with respect to this subject matter.

**5.2 Assignment.** This Agreement may not be assigned by either Party without the prior written consent of the other Party; provided, however, this Agreement may be assigned by DCTA to DART upon termination of the DART Agreement without the consent of Denton if DART agrees to assume all of DCTA's duties and responsibilities set forth in this Agreement.

**5.3 Successors and Assigns.** Subject to the provisions regarding assignment, this Agreement shall be binding on and inure to the benefit of the parties to it and their respective heirs, executors, administrators, legal representatives, successors and permitted assigns.

**5.4 Governing Law.** The laws of the State of Texas shall govern this Agreement; and venue for any action concerning this Agreement shall exclusively be in the State District

Court of Denton County, Texas. The parties agree to submit to the personal and subject matter jurisdiction of said court.

5.5 **Amendments.** This Agreement may be amended by the mutual written agreement of the parties.

5.6 **Severability.** In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions, and the Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in it.

5.7 **Notice.** Any notice required or permitted to be delivered hereunder may be sent by first class mail, overnight courier or by confirmed telefax or facsimile to the address specified below, or to such other party or address as either party may designate in writing, and shall be deemed received three (3) days after delivery set forth herein:

If intended for DCTA, to:

Attn: President  
Denton County Transportation Authority  
1660 South Stemmons, Suite 250  
Lewisville, Texas 75067  
972-221-4600 Telephone  
972-221-4601 Facsimile

With copy to:

Peter G. Smith  
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.  
1800 Ross Tower  
500 North Akard  
Dallas, Texas 75201

If intended for Denton, to:

George Campbell  
City Manager  
215 E. McKinney Street  
Denton, Texas 76201  
940-349-7715 Telephone  
940-349-8596 Facsimile

With a copy to:

Anita Burgess  
City Attorney  
215 E. McKinney Street  
Denton, Texas 76201  
940-349-8333 Telephone  
940-382-7923 Facsimile

5.8 **Counterparts.** This Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute one and the same instrument. Each counterpart may consist of any number of copies hereof each signed by less than all, but together signed by all of the parties hereto.

5.9 **Recitals.** The recitals to this Agreement are incorporated herein.

5.10 **Authorization.** Each Party represents that it has full capacity and authority to grant all rights and assume all obligations that are granted and assumed under this Agreement.

5.11 **Survival of Covenants.** Any of the representations, warranties, covenants, and obligations of the Parties, as well as any rights and benefits of the Parties, pertaining to a period of time following the termination of this Agreement shall survive termination hereof.

5.12 **Approval of Parties.** Whenever this Agreement requires or permits the approval or consent to be given by a party, the Parties agree that such approval or consent shall not be unreasonably withheld, conditioned or delayed.

5.13 **No Third-Party Beneficiary.** Nothing in this Agreement shall be construed as creating or giving rise to any rights of third-parties or any persons other than the Parties hereto.

**EXECUTED** this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

**DENTON COUNTY TRANSPORTATION AUTHORITY**

By: \_\_\_\_\_  
James C. Cline, Jr., P.E., President

**Approved as to Form:**

By: \_\_\_\_\_  
Peter G. Smith, General Counsel

**EXECUTED** this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

**CITY OF DENTON, TEXAS**

By: \_\_\_\_\_  
George Campbell, City Manager

**Approved as to Form:**

By: \_\_\_\_\_  
Anita Burgess, City Attorney

**Exhibit "A"**  
**Copy of Letter Agreement**

**[copy of 12/7/12 letter agreement to be attached]**

Exhibit 2  
Draft Ordinance

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF DENTON, TEXAS, REGARDING AN INTERLOCAL AGREEMENT BETWEEN THE DENTON COUNTY TRANSPORTATION AUTHORITY ("DCTA") AND THE CITY OF DENTON, TEXAS ("CITY"), TO EVIDENCE THE CITY'S AND DCTA'S AGREEMENT REGARDING THE PLANTING OF REPLACEMENT TREES BY DCTA IN RELATION TO THE COMMUNITY ENHANCEMENT PROJECT IN THE PROJECT AREA ALONG AND/OR WITHIN THE TRAIL EASEMENT SO THAT DCTA CAN MEET THE CITY OF DENTON DEVELOPMENT CODE'S TREE MITIGATION REQUIREMENTS RELATING TO DEVELOPMENT OF THE DCTA BUS OPERATION AND MAINTENANCE FACILITY, AND DECLARING AN EFFECTIVE DATE.

WHEREAS, DCTA owns and is developing the Property (as defined below) for the DCTA's Bus Operations and Maintenance Facility ("the Facility"); and

WHEREAS, in order to develop the Facility in the manner most effective for DCTA and the public served by DCTA, DCTA has removed from the Property approximately 846 Inches Diameter Breast Height (dbh) of trees, which the City has determined to be Protected Trees; and

WHEREAS, pursuant to DDC §35.13.7.A, DCTA is required to either fully mitigate the removal of Protected Trees as part of the development of the Property by planting Replacement Trees in a quantity that substantially equals the number of Caliper Inches of Protected Trees removed by DCTA, or pay funds into the City Tree Fund; and

WHEREAS, the area of the Property is insufficient to accommodate (i) the improvements to be constructed in relation to development of the Facility, (ii) new trees and other landscaping required by City pursuant to DDC §35.13.7.C, and (iii) the planting of 1,692 Caliper Inches of Replacement Trees on the Property; and

WHEREAS, in accordance with City's Development Review Fee Schedule, DCTA must pay \$211,500 to the City Tree Fund if DCTA were to plant no Replacement Trees at any location; and

WHEREAS, DCTA has determined that it is able to plant approximately 148 Caliper Inches of Replacement Trees on the Facility Property, leaving a balance of 1,544 Caliper Inches to be mitigated; and

WHEREAS, DCTA has considered, but not yet authorized commencement of, the Community Enhancement Project; and

WHEREAS, if DCTA did not implement the Community Enhancement Project, the City could use funds to pay for the costs of planting trees within the Project Area, which includes a portion of City's Hike and Bike Trail located within the Trail Easement; and

WHEREAS, Chapter 791 of the Texas Government Code ("the Interlocal Cooperation Act") authorizes local governments to enter into agreements to perform governmental functions and services which both entities are legally authorized to perform individually; and

WHEREAS, DCTA and City are each a “local government” as defined by the Interlocal Cooperation Act and are authorized to enter this Agreement pursuant to the Interlocal Cooperation Act; NOW, THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The findings and recitations contained in the preamble of this ordinance are incorporated herein by reference and found to be true.

SECTION 2. The Interlocal Agreement provides the evidence of the City’s and DCTA’s agreement regarding the planting of trees by DCTA in relation to the Community Enhancement Project in the Project Area along and/or within the Trail Easement so that DCTA can meet the City of Denton Development Code’s Tree Mitigation requirements relating to development of the Facility on the Property.

SECTION 3. The City Manager is authorized to execute an Interlocal Agreement with the DCTA.

SECTION 4. Any person violating any provision of this ordinance shall, upon conviction, be fined a sum not exceeding \$2,000.00. Each day that a provision of this ordinance is violated shall constitute a separate and distinct offense.

SECTION 4. If any provision of this ordinance or the application thereof to any person or circumstance is held invalid by any court, such invalidity shall not affect the validity of other provisions or applications, and to this end the provisions of this ordinance are severable.

SECTION 5. Any person violating any provision of this ordinance shall, upon conviction, be fined a sum not exceeding \$2,000.00. Each day that a provision of this ordinance is violated shall constitute a separate and distinct offense.

SECTION 5. This ordinance shall become effective fourteen (14) days from the date of its passage, and the City Secretary is hereby directed to cause the caption of this ordinance to be published twice in the Denton Record-Chronicle, a daily newspaper published in the City of Denton, Texas, within ten (10) days of the date of its passage.

PASSED AND APPROVED this the \_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
MARK A. BURROUGHS, MAYOR

ATTEST:  
JENNIFER WALTERS, CITY SECRETARY



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

APPROVED AS TO LEGAL FORM:  
ANITA A. BURGESS, CITY ATTORNEY

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

**AGENDA INFORMATION SHEET**

**AGENDA DATE:** November 19, 2013  
**DEPARTMENT:** City Manager's Office  
**CM/DCM/ACM:** George C. Campbell, City Manager

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**SUBJECT:**

Consider adoption of an ordinance of the City of Denton authorizing an agreement between the City of Denton, Texas and Coats for Kids Ride, Inc.; providing for the expenditure of funds therefore; and providing for an effective date.

**BACKGROUND:**

This agreement allows for the total expenditure of \$1,100 from Council Contingency Funds. (Mayor Burroughs \$300, Mayor Pro Tem Kamp \$300, Council Member Roden \$300 and Council Member Hawkins \$200)

Key provisions of the agreement include:

- Funds shall be used by the Organization for music and port-a-potty service expenses needed for the Coats for Kids Ride to collect coats for kids within our community that are considered homeless by the DISD.
- In addition to other reporting requirements, documentation in the form of cancelled checks and/or corresponding receipts specifically detailing expenditure of funds for the purpose provided is required for reimbursement from these designated funds.

**FISCAL INFORMATION**

Funding for the contract will come from Council contingency fund accounts.

Respectfully submitted:



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George C. Campbell  
City Manager

Prepared by:  
Linda Holley  
Senior Executive Assistant

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF DENTON AUTHORIZING AN AGREEMENT BETWEEN THE CITY OF DENTON, TEXAS, AND COATS FOR KIDS RIDE, INC.; PROVIDING FOR THE EXPENDITURE OF FUNDS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Denton hereby finds that the Event and the Agreement between the City and Coats for Kids Ride, Inc., attached hereto and made a part hereof by reference (the "Agreement"), serve a municipal and public purpose and is in the public interest; NOW, THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The findings set forth in the preamble of this Ordinance are incorporated by reference into the body of this Ordinance as if fully set forth herein.

SECTION 2. The City Manager, or his designee, is hereby authorized to execute the Agreement and to exercise all rights and duties of the City under the Agreement, including the expenditure of funds as provided in the Agreement.

SECTION 3. This Ordinance shall become effective immediately upon its passage and approval.

PASSED AND APPROVED this the \_\_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
MARK A. BURROUGHS, MAYOR

ATTEST:  
JENNIFER WALTERS, CITY SECRETARY

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

APPROVED AS TO LEGAL FORM:  
ANITA BURGESS, CITY ATTORNEY

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

**SERVICE AGREEMENT  
BETWEEN THE CITY OF DENTON, TEXAS AND  
COATS FOR KIDS RIDE, INC.**

This Agreement is hereby entered into by and between the City of Denton, Texas, a home rule municipal corporation, hereinafter referred to as "City", and Coats For Kids Ride, Inc., a Texas not for profit corporation, hereinafter referred to as "Coats".

WHEREAS, City has determined that the proposal for services merits assistance and can provide needed services to citizens of City and has provided funds in its budget for the purpose of a donation to Coats which serves a need of gathering new coats for kids within our community that are considered homeless by the Denton Independent School District; and

WHEREAS, this Agreement serves a valid municipal and public purpose and is in the public interest;

NOW, THEREFORE, the parties hereto mutually agree as follows:

**I. SCOPE OF SERVICES**

Coats shall in a satisfactory and proper manner perform the following tasks, for which the monies provided by City may be used:

The funds being provided shall be used by Coats to offset costs related to the following:

1. ~~Fee to GDAC in the amount of \$400.00; Pd by Access Bank.~~ <sup>\$28.80</sup> *WJS*
2. ~~Approximately \$300.00 to offset some costs relating to event music; and~~ <sup>\$30.00</sup> *WJS*
3. ~~Estimated \$300.00 to \$400.00 for port a potty services (unsure of amount or need).~~ <sup>\$30.00</sup> *WJS*

**II. OBLIGATIONS OF COATS**

In consideration of the receipt of funds from City, Coats agrees to the following terms and conditions:

- A. One Thousand, One Hundred Dollars and no/100 (\$1,100.00) shall be paid to Coats by City to be utilized for the purposes set forth in Article I.
- B. Coats will maintain adequate records to establish that the City funds are used for the purposes authorized by this Agreement.
- C. Coats will permit authorized officials of City to review its books at any time.
- D. Upon request, Coats will provide to City its By Laws and any of its rules and regulations that may be relevant to this Agreement.

E. Coats will not enter into any contracts that would encumber City funds for a period that would extend beyond the term of this Agreement.

F. Coats will appoint a representative who will be available to meet with City officials when requested.

### III. TIME OF PERFORMANCE

The services funded by City shall be undertaken and completed by Coats within the following time frame:

The term of this Agreement shall commence on the effective date and terminate September 30, 2014, unless the contract is sooner terminated under Section VII "Suspension or Termination".

### IV. PAYMENTS

A. **PAYMENTS TO COATS.** City shall pay to Coats the sum specified in Article II after the effective date of this Agreement.

B. **EXCESS PAYMENT.** Coats shall refund to City within ten (10) working days of City's request, any sum of money which has been paid by City and which City at any time thereafter determines:

- 1) has resulted in overpayment to Coats; or
- 2) has not been spent strictly in accordance with the terms of this Agreement; or
- 3) is not supported by adequate documentation to fully justify the expenditure.

### V. EVALUATION

Coats agrees to participate in an implementation and maintenance system whereby the services can be continuously monitored. Coats agrees to make available its bank statements for review by City at City's discretion. In addition, Coats agrees to provide City the following data and reports, or copies thereof:

A. An explanation of any major changes in program services.

B. To comply with this section, Coats agrees to maintain records that will provide accurate, current, separate, and complete disclosure of the status of funds received and the services performed under this Agreement. Coats's record system shall contain sufficient documentation to provide in detail full support and justification for each expenditure. Coats agrees to retain all books, records, documents, reports, and written accounting procedures pertaining to the services provided and expenditure of funds under this Agreement for five years.

C. Nothing in the above subsections shall be construed to relieve Coats of responsibility for retaining accurate and current records that clearly reflect the level and benefit of services provided under this Agreement.

#### VI. MEETINGS

Minutes of all meetings of Coats's governing body shall be available to City within ten (10) working days of approval.

#### VII. TERMINATION

The City may terminate this Agreement for cause if Coats violates any covenants, agreements, or guarantees of this Agreement, the Coats's insolvency or filing of bankruptcy, dissolution, or receivership, or the Coats's violation of any law or regulation to which it is bound under the terms of this Agreement. The City may terminate this Agreement for other reasons not specifically enumerated in this paragraph.

#### VIII. EQUAL OPPORTUNITY AND COMPLIANCE WITH LAWS

A. Coats shall comply with all applicable equal employment opportunity and affirmative action laws or regulations.

B. Coats will furnish all information and reports requested by City, and will permit access to its books, records, and accounts for purposes of investigation to ascertain compliance with local, State and Federal rules and regulations.

C. In the event of Coats's non-compliance with the non-discrimination requirements, the Agreement may be canceled, terminated, or suspended in whole or in part, and Coats may be barred from further contracts with City.

#### IX. WARRANTIES

Coats represents and warrants that:

A. All information, reports and data heretofore or hereafter requested by City and furnished to City, are complete and accurate as of the date shown on the information, data, or report, and, since that date, have not undergone any significant change without written notice to City.

B. Any supporting bank statements heretofore requested by City and furnished to City, are complete, accurate and fairly reflect the financial conditions of Coats on the date shown on said report, and the results of the operation for the period covered by the report, and that since said data, there has been no material change, adverse or otherwise, in the financial condition of Coats.

C. No litigation or legal proceedings are presently pending or threatened against Coats.

D. None of the provisions herein contravenes or is in conflict with the authority under which Coats is doing business or with the provisions of any existing indenture or agreement of Coats.

E. Coats has the power to enter into this Agreement and accept payments hereunder, and has taken all necessary action to authorize such acceptance under the terms and conditions of this Agreement.

F. None of the assets of Coats are subject to any lien or encumbrance of any character, except for current taxes not delinquent, except as shown in the bank statements furnished by Coats to City.

Each of these representations and warranties shall be continuing and shall be deemed to have been repeated by the submission of each request for payment.

#### X. CHANGES AND AMENDMENTS

A. Any alterations, additions, or deletions to the terms of this Agreement shall be by written amendment executed by both parties, except when the terms of this Agreement expressly provide that another method shall be used.

B. It is understood and agreed by the parties hereto that changes in the State, Federal or local laws or regulations pursuant hereto may occur during the term of this Agreement. Any such modifications are to be automatically incorporated into this Agreement without written amendment hereto, and shall become a part of the Agreement on the effective date specified by the law or regulation.

C. Coats shall notify City of any changes in personnel or governing board composition.

#### XI. INDEMNIFICATION

To the extent authorized by law, the Coats agrees to indemnify, hold harmless, and defend the CITY, its officers, agents, and employees from and against any and all claims or suits for injuries, damage, loss, or liability of whatever kind or character, arising out of or in connection with the performance by the Coats or those services contemplated by this Agreement, including all such claims or causes of action based upon common, constitutional or statutory law, or based, in whole or in part, upon allegations of negligent or intentional acts of Coats, its officers, employees, agents, subcontractors, licensees and invitees.

#### XII. CONFLICT OF INTEREST

A. Coats covenants that neither it nor any member of its governing body presently has any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. Coats further covenants that in the

performance of this Agreement, no person having such interest shall be employed or appointed as a member of its governing body.

B. Coats further covenants that no member of its governing body or its staff, subcontractors or employees shall possess any interest in or use his/her position for a purpose that is or gives the appearance of being motivated by desire for private gain for himself/herself, or others; particularly those with which he/she has family, business, or other ties.

C. No officer, member, or employee of City and no member of its governing body who exercises any function or responsibilities in the review or approval of the undertaking or carrying out of this Agreement shall participate in any decision relating to the Agreement which affects his personal interest or the interest in any corporation, partnership, or association in which he has direct or indirect interest.

### XIII. NOTICE

Any notice or other written instrument required or permitted to be delivered under the terms of this Agreement shall be deemed to have been delivered, whether actually received or not, when deposited in the United States mail, postage prepaid, registered or certified, return receipt requested, or via hand-delivery or facsimile, addressed to Coats or City, as the case may be, at the following addresses:

#### CITY

City of Denton, Texas  
Attn: City Manager  
215 E. McKinney  
Denton, TX 76201  
Fax No. 940.349.8591

#### COATS

Gregory J. Sawko  
Director of Coats For Kids Ride, Inc.  
207 Wellington Oaks Place  
Denton, TX 76210  
[ad2@sawko.com](mailto:ad2@sawko.com)

Either party may change its mailing address by sending notice of change of address to the other at the above address by certified mail, return receipt requested.

### XIV. MISCELLANEOUS

A. Coats shall not transfer, pledge or otherwise assign this Agreement or any interest therein, or any claim arising thereunder to any party or parties, bank, trust company or other financial institution without the prior written approval of City.

B. If any provision of this Agreement is held to be invalid, illegal, or unenforceable, the remaining provisions shall remain in full force and effect and continue to conform to the original intent of both parties hereto.

C. In no event shall any payment to Coats hereunder, or any other act or failure of City to insist in any one or more instances upon the terms and conditions of this Agreement constitute or be construed in any way to be a waiver by City of any breach of covenant or default which may then or



subsequently be committed by Coats. Neither shall such payment, act, or omission in any manner impair or prejudice any right, power, privilege, or remedy available to City to enforce its rights hereunder, which rights, powers, privileges, or remedies are always specifically preserved. No representative or agent of City may waive the effect of this provision.

D. This Agreement, together with referenced exhibits and attachments, constitutes the entire agreement between the parties hereto, and any prior agreement, assertion, statement, understanding, or other commitment occurring during the term of this Agreement or subsequent thereto, have any legal force or effect whatsoever, unless properly executed in writing, and if appropriate, recorded as an amendment of this Agreement.

E. This Agreement shall be interpreted in accordance with the laws of the State of Texas and venue of any litigation concerning this Agreement shall be in a court of competent jurisdiction sitting in Denton County, Texas.

IN WITNESS WHEREOF, the parties do hereby affix their signatures and enter into this Agreement as of the \_\_\_\_\_ day of \_\_\_\_\_, 2013 .

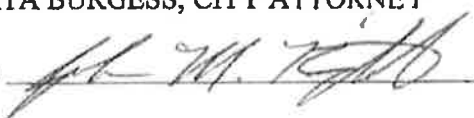
CITY OF DENTON

GEORGE C. CAMPBELL, CITY MANAGER

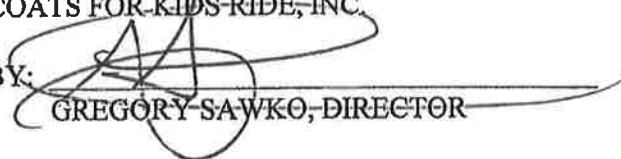
ATTEST:  
JENNIFER WALTERS, CITY SECRETARY

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

APPROVED AS TO LEGAL FORM:  
ANITA BURGESS, CITY ATTORNEY

BY: 

COATS FOR KIDS RIDE, INC.

BY:   
GREGORY SAWKO, DIRECTOR

ATTEST:

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

**AGENDA INFORMATION SHEET**

**AGENDA DATE:** November 19, 2013

**DEPARTMENT:** Engineering Services

**ACM:** Jon Fortune 

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**SUBJECT**

Consider adoption of an ordinance authorizing the City Manager or his designee to execute a temporary access permit (the “Permit”), by and between the City of Denton, Texas and EagleRidge Operating, LLC, a Texas limited liability company (“EagleRidge”), granting a license to EagleRidge to temporarily access certain City owned lands located in the James Edmonson Survey, Abstract Number 401 and the James L. Harris Survey, Abstract Number 555, located generally 1,800 feet southwest of the intersection of South Bonnie Brae and Vintage Boulevard, City of Denton, Denton County, Texas, in connection with the overland transport of water for gas well operations; and providing an effective date.

**BACKGROUND**

Staff recently fielded a request by EagleRidge asking permission to temporarily place two (2) water pipelines across the 88 acre City owned tract, presently solely occupied by Fire Station Number 7.

EagleRidge is in the process of reworking several gas wells in the southwest quadrant of the City and permitting this request would be an accommodation to them in their efforts.

Staff research indicates that placement of such temporary waterlines are routine in respect to proximity gas well operations. To date, the City has not issued any permits for temporary water lines upon City of Denton fee owned tracts, however, “Street Right-of-Way” permits are being issued in those instances where these types of temporary waterlines are traversing streets within the City’s jurisdiction. The staff recommended rental rate for the Permit at hand was modeled after the present permit rates in effect for the City of Fort Worth, for such installations upon that city’s fee owned tracts. That rental rate, for two (2) pipelines, closely approximates a market ground rental rate for the affected 88 acre tract.

The Permit provides for site restoration for any disturbance to the surface, insurance and performance bond requirements, and city staff inspection, similar in respect to the Geophysical Survey License Agreement permits issued by the City in recent years.

**OPTIONS**

1. Approve the proposed Ordinance.
2. Decline to approve the proposed Ordinance.
3. Table for future consideration.

**RECOMMENDATION**

Recommend approval of the Ordinance.

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

October 15, 2013 – City Council Meeting.

**FISCAL INFORMATION**

The temporary access permit fee calculates to be \$1,400.<sup>00</sup>. The methodology being:  
3,500 lineal feet of waterline x (\$0.20/ft.) x (2) waterlines = \$1,400.<sup>00</sup>.

**EXHIBITS**

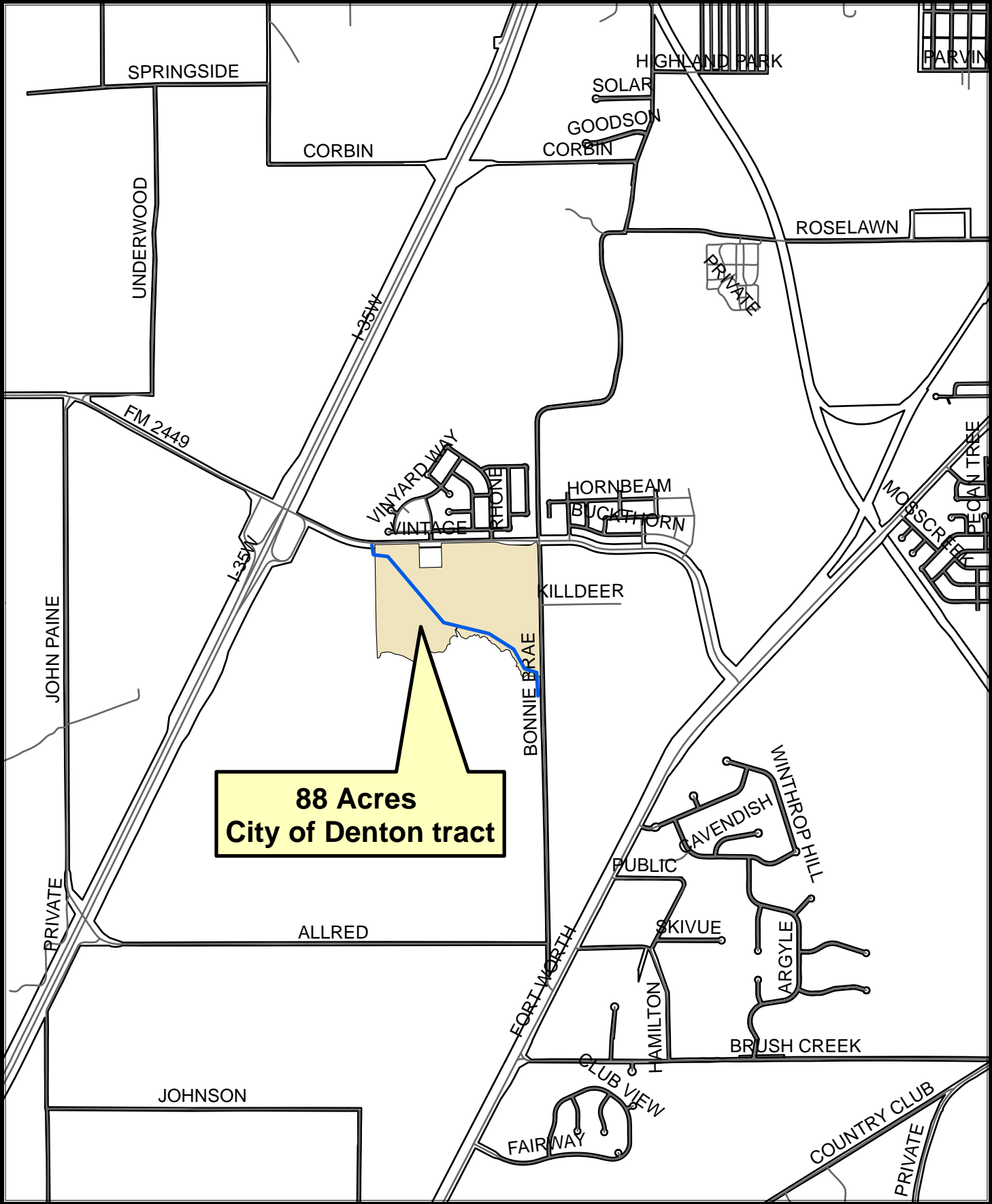
1. Location Map
2. Letter from applicant
3. Ordinance

Respectfully submitted,



Paul Williamson,  
Real Estate Manager

# Location Map





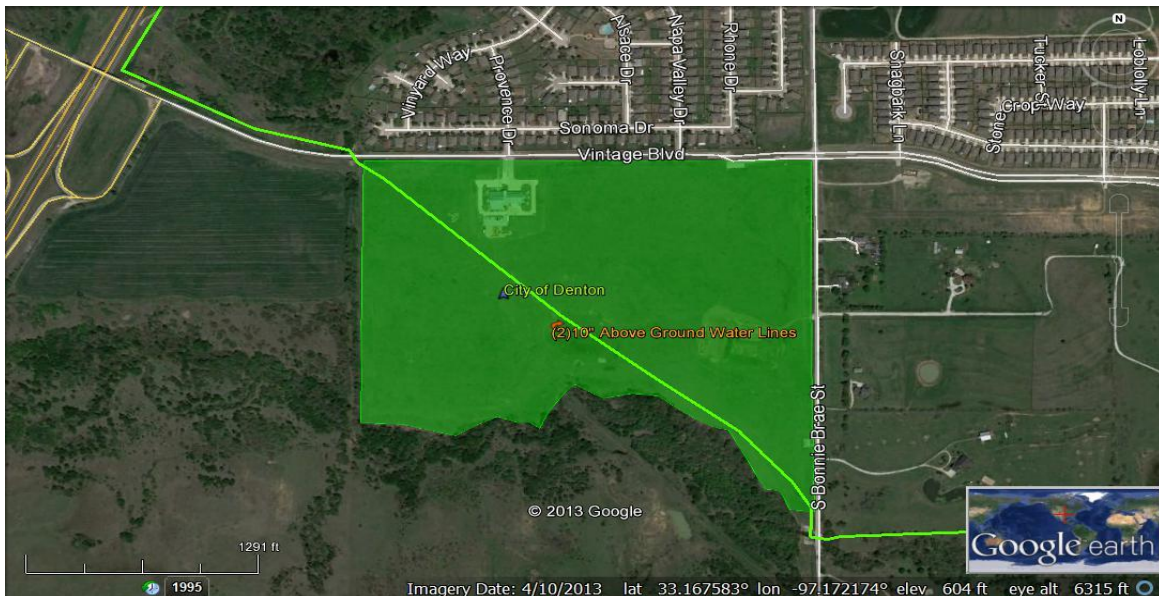
## Eagle Ridge Energy

[www.eagleridgeenergy.com](http://www.eagleridgeenergy.com)

To: City Service Center  
 901 A Texas Street, 2<sup>nd</sup> Floor  
 Denton, Texas 76209  
 Attn: Paul Williamson – Utilities Engineering

Mr. Williamson,

Eagle Ridge Energy is currently working on four new gas wells in the area of South Bonnie Brae and Vintage Road. So, Eagle Ridge Energy proposes to install (2)10" temporary above ground aluminum water lines across property owned by the City of Denton at 4111 Vintage Blvd. The waterlines will enter at the Northwest corner and exit at the Southeast corner of the property for approximately 3,500 ft, as shown on map below. The waterlines are used to transport fresh water from one holding pit to another pit east of Denton property during the fracing process. We will need the waterlines for approximately 45 days beginning around November 1, 2013.



If you have any questions in regards to this request please contact Mike Fongers at 817-980-0802 or [mike.fongers@gmail.com](mailto:mike.fongers@gmail.com)

Thanks,

Mike Fongers  
 Water and ROW Agent

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE AUTHORIZING THE CITY MANAGER OR HIS DESIGNEE TO EXECUTE A TEMPORARY ACCESS PERMIT (THE "PERMIT"), BY AND BETWEEN THE CITY OF DENTON, TEXAS AND EAGLERIDGE OPERATING, LLC, A TEXAS LIMITED LIABILITY COMPANY ("EAGLERIDGE"), GRANTING A LICENSE TO EAGLERIDGE TO TEMPORARILY ACCESS CERTAIN CITY OWNED LANDS LOCATED IN THE JAMES EDMONSON SURVEY, ABSTRACT NUMBER 401 AND THE JAMES L. HARRIS SURVEY, ABSTRACT NUMBER 555, LOCATED GENERALLY 1,800 FEET SOUTHWEST OF THE INTERSECTION OF SOUTH BONNIE BRAE AND VINTAGE BOULEVARD, CITY OF DENTON, DENTON COUNTY, TEXAS, IN CONNECTION WITH THE OVERLAND TRANSPORT OF WATER FOR GAS WELL OPERATIONS; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council finds the granting of a temporary license, as contemplated by the Permit, is in the best interest of the citizens of the City of Denton; NOW, THEREFORE;

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The recitals and findings contained in the preamble of this ordinance are incorporated into the body of this ordinance.

SECTION 2. The City Manager, or his designee, is hereby authorized to execute the Permit for and on behalf of the City of Denton, said Permit being attached hereto and incorporated herein by reference.

SECTION 3. This ordinance shall become effective immediately upon its passage and approval.

PASSED AND APPROVED this the \_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
MARK A. BURROUGHS, MAYOR

ATTEST:  
JENNIFER WALTERS, CITY SECRETARY

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

APPROVED AS TO LEGAL FORM:  
ANITA BURGESS, CITY ATTORNEY

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

## TEMPORARY ACCESS PERMIT

This Temporary Access Permit and Workspace License Agreement (“Permit” or “License”) is made and entered into by and between the City of Denton, Texas (hereinafter referred to as “City”), a home-rule municipal corporation organized under the laws of the State of Texas, and EagleRidge Operating, LLC, a Texas limited liability company, (hereinafter referred to as “Company”).

The following statements are true and correct and constitute the basis upon which the City has executed the Permit:

- A. The City owns certain real property described in Exhibit “A”, attached hereto and made a part hereof (the “Land”).
- B. Company desires to install a temporary water pipeline over and across the Land and wishes to use a certain designated portion of the Land in connection therewith.
- C. The City has reviewed Company’s request and agrees to grant Company use of the designated portion of the Land in accordance with the terms and conditions of this Permit.

### Agreement

#### I. Term

The term of this Permit shall consist of one (1) license period of one hundred and twenty (120) consecutive calendar days (“License Period”). The Company shall have the ability to select the date on which the License Period shall commence, provided, however, that: (i) the Company must notify the City’s Real Estate Division (the “RE Division”) at least five (5) business days prior to the date on which the License Period will commence; and (ii) the License Period shall terminate no later than six (6) months from the date on which this Permit is fully executed. No use of or access to the Licensed Premises (as defined below) shall be allowed outside of the designated License Period.

Company’s rights in the Licensed Premises hereunder shall be strictly limited and shall fully and absolutely terminate and be of no further force and effect at the conclusion of the License Period, unless terminated sooner pursuant to the terms hereof. After the expiration or termination of this License, all rights of the Company to occupy the Licensed Premises shall, automatically and without the need for any further documentation, fully and unconditionally terminate, whereupon the Company shall have no right of entry or use of the Licensed Premises whatsoever.

#### II. Licensed Premises

Subject to the terms and conditions set forth in this Permit, for and in consideration of the monetary payments to be made hereunder and the other covenants and promises expressed herein, the City does hereby agree to license to the Company during the License Period, without warranty of any kind, including without limitation, warranties of title, the use of a portion of Land, as described in Exhibit “B”, attached hereto and made a part hereof (the “Licensed Premises”).



Prior to entry upon the Licensed Premises, Company shall first obtain:

1. A "Site Entry Letter" from the Real Estate Division of the City. The City representative or representatives designated by the City Manager of City shall have the right to approve the plans for the activities to be performed on the Licensed Premises, to place restrictions, obligations and instructions upon Company in addition to those specifically provided by this Permit and to observe the activities of Company hereunder to ensure that such activities are conducted in accordance with the terms of this Permit.
2. A "Right-of-Way Inspection Permit" from the City Engineering Services. The role of the City Right-of-Way Inspector shall be to ensure that Company and/or their contractor(s) are conforming to best practices in their general operations upon the Licensed Premises. A City Right-of-Way Inspection Permit has a fee component, the minimum being one hundred dollars (\$100.00).

Except as may be permitted or authorized by the City, by and through the City Engineer, no street or highway in the City of Denton shall be blocked or obstructed during the activities permitted by this Permit. Company shall not, under any circumstance, disturb in any way, manner or form, the surface of any street, sidewalk, alley, easement or highway within or in the vicinity of the Licensed Premises.

### **III. License Fee**

Within five (5) days of the date on which this Permit is fully executed, Company shall deliver to the offices of the RE Division, payment of a License Fee of One Thousand Four Hundred Dollars (\$1,400.00) as full and complete monetary compensation for the rights and privileges granted under this Permit.

Such payment does not include any payment due, if any, to owners or holders of easements, surface and/or mineral lessees, mineral owners, royalty owners and/or any other party and/or parties. Additionally, this Permit does not purport to license or allow any rights to Company as concerns the owners of such interests and encumbrances. Company agrees not to enter upon the Licensed Premises for any purpose whatsoever until permission of all of the owners of such encumbrances or interests have been obtained.

### **IV. Acceptance of Licensed Premises**

The Company takes all portions of the Licensed Premises and all appurtenances in "AS IS" condition without any express or implied warranty on the part of the City. The Company accepts the Licensed Premises in their present condition, finds them suitable for the purposes intended, and further acknowledges that it is thoroughly familiar with such condition by reason of personal inspection and does not rely on any representations by the City as to the condition of the Licensed Premises or their suitability for the

purposes intended. The Company accepts the Licensed Premises subject to any and all previously recorded easements or other interests that may have been granted on, along, over, under, or across said property, and releases the City from any and all damages, claims for damages, loss, or liabilities that may be caused to owners of any interests in the Licensed Premises, and/or Company's invitees', licensees, or trespassers, by reason of the exercise of such rights or privileges hereunder. The Company's taking possession of the Licensed Premises shall be conclusive evidence that: (a) the Licensed Premises are suitable for the purposes and uses for which same are licensed; and (b) the Company waives any and all defects in and to the Licensed Premises and all the appurtenances thereto. **THE CITY, ITS OFFICERS, ELECTED OFFICIALS, AGENTS AND EMPLOYEES SHALL NOT BE LIABLE TO THE COMPANY, ITS AGENTS, EMPLOYEES, CONTRACTORS, SUBCONTRACTORS, INVITEES, LICENSEES, OR GUESTS FOR, AND THE COMPANY HEREBY RELEASES THE CITY, ITS OFFICERS, ELECTED OFFICIALS, AGENTS AND EMPLOYEES, FROM AND AGAINST ANY DAMAGE TO ANY PERSON OR PROPERTY DUE TO THE ACTS OR OMISSIONS OF THE COMPANY, ITS AGENTS, EMPLOYEES, CONTRACTORS, OR SUBCONTRACTORS, INCLUDING BUT NOT LIMITED TO LIABILITY, CLAIMS, LOSSES AND DAMAGES ARISING FROM OR CAUSED, IN WHOLE OR IN PART, BY THE NEGLIGENCE OF ANY KIND, TYPE OR DEGREE, OF THE CITY, ITS OFFICERS, AGENTS, ELECTED OFFICIALS AND EMPLOYEES. IT IS UNDERSTOOD AND AGREED THAT THE RELEASE PROVIDED FOR IN THIS SECTION RELEASES THE CITY OF DENTON, TEXAS, ITS OFFICERS, AGENTS, ELECTED OFFICIALS AND EMPLOYEES FROM AND AGAINST ITS OWN NEGLIGENCE WHETHER THAT NEGLIGENCE IS THE SOLE OR THE CONTRIBUTING OR CONCURRENT CAUSE OF THE RESULTANT LIABILITY, CLAIM, LOSS OR DAMAGE.**

V. **Use Not Exclusive**

This Permit and all rights granted to Company herein are strictly non-exclusive. The City reserves the right to enter into and grant other and future licenses, leases, and other authorizations for use of the Licensed Premises to other persons and entities as the City deems appropriate. This Permit does not establish any priority for the use of the Licensed Premises by the Company or by any present or future licensees or other permit holders.

VI. **Limitations on Use**

Company is authorized to utilize the Licensed Premises solely for the placement of two (2) above ground water pipelines.

All Company equipment and materials shall be placed solely within the confines of the Licensed Premises. Unless otherwise approved by the RE Division, the Company shall enter and leave the Licensed Premises via South Bonnie Brae Street and Vintage Boulevard only. South Bonnie Brae Street and Vintage Boulevard shall be used solely for ingress and egress purposes, and no equipment or materials may be placed or maintained on any street or roadway of the City, except when in transit to or from the Licensed Premises, unless authorized by separate permit(s).

In accessing and using the Licensed Premises, Company shall comply with all of its obligations and responsibilities under this Permit and under any and all applicable, federal, state, or local laws, rules, regulations and/or ordinances.

#### **VI.A. Use of Water**

In no event shall any portion of the water transported by the temporary water pipeline(s) be utilized for any purpose whatsoever, except purposes solely related to the Bonnie Brae 2H, 3H and 4H wells.

#### **VII. Public Safety**

Company shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with Company's use of the Licensed Premises.

Company shall take all necessary precautions and shall provide all necessary protection to prevent damage, injury, or loss to (a) all persons accessing portions of the Licensed Premises on which any activities are being performed by or on behalf of the Company; (b) all materials and equipment to be incorporated therein that are under the care, custody, or control of the Company, or the Company's employees, agents, contractors, or subcontractors, regardless of whether such material and equipment is stored on or off the Licensed Premises; and (c) other property on, adjacent to, or in the vicinity of, the Licensed Premises.

#### **VIII. Protection of the Environment**

Company shall not handle, place or store any Hazardous Materials on the Licensed Premises. For purposes of this Permit, "Hazardous Materials" shall mean potentially dangerous hazardous wastes, toxic substances, or related materials, including, but not limited to, pollutants; asbestos; polychlorinated biphenyl (PCB); petroleum or other fuels (including crude oil or any fraction or derivative thereof); underground storage tanks, and substances considered hazardous, toxic, or the equivalent pursuant to any applicable state, federal or local laws, rules, regulations and/or ordinances.

Company shall not create or aggravate any condition upon the Licensed Premises that could present a threat to human health or to the environment.

#### **IX. Documenting Condition of Licensed Premises**

Company must provide the RE Division with videographic documentation of the condition of the Licensed Premises as they exist before, after installation, and upon removal of, the pipeline. All such video must include a visible date and time stamp indicating when the videography occurred. Company must submit documentation of the pre-installation condition at least five (5) business days prior to the date on which the License Period will commence under Section I of this Permit. Post-installation and removal documentation must be submitted no later than five (5) business days after the last day of the License Period. RE Division staff will distribute copies of the documentation to all appropriate City personnel to determine whether any damage has been done to the Licensed Premises.

**X. No Impact upon Vegetation**

Company shall not cut, remove or negatively impact any trees or other vegetation on the Licensed Premises. Company shall conduct all operations in due regard to the surface of the Licensed Premises, and, in addition to any other requirements that may be imposed upon Company as provided by Article II, above, shall: (i) not access any part of the Licensed Premises which is unpaved during wet conditions; (ii) not use any explosive charges of any kind or nature; (iii) report to the Fire Department of the City any and all fires or other health or safety related conditions observed during the activities hereunder, and shall utilize any and all efforts necessary to prevent and suppress any fires on the Premises; (iv) only conduct activities permitted by this License within the hours of 7 a.m. and 7 p.m.; (v) not place upon the Licensed Premises any truck or other equipment with a gross vehicle weight in excess of 10,000 pounds; and (vi) conduct all operations authorized by this Permit so as not to cause any damage to pipelines, whether water, sewer, gas or product of any type, utility lines, water wells and/or structures of any kind.

**XI. Minimizing Impact of Utilities**

The Company acknowledges the potential of the existence of City-owned utilities in the Licensed Premises (including, but not limited to, waterlines, sewer lines, and storm drains and lines) and shall avoid impact upon same.

**XII. Restoration of Improvements**

To the extent any road, curb, gutter, irrigation system, utility line, barricade, fence, or any other improvement of any kind or type is destroyed, damaged, or altered in connection with or related to, the Company's activities under this Permit (such activities being prohibited), the Company shall reconstruct and restore such improvement in a good and workmanlike manner to a condition that is equal to or better than the one in which such improvement existed as of the date this Permit is fully executed, as evidenced by the pre-installation video required under Section IX of this Permit.

**XIII. Restoration of Surface of Licensed Premises**

Company shall restore, to the satisfaction of City, the surface of the Licensed Premises in the event any damage to the surface and/or vegetation shall be caused, in whole or in part by Company's activities.

**XIV. Insurance**

Company shall provide or cause to be provided the insurance described below upon execution of this Permit and maintain same during the term of this Permit. The insurance to be provided hereunder is independent of the indemnity obligations provided in Article XV, below.

a. Commercial General Liability Insurance. This coverage must include premises/operations, blowout or explosion, products/completed operations, blanket contractual liability, underground property damage, broad form property damage,

independent contractors and personal injury. This coverage shall be a minimum Combined Single Limit of \$1,000,000 per occurrence for Bodily Injury and Property Damage. The insurance shall also include coverage for Environment Impairment.

b. Excess Liability Insurance. Excess Liability Insurance shall be provided with limits of not less than \$5,000,000.00 annual aggregate.

c. Worker's Compensation Insurance. In addition to the minimum statutory requirements:

- (1) Employer's Liability limits of at least \$100,000 for each accident, \$100,000 for each employee, and a \$500,000 policy limit for occupational disease; and
- (2) The insurer agrees to waive rights of subrogation against the City, its officials, agents, employees, and volunteers for any work performed for the City by the Company; and
- (3) The Company shall comply with the provisions of with Section 406.096 of the Texas Labor Code and rule 28TAC 110.110 of the Texas Worker's Compensation Commission.

d. Automobile Liability Insurance.

- (1) Minimum Combined Single Limit of \$500,000 per occurrence for Bodily Injury and Property Damage; and
- (2) The Business Auto Policy must show Symbol 1 in the Covered Autos Portion of the liability section in Item 2 of the declarations page which includes coverage for hired, leased and non-owned vehicles.

e. General provisions

- (1) All policies shall be endorsed to read "THIS POLICY WILL NOT BE CANCELLED OR NON-RENEWED WITHOUT 30 DAYS ADVANCED WRITTEN NOTICE TO THE OWNER AND THE CITY EXCEPT WHEN THIS POLICY IS BEING CANCELLED FOR NONPAYMENT OF PREMIUM, IN WHICH CASE 10 DAYS ADVANCE WRITTEN NOTICE IS REQUIRED".
- (2) Commercial General Liability and Automobile Liability insurance shall be written by companies with A: VIII or better rating in accordance with the current AM Best Key Rating Guide.
- (3) Commercial General Liability, Automobile Liability, and Excess Liability insurance policies shall be primary and shall name as "Additional Insured" the City and its officials, agents, employees, and volunteers.

- (4) Certificates of insurance must reflect all coverages and endorsements required by this section.
- (5) Coverage shall be placed with insurance carriers licensed to do business in the State of Texas or with nonadmitted carriers that have a financial rating comparable to carriers licensed to do business in Texas approved by the City.
- (6) The insurance requirements set forth in this section and any recovery by the City of any sum by reason of any insurance policy required under this Permit shall in no way be construed or affected to limit or in any way affect Company's liability to the City or other persons as provided by this Permit or law.

**XV. Indemnity and Performance Bond**

A. Indemnification. Company shall and hereby does indemnify, defend and hold harmless the City, its officers, agents, elected officials and employees from all suits, losses, damages, actions or claims of any character, name and description brought for or on account of any injuries or damages received or sustained by any person, persons or property on account of or related to the operations of the Company, its agents, employees, contractors or subcontractors; or on account of or related to any action or omission of Company, its agents, employees, contractors or subcontractors, related to the rights licensed herein, and/or the occupation of City owned property or property interests by Company, its agents, employees, contractors and subcontractors, in connection with or related to the obligations or rights of the Company under this Permit; and shall pay any loss, damage, claim and any judgment, with costs, and including reasonable attorneys' fees and costs related thereto, which may be incurred by, occasioned upon or be obtained against the City, its officers, agents, elected officials and employees, growing out of or related to such injury or damage, INCLUDING BUT NOT LIMITED TO, LIABILITY, CLAIMS, LOSSES, AND DAMAGES ARISING FROM OR CAUSED, IN WHOLE OR IN PART, BY THE NEGLIGENCE OF ANY KIND, TYPE OR DEGREE, OF THE CITY, ITS OFFICERS, AGENTS, ELECTED OFFICIALS AND EMPLOYEES. IT IS UNDERSTOOD AND AGREED THAT THE INDEMNITY PROVIDED FOR IN THIS SECTION IS AN INDEMNITY EXTENDED BY THE COMPANY TO INDEMNIFY AND PROTECT THE CITY OF DENTON, TEXAS, ITS OFFICERS, AGENTS, ELECTED OFFICIALS AND EMPLOYEES FROM AND AGAINST ITS OWN NEGLIGENCE WHETHER THAT NEGLIGENCE IS THE SOLE OR THE CONTRIBUTING OR CONCURRENT CAUSE OF THE RESULTANT LIABILITY, CLAIM, LOSS OR DAMAGE.

B. Performance Bond. Company shall provide a performance bond, in the amount of Fifty Thousand Dollars (\$50,000.00), to secure Company's obligations under this License. The performance bond shall be executed by a surety company authorized to do business in the State of Texas in accordance with Chapter 2253 of the Texas Government Code.

**XVI. Prohibition Against Liens**

The Company shall not do any act or make any contract that may be purported to create or be the foundation of any lien on, or any interest in, the Licensed Premises. Any such act, contract, or lien attempted to be created shall be void. Should any purported lien on the Licensed Premises be created or filed, the Company shall, at its sole expense, liquidate and discharge same within ten (10) business days after notice from the City to do so.

**XVII. Notices**

All notices required or permitted under this Permit shall be conclusively determined to have been delivered (i) when hand-delivered or provided by telephonic facsimile to the other party, its agent, employee, servant, or representative, or (ii) the date of deposit of, in a regularly maintained receptacle for the United States Mail, postage prepaid, return receipt requested, at the address stated below or to such other address as one party may from time to time notify the other in writing.

To THE CITY:

Paul Williamson  
Real Estate & Capital Support  
901-A Texas Street  
Denton, Texas 76209  
Facsimile: 940/349-8951  
With a copy to:

Anita Burgess  
City Attorney  
215 E. McKinney  
Denton, Texas 76201  
Facsimile: 940/382-7923

To COMPANY:

Mark Grawe  
EagleRidge Operating, LLC  
3500 Oak Lawn, Suite 300  
Dallas, Texas 75219  
Facsimile: 214.520.2773  
With a copy to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Facsimile: \_\_\_\_\_

**XVIII. Independent Contractor**

It is expressly understood and agreed that Company shall operate as independent entity in each and every respect hereunder and not as an agent, representative, or employee of the City. Company shall have the exclusive control and the exclusive right to control all details and day-to-day operations and activities relative to operation of the Company and installation of the pipeline and shall be solely responsible for the acts and omissions of its officers, agents, servants, employees, contractors, subcontractors, licensees, and invitees. Company acknowledges that the doctrine of *respondeat superior* shall not apply as between the City and Company, its officers, agents, servants, employees, contractors, subcontractors, licensees, and invitees. Nothing contained in this Permit shall be construed as the creation of a partnership or joint enterprise between the City and Company.

**XIX. Prohibition Against Assignment; Right of Termination**

The Company may not sell, assign, or otherwise transfer any of its rights or obligations under this Permit without the prior, written consent of the City. Any such attempted

assignment without the City's consent shall be void.

The City may terminate this Permit at any time without cause upon ten (10) days notice to Company.

**XX. Compliance with Laws and Regulations and Permit Terms**

In operating under this Permit, Company agrees to comply with all applicable federal, state, and local laws, rules, regulations, and ordinances, including all City ordinances, charter provisions, and rules, regulations, and requirements of the City's Police, Fire, Code Compliance, Engineering, Transportation, Public Works, and Health Departments, or any other department of the City.

Company will not do or suffer to be done anything on the Licensed Premises during the term of this Permit in violation of any of the laws, statutes, ordinances, rules, regulations, charter provisions, directives or requirements referenced in this Permit.

If Company (i) uses the Licensed Premises for purposes other than the rights licensed herein; (ii) uses the Licensed Premises in a manner inconsistent with the rights licensed herein; or (iii) breaches or fails to comply with any term or condition of this Permit, as determined reasonably by the City, the City may exercise any and all rights and remedies available to it by law, equity, contract or otherwise, including, without limitation, the right to declare this Permit null and void whereupon Company shall have no further rights of usage of the Licensed Premises and assert any other rights available to City.

The rights granted by this Permit convey no interest in the real property or real property interests comprising the Licensed Premises. No rights to any other lands or interests owned by City, or located within the City, other than the Licensed Premises, are provided herein.

**XXI. Taxes**

The Company acknowledges and agrees that it shall be solely responsible for paying all taxes assessed or imposed by any governmental entity in connection with the construction, installation, operation, maintenance, repair, or reconstruction of the pipeline and with the use of the Licensed Premises related to activities within the scope of this Permit.

**XXII. Headings**

The section headings contained herein are solely for convenience in reference and are not intended to define or limit the scope of any provision of this Permit.

**XXIII. Choice of Law; Venue**

This Permit shall be governed by and construed in accordance with the laws of the State of Texas. If any action, whether real or asserted, at law or in equity, arises on the basis of any provision of this Permit, sole and exclusive venue for such action shall lie in courts of competent jurisdiction located in Denton County, Texas.



**XXIV. Governmental Powers**

It is understood and agreed that by execution of this Permit, City does not waive or surrender any of its governmental powers or immunities.

**XXV. Authorization**

By executing this Permit, Company's agent affirms that he or she is authorized by the Company to execute this Permit and that all representations made herein with regard to Company's identity, address and legal status are true and correct.

**XXVI. Entirety of Agreement**

This instrument (including all attachments, schedules, and exhibits attached hereto) constitutes the entire understanding and agreement of the City and Company as to use of the Licensed Premises. Any prior or contemporaneous oral or written agreement is hereby declared null and void to the extent in conflict with the terms and conditions of this Permit. This Permit shall not be amended unless agreed to in writing and authorized by both parties.

By executing this Permit, Company agrees to and accepts the terms, conditions and provision contained herein.

**IN WITNESS WHEREOF**, the parties hereto have executed this Permit this \_\_\_\_\_ day of \_\_\_\_\_, 2013 in Denton, Denton County, Texas.

THE CITY OF DENTON, TEXAS

By \_\_\_\_\_  
George C. Campbell  
City Manager

ATTEST:  
JENNIFER WALTERS, CITY SECRETARY

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

APPROVED AS TO LEGAL FORM:  
ANITA BURGESS, CITY ATTORNEY

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

COMPANY:  
EagleRidge Operating, LLC

By \_\_\_\_\_  
Mark Grawe,  
Chief Operating Officer

## AGENDA INFORMATION SHEET

**AGENDA DATE:** November 19, 2013  
**DEPARTMENT:** Materials Management  
**ACM:** Bryan Langley *LBL*

Questions concerning this acquisition may be directed to Phil Williams at 349-8487

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### **SUBJECT**

Consider adoption of an ordinance of the City of Denton, Texas amending a Professional Services Agreement by and between the City of Denton, Texas and Power Engineers, Inc. for electrical transmission line design, and other engineering related consulting services for Denton Municipal Electric Capital Improvement Projects; authorizing the expenditure of funds therefor; providing an effective date (File 5174-First Amendment to Professional Services Agreement in the original not-to-exceed amount of \$1,576,050, Amendment One in the amount of \$820,492, for a total not-to-exceed amount of \$2,396,542). The Public Utilities Board recommends approval (7-0).

### **FILE INFORMATION**

A Professional Services Agreement with Power Engineers, Inc. for engineering and other related services for studies, consultation, and support during the site and route selection processes for transmission line and electric substation projects was approved by Council on February 12, 2013. This amendment will include professional services related to design, procurement, and construction of the transmission lines. A detailed description of the services to be provided is included in the Public Utilities Board Agenda Information Sheet (Exhibit 1).

In accordance with provisions of Texas Local Government Code 252.022, the procurement of professional services is exempt from the requirements of the competitive bid process. City staff is recommending approval of the First Amendment based upon the detailed qualifications criteria of Power Engineers, Inc. and the continuity of existing services.

### **PRIOR ACTION/REVIEW (COUNCIL, BOARDS, COMMISSIONS)**

On November 11, 2013, the Public Utilities Board recommended approval to forward this item to the City Council for consideration.

### **RECOMMENDATION**

Approve a First Amendment to the Professional Services Agreement with Power Engineers, Inc. in the amount of \$820,492 for a total not-to-exceed amount of \$2,396,542).

**PRINCIPAL PLACE OF BUSINESS**

Power Engineers, Inc.  
Austin, TX

**ESTIMATED SCHEDULE OF PROJECT**

The services to be performed will begin immediately upon Council approval. The agreement will remain in effect for the period which may be reasonably required for completion of the project.

**FISCAL INFORMATION**

The costs for material purchased under the proposed agreement will be funded out of amounts budgeted for specific projects. The work proposed will be in the transmission category. These costs for transmission projects will ultimately be recovered through the Public Utility Commission Transmission Cost of Service Program (TCOS).

**EXHIBITS**

Exhibit 1: Public Utilities Board Agenda Information Sheet without Exhibits  
Exhibit 2: Public Utilities Board Draft Minutes

Respectfully submitted:



Chuck Springer, 349-8260  
Director of Finance

**PUBLIC UTILITIES BOARD AGENDA ITEM #5**

**AGENDA INFORMATION SHEET**

**AGENDA DATE:** November 12, 2013

**DEPARTMENT:** Utilities

**ACM:** Howard Martin, 349-8232



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**SUBJECT**

Consider recommending approval of an Amendment to Professional Services Agreement by and between the City of Denton, Texas and POWER Engineers, Inc., a Corporation, Austin, Texas, for electrical transmission line design, and other engineering-related consulting services for Capital Improvement Projects for Denton Municipal Electric, in the amount of \$820,492 (File No. 5174 – Amendment to Professional Services Agreement in the original not-to-exceed amount of \$1,576,050; with the not-to-exceed amount now totaling \$2,396,542).

**BACKGROUND**

Several Texas Municipal Power Agency (TMPA) reconstruction projects necessary on sections of the Denton 138kV transmission loop will be constructed and owned by Denton Municipal Electric (DME). While DME anticipated these projects and included them in the CIP, it was uncertain when and exactly what projects would become DME responsibility. Consequently, professional engineering contracts were not structured to include this work.

DME requires the support of consulting engineers to produce structural and electrical designs for electric transmission lines and to obtain other engineering related support for approved CIP projects. Over time, there will not be sufficient work to justify having engineers on staff that possess the specialized expertise necessary to prepare designs for the transmission lines or having the necessary field personnel to inspect and support certain construction activities (such as extensive surveying, staking and inspections required for transmission line design and construction). Using outside engineering resources is an efficient and reasonable method for obtaining the temporary and specialized services needed.

DME proposes to contract with POWER Engineers for the professional services needed for design and for support in the procurement and construction phases of transmission line projects. POWER Engineers has been providing similar services to TMPA for upgrade of the Denton 138kV loop for about the last two and one-half years. They completed aerial surveying for the entire loop at the start of the TMPA project and have completed the design for upgrade of the 138kV loop from the Teasley Substation around the west side of the loop to Denton North. This effort will enter the final construction phase in December of 2013.

The next project needed is reconstruction of the line from Teasley Substation to Pockrus Substation. Future projects are planned that will reconstruct sections of the Spencer Interchange

to the Arco Substation transmission line and from Arco to Denton North. DME believes it is prudent to continue the effort with POWER Engineers for additional segments of the loop since they have already completed similar designs for TMPA and have completed much of the initial data compilation for the next phases. DME has worked with TMPA during development of the projects that have been undertaken by POWER Engineers and has had opportunity to observe and interact with the engineers that have completed the work up to this point. DME is satisfied with the approach, the personnel, and the demonstrated performance of POWER Engineers.

DME has an existing contract with POWER Engineers that was approved in February of 2013. That contract was to obtain assistance with transmission line route selection and substation site selection. It is proposed to amend this contract to include professional services related to design, procurement, and construction of transmission lines in its scope and increase the cost to cover the additional services. The cost for all expected future projects has been included in DME's Capital Improvement Plan. It was anticipated during development of the CIP that responsibility for reconstruction of portions of the TMPA facilities would be transferred to DME.

POWER Engineers has been working under the current professional services agreement (PSA File 5174) that was approved in February 2013 for \$1,576,050. The funds for this PSA are budgeted for professional services required for evaluation and selection processes for transmission line routes and substation sites. It is proposed to expand the scope of work for the Power Engineers contract to include transmission line design and related professional engineering services.

If the design responsibility is assigned to an engineering group other than POWER Engineers, every aspect of the designs and preliminary information that has been gathered would have to be verified before any other engineering firm could professionally seal the designs. The TEXAS ENGINEERING PRACTICE ACT AND RULES CONCERNING THE PRACTICE OF ENGINEERING AND PROFESSIONAL ENGINEERING LICENSURE requirements state:

**§137.33 Sealing Procedures**

(a) The purpose of the engineer's seal is to assure the user of the engineering product that the work has been performed or directly supervised by the professional engineer named and to delineate the scope of the engineer's work.

**Texas Engineering Practice Act and Rules Page 54 of 67 Effective 9/10/07**

(b) License holders shall only seal work done by them, performed under their direct supervision as defined in §131.81 of this title, relating to Definitions, or shall be standards or general guideline specifications that they have reviewed and selected. Upon sealing, engineers take full professional responsibility for that work.

NERC has recently established a requirement that transmission owners provide evidence that field conditions and line configurations after construction match those anticipated in the design. The standard further requires that owners continue to monitor field conditions to insure that changes are discovered and properly addressed to insure continued safe and reliable operation of transmission lines. To comply with this standard, transmission owners must complete post-construction field surveys that include verification of terrain profiles, installed pole heights, and conductor sags and identification of obstructions and encroachments that were not accommodated in the designs. Transmission owners must continue to monitor these conditions for the life of the line. Because POWER Engineers will have the best knowledge of the project, they will be the best choice for completing the post construction field survey and verification.

The amount for the increase in this contract was arrived at by estimating the costs for the work required for each project that DME expects to undertake at this time. It is fully expected that POWER Engineers will be tasked to provide services for these projects. Changes in priorities, unforeseen requirements, or changes in approved projects could alter the projects that will be undertaken. The contract is structured to be billed on an hourly basis for work performed so that, should needs arise that are not related to the specific projects that were used to construct the estimate for this amendment, POWER Engineers can be used as a resource for DME to obtain necessary professional engineering services. It should also be noted that the contract does not obligate DME to provide work up to the contract amount or to make **any** minimum expenditure.

The following is a summary showing how the costs for the amendment were constructed:

POWER Engineers Project Estimate for Professional Services in Support of CIP October, 2013		
<u>Description</u>	Planned In-Service Year	Estimated Cost
<b><u>Transmission Line Design Projects</u></b>		
Teasley - Spencer 138kV Transmission Line		
Teasley - Corinth Segment	2015	\$79,042
Corinth - Pockrus Segment	2015	\$169,366
Pockrus - Spencer Segment	2015	\$45,034
Denton North - Arco 138kV Transmission Line		
	2017	\$226,246
Arco - Cooper Creek 138kV Transmission Line		
	2017	\$193,910
Masch Branch Substation 138kV Transmission Line Terminations		
	2016	\$66,894
Miscellaneous Design Support		
		\$40,000
<b>Transmission Project Total</b>		<b>\$820,492</b>

As stated earlier, DME must have the support of an outside engineering services group to complete the designs and provide procurement and construction support. DME has a contract in place with SGS Engineering for transmission line design and support services. SGS will be tasked with design for reconstruction of certain TMPA facilities. Because of the additional work generated by the decision to transfer responsibility for reconstruction of TMPA transmission lines to DME, and because it will be necessary to undertake multiple projects at the same time, there will be a need for additional engineering resources above what SGS can provide. Selecting a consultant other than POWER Engineers at this point would mean that DME would have to develop new relationships and work through training a new group on the types of designs and features DME has found useful. The knowledge and data gathered by POWER Engineers so far would be lost. The efficiency of having a group already familiar with the types of designs used

by DME and TMPA, and that has a library to draw from would be lost. With the scope and volume of transmission work already identified in the CIP, along with the aggressive timeframe for completing all currently approved CIP projects, amending the contract with POWER Engineers is the most efficient and effective choice.

DME views the estimate for services from POWER Engineer as exactly that – an estimate in advance of design. The scopes of the projects are known (e.g. to design a line from point A to point B), but the exact work that will be required cannot be known until the design is actually undertaken. The amount of work needed could change or assistance may be needed with design of additional poles that were not expected. To address this uncertainty, DME has added an amount of approximately 5% (\$40,000) to the estimate to cover miscellaneous items that tend to surface during transmission line projects and to provide a small amount that can be used in the event that design or analysis is needed to support another project.

### **OPTIONS**

1. Recommend approval of the proposed amendment to the Professional Services Agreement with POWER Engineers, Inc. in the amount of \$820,492.
2. Not recommend approval of the proposed amendment to the Professional Services Agreement with POWER Engineers, Inc., and direct that other actions be taken to obtain the needed services.

### **RECOMMENDATION**

DME recommends approval of the amended contract with POWER Engineers, Inc.

### **ESTIMATED SCHEDULE**

Project designs will begin immediately upon approval by the City Council and will proceed in accordance with project needs.

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

The Professional Services Agreement that is currently in force with POWER Engineers, Inc. was approved in February 2013.

### **FISCAL INFORMATION**

The charges for work under this contract amendment will not exceed an additional \$820,492 for a total contract amount of \$2,396,542, and will be funded out of amounts budgeted for specific projects. All of the work proposed will be in the transmission category. These costs for transmission projects will ultimately be recovered through the Public Utility Commission transmission cost of service program (TCOS). The proposed amendment will not increase CIP cost. Amounts for all projects were included in the CIP.



**BID INFORMATION**

Texas statutory law provides that procurements for professional services are made in accordance with the "Professional Services Procurement Act." The provisions of Texas Local Government Code, Section 252,022(a)(4) provide that procurements for professional services are exempt from the requirements of competitive bidding.

**DATE SCHEDULED FOR COUNCIL APPROVAL**

December 3, 2013

**EXHIBITS**

1. Project Location Map
2. Proposed Amendment to Professional Services Agreement
3. Proposal from POWER Engineers
4. Professional Services Agreement, February 2013 (File 5174)

Respectfully submitted,



Phil Williams  
General Manager  
Denton Municipal Electric

Prepared by:



Chuck Sears  
Engineering Division Manager  
Denton Municipal Electric

**DRAFT MINUTES**  
**PUBLIC UTILITIES BOARD**  
November 11, 2013

After determining that a quorum of the Public Utilities Board of the City of Denton, Texas is present, the Chair of the Public Utilities Board will thereafter convene into an open meeting on Monday, November 11 at 9:00 a.m. in the Service Center Training Room, City of Denton Service Center, 901A Texas Street, Denton, Texas.

Present: Chairman Dick Smith, Vice Chair Billy Cheek, Secretary Randy Robinson, Leonard Herring, Phil Gallivan Barbara Russell and Lilia Bynum

Ex Officio Members: George Campbell City Manager and Howard Martin, ACM Utilities

**OPEN MEETING:**

**ITEMS FOR INDIVIDUAL CONSIDERATION:**

- 4) Consider recommending approval of an Amendment to Professional Services Agreement by and between the City of Denton, Texas and POWER Engineers, Inc., a Corporation, Austin, Texas, for electrical transmission line design, and other engineering-related consulting services for Capital Improvement Projects for Denton Municipal Electric, in the amount of \$820,492 (File No. 5174 – Amendment to Professional Services Agreement in the original not-to-exceed amount of \$1,576,050; with the not-to-exceed amount now totaling \$2,396,542).

Chuck Sears presented this item. This is a change to the professional services agreement. There is a current contract with Power Engineers for transmission line siting and substation siting. Staff anticipated in the budget that they would be paying for the upgrades for the TMPA line around Denton in some manner but unsure of how that would be accomplished; money was included in the budget for that purpose. Staff didn't anticipate that they would have to do the design and construction management. That has changed in that TMPA has agreed and DME has taken responsibility for design and construction and will own several sections of the TMPA loop after this work is done. That was not included in the design scope originally. The reason DME wants to go with Power Engineers instead of SGS; both companies can do the work, when TMPA hired Power Engineers to do the design for the line sections around the west they went ahead and did a LIDR survey (radar survey) that included all the TMPA lines. There has already been a lot of design work started. When it was decided that DME would own those lines they had to take over the design. With the familiarity and work that had already been accomplished it would be advantageous time wise for DME to add this to the Power Engineering contract. There are three lines that DME is proposing to give them the responsibility for. That is the Teasley to Pockrus to Spencer line. The Teasley to Pockrus is a complete rebuild. The Spencer part will have one to six poles replaced for clearance requirements. The next part would be Denton North to Arco which is in the budget. Arco to Cooper Creek is the last section. They have already completed sections, this is a complete rebuild.

1 Sears then showed all the lines on a map.

2  
3 Sears went on to say that all that are included in the budget were anticipated were put under the  
4 SGS contract. All total there are 38 miles of either re-conductor or reconstruction where  
5 necessary. SGS will be responsible for about 71%. The lines that Power Engineering would be  
6 responsible for is about 29%. The pricing is comparable.

7  
8 **Herring asked how long it will take for these projects to be complete.** Sears answered up to  
9 construction a little over five years. The design work comes early in the process and hope to  
10 have that design work in three to four years. **Herring then asked the facilities that will now be**  
11 **owned by DME instead of TMPA, is that in the CIP.** Sears answered yes. **Herring then**  
12 **clarified that the increase cost would just be in engineering.** Sears agreed.

13  
14 Sears lastly stated that the change requested is \$820,492.

15  
16 **Cheek looked at the budget summary by tasks. Are the numbers justified by work from**  
17 **the past.** Sears answered they are comparable from work in the past.

18  
19 **Gallivan added that there is an income element to this as well.** Sears answered yes it is 100%  
20 TCOS. This is for transmission line design. Williams added that DME will file each of these  
21 expenses as part of the capital cost. The Public Utility Commission will take that in a rate case  
22 and allow recovery over the period of life. Recovery is from all the customers according to the  
23 amount of load.

24  
25 **Motion was made to approve item 2 by Board Member Herring with the second by Board**  
26 **Member Russell. The vote was 7-0 approved.**

27  
28 Adjournment 10:25 a.m.

ORDINANCE NO. 2013-\_\_\_\_\_

AN ORDINANCE OF THE CITY OF DENTON, TEXAS AMENDING A PROFESSIONAL SERVICES AGREEMENT BY AND BETWEEN THE CITY OF DENTON, TEXAS AND POWER ENGINEERS, INC. FOR ELECTRICAL TRANSMISSION LINE DESIGN, AND OTHER ENGINEERING RELATED CONSULTING SERVICES FOR DENTON MUNICIPAL ELECTRIC CAPITAL IMPROVEMENT PROJECTS; AUTHORIZING THE EXPENDITURE OF FUNDS THEREFOR; PROVIDING AN EFFECTIVE DATE (FILE 5174-FIRST AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT IN THE ORIGINAL NOT-TO-EXCEED AMOUNT OF \$1,576,050, AMENDMENT ONE IN THE AMOUNT OF \$820,492, FOR A TOTAL NOT-TO-EXCEED AMOUNT OF \$2,396,542).

WHEREAS, the City Council deems that it is in the public interest to continue to engage the firm of Power Engineers, Inc., of Austin, Texas to provide professional engineering and design consulting services for the City of Denton, Texas that are related to Denton Municipal Electric; and

WHEREAS, the Public Utility Board of Denton considered this item at its November 11, 2013 meeting and recommended approval by a vote of 7-0; and

WHEREAS, City staff has reported to the City Council that there is a substantial need for the further above-referenced professional engineering services, and that limited City staff cannot adequately perform the specialized services and tasks with its own personnel; and

WHEREAS, Chapter 2254 of the Texas Government Code, known as the “Professional Services Procurement Act,” generally provides that a City may not select a provider of professional services on the basis of competitive bids, but must select the provider on the basis of demonstrated competence, knowledge, and qualifications, and for a fair and reasonable price; NOW, THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The preamble to this ordinance is incorporated herewith by reference as a part of this ordinance.

SECTION 2. The City Manager is hereby authorized by the City Council to execute a “First Amendment to Professional Services Agreement for electrical transmission line design, and other engineering related consulting services” (the “First Amendment”) with Power Engineers Inc., for further professional engineering and design services related to professional services necessary for Denton Municipal Electric, for an additional fee of not-to-exceed \$820,492 (with the previous Agreement, totaling a fee not-to-exceed \$1,576,050); in substantially the form of the “First Amendment” that is attached hereto, which is incorporated herewith by reference.

SECTION 3. The award of this Agreement by the City is on the basis of the demonstrated competence, knowledge, and qualifications of Power Engineers, Inc. and the

demonstrated ability of Power Engineers, Inc. to perform the services needed by the City for a fair and reasonable price.

SECTION 4. The expenditure of funds as provided in the attached Agreement is hereby authorized.

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

PASSED AND APPROVED this the \_\_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
MARK A. BURROUGHS, MAYOR

ATTEST:  
JENNIFER WALTERS, CITY SECRETARY

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

APPROVED AS TO LEGAL FORM:  
ANITA BURGESS, CITY ATTORNEY



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

4-ORD-File 5174

STATE OF TEXAS §

COUNTY OF DENTON §

FIRST AMENDMENT TO  
PROFESSIONAL SERVICES AGREEMENT WITH POWER ENGINEERS, INC.  
(FILE #5174)

This “First Amendment to Professional Services Agreement with POWER Engineers, Inc., Lenexa, Kansas, Texas (hereafter the “First Amendment”) is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2013, by and between the City of Denton, Texas, a Texas municipal corporation, with its principal office at 215 East McKinney Street, Denton, Denton County, Texas 76201, hereinafter called “OWNER;” and POWER Engineers, Inc. a Corporation, with its offices at 11035 Strang Line Road, Lenexa, Kansas 66215, hereinafter called “POWER” each acting herein, by and through their duly authorized officials, officers and representatives.

WHEREAS, previously on February 12, 2013, the City of Denton, Texas engaged the firm of POWER Engineers, Inc., a Corporation, by a “Professional and Personal Services Agreement” (hereafter the “Agreement”), and approved by the City Council on February 12, 2103 by Ordinance No. 2013-50; in order to have the firm perform professional and personal services regarding the siting of electric substations and the routing of electric transmission lines, all in accordance with the 2013-2017 Capital Improvements Plan of the City; said Agreement providing for the expenditure of not-to-exceed \$1,576,050 for such services; and

WHEREAS, as work under the Agreement progressed, it became apparent that the scope of the project has significantly broadened, to include professional services for the design, and assistance with specifications, procurement and construction monitoring for electric transmission lines; specifically including structural and electric designs for electric transmission lines, and further that the scope of the undertaking has increased since the approval of the Agreement, namely, increasing the workload significantly, wherein the City has now committed to taking over and owning several sections of the Texas Municipal Power Agency 138 kV loop around the City, including seven (7) transmission line projects for which the Agreement was not structured to include any services on; and further, that NERC has recently made a regulatory requirement that transmission owners, such as DME, provide evidence that field conditions and line configurations after construction match those conditions expressed in the design of such facilities; and

WHEREAS, OWNER and POWER have proposed this “First Amendment to Professional Services Agreement with POWER Engineers, Inc.” (hereafter the “First Amendment”); which First Amendment provides for additional professional services fees of not-to-exceed \$820,492, totaling a fee of not-to-exceed \$2,396,542; and request that this First Amendment be approved, in order to provide the necessary services by POWER on the projects; and

WHEREAS, the services to be rendered by POWER incident to this First Amendment are essential to the continued reliability of Denton Municipal Electric in serving its customers.

WITNESSETH, that in consideration of the covenants and agreements herein contained, the parties hereto do mutually agree to amend the terms of the Agreement for the first time (the "First Amendment") as follows:

ARTICLE I  
INCORPORATION OF PREAMBLE BY REFERENCE

The Preamble to this First Amendment is hereby incorporated by reference herewith for all purposes.

ARTICLE II  
AMENDMENT AND ADDITION TO SCOPE OF SERVICES

POWER shall perform, in addition to those services provided for in the Agreement, the specific services that are contained in and provided for in that certain twenty-six (26) page document entitled "Budget, Scope of Plan and Work Plan" which provides for professional services to be rendered by POWER to the City for the following electric transmission line rebuild and reconfiguration projects:

- Teasley-Corinth 138 kV Rebuild
- Corinth-Pockrus 138 kV Rebuild
- Pockrus-Spencer 138 kV Upgrade Reconfiguration and Clearance (TMPA)
- Denton North-Arco 138 kV Rebuild
- Arco-Cooper Creek 138 kV Rebuild
- Masch Branch 138 kV SS Cut-In
- Other transmission line design and project support as assigned by DME

ARTICLE III  
INCREASE OF COMPENSATION AMOUNT

The original Agreement provided for an expenditure authority of not-to-exceed \$1,576,050; and by this First Amendment the expenditure authority is being hereby increased by not-to-exceed \$820,492, aggregating a sum not-to-exceed \$2,396,542.

ARTICLE IV  
EFFECT OF THIS FIRST AMENDMENT

POWER and OWNER agree, that except as specifically provided for by this First Amendment, that all of the terms, covenants, conditions, agreements, rights, responsibilities, and obligations of the Parties, set forth in the Original Agreement, shall be and will remain in full force and effect.

IN WITNESS HEREOF, the City of Denton, Texas has executed this First Amendment, by its duly authorized City Manager; and POWER has executed this First Amendment by and through its duly authorized undersigned officer on this the \_\_\_\_ day of \_\_\_\_\_, 2013.

“OWNER”

THE CITY OF DENTON, TEXAS  
A Texas Municipal Corporation

By: \_\_\_\_\_  
GEORGE C. CAMPBELL, CITY MANAGER

ATTEST:  
JENNIFER WALTERS, CITY SECRETARY

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

APPROVED AS TO LEGAL FORM:  
ANITA BURGESS, CITY ATTORNEY

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

“POWER”

POWER Engineers, Inc.  
A Corporation

By: *Brian Berkebile*  
Its *Brian Berkebile*  
*Business Unit Director*

ATTEST:

By: *Jon M Ferguson*  
*Jon M Ferguson*  
*Project Manager*



## AGENDA INFORMATION SHEET

**AGENDA DATE:** November 19, 2013

Questions concerning this acquisition may be directed to Phil Williams at 349-8487

**DEPARTMENT:** Materials Management

**ACM:** Bryan Langley *LBL*

### **SUBJECT**

Consider adoption of an ordinance of the City of Denton, Texas providing for, authorizing, and approving the expenditure of funds for the purchase of thirteen (13) vertical break switch upgrade components for Denton Municipal Electric substations which are available from only one source and in accordance with Texas Local Government Code 252.022, exempt from the requirements of competitive bidding; and providing an effective date (File 5113-awarded to Keasler Sales, LLC in the not-to-exceed amount of \$175,370). The Public Utilities Board recommends approval (7-0).

### **FILE INFORMATION**

Denton Municipal Electric (DME) has projects included in its approved Capital Improvement Plan to upgrade existing vertical break switches in the Teasley and Woodrow substations. There are (7) seven switches in the Teasley Substation that must be upgraded and (6) six in the Woodrow Substation. The purpose of the upgrade is to increase the current carrying capability of the switches from 1200 amps to 3000 amps. A detailed description of these projects is included in the attached Public Utilities Board Agenda Information Sheet (Exhibit 1).

In order to maintain product uniformity, provide the quickest change out times, and limit outage times during switch replacement, DME is recommending the purchase of Pascor Vertical Break Switch replacement assemblies. According to the attached sole source letter from Pascor, Keasler Sales, LLC is the only authorized distributor of the Pascor switches (Exhibit 2). Chapter 252.022 of the Texas Local Government Code exempts from the competitive bid process, those supplies and resources protected by copyright or patent and available from only one source.

### **PRIOR ACTION/REVIEW (COUNCIL, BOARDS, COMMISSIONS)**

On November 11, 2013, the Public Utilities Board recommended approval to forward this item to the City Council for consideration.

### **RECOMMENDATION**

Award the purchase of vertical break switch upgrade components to Keasler Sales, LLC in an amount not-to-exceed \$175,370.

**PRINCIPAL PLACE OF BUSINESS**

Keasler Sales, LLC  
Plano, TX

**ESTIMATED SCHEDULE OF PROJECT**

Delivery time for the switch components is approximately 11-12 weeks. Orders will be placed upon council approval.

**FISCAL INFORMATION**

The costs for material purchased under the proposed agreement will be funded out of amounts budgeted for specific projects. The work proposed will be in the transmission category. These costs for transmission projects will ultimately be recovered through the Public Utility Commission Transmission Cost of Service Program (TCOS).

**EXHIBITS**

- Exhibit 1: Public Utilities Board Agenda Information Sheet Without Exhibits
- Exhibit 2: Sole Source Letter from Keasler Sales LLC
- Exhibit 3: Public Utilities Board Draft Minutes
- Exhibit 4: Contract

Respectfully submitted:

*Chuck Springer*

Chuck Springer, 349-8260  
Director of Finance

**PUBLIC UTILITIES BOARD AGENDA ITEM #4**

**AGENDA INFORMATION SHEET**

**AGENDA DATE:** November 11, 2013

**DEPARTMENT:** Electric Engineering

**ACM:** Howard Martin, 349-8232 

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**SUBJECT**

Consider recommending approval of a single-source contract with Pacific Air Switch Corporation (Pascor), Forest Grove, Oregon, for the purchase of Pascor vertical break switch upgrade components, which are available only from Pascor. Section 252.022 of the Texas Local Government Code exempts such purchases from the requirements of competitive procurement, with adequate departmental justification. (awarded to Pascor in an amount not to exceed \$175,370). (File #5113)

**BACKGROUND**

Denton Municipal Electric (DME) has projects in its approved Capital Improvement Plan to upgrade existing vertical break switches in the Teasley and Woodrow substations. There are seven switches in the Teasley Substation that must be upgraded and six in the Woodrow Substation. The purpose of the upgrade is to increase the current carrying capability of the switches from 1200 amps to 3000 amps. Over the next two years, the capacity of the lines serving Teasley Substation will be increased from 912 amps to 2928 amps. The rating for the lines connected to Woodrow will increase to 1464 amps initially and to 2928 in the future. With these increases in line capabilities, it is necessary to increase the ratings of the substation equipment to a level that will not cause a power flow limit for the transmission lines. Busses and breakers must also eventually be upgraded to match the capacity of the lines. The switches are the most limiting elements in the stations at this time (devices with the lowest current ratings). The picture below shows an existing Pascor switch in the Teasley Substation.

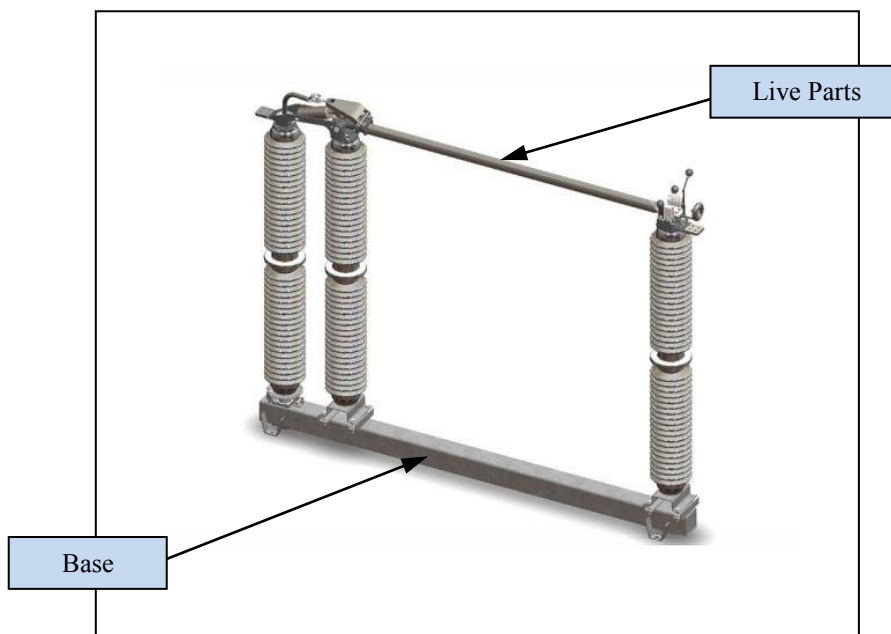


Switches are used in substations as a means of isolating equipment, busses, or transmission lines from other energized parts of the system so that maintenance or changes can be completed safely.

When Teasley and Woodrow substations were designed over 12 years ago, it was expected that the 1200 amp ratings chosen for the switches at the time would be adequate for the foreseeable future. Growth has exceeded expectations both in Denton and in the surrounding areas. This growth, which has challenged the capacities of transmission lines and equipment for DME and other utilities in the area, has been a major contributing factor to the CIP that DME has developed. For Teasley and Woodrow, the switches are the lowest rated equipment in their load flow paths and are the first equipment items to be replaced. Busses and circuit breakers will be replaced in subsequent efforts. Replacements will be timed to occur at least a year or more before analysis shows that their ratings will become a limitation. The busses in both stations are rated at 1800 amps, and circuit breakers are rated at 2000 amps. Evaluations are done each year on to verify the performance adequacy of every element in the transmission system.

Substation equipment is rated in only certain discrete ampacities. Those are 600 amps, 1200 amps, 2000 amps, 3000 amps, 4000 amps, and higher. The differences in costs for switches rated at 3000 amps and lower are not large when compared to the initial cost of the item. For example, the cost difference between a 2000 amp switch and a 3000 amp switch is only about \$1000. The initial cost of a 138kV, 3000 amp switch is between \$11,600 and \$13,500 and will vary with every bid. Switches rated above 3000 amps are much more expensive.

There are three possibilities for upgrading switches: replace live parts only (the electrical current carrying parts on the tops of the insulators), replace the switch pole assemblies (consisting of the steel base, bearings, insulators, and live parts assembled and adjusted at the factory; see picture below), or complete replacement of the entire switch, operating mechanism, and other hardware. DME has elected the second option using exact replacement assemblies, because the switch pole assemblies come completely assembled and adjusted with new insulators, and because the total cost of installation is lower. This offers an exact retrofit which will result in the quickest change out times and the shortest outage times. Exact replacement assemblies can only be purchased from the original manufacturer.



**Pascor Vertical Break Switch Assembly**  
 (Three Required for each Switch – One for each of the Three Phases)

The photo on the previous page is a picture of a Pascor switch assembly that is very similar to what will be replaced in Teasley and Woodrow. The only differences in this picture and what will be purchased are the configuration of the base and the sizes of the live parts on the tops of the insulators. These component assemblies will be mounted on the existing switch stands which were originally designed and constructed for Pascor switches. The new and higher rated switch sections will be manufactured to the exact dimensions of the original installation.

Multiple vendors manufacture quality vertical break switches that are similar to what is installed in Teasley and Woodrow substations. Each manufacturer's product is different in dimensions and arrangements. The operating mechanisms that are used to open and closed the switches are also different. Not having an exact fit for the base and the bus connection would greatly increase the amount of work required for the replacement. Using a different manufacturer's product would require that the operating mechanisms be replaced and that pipe bus connections be modified. The result would be more work and longer outages.

The cost for the Pascor switch assemblies is approximately \$26,000 higher for 13 switches than purchasing similar switches from Southern States. Southern States was the company that was awarded the contract for purchase of substation switches for CIP projects. Using Southern States switches would require replacement of the operating mechanisms and a few other items of hardware for all the switches. The operating mechanisms consist of pipes, fittings, bearings, mounting devices, operating handles, and grounding. Design would also be required to arrange for the fit of all the parts on the switch stands and for the pipe bus changes. Another item that is not apparent is that a set of interrupters would also have to be replaced on one switch in Teasley. Interrupters are devices that extinguish the electric arc that results from opening a 138kV switch under load. Interrupters are integral parts of a switch, and the mounting and operation must be designed by the manufacturer. They are not interchangeable between manufacturers. The cost

of the single set of interrupters would be just under \$21,000. That brings the difference in initial cost down to about \$5,000. Replacing the operating mechanisms and other small hardware items on all 13 switches would result in labor costs from \$15,000 to \$18,000. This does not account for costs for design, parts for modification of the pipe bus, and labor for the work on the pipe bus. While the equipment cost would be slightly lower using another Southern States switches, the additional labor cost would more than offset any initial price advantage. The total net additional cost for using Southern States switches would be in the range of \$25,000 to \$30,000. The option to upgrade the switches using Pascor components is the most practical and functional approach and provides the shortest outage times.

The Pascor upgrade components are only available from Pascor through Keasler Associates resulting in the single-source procurement.

### **OPTIONS**

1. Recommend approval of a single-source designation for Pascor for purchase of 13 vertical break switch upgrade components.
2. Not recommend approval of a single-source designation.

### **RECOMMENDATION**

DME recommends approval of a single-source designation for Pacific Air Switch Corporation (Pascor), Forest Grove, Oregon and award a single purchase contract in an amount not to exceed \$175,370.00.

### **ESTIMATED SCHEDULE**

Delivery time for switch components is approximately 11-12 weeks. Orders will be placed upon approval of the purchase.

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

There has been no prior action related to this purchase; however, the proposed purchases are consistent with project information detailed in CIP and budget presentations.

### **FISCAL INFORMATION**

The costs for material purchased under the proposed agreement will be funded out of amounts budgeted for specific projects. The work proposed will be in the transmission category. These costs for transmission projects will ultimately be recovered through the Public Utility Commission Transmission Cost of Service Program (TCOS).

### **BID INFORMATION**

Pascor switch upgrade components, as single-source items, are exempt from the competitive process. Cost information is summarized in Exhibit 1.

### **DATE SCHEDULED FOR COUNCIL APPROVAL**

November 19, 2013

**EXHIBITS**

1. Site Plans for the Teasley and Woodrow Substations
2. Single Source Letter from Pascor
3. Pricing from Pascor

Respectfully submitted:



Phil Williams  
General Manager of Electric Utilities  
Denton Municipal Electric

Prepared by:



Chuck Sears  
Transmission Engineering Manager  
Denton Municipal Electric

**pascor**

Pacific Air Switch Corporation  
2615 23rd Avenue  
Forest Grove, Oregon 97116  
(503) 359-3939  
FAX (503) 357-0858

October 16, 2013

Karen E. Smith, A.P.P.  
Assistant Purchasing Manager  
CITY OF DENTON  
901B Texas Street  
Denton, Texas 76209

Subject: Sole Source Letter File 5113

Dear Ms. Smith:

In reference to our proposal 20924M-03 submitted in response to your RFP #5071 we offer the following clarification:

The City of Denton may purchase directly from Keasler Sales, LLC at the same price and with the same terms and conditions. Please note, there are no other sources available for purchase of our products.

If you would require any further information, please do not hesitate to request same. We anxiously await your review results and thank you for your interest in our products.

With best regards,



Cynthia Miller  
Vice President

cc: File copy  
Keasler Associates



**DRAFT MINUTES**  
**PUBLIC UTILITIES BOARD**  
November 11, 2013

After determining that a quorum of the Public Utilities Board of the City of Denton, Texas is present, the Chair of the Public Utilities Board will thereafter convene into an open meeting on Monday, November 11 at 9:00 a.m. in the Service Center Training Room, City of Denton Service Center, 901A Texas Street, Denton, Texas.

Present: Chairman Dick Smith, Vice Chair Billy Cheek, Secretary Randy Robinson, Leonard Herring, Phil Gallivan Barbara Russell and Lilia Bynum

Ex Officio Members: George Campbell City Manager and Howard Martin, ACM Utilities

**OPEN MEETING:**

**ITEMS FOR INDIVIDUAL CONSIDERATION:**

4) Consider recommending approval of a single-source contract with Pacific Air Switch Corporation (Pascor), Forest Grove, Oregon, for the purchase of Pascor vertical break switch upgrade components, which are available only from Pascor. Section 252.022 of the Texas Local Government Code exempts such purchases from the requirements of competitive procurement, with adequate departmental justification (File No. 5113 - awarded to Pascor in an amount not to exceed \$175,370).

Chuck Sears, Engineering Division Manager DME, talked about this item. Sears stated this is a single source item and wanted to explain a little further. He clarified that this is a specific air switch company product. Pascor was the company name. The contract is actually through Keasler Sales LLC, which is the representative. As the system has grown capacity has increased. The switches that are being talked about are 1200 amps which are about half the capacity of the transmission lines. Staff would prefer that the substation not become a limiting element on the flow. Currently we are pushing the 1200 amp limit at this point. There are circuit breakers that are 2000 amps and BUS that is about 2400 amps in this station. Eventually all will have to be upgraded to at least the capacity of the transmission line. Switches are being handled first. Sears then showed drawings and pictures of the switches. There was some discussion regarding the switches. Sears added they prefer to purchase the switches preassembled from the factory as a total piece. It is the fastest way to change out the parts when necessary.

Outage time is expensive. Sears stated when the part of the 138 loop is replaced from Denton North to Jim Christal and Denton West back to Teasley which is about 17 miles, the cost will be approximately \$12 million. The cost of the outage time for that project has been estimated to be \$20 million. If you just replace the section as a whole then it takes much less time than replacing piece by piece. **Bynum inquired about the outages would the work be completed during the day or at night.** Sears answered it would be in an off season during the day. Brent Heath, Executive Manager of Energy Delivery, added that the outages wouldn't be seen by the customers it will be an outage in the station. **Herring asked who would bear the cost of the**

1 **\$20 million for the outage.** Sears answered the rate payers. Williams answered that is the cost  
2 of transmission congestion. John Moore, Executive Manager of Energy Delivery, added that \$20  
3 million is across billions of kilowatt hours.

4

5 **Motion was made to approve item 1 by Board Member Cheek with the second by Board**  
6 **Member Bynum. The vote was 7-0 approved.**

7

8 5) Adjournment 10:25 a.m.

**CONTRACT BY AND BETWEEN  
CITY OF DENTON, TEXAS AND KEASLER SALES, LLC  
(FILE 5113)**

**THIS CONTRACT** is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_ A.D., 2013, by and between Keasler Sales, LLC, corporation, whose address is 1721 West Plano Parkway, Suite, 203, Plano, TX 75075 hereinafter referred to as "Supplier," and the **CITY OF DENTON, TEXAS**, a home rule municipal corporation, hereinafter referred to as "City," to be effective upon approval of the Denton City Council and subsequent execution of this Contract by the Denton City Manager or his duly authorized designee.

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

**SCOPE OF SERVICES**

Supplier shall provide products in accordance with the Supplier's proposal in response thereto, a copy of which is attached hereto and incorporated herein for all purposes as **Exhibit "D"**. The Contract consists of this written agreement and the following items which are attached hereto and incorporated herein by reference:

- (a) Special Terms and Conditions (**Exhibit "A"**)
- (b) City of Denton Standard Terms and Conditions (**Exhibit "B"**)
- (c) Form CIQ – Conflict of Interest Questionnaire (**Exhibit "C"**).
- (d) Supplier's Proposal. (**Exhibit "D"**);

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

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

SUPPLIER

BY: Syd Keasler  
AUTHORIZED SIGNATURE

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

Name: SYD KEASLER

Title: PRESIDENT

972-669-4000  
PHONE NUMBER

972-669-4060  
FAX NUMBER

CITY OF DENTON, TEXAS

ATTEST:  
JENNIFER WALTERS, CITY SECRETARY

BY: \_\_\_\_\_  
GEORGE C. CAMPBELL, CITY MANAGER

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

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

APPROVED AS TO LEGAL FORM:  
ANITA BURGESS, CITY ATTORNEY

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

**Exhibit A**  
**Special Terms and Conditions**

**The Quantities** indicated on Exhibit D are estimates based upon the best available information. The City reserves the right to increase or decrease the quantities to meet its actual needs without any adjustments in the price. Individual purchase orders will be issued on an as needed basis.

**Product Changes During Contract Term**

The supplier shall not change specifications during the contract term without prior approval. Any deviation in the specifications or change in the product must be approved in advance by the City of Denton. Notice of a change shall be submitted in writing to [dentonpurchasing@cityofdenton.com](mailto:dentonpurchasing@cityofdenton.com), with the above file number in the subject line, for review. Products found to have changed specifications without notification, and acceptance, will be returned at the supplier's expense. Products that have been installed will be replaced at the supplier's expense.

**Authorized Distributor**

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

**Contract Terms**

The contract term will be one (1) year, effective from date of award.

**Price Escalation and De-escalation**

The City will implement an escalation/de-escalation price adjustment after December 15, 2013. The escalation/de-escalation will be based upon manufacturer published pricing sheets to the supplier. The price will be increased or decreased based upon the annual percentage change in the manufacturer's price list. The price adjustment will be determined quarterly from the award date. Should the change exceed or decrease a minimum threshold value of +/-1%, then the stated eligible bid prices shall be adjusted in accordance with the published price change. It is the supplier or the Cities responsibility to request a price adjustment annual in writing.

**Total Contract Amount**

The contract total shall not exceed \$175,370. Pricing shall be per Exhibit D attached.

**Delivery Lead Time**

Products will be delivered 11-12 weeks after the receipt of order from the City and verification of original switch CM&S numbers.

**Exhibit B**  
**City of Denton**  
**Standard Purchase Terms and Conditions**

These standard Terms and Conditions and the Terms and Conditions, Specifications, Drawings and other requirements included in the City of Denton's solicitation are applicable to Contracts/Purchase Orders issued by the City of Denton hereinafter referred to as the City or Buyer and the Seller herein after referred to as the Supplier. Any deviations must be in writing and signed by a representative of the City's Procurement Department and the Supplier. No Terms and Conditions contained in the Supplier's Proposal response, Invoice or Statement shall serve to modify the terms set forth herein. If there is a conflict between the provisions on the face of the Contract/Purchase Order these written provisions will take precedence.

By submitting an Offer in response to the Solicitation, the Supplier agrees that the contract shall be governed by the following terms and conditions, unless exceptions are duly noted and fully negotiated. Unless otherwise specified in the contract, Sections 3, 4, 5, 6, 7, 8, 20, 21, and 36 shall apply only to a Solicitation to purchase Goods, and Sections 9, 10, 11 and 22 shall apply only to a Solicitation to purchase Services to be performed principally at the City's premises or on public rights-of-way.

1. **SUPPLIER'S OBLIGATIONS.** The Supplier shall fully and timely provide all deliverables described in the Solicitation and in the Supplier's Offer in strict accordance with the terms, covenants, and conditions of the Contract and all applicable Federal, State, and local laws, rules, and regulations.

2. **EFFECTIVE DATE/TERM.** Unless otherwise specified in the Solicitation, this Contract shall be effective as of the date the contract is signed by the City, and shall continue in effect until all obligations are performed in accordance with the Contract.

3. **SUPPLIER TO PACKAGE DELIVERABLES:** The Supplier will package deliverables in accordance with good commercial practice and shall include a packing list showing the description of each item, the quantity and unit price unless otherwise provided in the Specifications or Supplemental Terms and Conditions, each shipping container shall be clearly and permanently marked as follows: (a) The Supplier's name and address, (b) the City's name, address and purchase order or purchase release number and the price agreement number if applicable, (c) Container number and total number of containers, e.g. box 1 of 4 boxes, and (d) the number of the container bearing the packing list. The Supplier shall bear cost of packaging. Deliverables shall be suitably packed to secure lowest transportation costs and to conform to all the requirements of common carriers and any applicable specification. The City's count or weight shall be final and conclusive on shipments not accompanied by packing lists.

4. **SHIPMENT UNDER RESERVATION PROHIBITED:** The Supplier is not authorized to ship the deliverables under reservation and no tender of a bill of lading will operate as a tender of deliverables.

5. **TITLE & RISK OF LOSS:** Title to and risk of loss of the deliverables shall pass to the City only when the City actually receives and accepts the deliverables.

6. **DELIVERY TERMS AND TRANSPORTATION CHARGES:** Deliverables shall be shipped F.O.B. point of delivery unless otherwise specified in the Supplemental Terms and Conditions. Unless otherwise stated in the Offer, the Supplier's price shall be deemed to include all delivery and transportation charges. The City shall have the right to designate what method of transportation shall be used to ship the deliverables. The place of delivery shall be that set forth the purchase order.

7. **RIGHT OF INSPECTION AND REJECTION:** The City expressly reserves all rights under law, including, but not limited to the Uniform Commercial Code, to inspect the deliverables at delivery before accepting them, and to reject defective or non-conforming deliverables. If the City has the right to inspect the Supplier's, or the Supplier's Subcontractor's, facilities, or the deliverables at the Supplier's, or the Supplier's Subcontractor's, premises, the Supplier shall furnish, or cause to be furnished, without additional charge, all reasonable facilities and assistance to the City to facilitate such inspection.

**8. NO REPLACEMENT OF DEFECTIVE TENDER:** Every tender or delivery of deliverables must fully comply with all provisions of the Contract as to time of delivery, quality, and quantity. Any non-complying tender shall constitute a breach and the Supplier shall not have the right to substitute a conforming tender; provided, where the time for performance has not yet expired, the Supplier may notify the City of the intention to cure and may then make a conforming tender within the time allotted in the contract.

**9. PLACE AND CONDITION OF WORK:** The City shall provide the Supplier access to the sites where the Supplier is to perform the services as required in order for the Supplier to perform the services in a timely and efficient manner, in accordance with and subject to the applicable security laws, rules, and regulations. The Supplier acknowledges that it has satisfied itself as to the nature of the City's service requirements and specifications, the location and essential characteristics of the work sites, the quality and quantity of materials, equipment, labor and facilities necessary to perform the services, and any other condition or state of fact which could in any way affect performance of the Supplier's obligations under the contract. The Supplier hereby releases and holds the City harmless from and against any liability or claim for damages of any kind or nature if the actual site or service conditions differ from expected conditions.

**10. WORKFORCE**

A. The Supplier shall employ only orderly and competent workers, skilled in the performance of the services which they will perform under the Contract.

B. The Supplier, its employees, subcontractors, and subcontractor's employees may not while engaged in participating or responding to a solicitation or while in the course and scope of delivering goods or services under a City of Denton contract or on the City's property .

i. use or possess a firearm, including a concealed handgun that is licensed under state law, except as required by the terms of the contract; or

ii. use or possess alcoholic or other intoxicating beverages, illegal drugs or controlled substances, nor may such workers be intoxicated, or under the influence of alcohol or drugs, on the job.

C. If the City or the City's representative notifies the Supplier that any worker is incompetent, disorderly or disobedient, has knowingly or repeatedly violated safety regulations, has possessed any firearms, or has possessed or was under the influence of alcohol or drugs on the job, the Supplier shall immediately remove such worker from Contract services, and may not employ such worker again on Contract services without the City's prior written consent.

**Immigration:** The Supplier represents and warrants that it shall comply with the requirements of the Immigration Reform and Control Act of 1986 and 1990 regarding employment verification and retention of verification forms for any individuals hired on or after November 6, 1986, who will perform any labor or services under the Contract and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA) enacted on September 30, 1996.

**11. COMPLIANCE WITH HEALTH, SAFETY, AND ENVIRONMENTAL REGULATIONS:** The Supplier, it's Subcontractors, and their respective employees, shall comply fully with all applicable federal, state, and local health, safety, and environmental laws, ordinances, rules and regulations in the performance of the services, including but not limited to those promulgated by the City and by the Occupational Safety and Health Administration (OSHA). In case of conflict, the most stringent safety requirement shall govern. The Supplier shall indemnify and hold the City harmless from and against all claims, demands, suits, actions, judgments, fines, penalties and liability of every kind arising from the breach of the Supplier's obligations under this paragraph.

**Environmental Protection:** The supplier shall be in compliance with all applicable standards, orders, or regulations issued pursuant to the mandates of the Clean Air Act (42 U.S.C. §7401 *et seq.*) and the Federal Water Pollution Control Act, as amended, (33 U.S.C. §1251 *et seq.*).

**12. INVOICES:**

A. The Supplier shall submit separate invoices in duplicate on each purchase order or purchase release after each delivery. If partial shipments or deliveries are authorized by the City, a separate invoice must be sent for each shipment or delivery made.

**B. Proper Invoices must include a unique invoice number, the purchase order or delivery order number and the master agreement number if applicable, the Department's Name, and the name of the point of contact for the Department.** Invoices shall be itemized and transportation

## Exhibit 4

charges, if any, shall be listed separately. A copy of the bill of lading and the freight waybill, when applicable, shall be attached to the invoice. The Supplier's name, remittance address and, if applicable, the tax identification number on the invoice must exactly match the information in the Vendor's registration with the City. Unless otherwise instructed in writing, the City may rely on the remittance address specified on the Supplier's invoice.

C. Invoices for labor shall include a copy of all time-sheets with trade labor rate and deliverables order number clearly identified. Invoices shall also include a tabulation of work-hours at the appropriate rates and grouped by work order number. Time billed for labor shall be limited to hours actually worked at the work site.

D. Unless otherwise expressly authorized in the Contract, the Supplier shall pass through all Subcontract and other authorized expenses at actual cost without markup.

E. Federal excise taxes, State taxes, or City sales taxes must not be included in the invoiced amount. The City will furnish a tax exemption certificate upon request.

### 13. PAYMENT:

A. All proper invoices need to be sent to Accounts Payable. Approved invoices will be paid within thirty (30) calendar days of the City's receipt of the deliverables or of the invoice being received in Accounts Payable, whichever is later.

**B. If payment is not timely made, (per paragraph A); interest shall accrue on the unpaid balance at the lesser of the rate specified in Texas Government Code Section 2251.025 or the maximum lawful rate; except, if payment is not timely made for a reason for which the City may withhold payment hereunder, interest shall not accrue until ten (10) calendar days after the grounds for withholding payment have been resolved.**

C. If partial shipments or deliveries are authorized by the City, the Supplier will be paid for the partial shipment or delivery, as stated above, provided that the invoice matches the shipment or delivery.

D. The City may withhold or set off the entire payment or part of any payment otherwise due the Supplier to such extent as may be necessary on account of:

- i. delivery of defective or non-conforming deliverables by the Supplier;
- ii. third party claims, which are not covered by the insurance which the Supplier is required to provide, are filed or reasonable evidence indicating probable filing of such claims;
- iii. failure of the Supplier to pay Subcontractors, or for labor, materials or equipment;
- iv. damage to the property of the City or the City's agents, employees or suppliers, which is not covered by insurance required to be provided by the Supplier;
- v. reasonable evidence that the Supplier's obligations will not be completed within the time specified in the Contract, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
- vi. failure of the Supplier to submit proper invoices with purchase order number, with all required attachments and supporting documentation; or
- vii. failure of the Supplier to comply with any material provision of the Contract Documents.

E. Notice is hereby given that any awarded firm who is in arrears to the City of Denton for delinquent taxes, the City may offset indebtedness owed the City through payment withholding.

F. Payment will be made by check unless the parties mutually agree to payment by credit card or electronic transfer of funds. The Supplier agrees that there shall be no additional charges, surcharges, or penalties to the City for payments made by credit card or electronic funds transfer.

G. The awarding or continuation of this contract is dependent upon the availability of funding. The City's payment obligations are payable only and solely from funds Appropriated and available for this contract. The absence of Appropriated or other lawfully available funds shall render the Contract null and void to the extent funds are not Appropriated or available and any deliverables delivered but unpaid shall be returned to the Supplier. The City shall provide the Supplier written notice of the failure of the City to make an adequate Appropriation for any fiscal year to pay the amounts due under the Contract, or the reduction of any Appropriation to an amount insufficient to permit the City to pay its obligations under the Contract. In the event of none or inadequate appropriation of funds, there will be no penalty nor removal fees charged to the City.

14. **TRAVEL EXPENSES:** All travel, lodging and per diem expenses in connection with the Contract shall be paid by the Supplier, unless otherwise stated in the contract terms.

### 15. FINAL PAYMENT AND CLOSE-OUT:



## Exhibit 4

A. If a DBE/MBE/WBE Program Plan is agreed to and the Supplier has identified Subcontractors, the Supplier is required to submit a Contract Close-Out MBE/WBE Compliance Report to the Purchasing Manager no later than the 15th calendar day after completion of all work under the contract. Final payment, retainage, or both may be withheld if the Supplier is not in compliance with the requirements as accepted by the City.

B. The making and acceptance of final payment will constitute:

i. a waiver of all claims by the City against the Supplier, except claims (1) which have been previously asserted in writing and not yet settled, (2) arising from defective work appearing after final inspection, (3) arising from failure of the Supplier to comply with the Contract or the terms of any warranty specified herein, (4) arising from the Supplier's continuing obligations under the Contract, including but not limited to indemnity and warranty obligations, or (5) arising under the City's right to audit; and ii. a waiver of all claims by the Supplier against the City other than those previously asserted in writing and not yet settled.

**16. SPECIAL TOOLS & TEST EQUIPMENT:** If the price stated on the Offer includes the cost of any special tooling or special test equipment fabricated or required by the Supplier for the purpose of filling this order, such special tooling equipment and any process sheets related thereto shall become the property of the City and shall be identified by the Supplier as such.

### **17. RIGHT TO AUDIT:**

A. The City shall have the right to audit and make copies of the books, records and computations pertaining to the Contract. The Supplier shall retain such books, records, documents and other evidence pertaining to the Contract period and five years thereafter, except if an audit is in progress or audit findings are yet unresolved, in which case records shall be kept until all audit tasks are completed and resolved. These books, records, documents and other evidence shall be available, within ten (10) business days of written request. Further, the Supplier shall also require all Subcontractors, material suppliers, and other payees to retain all books, records, documents and other evidence pertaining to the Contract, and to allow the City similar access to those documents. All books and records will be made available within a 50 mile radius of the City of Denton. The cost of the audit will be borne by the City unless the audit reveals an overpayment of 1% or greater. If an overpayment of 1% or greater occurs, the reasonable cost of the audit, including any travel costs, must be borne by the Supplier which must be payable within five (5) business days of receipt of an invoice.

B. Failure to comply with the provisions of this section shall be a material breach of the Contract and shall constitute, in the City's sole discretion, grounds for termination thereof. Each of the terms "books", "records", "documents" and "other evidence", as used above, shall be construed to include drafts and electronic files, even if such drafts or electronic files are subsequently used to generate or prepare a final printed document.

### **18. SUBCONTRACTORS:**

A. If the Supplier identified Subcontractors in a DBE/MBE/WBE agreed to Plan, the Supplier shall comply with all requirements approved by the City. The Supplier shall not initially employ any Subcontractor except as provided in the Supplier's Plan. The Supplier shall not substitute any Subcontractor identified in the Plan, unless the substitute has been accepted by the City in writing. No acceptance by the City of any Subcontractor shall constitute a waiver of any rights or remedies of the City with respect to defective deliverables provided by a Subcontractor. If a Plan has been approved, the Supplier is additionally required to submit a monthly Subcontract Awards and Expenditures Report to the Procurement Manager, no later than the tenth calendar day of each month.

B. Work performed for the Supplier by a Subcontractor shall be pursuant to a written contract between the Supplier and Subcontractor. The terms of the subcontract may not conflict with the terms of the Contract, and shall contain provisions that:

i. require that all deliverables to be provided by the Subcontractor be provided in strict accordance with the provisions, specifications and terms of the Contract;

ii. prohibit the Subcontractor from further subcontracting any portion of the Contract without the prior written consent of the City and the Supplier. The City may require, as a condition to such further subcontracting, that the Subcontractor post a payment bond in form, substance and amount acceptable to the City;

iii. require Subcontractors to submit all invoices and applications for payments, including any claims for additional payments, damages or otherwise, to the Supplier in sufficient time to enable the Supplier to include same with its invoice or application for payment to the City in accordance with the terms of the Contract;

iv. require that all Subcontractors obtain and maintain, throughout the term of their contract, insurance in the type and amounts specified for the Supplier, with the City being a named insured as its interest shall appear; and

v. require that the Subcontractor indemnify and hold the City harmless to the same extent as the Supplier is required to indemnify the City.

## Exhibit 4

C. The Supplier shall be fully responsible to the City for all acts and omissions of the Subcontractors just as the Supplier is responsible for the Supplier's own acts and omissions. Nothing in the Contract shall create for the benefit of any such Subcontractor any contractual relationship between the City and any such Subcontractor, nor shall it create any obligation on the part of the City to pay or to see to the payment of any moneys due any such Subcontractor except as may otherwise be required by law.

D. The Supplier shall pay each Subcontractor its appropriate share of payments made to the Supplier not later than ten (10) calendar days after receipt of payment from the City.

### 19. WARRANTY-PRICE:

A. The Supplier warrants the prices quoted in the Offer are no higher than the Supplier's current prices on orders by others for like deliverables under similar terms of purchase.

B. The Supplier certifies that the prices in the Offer have been arrived at independently without consultation, communication, or agreement for the purpose of restricting competition, as to any matter relating to such fees with any other firm or with any competitor.

C. In addition to any other remedy available, the City may deduct from any amounts owed to the Supplier, or otherwise recover, any amounts paid for items in excess of the Supplier's current prices on orders by others for like deliverables under similar terms of purchase.

20. **WARRANTY – TITLE:** The Supplier warrants that it has good and indefeasible title to all deliverables furnished under the Contract, and that the deliverables are free and clear of all liens, claims, security interests and encumbrances. The Supplier shall indemnify and hold the City harmless from and against all adverse title claims to the deliverables.

21. **WARRANTY – DELIVERABLES:** The Supplier warrants and represents that all deliverables sold the City under the Contract shall be free from defects in design, workmanship or manufacture, and conform in all material respects to the specifications, drawings, and descriptions in the Solicitation, to any samples furnished by the Supplier, to the terms, covenants and conditions of the Contract, and to all applicable State, Federal or local laws, rules, and regulations, and industry codes and standards. Unless otherwise stated in the Solicitation, the deliverables shall be new or recycled merchandise, and not used or reconditioned.

A. Recycled deliverables shall be clearly identified as such.

B. The Supplier may not limit, exclude or disclaim the foregoing warranty or any warranty implied by law; and any attempt to do so shall be without force or effect.

C. Unless otherwise specified in the Contract, the warranty period shall be at least one year from the date of acceptance of the deliverables or from the date of acceptance of any replacement deliverables. If during the warranty period, one or more of the above warranties are breached, the Supplier shall promptly upon receipt of demand either repair the non-conforming deliverables, or replace the non-conforming deliverables with fully conforming deliverables, at the City's option and at no additional cost to the City. All costs incidental to such repair or replacement, including but not limited to, any packaging and shipping costs shall be borne exclusively by the Supplier. The City shall endeavor to give the Supplier written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach of warranty, but failure to give timely notice shall not impair the City's rights under this section.

D. If the Supplier is unable or unwilling to repair or replace defective or non-conforming deliverables as required by the City, then in addition to any other available remedy, the City may reduce the quantity of deliverables it may be required to purchase under the Contract from the Supplier, and purchase conforming deliverables from other sources. In such event, the Supplier shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such deliverables from another source.

E. If the Supplier is not the manufacturer, and the deliverables are covered by a separate manufacturer's warranty, the Supplier shall transfer and assign such manufacturer's warranty to the City. If for any reason the manufacturer's warranty cannot be fully transferred to the City, the Supplier shall assist and cooperate with the City to the fullest extent to enforce such manufacturer's warranty for the benefit of the City.

22. **WARRANTY – SERVICES:** The Supplier warrants and represents that all services to be provided the City under the Contract will be fully and timely performed in a good and workmanlike manner in accordance with generally accepted industry standards and practices, the terms, conditions, and covenants of the Contract, and all applicable Federal, State and local laws, rules or regulations.

A. The Supplier may not limit, exclude or disclaim the foregoing warranty or any warranty implied by law, and any attempt to do so shall be without force or effect.

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B. Unless otherwise specified in the Contract, the warranty period shall be at least one year from the Acceptance Date. If during the warranty period, one or more of the above warranties are breached, the Supplier shall promptly upon receipt of demand perform the services again in accordance with above standard at no additional cost to the City. All costs incidental to such additional performance shall be borne by the Supplier. The City shall endeavor to give the Supplier written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach warranty, but failure to give timely notice shall not impair the City's rights under this section.

C. If the Supplier is unable or unwilling to perform its services in accordance with the above standard as required by the City, then in addition to any other available remedy, the City may reduce the amount of services it may be required to purchase under the Contract from the Supplier, and purchase conforming services from other sources. In such event, the Supplier shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such services from another source.

**23. ACCEPTANCE OF INCOMPLETE OR NON-CONFORMING DELIVERABLES:** If, instead of requiring immediate correction or removal and replacement of defective or non-conforming deliverables, the City prefers to accept it, the City may do so. The Supplier shall pay all claims, costs, losses and damages attributable to the City's evaluation of and determination to accept such defective or non-conforming deliverables. If any such acceptance occurs prior to final payment, the City may deduct such amounts as are necessary to compensate the City for the diminished value of the defective or non-conforming deliverables. If the acceptance occurs after final payment, such amount will be refunded to the City by the Supplier.

**24. RIGHT TO ASSURANCE:** Whenever one party to the Contract in good faith has reason to question the other party's intent to perform, demand may be made to the other party for written assurance of the intent to perform. In the event that no assurance is given within the time specified after demand is made, the demanding party may treat this failure as an anticipatory repudiation of the Contract.

**25. STOP WORK NOTICE:** The City may issue an immediate Stop Work Notice in the event the Supplier is observed performing in a manner that is in violation of Federal, State, or local guidelines, or in a manner that is determined by the City to be unsafe to either life or property. Upon notification, the Supplier will cease all work until notified by the City that the violation or unsafe condition has been corrected. The Supplier shall be liable for all costs incurred by the City as a result of the issuance of such Stop Work Notice.

**26. DEFAULT:** The Supplier shall be in default under the Contract if the Supplier (a) fails to fully, timely and faithfully perform any of its material obligations under the Contract, (b) fails to provide adequate assurance of performance under Paragraph 24, (c) becomes insolvent or seeks relief under the bankruptcy laws of the United States or (d) makes a material misrepresentation in Supplier's Offer, or in any report or deliverable required to be submitted by the Supplier to the City.

**27. TERMINATION FOR CAUSE:** In the event of a default by the Supplier, the City shall have the right to terminate the Contract for cause, by written notice effective ten (10) calendar days, unless otherwise specified, after the date of such notice, unless the Supplier, within such ten (10) day period, cures such default, or provides evidence sufficient to prove to the City's reasonable satisfaction that such default does not, in fact, exist. In addition to any other remedy available under law or in equity, the City shall be entitled to recover all actual damages, costs, losses and expenses, incurred by the City as a result of the Supplier's default, including, without limitation, cost of cover, reasonable attorneys' fees, court costs, and prejudgment and post-judgment interest at the maximum lawful rate. Additionally, in the event of a default by the Supplier, the City may remove the Supplier from the City's vendor list for three (3) years and any Offer submitted by the Supplier may be disqualified for up to three (3) years. All rights and remedies under the Contract are cumulative and are not exclusive of any other right or remedy provided by law.

**28. TERMINATION WITHOUT CAUSE:** The City shall have the right to terminate the Contract, in whole or in part, without cause any time upon thirty (30) calendar days' prior written notice. Upon receipt of a notice of termination, the Supplier shall promptly cease all further work pursuant to the Contract, with such exceptions, if any, specified in the notice of termination. The City shall pay the Supplier, to the extent of funds Appropriated or otherwise legally available for such purposes, for all goods delivered and services performed and obligations incurred prior to the date of termination in accordance with the terms hereof.

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

may result in legal action.

**30. DELAYS:**

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

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

**31. INDEMNITY: A. Definitions:**

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

**B. THE SUPPLIER SHALL DEFEND (AT THE OPTION OF THE CITY), INDEMNIFY, AND HOLD THE CITY, ITS SUCCESSORS, ASSIGNS, OFFICERS, EMPLOYEES AND ELECTED OFFICIALS HARMLESS FROM AND AGAINST ALL INDEMNIFIED CLAIMS DIRECTLY ARISING OUT OF, INCIDENT TO, CONCERNING OR RESULTING FROM THE FAULT OF THE SUPPLIER, OR THE SUPPLIER'S AGENTS, EMPLOYEES OR SUBCONTRACTORS, IN THE PERFORMANCE OF THE SUPPLIER'S OBLIGATIONS UNDER THE CONTRACT. NOTHING HEREIN SHALL BE DEEMED TO LIMIT THE RIGHTS OF THE CITY OR THE SUPPLIER (INCLUDING, BUT NOT LIMITED TO, THE RIGHT TO SEEK CONTRIBUTION) AGAINST ANY THIRD PARTY WHO MAY BE LIABLE FOR AN INDEMNIFIED CLAIM.**

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

**A. General Requirements.**

i. The Supplier shall at a minimum carry insurance in the types and amounts indicated and agreed to, as submitted to the City and approved by the City within the procurement process, for the duration of the Contract, including extension options and hold over periods, and during any warranty period.

ii. The Supplier shall provide Certificates of Insurance with the coverage's and endorsements required to the City as verification of coverage prior to contract execution and within fourteen (14) calendar days after written request from the City. Failure to provide the required Certificate of Insurance may subject the Offer to disqualification from consideration for award. The Supplier must also forward a Certificate of Insurance to the City whenever a previously identified policy period has expired, or an extension option or hold over period is exercised, as verification of continuing coverage.

iii. The Supplier shall not commence work until the required insurance is obtained and until such insurance has been reviewed by the City. Approval of insurance by the City shall not relieve or decrease the liability of the Supplier hereunder and shall not be construed to be a limitation of liability on the part of the Supplier.

iv. The Supplier must submit certificates of insurance to the City for all subcontractors prior to the

subcontractors commencing work on the project.

v. The Supplier's and all subcontractors' insurance coverage shall be written by companies licensed to do business in the State of Texas at the time the policies are issued and shall be written by companies with A.M. Best ratings of **A- VII or better**. The City will accept workers' compensation coverage written by the Texas Workers' Compensation Insurance Fund.

vi. All endorsements naming the City as additional insured, waivers, and notices of cancellation endorsements as well as the Certificate of Insurance shall contain the solicitation number and the following information:

City of Denton  
Materials Management Department  
901B Texas Street  
Denton, Texas 76209

vii. The "other" insurance clause shall not apply to the City where the City is an additional insured shown on any policy. It is intended that policies required in the Contract, covering both the City and the Supplier, shall be considered primary coverage as applicable.

viii. If insurance policies are not written for amounts agreed to with the City, the Supplier shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.

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

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

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

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

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

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

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

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

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

**35. RIGHTS TO BID, PROPOSAL AND CONTRACTUAL MATERIAL:** All material submitted by the Supplier to the City shall become property of the City upon receipt. Any portions of such material claimed by the Supplier to be proprietary must be clearly marked as such. Determination of the public nature of the material is subject to the Texas Public Information Act, Chapter 552, and Texas Government Code.

**36. NO WARRANTY BY CITY AGAINST INFRINGEMENTS:** The Supplier represents and warrants to the City that: (i) the Supplier shall provide the City good and indefeasible title to the deliverables and (ii) the deliverables supplied by the Supplier in accordance with the specifications in the Contract will not infringe, directly or contributorily, any patent, trademark, copyright, trade secret, or any other intellectual property right of any kind of any third party; that no claims have been made by any person or entity with respect to the ownership or operation of the deliverables and the Supplier does not know of any valid basis for any such claims. The Supplier shall, at its sole expense, defend, indemnify, and hold the City harmless from and against all liability, damages, and costs (including court costs and reasonable fees of attorneys and other professionals) arising out of or resulting from: (i) any claim that the City's exercise anywhere in the world of the rights associated with the City's ownership, and if applicable, license rights, and its use of the deliverables infringes the intellectual property rights of any third party; or (ii) the Supplier's breach of any of Supplier's representations or warranties stated in this Contract. In the event of any such claim, the City shall have the right to monitor such claim or at its option engage its own separate counsel to act as co-counsel on the City's behalf. Further, Supplier agrees that the City's specifications regarding the deliverables shall in no way diminish Supplier's warranties or obligations under this paragraph and the City makes no warranty that the production, development, or delivery of such deliverables will not impact such warranties of Supplier.

**37. CONFIDENTIALITY:** In order to provide the deliverables to the City, Supplier may require access to certain of the City's and/or its licensors' confidential information (including inventions, employee information, trade secrets, confidential know-how, confidential business information, and other information which the City or its licensors consider confidential) (collectively, "Confidential Information"). Supplier acknowledges and agrees that the Confidential Information is the valuable property of the City and/or its licensors and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information will substantially injure the City and/or its licensors. The Supplier (including its employees, subcontractors, agents, or representatives) agrees that it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate, or otherwise use the Confidential Information without the prior written consent of the City or in a manner not expressly permitted under this Agreement, unless the Confidential Information is required to be disclosed by law or an order of any court or other governmental authority with proper jurisdiction, provided the Supplier promptly notifies the City before disclosing such information so as to permit the City reasonable time to seek an appropriate protective order. The Supplier agrees to use protective measures no less stringent than the Supplier uses within its own business to protect its own most valuable information, which protective measures shall under all circumstances be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.

**38. OWNERSHIP AND USE OF DELIVERABLES:** The City shall own all rights, titles, and interests throughout the world in and to the deliverables.

A. Patents. As to any patentable subject matter contained in the deliverables, the Supplier agrees to disclose such patentable subject matter to the City. Further, if requested by the City, the Supplier agrees to assign and, if necessary, cause each of its employees to assign the entire right, title, and interest to specific inventions under such patentable subject matter to the City and to execute, acknowledge, and deliver and, if necessary, cause each of its employees to execute, acknowledge, and deliver an assignment of letters patent, in a form to be reasonably approved by the City, to the City upon request by the City.

B. Copyrights. As to any deliverables containing copyrightable subject matter, the Supplier agrees that upon their creation, such deliverables shall be considered as work made-for-hire by the Supplier for the City and the City shall own all copyrights in and to such deliverables, provided however, that nothing in this Paragraph 38 shall negate the City's sole or joint ownership of any such deliverables arising by virtue of the City's sole or joint authorship of such deliverables. Should by operation of law, such deliverables not be considered works made-for-hire, the Supplier hereby assigns to the City (and agrees to cause each of its employees providing services to the City hereunder to execute, acknowledge, and deliver an assignment to the City of) all worldwide right, title, and interest in and to such deliverables. With respect to such work made-for-hire, the Supplier agrees to execute, acknowledge, and deliver and cause each of its employees providing services to the City hereunder to execute, acknowledge, and deliver a work-made-for-hire agreement, in a form to be reasonably approved by the City, to the City upon delivery of such deliverables to the City or at such other time as the City may request.

C. Additional Assignments. The Supplier further agrees to, and if applicable, cause each of its employees to, execute, acknowledge, and deliver all applications, specifications, oaths, assignments, and all other instruments which the City might reasonably deem necessary in order to apply for and obtain copyright protection, mask work registration, trademark registration and/or protection, letters patent, or any similar rights in any and all countries and in order to assign and convey to the City, its successors, assigns and nominees, the sole and exclusive right, title, and interest in and to the deliverables. The Supplier's obligations to execute, acknowledge, and deliver (or cause to be executed, acknowledged, and delivered) instruments or papers such as those described in this Paragraph 38 a., b., and c. shall continue after the termination of this Contract with respect to such deliverables. In the event the City should not seek to obtain copyright protection, mask work registration or patent protection for any of the deliverables, but should desire to keep the same secret, the Supplier agrees to treat the same as Confidential Information under the terms of Paragraph 37 above.

39. **PUBLICATIONS:** All published material and written reports submitted under the Contract must be originally developed material unless otherwise specifically provided in the Contract. When material not originally developed is included in a report in any form, the source shall be identified.

40. **ADVERTISING:** The Supplier shall not advertise or publish, without the City's prior consent, the fact that the City has entered into the Contract, except to the extent required by law.

41. **NO CONTINGENT FEES:** The Supplier warrants that no person or selling agency has been employed or retained to solicit or secure the Contract upon any agreement or understanding for commission, percentage, brokerage, or contingent fee, excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Supplier for the purpose of securing business. For breach or violation of this warranty, the City shall have the right, in addition to any other remedy available, to cancel the Contract without liability and to deduct from any amounts owed to the Supplier, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

42. **GRATUITIES:** The City may, by written notice to the Supplier, cancel the Contract without liability if it is determined by the City that gratuities were offered or given by the Supplier or any agent or representative of the Supplier to any officer or employee of the City of Denton with a view toward securing the Contract or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performing of such contract. In the event the Contract is canceled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the Supplier in providing such gratuities.

43. **PROHIBITION AGAINST PERSONAL INTEREST IN CONTRACTS:** No officer, employee, independent consultant, or elected official of the City who is involved in the development, evaluation, or decision-making process of the performance of any solicitation shall have a financial interest, direct or indirect, in the Contract resulting from that solicitation. Any willful violation of this section shall constitute impropriety in office, and any officer or employee guilty thereof shall be subject to disciplinary action up to and including dismissal. Any violation of this provision, with the knowledge, expressed or implied, of the Supplier shall render the Contract voidable by the City. The Supplier shall complete and submit the City's Conflict of Interest Questionnaire (**Attachment B**).

44. **INDEPENDENT SUPPLIER:** The Contract shall not be construed as creating an employer/employee relationship, a partnership, or a joint venture. The Supplier's services shall be those of an independent supplier. The Supplier agrees and understands that the Contract does not grant any rights or privileges established for employees of the City of Denton, Texas for the purposes of income tax, withholding, social security taxes, vacation or sick leave benefits, worker's compensation, or any other City employee benefit. The City shall not have supervision and control of the Supplier or any employee of the Supplier, and it is expressly understood that Supplier shall perform the services hereunder according to the attached specifications at the general direction of the City Manager of the City of Denton, Texas, or his designee under this agreement.

45. **ASSIGNMENT-DELEGATION:** The Contract shall be binding upon and ensure to the benefit of the City and the Supplier and their respective successors and assigns, provided however, that no right or interest in the Contract shall be assigned and no obligation shall be delegated by the Supplier without the prior written consent of the City. Any attempted assignment or delegation by the Supplier shall be void unless made in conformity with this paragraph. The Contract is not intended to confer rights or benefits on any person, firm or entity not a party hereto; it

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being the intention of the parties that there are no third party beneficiaries to the Contract.

46. **WAIVER:** No claim or right arising out of a breach of the Contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. No waiver by either the Supplier or the City of any one or more events of default by the other party shall operate as, or be construed to be, a permanent waiver of any rights or obligations under the Contract, or an express or implied acceptance of any other existing or future default or defaults, whether of a similar or different character.

47. **MODIFICATIONS:** The Contract can be modified or amended only by a writing signed by both parties. No pre-printed or similar terms on any the Supplier invoice, order or other document shall have any force or effect to change the terms, covenants, and conditions of the Contract.

48. **INTERPRETATION:** The Contract is intended by the parties as a final, complete and exclusive statement of the terms of their agreement. No course of prior dealing between the parties or course of performance or usage of the trade shall be relevant to supplement or explain any term used in the Contract. Although the Contract may have been substantially drafted by one party, it is the intent of the parties that all provisions be construed in a manner to be fair to both parties, reading no provisions more strictly against one party or the other. Whenever a term defined by the Uniform Commercial Code, as enacted by the State of Texas, is used in the Contract, the UCC definition shall control, unless otherwise defined in the Contract.

**49. DISPUTE RESOLUTION:**

A. If a dispute arises out of or relates to the Contract, or the breach thereof, the parties agree to negotiate prior to prosecuting a suit for damages. However, this section does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. Either party may make a written request for a meeting between representatives of each party within fourteen (14) calendar days after receipt of the request or such later period as agreed by the parties. Each party shall include, at a minimum, one (1) senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within thirty (30) calendar days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will proceed directly to mediation as described below. Negotiation may be waived by a written agreement signed by both parties, in which event the parties may proceed directly to mediation as described below.

B. If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within thirty (30) calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option; the City and the Supplier agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in the Contract prevents the parties from relying on the skills of a person who is trained in the subject matter of the dispute or a contract interpretation expert. If the parties fail to agree on a mediator within thirty (30) calendar days of initiation of the mediation process, the mediator shall be selected by the Denton County Alternative Dispute Resolution Program (DCAP). The parties agree to participate in mediation in good faith for up to thirty (30) calendar days from the date of the first mediation session. The City and the Supplier will share the mediator's fees equally and the parties will bear their own costs of participation such as fees for any consultants or attorneys they may utilize to represent them or otherwise assist them in the mediation.

50. **JURISDICTION AND VENUE:** The Contract is made under and shall be governed by the laws of the State of Texas, including, when applicable, the Uniform Commercial Code as adopted in Texas, V.T.C.A., Bus. & Comm. Code, Chapter 1, excluding any rule or principle that would refer to and apply the substantive law of another state or jurisdiction. All issues arising from this Contract shall be resolved in the courts of Denton County, Texas and the parties agree to submit to the exclusive personal jurisdiction of such courts. The foregoing, however, shall not be construed or interpreted to limit or restrict the right or ability of the City to seek and secure injunctive relief from any competent authority as contemplated herein.

51. **INVALIDITY:** The invalidity, illegality, or unenforceability of any provision of the Contract shall in no way affect the validity or enforceability of any other portion or provision of the Contract. Any void provision shall be deemed severed from the Contract and the balance of the Contract shall be construed and enforced as if the Contract did not contain the particular portion or provision held to be void. The parties further agree to reform the Contract to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken



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provision. The provisions of this section shall not prevent this entire Contract from being void should a provision which is the essence of the Contract be determined to be void.

**52. HOLIDAYS:** The following holidays are observed by the City

New Year's Day (observed)
MLK Day
Memorial Day
4th of July
Labor Day
Thanksgiving Day
Day After Thanksgiving
Christmas Eve (observed)
Christmas Day (observed)
New Year's Day (observed)

If a Legal Holiday falls on Saturday, it will be observed on the preceding Friday. If a Legal Holiday falls on Sunday, it will be observed on the following Monday. Normal hours of operation shall be between 8:00 am and 4:00 pm, Monday through Friday, excluding City of Denton Holidays. Any scheduled deliveries or work performance not within the normal hours of operation **must be approved** by the City Manager of Denton, Texas or his authorized designee.

**53. SURVIVABILITY OF OBLIGATIONS:** All provisions of the Contract that impose continuing obligations on the parties, including but not limited to the warranty, indemnity, and confidentiality obligations of the parties, shall survive the expiration or termination of the Contract.

**54. NON-SUSPENSION OR DEBARMENT CERTIFICATION:**

The City of Denton is prohibited from contracting with or making prime or sub-awards to parties that are suspended or debarred or whose principals are suspended or debarred from Federal, State, or City of Denton Contracts. By accepting a Contract with the City, the Vendor certifies that its firm and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Denton.

**55. EQUAL OPPORTUNITY**

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

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

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

The following federally funded requirements are applicable, in addition to the specific federally funded requirements.

A. Definitions. As used in this paragraph –

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

ii. "Cost of components" means -

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

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

iii. "Domestic end product" means-

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

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

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

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

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

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

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

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

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

**58. LICENSE FEES OR TAXES:** Provided the solicitation requires an awarded supplier or supplier to be licensed by the State of Texas, any and all fees and taxes are the responsibility of the supplier.

**59. PREVAILING WAGE RATES:** All suppliers will be required to comply with Provision 5159a of "Vernon's Annotated Civil Statutes" of the State of Texas with respect to the payment of prevailing wage rates and prohibiting discrimination in the employment practices.

<http://www.access.gpo.gov/davisbacon/tx.html>

**60. COMPLIANCE WITH ALL STATE, FEDERAL, AND LOCAL LAWS:** The contractor or supplier shall comply with all State, Federal, and Local laws and requirements. The Supplier must comply with all applicable laws at all times, including, without limitation, the following: (i) §36.02 of the Texas Penal Code, which prohibits bribery; (ii) §36.09 of the Texas Penal Code, which prohibits the offering or conferring of benefits to public servants. The Supplier shall give all notices and comply with all laws and regulations applicable to furnishing and performance of the Contract.

**61. FEDERAL, STATE, AND LOCAL REQUIREMENTS:** Supplier shall demonstrate on-site compliance with the Federal Tax Reform Act of 1986, Section 1706, amending Section 530 of the Revenue Act of 1978, dealing with issuance of Form W-2's to common law employees. Supplier is responsible for both federal and State unemployment insurance coverage and standard Worker's Compensation insurance coverage. Supplier shall ensure compliance with all federal and State tax laws and withholding requirements. The City of Denton shall not be liable to Supplier or its employees for any Unemployment or Workers' Compensation coverage, or federal or State withholding requirements. Supplier shall indemnify the City of Denton and shall pay all costs, penalties, or losses resulting from Supplier's omission or breach of this Section.

**62. DRUG FREE WORKPLACE:** The supplier shall comply with the applicable provisions of the Drug-Free Work Place Act of 1988 (Public Law 100-690, Title V, Subtitle D; 41 U.S.C. 701 ET SEQ.) and maintain a drug-free work environment; and the final rule, government-wide requirements for drug-free work place (grants), issued by the Office of Management and Budget and the Department of Defense (32 CFR Part 280, Subpart F) to implement the provisions of the Drug-Free Work Place Act of 1988 is incorporated by reference and the supplier shall comply with the relevant provisions thereof, including any amendments to the final rule that may hereafter be issued.

**63. SUPPLIER LIABILITY FOR DAMAGE TO GOVERNMENT PROPERTY:** The Supplier shall be liable for all damages to government-owned, leased, or occupied property and equipment caused by the Supplier and its employees, agents, subcontractors, and suppliers, including any delivery or cartage company, in connection with any

## Exhibit 4

performance pursuant to the Contract. The Supplier shall notify the City of Denton Procurement Manager in writing of any such damage within one (1) calendar day.

**64. FORCE MAJEURE:** The City of Denton, any Customer, and the Supplier shall not be responsible for performance under the Contract should it be prevented from performance by an act of war, order of legal authority, act of God, or other unavoidable cause not attributable to the fault or negligence of the City of Denton. In the event of an occurrence under this Section, the Supplier will be excused from any further performance or observance of the requirements so affected for as long as such circumstances prevail and the Supplier continues to use commercially reasonable efforts to recommence performance or observance whenever and to whatever extent possible without delay. The Supplier shall immediately notify the City of Denton Procurement Manager by telephone (to be confirmed in writing within five (5) calendar days of the inception of such occurrence) and describe at a reasonable level of detail the circumstances causing the non-performance or delay in performance.

**65. NON-WAIVER OF RIGHTS:** Failure of a Party to require performance by another Party under the Contract will not affect the right of such Party to require performance in the future. No delay, failure, or waiver of either Party's exercise or partial exercise of any right or remedy under the Contract shall operate to limit, impair, preclude, cancel, waive or otherwise affect such right or remedy. A waiver by a Party of any breach of any term of the Contract will not be construed as a waiver of any continuing or succeeding breach.

**66. NO WAIVER OF SOVEREIGN IMMUNITY:** The Parties expressly agree that no provision of the Contract is in any way intended to constitute a waiver by the City of Denton of any immunities from suit or from liability that the City of Denton may have by operation of law.

**67. RECORDS RETENTION:** The Supplier shall retain all financial records, supporting documents, statistical records, and any other records or books relating to the performances called for in the Contract. The Supplier shall retain all such records for a period of four (4) years after the expiration of the Contract, or until the CPA or State Auditor's Office is satisfied that all audit and litigation matters are resolved, whichever period is longer. The Supplier shall grant access to all books, records and documents pertinent to the Contract to the CPA, the State Auditor of Texas, and any federal governmental entity that has authority to review records due to federal funds being spent under the Contract.

EXHIBIT C

<b>CONFLICT OF INTEREST QUESTIONNAIRE</b>		<b>FORM CIQ</b>
<b>For vendor or other person doing business with local governmental entity</b>		
<b>This questionnaire reflects changes made to the law by H.B. 1491, 80th Leg., Regular Session.</b>		<b>OFFICE USE ONLY</b>
<p>This questionnaire is being filed in accordance with chapter 176 of the Local Government Code by a person who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the person meets requirements under Section 176.006(a).</p> <p>By law this questionnaire must be filed with the records administrator of the local government entity not later than the 7th business day after the date the person becomes aware of facts that require the statement to be filed. See Section 176.006, Local Government Code.</p> <p>A person commits an offense if the person knowingly violates Section 176.006, Local Government Code. An offense under this section is a Class C misdemeanor.</p>		Date Received
<b>1</b>	Name of person who has a business relationship with local governmental entity.  <div style="text-align: center; font-size: 1.2em; font-family: cursive;">SYD KEASLER</div>	
<b>2</b>	<input type="checkbox"/> Check this box if you are filing an update to a previously filed questionnaire.  (The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7 <sup>th</sup> business day after the date the originally filed questionnaire becomes incomplete or inaccurate.)	
<b>3</b>	Name of local government officer with whom filer has an employment or business relationship.  <div style="text-align: center; font-size: 1.2em; font-family: cursive;">NONE</div> _____ Name of Officer	
This section, (item 3 including subparts A, B, C & D), must be completed for each officer with whom the filer has an employment or other business relationship as defined by Section 176.001(1-a), Local Government Code. Attach additional pages to this Form CIQ as necessary.		
A. Is the local government officer named in this section receiving or likely to receive taxable income, other than investment income, from the filer of the questionnaire?  <input type="checkbox"/> Yes <input type="checkbox"/> No		
B. Is the filer of the questionnaire receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer named in this section AND the taxable income is not received from the local governmental entity?  <input type="checkbox"/> Yes <input type="checkbox"/> No		
C. Is the filer of this questionnaire employed by a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership of 10 percent or more?  <input type="checkbox"/> Yes <input type="checkbox"/> No		
D. Describe each affiliation or business relationship.		
<b>4</b>	<div style="display: flex; justify-content: space-between; align-items: flex-end;"> <div style="width: 60%;">                  _____                  Signature of person doing business with the governmental entity             </div> <div style="width: 35%; text-align: center;">                 _____                  Date             </div> </div>	



Pacific Air Switch Corporation  
 P. O. Box 328  
 Forest Grove, Oregon 97116  
 Phone (503) 359-3939 Fax (503) 357-0858

**Our Quotation # 20924M-03**

//

To :

**CITY OF DENTON  
 901-A TEXAS STREET  
 DENTON TX 76209  
 United States**

**Quotation Valid Thru : 12/15/2013**

**Terms : NET 30**

**Attention : CHUCK SEARS**

**Your Request : E-MAIL**

**UPGRADE OF SWITCHES \*\*\***  
**CHANGE #1, REVISED ADDING TR-289'S**  
**CHANGE #2, REVISED EXTENDING BID VALIDITY DATE**  
**CHANGE #3, REVISED EXTENDING BID VALIDITY DATE AND EXTENDING SHIPMENT TIMEFRAME**

*We are pleased to present our proposal in response to the product needs identified within your request for quote. Our company takes great pride in providing quality products on time and we look forward to the opportunity of serving you.*

Item	Part / Rev / Description / Details	Quantity Quoted	Unit Price	Extended Price
001	<b>VBPA 138/30V2 UPGRADES</b> Rev NS U/M EA UPGRADE OF PASCOR VERTICAL BREAK SWITCHES (CM&S #20-995-001 &/OR #20-996-001) FROM 1200A TO 3000A RATING. TO CONSIST OF 3 PHASES OF SINGLE POLES. NOTE, NO OPERATOR, CONTROLS, PIPE ARE INCLUDED.  Rated: * 138kV (145kV Maximum) * 650kV BIL * 3000A Continuous * 120kA Momentary  To Include: * TR-289 Insulators, NGK-Locke, shipped assembled and fully adjusted on the switches  Shipment: 11 TO 12 WEEKS AFTER RECEIPT OF ORDER AND VERIFICATION OF ORIGINAL SWITCH CM&S NUMBERS.	13.0000	13,490.0000	US\$ 175,370.00

PLEASE NOTE: Prices quoted are firm for shipments no later than 04/30/20143.

FREIGHT: F.O.B. destination freight prepaid and allowed on orders with a single shipment of quantities quoted.

PASCOR's standard terms and conditions apply.

Thank you, we appreciate the opportunity to offer our proposal! If additional information is needed, please do not hesitate to contact me or our representative:

KEASLER ASSOCIATES, INC.  
 1721 West Plano Parkway, Suite 203  
 Plano, TX 75075



Pacific Air Switch Corporation  
P. O. Box 328  
Forest Grove, Oregon 97116  
Phone (503) 359-3939 Fax (503) 357-0858

**Our Quotation # 20924M-03**

//

To :

**CITY OF DENTON  
901-A TEXAS STREET  
DENTON TX 76209  
United States**

**Quotation Valid Thru : 12/15/2013**

**Attention : CHUCK SEARS**

**Your Request : E-MAIL**

Item	Part / Rev / Description / Details	Quantity Quoted	Unit Price	Extended Price
<p>Phone: 972-669-4000 Fax: 972-669-4060</p> <p>With best regards,</p> <p>Cynthia Miller Marketing Manager email: cynthia.miller@pascor.com</p>				

Exhibit 5

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF DENTON, TEXAS PROVIDING FOR, AUTHORIZING, AND APPROVING THE EXPENDITURE OF FUNDS FOR THE PURCHASE OF THIRTEEN (13) VERTICAL BREAK SWITCH UPGRADE COMPONENTS FOR DENTON MUNICIPAL ELECTRIC SUBSTATIONS WHICH ARE AVAILABLE FROM ONLY ONE SOURCE AND IN ACCORDANCE WITH TEXAS LOCAL GOVERNMENT CODE 252.022, EXEMPT FROM THE REQUIREMENTS OF COMPETITIVE BIDDING; AND PROVIDING AN EFFECTIVE DATE (FILE 5113-AWARDED TO KEASLER SALES, LLC IN THE -TO-EXCEED AMOUNT OF \$175,370).

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

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

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

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

<u>FILE</u> <u>NUMBER</u>	<u>VENDOR</u>	<u>AMOUNT</u>
5113	Keasler Sales, LLC	\$175,370

SECTION 2. The City Council hereby finds that this bid, and the award thereof, constitutes a procurement of items that are available from only one source, including, items that are only available from one source because of patents, copyrights, secret processes or natural monopolies; films, manuscripts or books; electricity, gas, water and other utility purchases; captive replacement parts or components for equipment; and library materials for a public library that are available only from the persons holding exclusive distribution rights to the materials; and need not be submitted to competitive bids.

Exhibit 4

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

SECTION 4. The City Manager is hereby authorized to execute any contracts relating to the items specified in Section 1 and the expenditure of funds pursuant to said contracts is hereby authorized.

SECTION 5. The City Council of the City of Denton, Texas hereby expressly delegates the authority to take any actions that may be required or permitted to be performed by the City of Denton under File 5113 to the City Manager of the City of Denton, Texas, or his designee.

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

PASSED AND APPROVED this the \_\_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
MARK A. BURROUGHS, MAYOR

ATTEST:  
JENNIFER WALTERS, CITY SECRETARY

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

APPROVED AS TO LEGAL FORM:  
ANITA BURGESS, CITY ATTORNEY



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



**AGENDA INFORMATION SHEET**

**AGENDA DATE:** November 19, 2013  
**DEPARTMENT:** Denton Municipal Electric  
**ACM:** Howard Martin, 349-8232

**SUBJECT**

Consider adoption of an ordinance authorizing the City Manager or his designee to execute a Contract of Sale (herein so called) as attached hereto and made a part hereof as Exhibit "A" by and between the City of Denton (the "City"), and Westpark Group, L.P., a Texas Limited Partnership (the "Seller"), contemplating (I) the sale by Seller and purchase by City of a 4.2218 acre tract of land, more or less, for the purchase price of Four Hundred Thirty Five Thousand Six Hundred and No/100 Dollars (435,600.<sup>00</sup>); and (II) donation of a 10.1164 acre tract of land, more or less, all of said Real Property being generally located along the east side of Western Boulevard between Airport Road and Jim Christal Road in the James Perry Survey, Abstract 1040, City of Denton, Denton County, Texas; authorizing the City Manager, or his designee, to execute, deliver any and all other documents necessary to accomplish closing of the transactions contemplated by the Contract of Sale; authorizing the expenditure of funds therefore; and providing an effective date.

**BACKGROUND**

In preparation for future projects involving the expansion of electric and natural gas infrastructure, DME proposed to secure easements, tracts of land, and access. The projects necessitate the acquisition of a 4.2218 acre tract of land located south of Jim Christal road, and east of Western Boulevard. Staff has been actively pursuing the transaction acquisition terms with the affected property owner beginning in September 2010, the result of which are embodied in the Contract of Sale. Staff recommends approval of the Contract of Sale substantially in the form attached.

Delivery of Contract of Sale in final form is expected from the Seller prior to the convening of the November 19th, 2013 City Council meeting, otherwise this item will be pulled from the agenda.

Recommended approval authorizes staff to proceed to closing the purchase transaction with the Seller upon City Council approval of the ordinance.

**OPTIONS**

1. Recommend approval of the Ordinance
2. Do not recommend approval

**RECOMMENDATION**

Staff endorses approval of the Ordinance.

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

City Council Closed Session Briefing on the utility project September 14, 2010  
City Council Closed Session Briefing on the utility project January 4, 2011  
Public Utility Board Approval April 5, 2011  
City Council Approval April 19<sup>th</sup> Ordinance 2011-063  
Public Utility Board Closed Session briefing July 22, 2-013  
City Council Closed Session briefing August 6, 2013  
Public Utility Board Closed Session and Consent agenda approvals October 28, 2013  
City Council Executive Session November 5, 2013  
Public Utility Board Executive Session November 11, 2013

**FISCAL INFORMATION**

\$435,600.<sup>00</sup> plus standard and customary closing costs.

**BID INFORMATION**

N/A

**EXHIBITS**

1. Location Map
2. Contract of Sale

Prepared by:

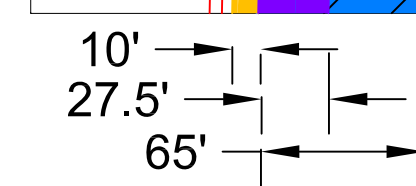
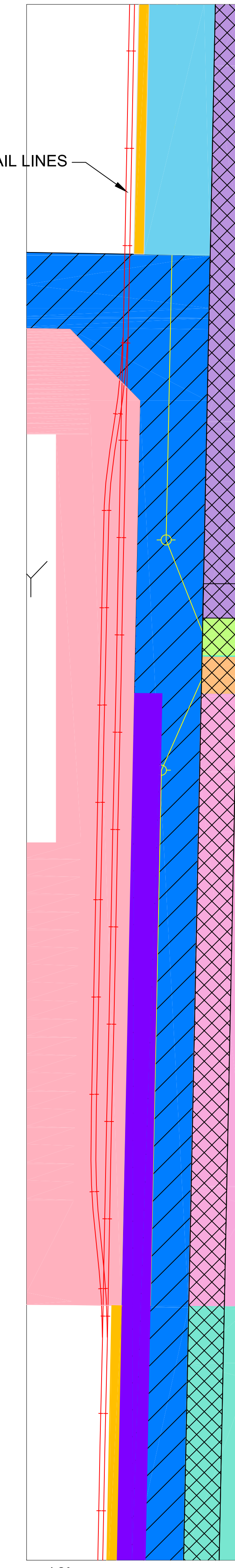
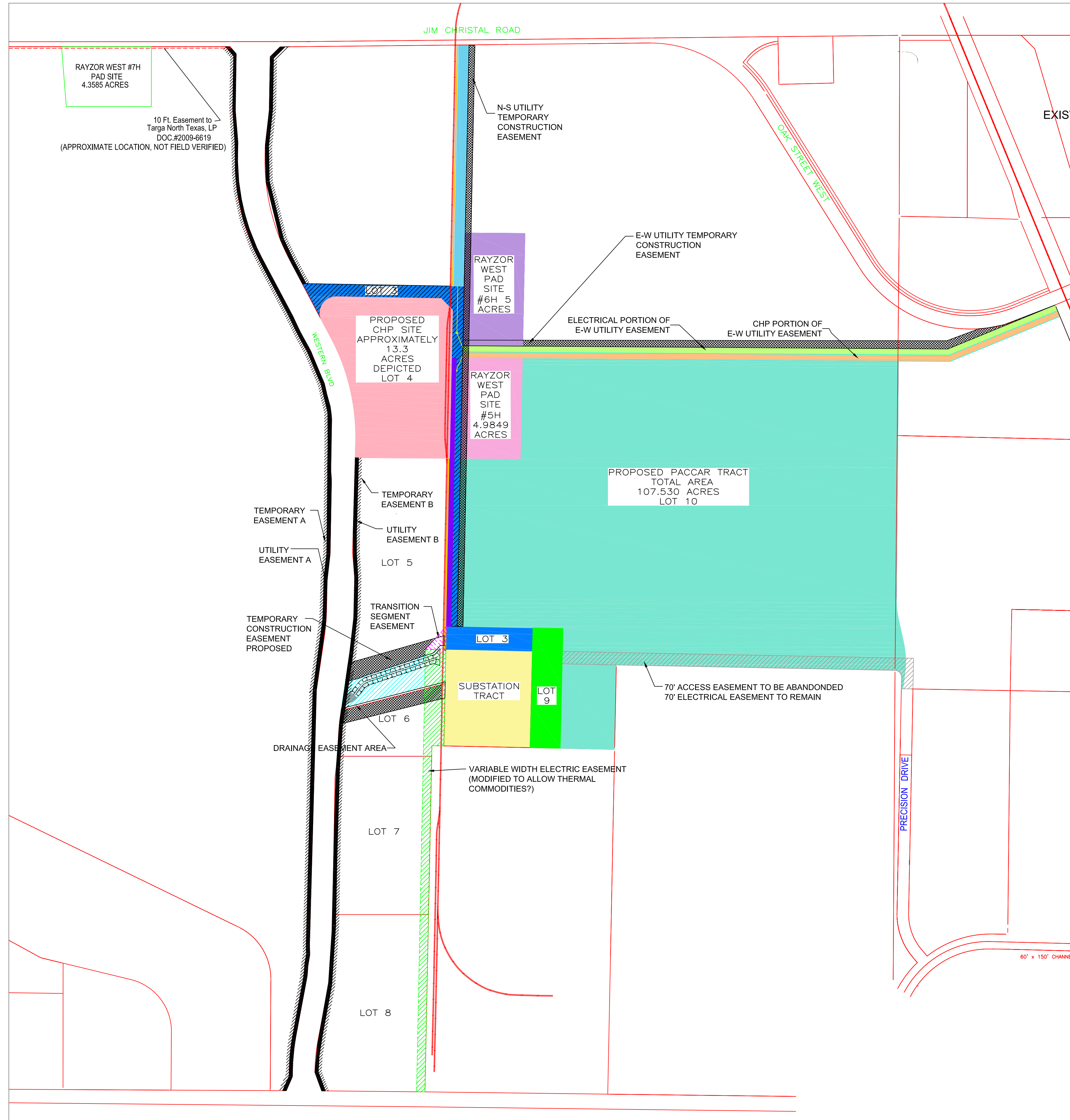
Respectfully submitted:



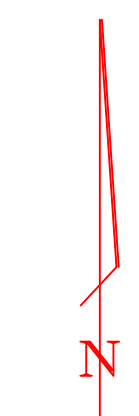
Mike Grim  
Executive Manager  
Power Legislative and Regulatory Affairs  
Denton Municipal Electric

Phil Williams  
General Manager  
Denton Municipal Electric

EXHIBIT 1



- PACCAR TRACT (TRACT 10)
- CHP PARCEL (TRACT 4)
- SUBSTATION TRACT
- DME ACCESS/UTILITY PARCEL (TRACT 3)
- RD WELLS EXPANSION STRIP PARCEL (TRACT 9)
- PAD SITE 5
- PAD SITE 6
- DME RAIL SPUR UTILITY EASEMENT
- E-W UTILITY EASEMENT CHP PORTION
- E-W UTILITY EASEMENT ELECTRIC PORTION
- N-S UTILITY EASEMENT
- RETAINED ACCESS EASEMENT
- ELECTRIC PORTION OF DME STRIP
- DRAINAGE EASEMENT AREA



**DENTON MUNICIPAL ELECTRIC**  
 Energizing tomorrow's community today!  
 Date & Time: Tue, 01 Oct '13 - 4:24PM  
 Login: z231726

**ELECTRIC ENGINEERING**  
 1659 SPENCER ROAD  
 DENTON, TEXAS 76205  
 (840) 348-7119

APPROVAL SIGNATURES	
ADMINISTRATOR Date	ADMIN_DATE Date
DISTRIBUTION_SUPER. Date	DIST_DATE Date
ENGINEER Date	ENG_DATE Date
DRAFTER Date	DRAFT_DATE Date
MAPPER Date	MAP_DATE Date

# DME\_RAYZOR\_SUMMARY

**PROJECT DATA**

CONTRACTOR  
 Contractor Phone: \_\_\_\_\_  
 DISTRIBUTION\_FOREMAN  
 DISTRIBUTION FOREMAN Phone: \_\_\_\_\_  
 FOREMAN\_PHONE  
 PHONE: \_\_\_\_\_

START\_DATE  
 Start date: \_\_\_\_\_

FINISH\_DATE  
 Finish date: \_\_\_\_\_

**STATUS**  
 Project status: \_\_\_\_\_

**DRAWING DATA**

DRC\_#:  
 PROJECT:  
 CREW MGR. #:  
 TILE:  
 SCALE:  
 SHEET#:

INFORMATION ON THIS DRAWING IS ACCURATE TO THE BEST OF OUR KNOWLEDGE. DENTON MUNICIPAL ELECTRIC MAKES NO GUARANTEE AS TO ACCURACY AND ASSUMES NO RESPONSIBILITY FOR USE OF THE INFORMATION BY ANY OTHER PERSON OR ORGANIZATION.

# EXHIBIT 2

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF DENTON, TEXAS, AUTHORIZING THE CITY MANAGER OR HIS DESIGNEE TO EXECUTE A CONTRACT OF SALE (HEREIN SO CALLED), AS ATTACHED HERETO AND MADE A PART HEREOF AS EXHIBIT "A", BY AND BETWEEN THE CITY OF DENTON (THE "CITY"), AND WESTPARK GROUP, L.P., A TEXAS LIMITED PARTNERSHIP (THE "SELLER"), CONTEMPLATING (I) THE SALE BY SELLER AND PURCHASE BY CITY OF A 4.\_\_\_\_ ACRE TRACT OF LAND, MORE OR LESS, FOR THE PURCHASE PRICE OF FOUR HUNDRED THIRTY FIVE THOUSAND SIX HUNDRED AND NO/100 DOLLARS (\$435,600.00); AND (II) DONATION OF A 10.\_\_\_\_ ACRE TRACT OF LAND, MORE OR LESS, ALL OF SAID REAL PROPERTY BEING GENERALLY LOCATED IN THE \_\_\_\_ BLOCK OF \_\_\_\_\_ STREET, AND LOCATED IN THE \_\_\_\_\_ SURVEY, ABSTRACT NUMBER \_\_\_\_\_, DENTON COUNTY, TEXAS; AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE AND DELIVER ANY AND ALL OTHER DOCUMENTS NECESSARY TO ACCOMPLISH CLOSING OF THE TRANSACTIONS CONTEMPLATED BY THE CONTRACT OF SALE; AUTHORIZING THE EXPENDITURE OF FUNDS THEREFOR; AND PROVIDING AN EFFECTIVE DATE.

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The City Manager, or his designee, is hereby authorized to execute the Contract of Sale, by and between the City of Denton, as buyer and Westpark Group, L.P., as seller, in the form attached hereto and made a part hereof as Exhibit "A", with a purchase price of \$435,600.00, plus certain costs as prescribed in the Contract of Sale; and (ii) any and all other

documents necessary for closing the transaction contemplated by the Contract of Sale, as more particularly described therein.

SECTION 2. The City Manager is hereby authorized to make expenditures as set forth in the Contract of Sale.

SECTION 3. This ordinance shall become effective immediately upon its passage and approval.

PASSED AND APPROVED this the \_\_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
MARK A. BURROUGHS, MAYOR

ATTEST:  
JENNIFER WALTERS, CITY SECRETARY

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

APPROVED AS TO LEGAL FORM:  
ANITA BURGESS, CITY ATTORNEY

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

## **CONTRACT OF SALE**

THIS CONTRACT OF SALE ("**Contract**") is dated the \_\_\_\_ day of November 2013 ("**Effective Date**"), and is made by and between Westpark Group, LP, a Texas limited partnership ("**Westpark**") and the City of Denton, a Texas home rule municipal corporation ("**Denton**").

### **RECITALS**

A. Westpark is the owner of fee simple title to a certain tract of land located in the City of Denton, Denton County, Texas containing approximately 14.3382 acres as more particularly described in **Appendix 1-A** attached hereto (that tract, the "**Land**"). The Land, for purposes of this Contract, consists of two subtracts, the first being located within the northern portion of the Land, consisting of approximately 4.\_\_\_\_ acres of land and more particularly described in **Appendix 1-B** attached hereto, and known as Lot 4A, Block A, of the Westpark Addition (that subtract, the "**Northern Portion**"), and the second being located within the southern portion of the Land, consisting of approximately 10.\_\_\_\_ acres of land and more particularly described in **Appendix 1-C** attached hereto, and known as lot 4B, Block A, of the Westpark Addition (that subtract, the "**Southern Portion**"). The fee simple interest in the Land and the appurtenant rights and interests are referred to herein collectively as the "**Property**" as further provided below. The physical land area covered by the fee simple interest in the Land is referred to herein as the "**Property Area**".

B. Denton is a political subdivision of the State of Texas and Denton desires to acquire the Property to be used solely for the advancement of the purposes as provided herein.

C. Westpark has satisfied itself that Denton is a governmental unit as defined in Section 170(c)(1) of the Internal Revenue Code of 1986, as amended, and that as such, Denton is capable of receiving deductible charitable donations, pursuant to IRC § 170(a) et seq. To further Denton's ability to operate on behalf of the public as a political subdivision, Westpark desires to convey the Southern Portion to Denton on a "charitable" basis (i.e., as a charitable donation/gift), and Denton desires to acquire the Southern Portion from Westpark on such basis, so that Westpark will receive a tax deduction for the gift of the Southern Portion in the amount of the fair market value for such Property, it being Westpark's intent to make a charitable contribution to Denton pursuant to IRC § 170(a) et seq and IRC § 1011(b) for the fair market value of the Southern Portion.

NOW, THEREFORE, in consideration of the exchange of real property, mutual covenants and agreements set forth in this Contract, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Westpark and Denton hereby agree to the following:

### **ARTICLE I: CONVEYANCE OF PROPERTY**

On the Closing Date (as hereinafter defined), Westpark shall grant and convey the Property to Denton, subject to the terms and provisions set forth below:

**1.1 Sale and Purchase of the Northern Portion/Donation of Southern Portion.** Westpark agrees to (i) sell and convey to Denton, and Denton agrees to purchase from Westpark, fee simple title to the Northern Portion, for the Purchase Price (as hereinafter defined), on and subject to the terms and conditions set forth in this Contract and (ii) give and donate to the City of Denton, and Denton agrees to accept from Westpark, fee simple title to the Southern Portion, for no consideration, on and subject to the terms and conditions set forth in this Contract. The above Northern Portion and Southern Portion will be conveyed pursuant to the Special Warranty Deeds (each a "**Deed**" and collectively, the "**Deeds**") attached hereto as **Appendix 2A** and **Appendix 2B**, respectively, together with all of Westpark's rights and interests in and to all roads, streets, alleys, surface water privileges, association rights and easements belonging or appurtenant thereto, rights of way, licenses, interests, and all other rights and appurtenances appertaining thereto, as provided in the Deed.

**1.2 Minerals Excluded.** Westpark has previously sold and conveyed to RIL Mineral Holdings, L.P. ("**RILMH**") all of Westpark's right, title and interest in all minerals of every kind, including oil, crude oil, natural gas, casing-head gas, other gas, other gaseous or liquid hydrocarbon minerals or substances, condensate, coal, ores, sulfur and other minerals of every kind and nature in and under and/or that may be produced from the Land (and other Property Areas) pursuant to those certain Mineral Deeds recorded as Document No. 2011-67794 and Document No. 2011-67798 of the Official Records of Denton County, Texas ("**Prior Mineral Conveyance**"). Westpark shall be permitted to execute and record a confirmatory Mineral Deed in form similar to and in furtherance of said existing Mineral Deeds to RILMH but with the final legal description of the Land or any other Property Area attached thereto ("**Confirmatory Mineral Deed**"). Nonetheless, to the extent Westpark continues to hold as of Closing any such minerals in and under and/or that may be produced from the Land (or any other Property Areas), Westpark, subject to the limitation of such reservation made herein, shall reserve, for itself, its successors and assigns all oil, gas and other minerals in, on and under and that may be produced from the Land ("**Mineral Reservation**"). Westpark, its successors and assigns shall not have the right to use or access the surface of the Land, in any way, manner or form, in connection with or related to the reserved oil, gas, and other minerals and/or related to exploration and/or production of the oil, gas and other minerals reserved herein, including without limitation, use or access of the surface of the Land for the location of any well or drill sites, well bores, whether vertical or any deviation from vertical, water wells, pit areas, seismic activities, tanks or tank batteries, pipelines, roads, electricity or other utility infrastructure, and/or for subjacent or lateral support for any surface facilities or well bores, or any other infrastructure or improvement of any kind or type in connection with or related to the reserved oil, gas and other minerals, and/or related to the exploration or production of same. With respect to the Prior Mineral Conveyance, Westpark also agrees to cause RILMH to deliver a surface waiver agreement at Closing waiving RILMH's rights to use the surface of the Land in the form attached hereto and made a part hereof as **Appendix 3** (the "**RILMH Surface Waiver**").

As used herein, the term “surface of the Land” shall include the area from the surface of the earth to a depth of five hundred feet (500’) below the surface of the earth and all areas above the surface of the earth.

## **ARTICLE II: PURCHASE PRICE AND DONATION**

2.1 **Purchase Price.** Denton will pay a purchase price of \$435,600.00 for the Northern Portion (that price, the "**Purchase Price**"). Denton will not be required to pay any consideration for the Southern Portion. Westpark is responsible for establishing, for federal tax purposes, the fair market value of the Southern Portion as of the Closing or as of such other subsequent date as may be applicable substantiated by a “qualified appraisal” (as defined under IRS regulations) prepared for Westpark at its own expense (the "**Fair Market Value**"). The Fair Market Value of the Southern Portion shall be considered by Westpark as a charitable contribution by Westpark to Denton ("**Charitable Contribution Amount**").

2.2 **Payment of Purchase Price.** The Purchase Price for the Northern Portion shall be payable at the Closing (as hereinafter defined).

2.3 **Earnest Money.** Denton shall deposit the sum of one thousand and No/100 Dollars (\$1,000.<sup>00</sup>), as "**Earnest Money**" (herein so called) Republic Title of Texas, Inc., 550 Bailey Avenue, Suite 100, Fort Worth, Texas 76107 (the "**Title Company**"), as escrow agent, on or before the Closing Date. All interest earned thereon shall become part of the Earnest Money and shall be applied or disposed of in the same manner as the original Earnest Money deposit, as provided in this Contract. If the purchase contemplated hereunder is consummated in accordance with the terms and the provisions hereof, the Earnest Money, together with all interest earned thereon, shall be applied to the Purchase Price at Closing. In all other events, the Earnest Money, and the interest accrued thereon, shall be disposed of by the Title Company as provided in this Contract.

2.4 **Independent Contract Consideration.** On or before the Closing Date, Denton shall deliver to the Title Company, payable to and for the benefit of Westpark, a check in the amount of One Hundred and No/100 Dollars (\$100.<sup>00</sup>) (the "**Independent Contract Consideration**"), which amount the parties hereby acknowledge and agree has been bargained for and agreed to as consideration for Westpark’s execution and delivery of the Contract. The Independent Contract Consideration is, in addition to and independent of any other consideration or payment provided in this Contract, non-refundable and shall be retained by Westpark notwithstanding any other provision of this Contract.

## **ARTICLE III: TITLE AND SURVEY**

3.1 **Title Commitment.** Denton may cause to be issued a current Commitment for Title Insurance (the "**Title Commitment**") for the Property, issued by the Title Company. The Title Commitment shall set forth the state of title to the Property, including a list of any defects, encumbrances and other exceptions to title, and outstanding claims, interests or equities of any nature (each of which referred to herein as an "**Exception**").



3.2 **Survey.** Denton may, at its expense, cause a current on the ground survey of the Property Area, or any part thereof, to be prepared by Gerry Curtis Associates or any other surveyor approved by both parties (the "**Survey**"). The Survey may include all matters prescribed by Denton. In any case, the description of the Land as set forth in the Survey shall be used to describe the Land in the Deed conveying the Land to Denton and shall be the description of the Land set forth in the Title Policy (hereinafter defined).

3.3 **Westpark's Efforts to Cure.** Westpark shall take good faith efforts to assist Denton in curing or satisfying any Exceptions or defects depicted or revealed in the Survey, as set forth in the notice to Westpark by Denton ("**Objections**"). Notwithstanding the obligation of Westpark to provide good faith efforts in its assistance to Denton to cure any defects related to the Title or Survey of the Property, Westpark shall not be obligated to expend funds in such efforts or incur any liability or otherwise incur any economic burden. In the event Denton and Westpark cannot cure the Objections prior to Closing, Denton may elect to either (i) terminate this Contract or (ii) waive the uncured Objections, which shall become Permitted Exceptions (as defined below), and upon such waiver, close the transaction contemplated by this Contract. The term "**Permitted Exceptions**" as used herein shall mean (i) the Roll-Back Taxes (as hereinafter defined), (ii) the Prior Mineral Conveyance and the Mineral Reservation, (iii) easements, restrictions, claims, rights of way, encroachments or other encumbrances or other matters whatsoever affecting the Property as shown in the Title Commitment or Survey, but excluding any matters which were subject to Objections and which Westpark actually cures, (iv) all municipal or other governmental zoning laws, regulations and ordinances, if any, affecting the herein-described Property and (v) any other matters affecting the Property which are of public record or would be disclosed by a physical inspection of the Property and/or an accurate survey of the Property. Notwithstanding anything to the contrary herein, Westpark shall provide to Denton, at or prior to the Closing Date, the RILMH Surface Waiver, and shall use reasonable efforts to provide to Denton, at or prior to Closing, evidence satisfactory to Denton and Westpark that any other owners of the rights to conduct mineral exploration and production activities (the "**Operations**") on the Property are prohibited from using or occupying in any way the surface of the Property in connection with such Operations.

3.4 **Title Policy.** At Closing, Denton, at Denton's sole cost and expense, may cause a standard Texas Owner Policy of Title Insurance ("**Title Policy**"), along with a T-19.1, T-19.2 or T-19.3 endorsement, as applicable, to be furnished to Denton, to the extent available. The Title Policy shall be issued by the Title Company, in the amount of the Fair Market Value of the Property and insuring that Denton has indefeasible fee simple title to the Land, subject only to the Permitted Exceptions.

#### **ARTICLE IV: AS-IS SALE**

4.1 **AS-IS Sale.** Denton expressly acknowledges that the Property is being sold, conveyed, granted and accepted **AS-IS, WHERE-IS WITH ALL FAULTS**, and, except as expressly set forth in **Article VI**, below, Westpark makes no representations or warranties, express or implied, with respect to the physical condition or any other aspect of the Property or any real property encumbered by the Property, including without limitation: (i) the structural

integrity of improvements on such properties, if any; (ii) the manner, construction, condition and state of repair or lack of repair of any improvements on such properties; (iii) the conformity of any improvements to any plans or specifications for such properties, including but not limited to any plans and specifications that may have been or which may be provided to Denton; (iv) the conformity of such properties to past, current or future applicable zoning or building code requirements or such properties' compliance with any other laws; (v) the financial earning capacity or history or expense history of the operation of such properties; (vi) the existence of soil instability, past soil repairs, soil additions or conditions of soil fill, such properties' susceptibility to landslides, sufficiency of undershoring or sufficiency of drainage to, from or across such properties; (vii) whether such properties are located wholly or partially in a flood plain or a flood hazard boundary or similar area or within any area that may be considered wetlands or jurisdictional waters of the United States; (viii) the existence or non-existence of underground or above ground storage tanks, asbestos, hazardous waste or other toxic or Hazardous Materials (as hereinafter defined) of any kind or any other environmental condition or whether such properties are in compliance with applicable laws; (ix) such properties' investment potential or resale at any future date, at a profit or otherwise; (x) any tax consequences of ownership of such properties, except as provided in **Section 7.3** below; or (xi) any other matter whatsoever affecting the stability, integrity, other condition or status of the Property (matters (i) through (xi), collectively, the "**Property Conditions**"). **EXCEPT AS PROVIDED IN ARTICLE VI, BELOW, DENTON HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVES ANY AND ALL ACTUAL OR POTENTIAL RIGHTS IT MIGHT HAVE REGARDING ANY FORM OF WARRANTY, EXPRESS OR IMPLIED OR ARISING BY OPERATION OF LAW, INCLUDING, BUT IN NO WAY LIMITED TO, ANY WARRANTY OF QUANTITY, QUALITY, CONDITION, HABITABILITY, MERCHANTABILITY, SUITABILITY OR FITNESS FOR A PARTICULAR PURPOSE RELATED TO THE PROPERTY, ANY IMPROVEMENTS THEREON OR THE PROPERTY CONDITIONS, SUCH WAIVER BEING ABSOLUTE, COMPLETE, TOTAL AND UNLIMITED IN ANY WAY.** This waiver fully applies to Westpark as well as all other Westpark Parties (as hereinafter defined) but does not apply to Westpark's predecessors in title to the Property who are not Westpark Parties. As used herein the "**Westpark Parties**" shall mean Westpark, Rayzor Investments, Ltd. ("**RIL**"), Jesse Newton Rayzor and Eugenia Porter Rayzor, and any other person that was a spouse, descendant or other relative of Jesse Newton Rayzor and/or Eugenia Porter Rayzor, or an affiliated entity of any of the foregoing.

4.2 **Information Disclaimer.** Any and all information related to the Property provided to Denton by Westpark (without implying any obligation to deliver such information, however) ("**Information**"), shall be delivered as an accommodation to Denton only, without any representation or warranty as to the completeness or accuracy of the data or other information contained therein, and all such Information is furnished to Denton solely as a courtesy, and Westpark has not verified the accuracy of any statements or other information therein contained, the method used to compile such Information nor the qualifications of the persons preparing such Information. The Information is provided on an **AS-IS, WHERE-IS BASIS, AND DENTON EXPRESSLY ACKNOWLEDGES THAT, IN CONSIDERATION OF THE AGREEMENTS HEREIN, WESTPARK MAKES NO REPRESENTATION, EXPRESS OR IMPLIED, OR ARISING BY OPERATION OF LAW, INCLUDING, BUT IN NO WAY LIMITED**

**TO, ANY WARRANTY OF QUANTITY, QUALITY, CONDITION, MERCHANTABILITY, SUITABILITY OR FITNESS FOR A PARTICULAR PURPOSE AS TO THE INFORMATION.**

**4.3 Waiver of Compliance with Requirements.** Denton expressly acknowledges that it is not relying on (and hereby disclaims and renounces) any representations or warranties made by or on behalf of Westpark of any kind or nature whatsoever, except as expressly provided in **Article VI**, below. Denton acknowledges that the Property may not be in compliance with all laws that may apply to such Property or any part thereof and the continued ownership, maintenance, management and repair of such properties ("**Requirements**"). Denton shall be solely responsible for any and all Requirements.

**4.4 Environmental Waiver.** Without limitation, to the fullest extent permitted by law, and except as provided in **Article VI**, below, Denton, for itself and its successors and assigns, hereby releases Westpark from and waives any and all claims and liabilities against Westpark, related to or in connection with any environmental condition at such Property (or the presence of any matter or substance relating to the environmental condition of such Property), including, but not limited to, claims and/or liabilities relating to (in any manner whatsoever) any hazardous, toxic or dangerous materials or substances located in, at, about or under such Property, or for any and all claims or causes of action (actual or threatened) based upon, in connection with or arising out of: (i) the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. §§9601 et seq.) ("**CERCLA**"); (ii) the Resource Conservation and Recovery Act (42 U.S.C. §§6901 et seq.) ("**RCRA**"); (iii) the Superfund Amendments and Reauthorization Act (42 U.S.C. §§9601 et seq.) ("**SARA**"); or (iv) any other claim or cause of action (including any federal or state based statutory, regulatory or common law cause of action, including without limitation, the Texas Solid Waste Disposal Act) related to environmental matters or liability with respect to or affecting the Property. This waiver does not apply to any predecessors in title to Westpark.

**4.5 Assumption of Hazardous Materials Risks.** Without limitation to any of the above, Denton assumes the risk that Hazardous Materials may be present in, on or under the Property, and except as provided in Article V and Article VI, below, hereby waives, releases and discharges forever, Westpark from any and all present or future claims or demands, and any and all damages, loss, injury, claims or costs, including fines, penalties and judgments arising from or in any way related to the condition of the Property or presence of any Hazardous Materials in, on or under the Property, whether or not arising from or attributed to the sole or concurrent negligence of Westpark. This waiver does not apply to any predecessors in title to Westpark.

**4.6 Parties Relying on Own Inspections.** Denton acknowledges and agrees that Westpark was unwilling to convey, grant and sell the Property unless Westpark was released as expressly set forth above. With respect to the waivers and agreements contained in **Article IV, Sections 4.1 through 4.5**, above, Denton and Westpark represent and warrant to the other that: they are (i) represented by legal counsel in connection with the sale contemplated by this Contract; (ii) each, with its counsel, has fully reviewed the disclaimers and waivers and agreements set forth in this Contract and understands their significance and effect; (iii) each is

knowledgeable and experienced in the purchase, operation, ownership, refurbishing and sale of commercial real estate, and is fully able to evaluate the merits and risks of this transaction; and (iv) each is not in a significantly disparate bargaining position. As part of the provisions of this **Article IV**, but not as a limitation thereon, Denton agrees, represents and warrants that the matters released herein are not limited to matters which are known or disclosed. To the extent permitted by law, Denton hereby agrees, represents and warrants that it realizes and acknowledges that factual matters now unknown to it may have given or may hereafter give rise to causes of action, claims, demands, debts, controversies, damages, costs, losses and expenses which are presently unknown, unanticipated and unsuspected, and Denton further agrees, represents and warrants that the waivers and releases herein have been negotiated and agreed upon in light of that realization and that Denton nevertheless hereby intends to release, discharge and acquit Westpark from any such unknown causes of action, claims, demands, debts, controversies, damages, costs, losses and expenses which might in any way be included in the waivers and matters released as set forth in this **Article IV**.

4.6A **Waivers Limited.** Notwithstanding anything to the contrary herein, any and all representations, disclaimers and waivers of any claims by Denton, all as may be prescribed in this Article IV, are made to the extent, and only to the extent, such is authorized or permitted under existing laws.

4.7 **Survival.** Notwithstanding anything herein to the contrary, all of the terms and provisions of **Article IV, Sections 4.1 through 4.6.A** shall survive the Closing.

#### **ARTICLE V: INSPECTION**

5.1 **Tests.** Until the Closing, Denton and its agents, employees and contractors, at their sole risk and expense, shall have the right to enter upon the Property Areas during normal business hours (and subject to advance notice as required below) for inspections, surveying, engineering and other reasonable testing and inspection purposes ("**Tests**"). All such inspections may include both non-intrusive inspections and studies (such as non-intrusive "Phase I Level" type tests with respect to environmental matters) which do not involve borings or any sampling of any material or media, including soil, surface water, or ground water and intrusive "Phase II Level" environmental or other intrusive testing or any borings or sampling of any material or media, including soil, surface water, or ground water. Without limitation, the general authorization provided above, Denton may conduct soil borings on the Property Areas for the purpose of evaluating soil stability and characteristics for typical construction industry purposes related to its intended use of the Property. All soil borings shall be conducted in a commercially reasonable manner in accordance with generally accepted construction industry standards, and upon completion of all such soil borings, Denton shall restore the affected portion of the Property to substantially the same condition as existed prior to such soil borings. Any and all activities conducted by Denton shall be in accordance with applicable laws. Any entry upon the Property Areas is referred to herein as an "**Entry**". All such activities shall be conducted in such a fashion so as to minimize interference with the use of the properties being inspected. Denton shall promptly repair any damage to the affected portion of the Property as a result of such Tests and restore same to its condition which existed prior to such Tests.

5.2 **Notice of Entry.** Prior to any Entry upon the Property Area to be inspected for any purpose permitted herein, Denton shall give prior notice to and shall coordinate such access as follows: Mr. Philip A. Baker (telephone 940/387-8711, fax 940/566-1591, The Rayzor Company, 400 West Oak Street, Suite 200, Denton, Texas 76201), or his successor or designee, who will act as Westpark's agent with respect thereto. Such notice shall be given at least 24 hours prior to the proposed Entry and shall include the names of the individuals who will be entering the Property Area and the name of such individual's firm or company, the purpose of the inspection and specific activities which will be conducted by such individuals on such Property Area, the times during which such Entry shall occur and such other information as may be reasonably requested by Mr. Baker. The inspecting party shall fully cooperate with and follow any reasonable additional requirements or instructions given by Mr. Baker with respect to such Entry.

5.3 **Insurance.** Any consultant or contractor of Denton desiring to enter the Property to be inspected for any Tests shall only enter such Property Areas after submitting to Westpark certificates of insurance evidencing Commercial General Liability Insurance coverage in commercially reasonable amounts, but not to exceed the amount of Five Hundred Thousand ~~One Million~~ and No/100 Dollars (\$~~1,05~~00,000.00), covering such consultant's or contractor's operations on the Property to be inspected, with Westpark included as an additional insured thereunder and stating that such insurance is primary with regard to any other insurance maintained by Westpark.

5.4 **Termination.** Any term or provision of this Contract notwithstanding, the obligations of Denton specified in this Contract are wholly conditioned on Denton's having determined, in Denton's sole and absolute discretion, during the inspection provided by this **Article V**, based on such tests, examinations, studies, investigations and inspections of the Property Denton deems necessary or desirable, that Denton finds the Property suitable for Denton's purposes. If Denton determines, in its sole judgment, that the Property is not suitable, for any reason, for Denton's intended use or purpose, Denton may terminate this Contract by written notice to Westpark, as soon as reasonably practicable, but in any event prior to the Closing. In the event Denton elects to terminate this Contract pursuant to the terms of this **Section 5.4**, Denton will provide to Westpark copies of any and all non-confidential and non-privileged reports and studies obtained by Denton during or resulting from the Tests.

#### **ARTICLE VI: REPRESENTATIONS, WARRANTIES, COVENANTS AND AGREEMENTS**

6.1 **Representations and Warranties of Westpark.** Westpark represents and warrants to Denton, as of the Effective Date of this Contract and as of the Closing Date, except where specific reference is made to another date that:

- (a) Westpark has the full right, power and authority to sell and convey the Property as provided in this Contract and to carry out Westpark's obligations hereunder and this Contract, and all documents to be delivered by Westpark hereunder, are and shall be legal and binding upon Westpark.

- (b) Westpark has not received notice of, and has no other knowledge or information of, any pending or threatened judicial or administrative action, or any action pending or threatened by adjacent landowners or other persons against or affecting the Property.
- (c) Westpark has not contracted or entered into any agreement with any real estate broker, agent, finder, or any other party in connection with this transaction or taken any action which would result in any real estate broker commissions or finder's fee or other fees payable to any other party with respect to the transactions contemplated by this Contract.
- (d) All Leases, as defined in **Section 6.3(a)**, relating to the Property shall have expired or otherwise terminated on or before the date of Closing.
- (e) Westpark has not received notice of any violation of any law, statute, rule, regulation or ordinance related to or affecting the Property or Westpark's obligations under this Contract.
- (f) To Westpark's actual knowledge, without independent investigation, there are no Hazardous Materials (as hereinafter defined) which are or have been used, manufactured, placed or stored on the Property and/or real property encumbered by the Property. As used above, the term "**Hazardous Materials**" means any material or substance which is (i) defined as a "hazardous waste," "extremely hazardous waste," "restricted hazardous waste," "hazardous material," "hazardous substance," or any similar formation under or pursuant to any state or federal statute or common law rule, (ii) designated as a "hazardous waste" pursuant to Section 311 of the Clean Water Act, 33 U.S.C. §1251 et seq. (33 U.S.C. §1321) or listed pursuant to Section 307 of the Clean Water Act (33 U.S.C. §1317), (iii) defined as a "hazardous waste" pursuant to Section 1004 of the Resource Conservation and Recovery Act, 44 U.S.C. §6901 et seq. (42 U.S.C. §6903) or (iv) defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. §9601 et seq. (42 U.S.C. §9601); provided, however, "Hazardous Materials" shall not, for purposes of this representation, include gasoline, diesel fuel or other petroleum products routinely used in connection with farm and ranch operations, nor shall such term include any pesticides, herbicides, cattle dipping solutions and other substances which are now or ever have been customarily used in connection with farm and ranch operations (and such exclusion from such term shall include items which were historically used in the farm and ranching industry for such purposes but which may now be banned or otherwise not so used). Westpark hereby informs Denton that it has not conducted an independent investigation in connection with the above representation and that Westpark has limited knowledge as to such matters and advises Denton to conduct independent investigations with respect to such matters as Denton may deem necessary or desirable to fully satisfy itself with respect to the

environmental condition of the Property, it being understood that the above representation is limited in nature and is only to Westpark's actual knowledge, and does not give a complete understanding of the environmental condition of the Property.

- (g) Westpark is not a "foreign person" as defined in Section 1445 of the Internal Revenue Code of 1986, as amended.
- (h) Mr. Baker shall serve as the Westpark representative or agent with respect to this Contract.

**6.2 Representations and Warranties of Denton and Westpark.** Denton and Westpark represent and warrant to each other that they have the power to execute, deliver and perform under this Contract, have taken all actions necessary to authorize the execution, delivery and performance of this Contract and that the parties executing this Contract and the conveyance documents exhibited hereto for and on behalf of Denton and Westpark have been duly authorized by Denton and Westpark to act in such capacity.

**6.3 Covenants and Agreements of Westpark.** Westpark covenants and agrees with Denton as follows:

- (a) Within ten (10) business days after the Effective Date, Westpark shall deliver to Denton true, correct and complete copies of the following:
  - (i) Any lease agreements and/or occupancy agreements and/or licenses of any kind or nature (if oral, Westpark shall provide to Denton in writing all material terms thereof) relating to the possession of the Property, or any part thereof, including any and all modifications, supplements, and amendments thereto (the "**Leases**"), provided that only those Leases which will remain in force after the Closing, if any, must be delivered to Denton.
- (b) From the Effective Date until the date of Closing and with respect to the Property, Westpark shall:
  - (i) Not enter into any written or oral contract, lease, easement or right of way agreement, conveyance or any other agreement of any kind with respect to, or affecting, the Property that will not be fully performed on or before the Closing or would be binding on Denton or the Property after the date of Closing.
  - (ii) Not sell, assign, lease or convey any right, title or interest whatsoever in or to the Property, or create, or permit to exist, any lien, encumbrance, or charge thereon.

- (c) Westpark shall assist and cooperate in the platting activities of Denton, as set forth in **Section 6.4** below, including without limitation, execution of any applications or other materials related to ownership of the Land, in such processes.
- (d) Notwithstanding anything to the contrary herein, Westpark has satisfied itself as to the accuracy of the statements made in the recitals hereof, as well as the tax status and eligibility of any tax deductions ("**Tax Consequences**") regarding the transaction contemplated by this Contract, and Denton makes no representations or warranties, of any kind or type, regarding any Tax Consequences of this transaction to Westpark, and Westpark expressly waives, releases and discharges forever, Denton, its officers, employees, agents and elected officials from any and all present or future claims or demands, and any and all damage, loss, injury, claim or cost, that might arise thereunder. Further, Westpark hereby expressly stipulates that it is not relying on any recital, representation, warranty or any other matter regarding the Tax Consequences, and is instead relying upon its own independent research, analysis and judgment in such matters.

#### 6.4 Covenants and Agreements of Denton.

- (a) Denton shall, prior to Closing, have obtained approval of a conveyance plat or other plat of the Land from the Planning and Zoning Commission or the Development Review Committee in accordance with the terms of the Denton Development Code, including without limitation, Sections 35.16.6, 35.16.17, 35.16.17.1 and 35.16.17.2 thereof, or, alternatively to the foregoing, Denton shall obtain any necessary approval of the transaction herein contemplated in lieu of a conveyance plat from the Planning and Zoning Commission and/or Development Review Committee. In the event Denton produces a conveyance plat or other plat in connection with this Contract, Westpark shall reasonably cooperate in the platting process and shall either execute a conveyance plat or other plat provided to it by Denton or provide objections to same to Denton, on or before five (5) days after the conveyance plat or other plat is submitted to it by Westpark. Notwithstanding anything herein to the contrary, in no event shall a conveyance plat impose obligations on Westpark to dedicate easements or rights-of-way across any of Westpark's other lands or impose any restrictions or other requirements with respect to the Denton's such other lands.
- (b) As more specifically prescribed in the Deed attached hereto as Appendix 2B, (i) the Southern Portion may only be used for the development, construction and the placement into operation of facilities for the generation of electric power and/or thermal energy commodities such as heated and/or chilled water, compressed air and/or steam, for distribution to users in the surrounding areas and suitable for an industrial park setting ("Power Plant Facilities"), (ii) Denton shall have acquired a Notice to Proceed issued by the Texas Commission on Environmental Quality for, or has entered into a contract for the design and/or construction of, a



~~facility for the generation of electric power and/or thermal energy commodities, such as heated water, chilled water, compressed air or steam (“Power Plant Facilities”) on the Southern Portion so develop, construct and place into operation such Power Plant Facilities~~ within fifteen (15) years after the Closing Date, and (iii) no portion of the Southern Portion may be used as an area to locate any high pressure gas ~~transmission~~-pipeline (provided that ~~distribution~~ pipelines to supply necessary gas to the Power Plant Facilities for operations are permitted). As used herein, “high pressure gas pipeline” shall mean a pipeline, other than a gathering line, that: (1) transports gas from a gathering line or storage facility to a distribution center, storage facility, or large volume customer that is not down-stream from a distribution center; (2) operates at a hoop stress of 20 percent or more of SMYS; or (3) transports gas within a storage field. -A “gathering line” is a pipeline that transports gas from a current production facility to a transmission line or main. ~~a pipeline capable of delivering gas at pressures at or above threeone hundred pounds per square inch gauge (1300 psig).~~ The above described Conditions (herein so called) and the remedies and limitations with respect thereto are set forth in the form of Deed for the Southern Property.

(c) Denton acknowledges that a rail spur strip along the eastern portion of the Property is subject to an easement, covenants and other restrictions relating to a railroad spur track situated thereon. Denton shall comply with the covenants, restrictions and other terms and conditions referred to in the Deed attached hereto and which are more specifically defined in the Confirmation and Restatement of Easement Rights instrument recorded on \_\_\_\_\_ as Instrument No. \_\_\_\_ in the official records of Denton County, Texas.

~~(d) If Denton shall ever desire to sell the Northern Portion to any third party pursuant to a bona fide third party written offer, Westpark shall have a rRight of fFirst rRefusal (herein so called) (exercisable with thirty (30) days after receipt of written notice from Denton) to purchase the Property on the same terms and conditions as contained in such third party bona fide offer pursuant to the terms and conditions of the Deed for the Northern Portion, attached hereto as Appendix 2A. of a Right of First Refusal Agreement (herein so called) to be executed by Westpark and Denton at Closing in the form of Appendix 4 attached hereto.~~

6.5 **Survival.** Notwithstanding anything to the contrary contained in this Contract, the representations, warranties, covenants and agreements of Westpark contained in this Contract shall survive the Closing for a period of one year after the Closing Date, and shall not, in any circumstance, be merged with the Deeds to be delivered at Closing pursuant to **Section 7.2**; provided, however, that the limitation upon the duration of the warranties in this **Section 6.5** shall not apply to the warranties, ~~and condition~~ and covenants contained in the Deeds, ~~as applicable, the terms and provisions of which shall be enforceable pursuant to times and deadlines enunciated therein and which shall not be limited hereby.~~

**ARTICLE VII: CLOSING**

7.1 **Date and Place of Closing.** The "Closing" (herein so called) shall take place in the offices of the Title Company and shall be accomplished through an escrow to be established with the Title Company, as escrowee. The "Closing Date" (herein sometimes called) shall occur before 5:00 PM on November 22, 2013 unless otherwise mutually agreed to by Denton and Westpark.

7.2 **Items to be Delivered at the Closing.**

(a) At the Closing, Westpark shall deliver or cause to be delivered to the Title Company, the following items:

(i) The Deeds for the Land, in form and substance identical to that attached hereto as **Appendix 2A** and **Appendix 2BA**, subject only to the Permitted Exceptions, duly executed by Westpark and acknowledged.

(ii) The RILMH Surface Waiver, in the form as attached hereto as **Appendix 3**, executed by RILMH and acknowledged.

~~(iii) The Right of First Refusal, in the form as attached hereto as **Appendix 4**, executed by Westpark and acknowledged~~

~~(iiiv)~~ Other items reasonably requested by the Title Company as administrative requirements for consummating the Closing.

(b) At the Closing, Denton shall deliver to the Title Company, the following items:

(i) The sum equal to the Purchase Price as required by **Article II**.

~~(ii) The Right of First Refusal, in the form as attached hereto as **Appendix 4**, executed by Denton and acknowledged~~

~~(iii)~~ Other items reasonably requested by the Title Company as administrative requirements for consummating the Closing.

7.3 **Adjustments at Closing.** Notwithstanding anything to the contrary contained in this Contract and without limiting the general application of the provisions of **Section 6.5**, above, the provisions of this **Section 7.3** shall survive the Closing.

7.3.1 **General Proration.** Ad valorem and similar taxes and assessments (the "Taxes") relating to the Land for the year in which the Closing occurs shall be prorated between Westpark and Denton as of the Closing Date, in accordance with Section 26.11

of the Texas Tax Code. In this regard the Title Company shall have each taxing unit certify Westpark's prorated tax liability for the year of closing which amounts will be paid by Westpark out of the proceeds of the sale.

7.3.2 Roll-Back Taxes. Westpark stipulates that, for purposes of assessing taxes against the Property for prior years, the applicable central appraisal district has applied agricultural, open-space or other special use valuation methods ("**Special Use Valuation**") to arrive at the taxable value of the Property as permitted under the Texas Tax Code, and accordingly a change in land usage of the Property may result in an additional tax (in addition to taxes for the year in which the Roll-Back Event, as hereinafter defined, occurs) being assessed against the Property (any such additional taxes, together with interest thereon, being referred to herein as "**Roll-Back Taxes**"). To the extent any Roll-Back Taxes exist, Westpark shall not be responsible for same.

7.4 **Possession at Closing**. Possession of the Property shall be delivered to Denton at Closing, subject to ~~the Right of First Refusal~~, the Permitted Exceptions and the Right of Entry in favor of Westpark as prescribed in the Deeds.

7.5 **Costs of Closing**. Each party is responsible for paying the legal fees of its counsel, in negotiating, preparing, and closing the transaction contemplated by this Contract. Westpark is responsible for paying fees, costs and expenses identified herein as being the responsibility of Westpark. Denton is responsible for paying fees, costs and expenses identified herein as being the responsibility of Denton. If the responsibility for such costs or expenses associated with closing the transaction contemplated by this Contract are not identified herein, such costs or expenses shall be allocated between the parties in the customary manner for closings of real property similar to the Property in Denton County, Texas.

## **ARTICLE VIII: DEFAULTS AND REMEDIES**

### **8.1 Westpark's Defaults and Denton's Remedies.**

8.1.1 Westpark's Defaults. Westpark is in default under this Contract on the occurrence of any one or more of the following events:

- (i) Any of Westpark's warranties or representations contained in this Contract are untrue on the Closing Date; or
- (ii) Westpark fails to meet, comply with or perform any covenant, agreement, condition precedent or obligation on Westpark's part required within the time limits and in the manner required in this Contract; or
- (iii) Westpark fails to deliver at Closing, the items specified herein at **Section 7.2(a)** for any reason other than a default by Denton or termination of this Contract by Denton pursuant to the terms hereof prior to Closing.

8.1.2 Denton's Remedies. If Westpark is in default under this Contract, Denton, as Denton's sole and exclusive remedies for the default, may, at Denton's sole option, do either one of the following:

- (i) Terminate this Contract by written notice delivered to Westpark; or
- (ii) Enforce specific performance of this Contract against Westpark, requiring Westpark to convey the Property to Denton subject to no liens, encumbrances, exceptions, and conditions other than the Permitted Exceptions.

## 8.2 **Denton's Default and Westpark's Remedies.**

8.2.1 Denton's Default. Denton is in default under this Contract on the occurrence of any one or more of the following events:

- (i) Denton fails to meet, comply with or perform any covenant, agreement, condition precedent or obligation on Denton's part required within the time limits and in the manner required by this Contract; or
- (ii) Denton fails to deliver at Closing, the items specified in **Section 7.2(b)** of this Contract for any reason other than a default by Westpark under this Contract or termination of this Contract pursuant to the terms hereof prior to Closing.

8.2.2 Westpark's Remedy. If Denton is in default under this Contract, Westpark, as Westpark's sole and exclusive remedy for the default, may terminate this Contract by written notice delivered to Denton, whereupon neither party shall have any further rights or obligations hereunder.

8.3 Notwithstanding the foregoing, Westpark may pursue all rights and remedies available at law or in equity against Denton with respect to (i) any damages incurred by Westpark as a result of Denton's failure to comply with the insurance requirements provided for in this Contract, and (ii) all obligations under the attached Deed executed at Closing, to the extent provided in the Deed.

## **ARTICLE IX: MISCELLANEOUS PROVISIONS**

9.1 **Notice.** Unless otherwise specified in a recorded instrument of conveyance of the Property under this Contract, all notices, demands, requests, and other communications required hereunder shall be in writing, and shall be deemed to be delivered, upon the earlier to occur of (a) the date provided if provided by telephonic facsimile, and (b) the date of the deposit of, in a regularly maintained receptacle for the United States Mail, registered or certified, return receipt requested, postage prepaid, addressed as follows:

DENTON:

Richard Casner,  
First Assistant City Attorney  
City of Denton, Texas  
215 E. McKinney Street  
Denton, Texas 76201  
Phone: (940) 349-8333  
Fax: (940) 382-7923  
Richard.Casner@cityofdenton.com

Paul Williamson, Real Estate Manager  
City of Denton Texas  
Phone: (940) 349-8921

Fax: (940) 349-8951  
Paul.Williamson@cityofdenton.com

With Copies To:

Pamela England, Real Estate Specialist  
City of Denton, Texas  
Phone: (940) 349-8928

Fax: (940) 349-8951  
Pamela.England@cityofdenton.com

Michael S. Grim  
Executive Manager  
Power, Legislative and  
Regulatory Affairs  
City of Denton Texas  
Phone: (940) 349-7565  
Fax: (940) 349-7334

[Mike.grim@cityofdenton.com](mailto:Mike.grim@cityofdenton.com)

RAYZOR:

David Mellina  
Mellina & Larson, P.C.  
1128 Fairmount Avenue  
Fort Worth, Texas 76104  
Phone: (817) 335-1200  
Fax: (817) 335-1221  
Dmellina@mellinalarson.com

Philip A. Baker, Vice President  
The Rayzor Company  
P.O. Box 336  
Phone: (940) 387-8711  
Denton, Texas 76202  
Fax: (940) 566-1591  
pabaker@rayzorcompany.com

Joanna Cloud  
Republic Title of Texas, Inc.  
550 Bailey Avenue, Suite 100  
Fort Worth, Texas 76107  
Phone: (817) 877-1481  
Fax: (817) 654-0008  
joannacloud@republictitle.com

9.2 **Governing Law and Venue.** This Contract is being executed and delivered and is intended to be performed in the State of Texas, the laws of Texas governing the validity, construction, enforcement and interpretation of this Contract. THIS CONTRACT IS PERFORMABLE IN, AND THE EXCLUSIVE VENUE FOR ANY ACTION BROUGHT WITH RESPECT HERETO SHALL LIE IN, COURTS OF COMPETENT JURISDICTION IN DENTON COUNTY, TEXAS.

9.3 **Entirety and Amendments.** This Contract embodies the entire agreement between the parties and supersedes all prior agreements and understandings, if any, related to the Property, and may be amended or supplemented only in writing executed and authorized by the party against whom enforcement is sought.

9.4 **Further Assurances.** In addition to the acts and deeds recited in this Contract and contemplated to be performed, executed and/or delivered by Westpark and Denton, Westpark and Denton agree to perform, execute and/or deliver, or cause to be performed, executed and/or delivered at the Closing or after the Closing, any further deeds, acts, and assurances as are reasonably necessary to consummate the transactions contemplated hereby. Notwithstanding anything to the contrary contained in this Contract, the provisions of this **Section 9.4** shall survive Closing.

9.5 **Appendices.** Each Appendix which is referenced in, and attached to this Contract, is incorporated in and made a part of this Contract for all purposes.

9.6 **Assigns.** This Contract shall inure to the benefit of and shall bind the parties hereto and their respective legal representatives, successors and assigns; provided, however, no party may assign its rights under this Contract without the prior written consent of the other party.

9.7 **Time of the Essence.** Time is of the essence of this Contract.

9.8 **Taking Prior to Closing.** If the Property, or any portion thereof, becomes subject to a taking under the provisions of eminent domain prior to the Closing, Denton shall have the option of: (i) closing this transaction as provided herein (with no reduction in consideration), in which event Westpark shall assign to Denton at Closing all condemnation proceeds, if any, but only to the extent such proceeds accrue from a taking of the Land, as a result of such proceeding; or (ii) terminating this Contract, in its entirety or as to the portion of the Property subject to or affected by a taking (the "**Affected Property**"), at the sole election of Denton, by giving Westpark written notice thereof within ten (10) business days from the date such party receives notice of such taking, in which event this Contract shall be deemed null and void, in its entirety or as to the Affected Property, as applicable to the election of Denton, and the parties hereto shall have no further obligations to or recourse against each other either under this Contract, in its entirety or as to the Affected Property, as applicable to the election of Denton. In the event the Contract is partially terminated as to a portion of the Northern Portion~~hereof~~, the Purchase Price shall be reduced by the product of ~~2.50~~ 69 times the square feet included in the Northern Portion~~Affected Property~~. ~~Notwithstanding the foregoing, the parties agree if the Property or a portion thereof becomes subject to eminent domain, condemnation or other takings action brought, initiated or joined by the City of Denton or any governmental authority controlled by the City of Denton or sharing geographical jurisdiction (in whole or in part) with the City of Denton or any procedural action materially connected therewith is initiated before Closing ("City Taking"), Westpark may terminate this Contract in its sole discretion.~~

9.9 **Severability.** In case any one or more of the provisions contained in this Contract shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity,

illegality, or unenforceability shall not affect any other provision hereof, and this Contract shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

**9.10 Rule of Construction.** The parties acknowledge that each party and its counsel has reviewed and revised this Contract, and the parties hereby agree that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Contract or any amendments or exhibits hereto.

**9.11 Business Days and Time References.** All reference to “days” in this Contract shall be deemed for all purposes to be “business days”. If the Closing Date or the day of performance of any act required under this Contract falls on a Saturday, Sunday or legal holiday (“All agencies closed” days defined by Texas State Auditor’s office), then the Closing Date or the day for such performance, as the case may be, shall be the next following regular business day. References to particular times of day correspond to the time in Denton, Texas.

**9.12 Designation of Reporting Person.** Denton and Westpark hereby designate the Title Company as the “**Reporting Person**” with respect to the transaction contemplated under this Contract for purposes of complying with the regulations set forth in 26 C.F.R. Section 1.6045-4(e)(5).

**9.13 Counterparts.** This Contract may be executed in multiple counterparts, each of which shall, for all purposes, be deemed an original, but which together shall constitute one and same instrument, and the signature pages from any counterpart may be appended to any other counterpart to assemble fully executed documents, and counterparts of this Contract may also be exchanged via electronic facsimile machines and any electronic facsimile of any party’s signature shall be deemed to be an original signature for all purposes; provided, however, that any signature pages transmitted by electronic facsimile shall nevertheless be followed by the exchange of hard copy originals.

**9.14 Waiver.** The waiver by any party of a breach of any provision of this Contract shall not be deemed a continuing waiver or a waiver of any subsequent breach whether of the same or another provision of this Contract.

**9.15 Delegation of Authority.** Authority to take any actions that are to be, or may be, taken by Denton under this Contract are hereby delegated by Denton, pursuant to approval of this Contract by the City Council of Denton, Texas, to the General Manager of Denton Municipal Electric, or his designee.

**9.16 Expiration of Offer.** The execution of this Contract by Westpark constitutes, subject to the terms hereof, an irrevocable offer to sell the Property to Denton. Unless by 5:00 p.m., on November 20, 2013, this Contract is accepted by Denton by action of the City Council of Denton, the offer of this Contract shall be automatically revoked and terminated.

**9.17 Appendices.** The following Appendices are attached hereto and made a part hereof:

[Type text]

Exhibit A to Ordinance [Type text]

- Appendix 1A – Land Description
- Appendix 1B – ~~Northern~~Southern Portion
- Appendix 1C – ~~Southern~~Northern Portion
- Appendix 2A – Deed for ~~Northern~~Southern Portion
- Appendix 2B – Deed for ~~Southern~~Northern Portion
- Appendix 3 – RILMH Surface Waiver
- ~~Appendix 4 – Right of First Refusal~~

IN WITNESS WHEREOF, this Contract is hereby executed as of the Effective Date.

***[The Balance of This Page Has Been Intentionally  
Left Blank – Signature Pages Follow.]***



**WESTPARK SIGNATURE PAGE**

**WESTPARK:**

WESTPARK GROUP, LP, a Texas limited partnership

By: Westpark Group GP, LLC, a Texas limited liability company, its general partner

By: The Rayzor Company, a Texas corporation, its sole manager

By: \_\_\_\_\_  
Philip A. Baker, Vice President

Executed by Westpark on the \_\_\_\_ day of \_\_\_\_\_ 2013.

[Type text]

Exhibit A to Ordinance [Type text]

**DENTON SIGNATURE PAGE**

**DENTON:**

CITY OF DENTON, a Texas municipal corporation

By: \_\_\_\_\_  
GEORGE C. CAMPBELL, CITY MANAGER

Executed by City of Denton on the \_\_\_\_ day of \_\_\_\_\_ 2013.

ATTEST:  
JENNIFER WALTERS, CITY SECRETARY

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

APPROVED AS TO LEGAL FORM:  
ANITA BURGESS, CITY ATTORNEY

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

**RECEIPT OF AGREEMENT BY TITLE COMPANY**

By its execution below, Title Company acknowledges receipt of an executed copy of this Contract. Title Company agrees to comply with, and be bound by, the terms and provisions of this Contract to perform its duties pursuant to the provisions of this Contract and comply with Section 6045(e) of the Internal Revenue Code of 1986, as amended from time to time, and as further set forth in any regulations or forms promulgated thereunder. The Effective Date of the Contract per the terms thereof is \_\_\_\_\_.

TITLE COMPANY:

REPUBLIC TITLE OF TEXAS, INC.

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

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

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

Contract receipt date: \_\_\_\_\_, 2013

## **APPENDIX 1A**

Attached hereto and made a part hereof is the Description of the Land

## **APPENDIX 1B**

Attached hereto and made a part hereof is the Description of the Northern Portion

## **APPENDIX 1C**

Attached hereto and made a part hereof is the Description of the Southern Portion

**APPENDIX 2A**

*Attached hereto and made a part hereof is the Deed for the Northern Portion.*

**NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.**

**SPECIAL WARRANTY DEED**

THE STATE OF TEXAS                   §  
  §       KNOW ALL PERSONS BY THESE PRESENTS:  
COUNTY OF DENTON                 §

WESTPARK GROUP, LP, a Texas limited partnership ("**Grantor**") does hereby deliver this Deed to the CITY OF DENTON, a municipal political subdivision of the State of Texas ("**Grantee**"), whose mailing address is 215 E. McKinney, Denton, Texas 76201.

Grantor, for TEN DOLLARS (\$10.00) and other good and valuable consideration paid to it by Grantee the receipt and sufficiency of which is hereby acknowledged, has SOLD, GRANTED and CONVEYED, and by these presents does SELL, GRANT and CONVEY unto the Grantee the tract of land described on **Exhibit A** attached hereto, together with all rights and appurtenances appertaining thereto (herein collectively called the "**Property**").

Grantor has previously conveyed all of the minerals owned by Grantor in and under, and that may be produced from, the Property to RIL Mineral Holdings, LP ("**RILMH**"); but to the extent that Grantor continues to hold any such minerals, Grantor, subject to the limitation of such reservation made herein, shall reserve, for itself, its successors and assigns all oil, gas and other minerals in, on and under and that may be produced from the Property which Grantor may hold, if any. Grantor, its successors and assigns shall not have the right to use or access the surface of the Property, in any way, manner or form, in connection with or related to the reserved oil, gas, and other minerals and/or related to exploration and/or production of the oil, gas and other minerals reserved herein, including without limitation, use or access of the surface of the Property for the location of any well or drill sites, well bores, whether vertical or any deviation from vertical, water wells, pit areas, seismic activities, tanks or tank batteries, pipelines, roads, electricity or other utility infrastructure, and/or for subjacent or lateral support for any surface facilities or well bores, or any other infrastructure or improvement of any kind or type in connection with or related to the reserved oil, gas and other minerals, and/or related to the exploration or production of same; provided, further, however, that the parties acknowledge that the minerals held by Grantor, if any, may not constitute all of the minerals under the Property and there may be third party holders of mineral rights ("**Other Mineral Rights Holders**") and/or the minerals may be subject to one or more existing oil and gas or other mineral leases, to the extent same are valid and subsisting ("**Existing Mineral Leases**") in favor of lessees thereunder ("**Mineral Lessees**"), and the foregoing waiver as to surface use shall not be construed to limit any of the existing rights of the Other Mineral Rights Holders or Mineral Lessees under the Existing Mineral Leases, nor shall Mineral Owner have any duty or obligation to obtain any waivers or other agreements from any such Other Mineral Rights Holders or Mineral Lessees with respect to limitations on surface use or otherwise, and in no event shall Mineral Owner have any liability or responsibility for any surface damage or injury to property or



person as a result of the exploration and/or production of the minerals by any Other Mineral Rights Holders or any Mineral Lessee, and Grantee shall pursue any such claims solely against such Mineral Lessee or Other Mineral Rights Holder, as applicable.

As used herein, the term "minerals" shall mean all of Grantor's right, title and interest in all minerals of every kind, including oil, crude oil, natural gas, casing-head gas, other gas, other gaseous or liquid hydrocarbon minerals or substances, condensate, coal, ores, sulphur and other minerals of every kind and nature in and under and/or that may be produced from the Property.

As used herein, the term "surface of the Property" shall include the area from the surface of the earth to a depth of five hundred feet (500') below the surface of the earth and all areas above the surface of the earth.

This Deed is executed by Grantors and accepted by Grantee subject to the following (collectively, the "**Permitted Exceptions**"): (i) the Roll-Back Taxes hereinafter defined, (ii) the prior reservation of all minerals associated with the Land as contained in Special Warranty Deed recorded under Instrument No. 2011-67794 and/or Instrument No. 2011-67798 and Instrument No. 2013-\_\_\_\_\_ in the Deed Records of Denton County, Texas (iii) all encumbrances and other matters listed in Exhibit "B" hereto [**attach list of all valid and subsisting "Permitted Exceptions" as defined in the Agreement**]; (iv) ~~that certain the Right of First Refusal reserved executed by Grantor herein; and Grantee and recorded as of even date herewith;~~ (v) all municipal or other governmental zoning laws, regulations and ordinances, if any, affecting the Property, and (vi) any other matters affecting the Property of public record or which would be disclosed by a physical inspection of the Property or an accurate survey of the Property. "**Roll-Back Taxes**" as used herein shall mean any taxes or assessments assessed against the Property as a result of any change in land usage or ownership based on the Property having been assessed under any agricultural, open-space or other special use valuation methods ("**Special Use Valuation**") to arrive at the taxable value of the Property as permitted under the Texas Tax Code.

Grantor hereby assigns to Grantee, without recourse or representation, any and all claims and causes of action that Grantor may have for or related to any defects in, or injury to, the Property.

TO HAVE AND TO HOLD the Property, together with all and singular the rights and appurtenances thereto in anywise belonging unto Grantee, its successors and assigns forever, and Grantor does hereby bind itself, its successors and assigns to WARRANT AND FOREVER DEFEND all and singular the Property, subject to the Permitted Exceptions, unto said Grantee, its successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof by, through or under Grantor, but not otherwise.

WITNESS THE EXECUTION HEREOF effective as of the \_\_\_\_ day of \_\_\_\_\_, 2013 ("**Effective Date**").

**GRANTOR:**

WESTPARK GROUP, LP,  
a Texas limited partnership

By: Westpark Group GP, LLC,  
a Texas limited liability company  
its general partner

By: The Rayzor Company,  
a Texas corporation,  
its sole member

By: \_\_\_\_\_  
Philip A. Baker  
Vice President

*[Notary seal and Grantee's Acceptance follow.]*

THE STATE OF TEXAS     §  
  §  
COUNTY OF DENTON     §

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_  
2013, by Philip A. Baker, Vice President of The Rayzor Company, a Texas corporation, sole  
member of Westpark Group GP, LLC, a Texas limited liability company, general partner of  
Westpark Group, LP, a Texas limited partnership, on behalf of said limited partnership.

\_\_\_\_\_  
Notary Public, State of Texas

*[The balance of this page is intentionally blank. Grantee's Acceptance follows below.]*

[Type text]

Exhibit A to Ordinance [Type text]

**GRANTEE'S ACCEPTANCE OF DEED  
AND ALL COVENANTS, RESTRICTIONS  
AND PROVISIONS:**

CITY OF DENTON, TEXAS, a Texas municipal corporation

By: \_\_\_\_\_  
George C. Campbell, City Manager

Executed by City of Denton on this \_\_\_\_ day of \_\_\_\_\_, 2013.

ATTEST:  
Jennifer Walters, City Secretary

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

APPROVED AS TO LEGAL FORM:  
Anita Burgess, City Attorney

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

**ACKNOWLEDGMENT**

STATE OF TEXAS           §  
  §  
COUNTY OF DENTON       §

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_,  
2013, by George C. Campbell, City Manager of the City of Denton, Texas, on behalf of the City  
of Denton, Texas.

GIVEN under my hand and seal of office this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
Notary Public, State of Texas

\_\_\_\_\_  
Notary's Printed Name

My Commission Expires:\_\_\_\_\_

Attach Exhibits "A" and "B"

**APPENDIX 2B**

*Attached hereto and made a part hereof is the Deed for the Southern Portion.*

**NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.**

**DONATION DEED**

THE STATE OF TEXAS                   §  
  §       KNOW ALL PERSONS BY THESE PRESENTS:  
COUNTY OF DENTON                 §

WESTPARK GROUP, LP, a Texas limited partnership ("**Grantor**") does hereby deliver this Deed to the CITY OF DENTON, a municipal political subdivision of the State of Texas ("**Grantee**"), whose mailing address is 215 E. McKinney, Denton, Texas 76201.

Grantor has GIVEN, GRANTED and CONVEYED, and by these presents does GIVE, GRANT and CONVEY unto the Grantee the ~~portion of the~~ tract of land described on **Exhibit A** attached hereto (the "**Southern Portion**") together with all rights and appurtenances appertaining thereto (herein collectively called the "**Property**"), without monetary or other economic consideration and with Grantor's intention to make a gift as a charitable contribution under applicable income tax laws and regulations.

Grantor has previously conveyed all of the minerals owned by Grantor in and under, and that may be produced from, the Property to RIL Mineral Holdings, LP ("**RILMH**"); but to the extent that Grantor continues to hold any such minerals, Grantor, subject to the limitation of such reservation made herein, shall reserve, for itself, its successors and assigns all oil, gas and other minerals in, on and under and that may be produced from the Property which Grantor may hold, if any. Grantor, its successors and assigns shall not have the right to use or access the surface of the Property, in any way, manner or form, in connection with or related to the reserved oil, gas, and other minerals and/or related to exploration and/or production of the oil, gas and other minerals reserved herein, including without limitation, use or access of the surface of the Property for the location of any well or drill sites, well bores, whether vertical or any deviation from vertical, water wells, pit areas, seismic activities, tanks or tank batteries, pipelines, roads, electricity or other utility infrastructure, and/or for subjacent or lateral support for any surface facilities or well bores, or any other infrastructure or improvement of any kind or type in connection with or related to the reserved oil, gas and other minerals, and/or related to the exploration or production of same; provided, further, however, that the parties acknowledge that the minerals held by Grantor, if any, may not constitute all of the minerals under the Property and there may be third party holders of mineral rights ("**Other Mineral Rights Holders**") and/or the minerals may be subject to one or more existing oil and gas or other mineral leases, to the extent same are valid and subsisting ("**Existing Mineral Leases**") in favor of lessees thereunder ("**Mineral Lessees**"), and the foregoing waiver as to surface use shall not be construed to limit any of the existing rights of the Other Mineral Rights Holders or Mineral Lessees under the Existing Mineral Leases, nor shall Mineral Owner have any duty or obligation to obtain any waivers or other agreements from any such Other Mineral Rights Holders or Mineral Lessees with respect to limitations on surface use or otherwise, and in no event shall

Mineral Owner have any liability or responsibility for any surface damage or injury to property or person as a result of the exploration and/or production of the minerals by any Other Mineral Rights Holders or any Mineral Lessee, and Grantee shall pursue any such claims solely against such Mineral Lessee or Other Mineral Rights Holder, as applicable.

As used herein, the term "minerals" shall mean all of Grantor's right, title and interest in all minerals of every kind, including oil, crude oil, natural gas, casing-head gas, other gas, other gaseous or liquid hydrocarbon minerals or substances, condensate, coal, ores, sulphur and other minerals of every kind and nature in and under and/or that may be produced from the Property.

As used herein, the term "surface of the Property" shall include the area from the surface of the earth to a depth of five hundred feet (500') below the surface of the earth and all areas above the surface of the earth.

The Property is conveyed to Grantee on the following conditions: ~~(i) the Property shall be used solely for the development, construction and placement into operation of a Power Plant Facility (as hereinafter defined) and~~ (ii) Grantee shall have acquired a Notice to Proceed issued by the Texas Commission on Environmental Quality for, or has entered into a contract for the design and/or construction of, a facility for the generation of electric power and/or thermal energy commodities, such as heated water, chilled water, compressed air or steam (the "Power Plant Facilities") ~~so develop, construct and placeput into operation a Power Plant Facility (so as to provide such power services to municipal residents and/or customers located in the City of Denton, Texas) on the Property~~ -on or before the fifteenth (15<sup>th</sup>) anniversary of the Effective Date hereof; and (iii) no portion of the Property shall be used as an area to locate any high pressure gas transmission pipeline (provided that ~~distribution~~ pipelines to supply necessary gas to the Power Plant Facilities for operations are permitted) (collectively, the "**Conditions**"). It is expressly stipulated that ~~As used herein, "high pressure gas pipeline" shall mean a pipeline, other than a gathering line, that: (1) transports gas from a gathering line or storage facility to a distribution center, storage facility, or large volume customer that is not down-stream from a distribution center; (2) operates at a hoop stress of 20 percent or more of SMYS; or (3) transports gas within a storage field. A "gathering line" is a pipeline that transports gas from a current production facility to a transmission line or main. a pipeline capable of delivering gas at pressures at or above threooone hundred pounds per square inch gauge (1300 psig). -As used herein "Power Plant Facilities" shall mean facilities for the generation of electric power and/or thermal energy commodities such as heated and/or chilled water, compressed air and/or steam, for distribution to users in the surrounding areas, and suitable for an industrial park setting.~~

In the event Grantee or its successors and assigns ~~any one or more persons, firms, or other entities~~ violate any of the Conditions described above, Grantor and its successors and assigns may institute and prosecute any one or all of the following, as applicable: (i) any proceeding at law or in equity to abate, prevent, or enjoin any such violation or attempted violation (as to a violation of the Conditions listed in ~~(ii) and (iii)~~ above), and/or (ii) reenter the Property for condition broken (as to a violation of any of the Conditions) and declare that title to the Property has irrevocably reverted to Grantor. Grantee acknowledges and agrees that in the event of a violation of any of the Conditions, Grantee, its successors and assigns shall have upon reentry by Grantor, as described above, forfeited all rights to the Property as a result of such violation. The right of entry for condition broken ("**Right of Entry**") in favor of Grantor shall touch, concern and run with and burden the Property and shall inure to the benefit of and be enforceable by Grantor and Grantor's successors and assigns. No delay in enforcing the provisions hereof with respect to any breach or violation of the Conditions shall impair, damage,

or waive the right of any party entitled to enforce the same to obtain relief against or recover for the continuation or repetition of such breach or violation or any similar breach or violation thereof at any later time or times. Each contract for sale, deed, deed of trust, or other instrument which may hereafter be executed with respect to any property situated within the Property prior to the Termination Date (as defined below) shall be deemed to have been executed, delivered, and accepted subject to all of the provisions contained herein and all such provisions shall, without further action, be incorporated by reference therein, regardless of whether any such instrument specifically refers to or recites all or any part of the Conditions. Notwithstanding any of the above, at such time, if ever, that Grantee satisfies the Condition listed in item (ii) above (the date on such satisfaction being referred to as the "**Termination Date**"), then the Property shall no longer be subject to any of the Conditions, and in such event, upon request by Grantee, Grantor shall promptly file for record in the Real Property Records of Denton County, Texas, an instrument confirming that the Condition specified in item (ii) above has been satisfied and that the Property is no longer subject to any of the Conditions or the Right of Entry in favor of Grantor. Grantee agrees to endeavor to give written notice to Grantor of its satisfaction of the Condition listed in item (ii) above promptly upon such satisfaction.

It is further stipulated that any and all easements in favor of Grantee encumbering any portion of the Property, dated on or before three (3) months after the Effective Date of this Deed, shall survive and shall not be affected by, any termination of, or entry upon, the estate granted herein. Notwithstanding anything to the contrary herein, Grantor and Grantee hereby stipulate that such easements shall not be deemed, for any purposes, to have merged with the fee simple estate of the Property, and that such easements, including without limitation, (i) \_\_\_\_\_; (ii) \_\_\_\_\_ and (iii) \_\_\_\_\_, shall further be deemed free of, and unaffected by, the Conditions and Right of Entry prescribed herein.

This Deed is executed by Grantors and accepted by Grantee subject to the following (collectively, the "**Permitted Exceptions**"): (i) the Roll-Back Taxes hereinafter defined, (ii) the prior reservation of all minerals associated with the Land as contained in Special Warranty Deed recorded under Instrument No. 2011-67794 and/or Instrument No. 2011-67798 and Instrument No. 2013-\_\_\_\_\_ in the Deed Records of Denton County, Texas (iii) all encumbrances and other matters listed in **Exhibit "B"** hereto [**attach list of all valid and subsisting "Permitted Exceptions" as defined in the Agreement**] (iv) all municipal or other governmental zoning laws, regulations and ordinances, if any, affecting the Property, and (v) any other matters affecting the Property of public record or which would be disclosed by a physical inspection of the Property or an accurate survey of the Property. "**Roll-Back Taxes**" as used herein shall mean any taxes or assessments assessed against the Property as a result of any change in land usage or ownership based on the Property having been assessed under any agricultural, open-space or other special use valuation methods ("**Special Use Valuation**") to arrive at the taxable value of the Property as permitted under the Texas Tax Code.

Grantor hereby assigns to Grantee, without recourse or representation, any and all claims and causes of action that Grantor may have for or related to any defects in, or injury to, the Property.

TO HAVE AND TO HOLD the Property, together with all and singular the rights and appurtenances thereto in anywise belonging unto Grantee, its successors and assigns forever, and Grantor does hereby bind itself, its successors and assigns to WARRANT AND FOREVER DEFEND all and singular the Property, subject to the Permitted Exceptions, unto said Grantee, its successors and assigns, against every person whomsoever lawfully claiming or to claim the

[Type text]

Exhibit A to Ordinance [Type text]

same or any part thereof by, through or under Grantor, but not otherwise.

WITNESS THE EXECUTION HEREOF effective as of the \_\_\_\_ day of \_\_\_\_\_, 2013 ("**Effective Date**").

**GRANTOR:**

WESTPARK GROUP, LP,  
a Texas limited partnership

By: Westpark Group GP, LLC,  
a Texas limited liability company  
its general partner

By: The Rayzor Company,  
a Texas corporation,  
its sole member

By: \_\_\_\_\_  
Philip A. Baker  
Vice President

*[Notary seal and Grantee's Acceptance follow.]*

THE STATE OF TEXAS     §  
  §  
COUNTY OF DENTON     §

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_ 2013, by Philip A. Baker, Vice President of The Rayzor Company, a Texas corporation, sole member of Westpark Group GP, LLC, a Texas limited liability company, general partner of Westpark Group, LP, a Texas limited partnership, on behalf of said limited partnership.

\_\_\_\_\_  
Notary Public, State of Texas

*[The balance of this page is intentionally blank. Grantee's Acceptance follows below.]*



[Type text]

Exhibit A to Ordinance [Type text]

**GRANTEE'S ACCEPTANCE OF DEED  
AND ALL COVENANTS, RESTRICTIONS  
AND PROVISIONS:**

CITY OF DENTON, TEXAS, a Texas municipal corporation

By: \_\_\_\_\_  
George C. Campbell, City Manager

Executed by City of Denton on this \_\_\_\_ day of \_\_\_\_\_, 2013.

ATTEST:  
Jennifer Walters, City Secretary

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

APPROVED AS TO LEGAL FORM:  
Anita Burgess, City Attorney

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

**ACKNOWLEDGMENT**

STATE OF TEXAS           §  
  §  
COUNTY OF DENTON       §

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_,  
2013, by George C. Campbell, City Manager of the City of Denton, Texas, on behalf of the City  
of Denton, Texas.

GIVEN under my hand and seal of office this \_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
Notary Public, State of Texas

\_\_\_\_\_  
Notary's Printed Name

My Commission Expires:\_\_\_\_\_

Attach Exhibits "A" and "B"

| [Type text]

Exhibit A to Ordinance [Type text]

### **APPENDIX 3**

*Attached hereto and made a part hereof is the RILMH Surface Waiver.*

**WAIVER AND RELEASE OF SURFACE RIGHTS AGREEMENT**

STATE OF TEXAS           §  
  §           **KNOW ALL PERSONS BY THESE PRESENTS:**  
COUNTY OF DENTON     §

This Waiver and Release of Surface Rights Agreement ("**Agreement**") is made and entered into as of \_\_\_\_ day of \_\_\_\_\_, 20\_\_ by RIL MINERAL HOLDINGS, LP, a Texas limited partnership ("**Mineral Owner**") for the benefit of WESTPARK GROUP, L.P., a Texas limited partnership ("**Westpark**") and any other successor owners of the certain tract of land described hereinbelow as the Waiver Property, specifically including, without limitation, the City of Denton, Texas ("**City**").

**RECITALS:**

- A. Westpark is the surface owner of certain real property located in Denton County, Texas as more particularly described on **Exhibit "A"** (the "**Waiver Property**").
- B. Mineral Owner is the owner of the mineral estate relating to the Waiver Property (such minerals owned by Mineral Owner being referred to as the "**RILMH Minerals**").
- C. Westpark is selling and conveying the surface of the Waiver Property to the City on or about the date hereof (the City, together with any successors and assigns who own any portion of the surface of the Waiver Property is referred to as a "**Surface Owner**" with respect to the surface lands owned by it).
- D. Mineral Owner, as the current holder of the RILMH Minerals, has agreed to execute this instrument to confirm and agree that Mineral Owner waives and releases its right to use the surface of the Waiver Property as provided below.

**AGREEMENTS:**

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, Mineral Owner covenants and agrees as follows:

- 1. **Release and Waiver.** Mineral Owner waives and releases, on behalf of Mineral Owner and Mineral Owner's successors and assigns, all rights of ingress and egress and all other rights to enter upon or to use the surface of the Waiver Property or any part thereof in any way, manner or form, in connection with or related to the RILMH Minerals and/or related to exploration and/or production of the RILMH Minerals, including without limitation, use or access of the surface of the Property for the location of any well or drill sites, well bores, whether vertical or any deviation from vertical, water wells, pit areas, seismic activities, tanks or tank batteries, pipelines, roads, electricity or other utility infrastructure, and/or for subjacent or lateral

support for any surface facilities or well bores, or any other infrastructure or improvement of any kind or type in connection with or related to the RILMH Minerals, and/or related to the exploration or production of same; provided further, however, nothing herein shall prevent Mineral Owner or its successors and assigns from exploring for, developing and/or producing the RILMH Minerals in and under the Waiver Property by pooling or by directional drilling under the Waiver Property from well sites or mining sites located on other property so long as such activity does not interfere with surface uses on the Waiver Property down to a depth of 500 feet or subsurface support of any structure, facility or other improvement on the Waiver Property; provided, further, however, that the parties acknowledge that the RILMH Minerals may not constitute all of the minerals under the Waiver Property and there may be third party holders of mineral rights ("**Other Mineral Rights Holders**") and/or the RILMH Minerals may be subject to one or more existing oil and gas or other mineral leases ("**Existing Mineral Leases**") in favor of lessees thereunder ("**Mineral Lessees**"), and the forgoing waiver as to surface use shall not be construed to limit any of the existing rights of the Other Mineral Rights Holders or Mineral Lessees under the Existing Mineral Leases, nor shall Mineral Owner have any duty or obligation to obtain any waivers or other agreements from any such Other Mineral Rights Holders or Mineral Lessees with respect to limitations on surface use or otherwise, and in no event shall Mineral Owner have any liability or responsibility for any surface damage or injury to property or person as a result of the exploration and/or production of the RILMH Minerals by any Other Mineral Rights Holders or any Mineral Lessee, and all Surface Owners shall pursue any such claims solely against such Mineral Lessee or Other Mineral Rights Holder, as applicable. As used herein, the term "surface of the Property" shall include the area from the surface of the earth to a depth of five hundred feet (500') below the surface of the earth and all areas above the surface of the earth.

2. **Current Holder of Rights.** Mineral Owner represents and warrants that Mineral Owner is the current holder of the RILMH Minerals.

3. **Successors and Assigns.** The acknowledgements and agreements of Mineral Owner hereunder shall (i) run with the Waiver Property for the benefit of Westpark and any future Surface Owner, specifically including, without limitation, the City, (ii) inure to the benefit of and be enforceable by Westpark as well as any future Surface Owner, specifically including, without limitation, the City, and its respective heirs, legal representatives, successors and assigns of, and (iii) be binding upon and enforceable against Mineral Owner and its legal representatives, successors and permitted assigns.

4. **Other/Miscellaneous.**

(a) **Choice of Law.** THIS AGREEMENT SHALL BE GOVERNED BY THE LAWS OF THE UNITED STATES OF AMERICA AND THE INTERNAL LAWS OF THE STATE OF TEXAS, WITHOUT REGARD TO ITS CONFLICT OF RULES. THIS AGREEMENT IS PERFORMABLE IN, AND THE EXCLUSIVE VENUE FOR ANY ACTION BROUGHT WITH RESPECT HERETO, SHALL LIE IN COURTS OF COMPETENT JURISDICTION IN DENTON COUNTY, TEXAS.

(b) **Headings.** The titles and article headings contained herein are for purposes of identification only and shall not be considered in construing this Agreement.

(c) **Notices.** Any notice, report or demand by Westpark and/or Surface Owner to Mineral Owner with respect to this Agreement shall be in writing and shall be deemed to have been sufficiently given or served to Mineral Owner for all purposes upon

[Type text]

Exhibit A to Ordinance [Type text]

Mineral Owner's receipt or refusal of receipt when sent by (i) registered or certified mail, return receipt requested, or (ii) personal hand delivery, or (iii) overnight courier service, to the Mineral Owner at the address shown beneath Mineral Owner's signature below.

EXECUTED to be effective as of the first date hereinabove written.

*[Signature pages follow.]*

**MINERAL OWNER:**

RIL MINERAL HOLDINGS, LP, a Texas limited partnership

By: RIL Mineral Holdings GP, LLC, a Texas limited liability company, its general partner

By: The Rayzor Company, a Texas corporation, its sole member

By: \_\_\_\_\_  
Philip A. Baker, Vice-President

**Address:**

c/o The Rayzor Company  
400 W. Oak, Suite 200  
Denton, Texas 76201  
Tel. No. (940) 387-8711  
Fax No. (940) 566-1591

THE STATE OF TEXAS           §  
  §  
COUNTY OF DENTON           §

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2013, by Philip A. Baker, Vice-President of The Rayzor Company, a Texas corporation, sole member of RIL Mineral Holdings GP, LLC, a Texas limited liability company, sole general partner of RIL Mineral Holdings, LP, a Texas limited partnership, on behalf of said limited partnership.

\_\_\_\_\_  
Notary Public, State of Texas

**After Recording Return To:**

Rayzor Investments, Ltd.  
c/o The Rayzor Company  
400 W. Oak, Suite 200  
Denton, Texas 76201

**Attach Exhibit "A"**

[Type text]

Exhibit A to Ordinance [Type text]

**APPENDIX 4**

*Attached hereto and made a part hereof is the Right of First Refusal*

**RIGHT OF FIRST REFUSAL AGREEMENT**

\_\_\_\_\_  
This Right of First Refusal Agreement ("**Agreement**") is made and entered into effective as of the \_\_\_\_ day of November, 2013 ("**Effective Date**") by and between **WESTPARK GROUP, LP**, a Texas limited partnership ("**Westpark**") and the **CITY OF DENTON**, a municipal political subdivision of the State of Texas ("**Denton**").

**WITNESSETH:**

\_\_\_\_\_  
A. As of even date herewith, Westpark is conveying to Denton certain real property ("**Property**") located in Denton County, Texas, more particularly described on **Exhibit "A"** attached hereto.

B. As a material part of the terms, conditions and considerations given and exchanged by the parties in connection with the purchase and sale of the Property, Westpark and Denton have agreed that Denton shall grant to Westpark a right of first refusal for certain conveyances of the Property as hereinafter discussed.

**AGREEMENTS:**

\_\_\_\_\_  
Now, therefore, for and in consideration of good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Denton agrees as follows:

\_\_\_\_\_  
**Section 1. Right of First Refusal.** In consideration of Westpark's conveyance of the Property and other good and valuable consideration, Denton agrees to grant Westpark a right of first refusal ("**Right of First Refusal**") in connection with any Contemplated Conveyance (as hereinafter defined) of the Property.

**Section 2. Contemplated Conveyance.** If Denton receives a bona fide third party written offer acceptable to Denton in good faith from any person or entity, other than a Permitted Assignee (as hereinafter defined) to purchase the Property or any portion or interest therein, or Denton makes an offer in writing to sell the Property or any portion or interest therein to any person or entity, other than a Permitted Assignee (referred to herein as a "**Contemplated Conveyance**"; and the terms and conditions thereunder the "**Contemplated Terms**"), then Westpark shall have the right to purchase the Property or such portion or interest therein on the same Contemplated Terms as contained in such third party bona fide offer, subject to the conditions herein. The term "**Permitted Assignee**" shall mean any governmental authority controlled by the City of Denton or sharing geographical jurisdiction with the City of Denton.

**Section 3. Refusal Notice.** Denton shall give Westpark prompt written notice ("**Refusal Notice**") of the terms and conditions of any Contemplated Conveyance and shall include a copy of (i) any bona fide third party written offer signed by any person or entity making an offer, other than a Permitted Assignee, to Denton or (ii) any bona fide offer from Denton making an offer to any person or entity, other than a Permitted Assignee, as the case may be. Westpark will then have thirty (30) days from the date such Refusal Notice is received by Westpark in which to exercise its Right of First Refusal by giving written notice ("**Exercise Notice**") to Denton of the exercise of its Right of First Refusal.

**Section 4. Conveyance and Closing Under Contemplated Conveyance.** If

Westpark gives Exercise Notice, then the following shall occur:

- A. ~~Denton shall convey the Property to Westpark in accordance with the terms and conditions of the Contemplated Conveyance; and~~
- B. ~~Westpark shall pay the purchase price in accordance with the terms and conditions provided in the Contemplated Conveyance; and~~
- C. ~~all other obligations contained in the Contemplated Conveyance shall be performed by the respective parties in accordance with the terms and conditions contained therein.~~

**Section 5. Failure to Exercise.** ~~If Westpark does not give Exercise Notice within thirty (30) days following the date of Westpark's receipt of Refusal Notice from Denton with respect to a Contemplated Conveyance ("**Non-exercise**"), then Denton may sell the Property to the offeror in accordance with the terms of such Contemplated Conveyance. However, any sale or conveyance (i) to a different person or entity than that contained in such Contemplated Conveyance (except to an affiliate of such person or entity), or (ii) of a different interest in the Property than that contained in such Contemplated Conveyance, or (iii) upon terms materially different from those contained in such Contemplated Conveyance shall be deemed a new Contemplated Conveyance ("**New Contemplated Conveyance**"). In the event of a New Contemplated Conveyance, Westpark shall have its Right of First Refusal with respect thereto and Denton shall tender Refusal Notice to Westpark with respect thereto and Westpark shall have the right to exercise the Right of First Refusal with respect to such New Contemplated Conveyance by sending an Exercise Notice. In the event there is a Non-exercise on the part of Westpark and Denton thereafter consummates the Contemplated Conveyance with the third party offeror in accordance with the Contemplated Terms thereunder, then from and after the completion of such Contemplated Conveyance, the Right of First Refusal in favor of Westpark shall terminate and Westpark shall have no further rights under this Agreement thereafter (a "**Non-exercise Termination**").~~

**Section 6. Notices.**

~~A. Any notice required or permitted to be given hereunder by one party to the other shall be in writing and the same shall be given and shall be deemed to have been served and given if (i) delivered in person to the address set forth below the signature of such party, (ii) placed in the United States mail, certified, return receipt requested, addressed to such party at the address specified below the signature of such party, (iii) deposited into the custody of a reputable overnight delivery carrier for next day delivery, addressed to such party at the address specified below the signature of such party, or (iv) telecopied by facsimile transmission to such party at the telecopy number listed below, provided that such transmission is confirmed by machine generated confirmation on the date of such transmission. From time to time either party may designate another address within the 48 contiguous states of the United States of America for all purposes of this Agreement by giving the other party not less than thirty (30) days advance written notice of such change of address in accordance with the provisions hereof.~~

~~B. The address of Westpark for all purposes under this Agreement and for all notices hereunder shall be:~~

~~Philip A. Baker, Vice President~~



[Type text]

Exhibit A to Ordinance [Type text]

The Rayzor Company  
P.O. Box 336  
Phone: (940) 387-8714  
Denton, Texas 76202  
Fax: (940) 566-1594  
pabaker@rayzorcompany.com

~~\_\_\_\_\_ C. \_\_\_\_\_ The address of Denton for all purposes under this Agreement and for all notices hereunder shall be:~~

~~Richard Casner,  
First Assistant City Attorney \_\_\_\_\_  
City of Denton, Texas  
215 E. McKinney Street  
Denton, Texas 76204  
Phone: (940) 349-8333  
Fax: (940) 382-7923  
Richard.Casner@cityofdenton.com~~

~~Paul Williamson, Real Estate Manager \_\_\_\_\_  
City of Denton Texas \_\_\_\_\_  
Phone: (940) 349-8921 \_\_\_\_\_~~

~~Fax: (940) 349-8951 \_\_\_\_\_  
Paul.Williamson@cityofdenton.com \_\_\_\_\_~~

With Copies To:

~~Pamela England, Real Estate Specialist  
City of Denton, Texas  
Phone: (940) 349-8928  
Fax: (940) 349-8954  
Pamela.England@cityofdenton.com~~

~~Michael S. Grim  
Executive Manager  
Power, Legislative and  
Regulatory Affairs  
City of Denton Texas  
Phone: (940) 349-7565  
Fax: (940) 349-7334  
Mike.grim@cityofdenton.com~~

~~**Section 7. Entire Agreement.** This Agreement (including the exhibits hereto) contains the entire contract between Denton and Westpark, and no oral statements or prior written matter not specifically incorporated herein shall be of any force and effect. No variations, modifications, or changes hereof shall be binding on either party hereto unless set forth in a document executed by such parties or a duly authorized agent, officer or representative thereof.~~

~~**Section 8. Further Assurances.** Denton shall do all such further acts and shall execute, acknowledge and deliver all such deeds, assignments, transfers, conveyances, consents and assurances, and shall cooperate fully in all manners and respects, as may be reasonably necessary or appropriate, to protect Westpark's Right of First Refusal hereunder and to carry out the transactions contemplated by this Agreement.~~

~~**Section 9. Successors and Assigns.** This Agreement shall inure to the benefit of and be binding on the parties hereto and their respective legal representatives, successors, and permitted assigns, and shall burden, touch, concern and run with the Property and shall inure to the benefit of and be enforceable by Westpark and its successors and assigns, subject however to a Non-exercise Termination. Westpark may assign his rights hereunder at any time to any other person or entity.~~

~~**Section 10. Terminology.** The captions beside the section numbers of this Agreement are for reference only and shall not modify or affect this Agreement in any manner whatsoever. Wherever required by the context, any gender shall include any other gender, the singular shall include the plural, and the plural shall include the singular.~~

~~**Section 11. Choice of Law.** THIS AGREEMENT SHALL BE GOVERNED BY THE LAWS OF THE UNITED STATES OF AMERICA AND THE INTERNAL LAWS OF THE STATE OF TEXAS, WITHOUT REGARD TO ITS CONFLICT OF RULES. THIS AGREEMENT IS PERFORMABLE IN, AND THE EXCLUSIVE VENUE FOR ANY ACTION BROUGHT WITH RESPECT HERETO, SHALL LIE IN COURTS OF COMPETENT JURISDICTION IN DENTON COUNTY, TEXAS.~~

~~**Section 12. Severability.** If any clause or provision of this Agreement is illegal, invalid or unenforceable under present or future laws effective during the term of this Agreement, then and in that event, it is the intention of the parties hereto that the remainder of this Agreement shall not be affected thereby, and it is also the intention of the parties to this Agreement that in lieu of each clause or provision of this Agreement that is illegal, invalid or unenforceable, there be added, as a part of this Agreement, a clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible and be legal, valid and enforceable.~~

~~**Section 13. Construction.** The parties acknowledge that each party and its counsel have reviewed and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any amendments or exhibits hereto.~~

~~**Section 14. Attorneys' Fees.** If any action at law or in equity is necessary to enforce or interpret the terms of this Agreement, the prevailing party or parties shall be entitled to reasonable attorneys' fees, costs and necessary disbursements in addition to any other relief to which such party or parties may be entitled.~~

~~**Section 15. Business Days.** If the day for performance of any act required under this Agreement falls on a Saturday, Sunday or legal holiday, then the day for such performance, as the case may be, shall be the next following regular business day.~~

~~**Section 16. Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be deemed an original for all purposes and all of which when taken together shall constitute a single counterpart instrument. Executed signature pages to any counterpart instrument may be detached and affixed to a single counterpart, which single counterpart with multiple executed signature pages affixed thereto constitutes the original counterpart instrument. All of these counterpart pages shall be read as though one and they shall have the same force and effect as if all of the parties had executed a single signature page.~~

~~**Section 17. Recording.** This Agreement shall be recorded in the appropriate real property records of the County of Denton, State of Texas, to provide notice to third parties of the existence of the Right of First Refusal and interests of Westpark in the Property resulting therefrom.~~

~~[THE REMAINDER OF THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK]~~

**WESTPARK:**

~~WESTPARK GROUP, LP,  
a Texas limited partnership~~

~~By: Westpark Group GP, LLC,  
a Texas limited liability company  
its general partner~~

~~By: The Rayzor Company,  
a Texas corporation,  
its sole member~~

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

Philip A. Baker  
Vice President

~~THE STATE OF TEXAS §  
§  
COUNTY OF DENTON §~~

~~This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_  
2013, by Philip A. Baker, Vice President of The Rayzor Company, a Texas corporation, sole  
member of Westpark Group GP, LLC, a Texas limited liability company, general partner of  
Westpark Group, LP, a Texas limited partnership, on behalf of said limited partnership.~~

\_\_\_\_\_  
Notary Public, State of Texas

[Type text]

Exhibit A to Ordinance [Type text]

**DENTON:**

~~CITY OF DENTON, TEXAS, a Texas municipal corporation~~

By: \_\_\_\_\_  
\_\_\_\_\_ George C. Campbell, City Manager

Executed by City of Denton on this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

**ATTEST:**  
~~Jennifer Walters, City Secretary~~

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

**APPROVED AS TO LEGAL FORM:**  
~~Anita Burgess, City Attorney~~

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

**ACKNOWLEDGMENT**

STATE OF TEXAS \_\_\_\_\_ §  
\_\_\_\_\_ §  
COUNTY OF DENTON \_\_\_\_\_ §

\_\_\_\_\_ This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 2013, by George C. Campbell, City Manager of the City of Denton, Texas, on behalf of the City of Denton, Texas.

\_\_\_\_\_ GIVEN under my hand and seal of office this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
Notary Public, State of Texas

\_\_\_\_\_  
Notary's Printed Name

My Commission Expires: \_\_\_\_\_

~~Attach Exhibit "A"~~

**AGENDA INFORMATION SHEET**

**AGENDA DATE:** November 19, 2013  
**DEPARTMENT:** Denton Municipal Electric  
**ACM:** Howard Martin, 349-8232

**SUBJECT**

Consider adoption of an ordinance of the City of Denton, Texas, authorizing the City Manager or his designee to execute a Contract of Sale (herein so called), by and between the City of Denton (the "City"), and Westpark Group, L.P., a Texas Limited Partnership (the "Seller") contemplating the sale by Seller and purchase by the City of a 3.00 acre tract of land, more or less, for the purchase price of One Hundred Eighty Thousand Nine Hundred Ninety One and 80/100 Dollars (\$180,991.<sup>80</sup>), said Real Property being generally located east of Western Boulevard and North of Airport Road, and located in the James Perry Survey, Abstract 1040, and the John Davis Survey, Abstract 326, Denton County, Texas, authorizing the City Manager, or his designee, to execute and deliver any and all other documents necessary to accomplish closing of the transactions contemplated by the Contract of Sale; authorizing the expenditure of funds therefore; and providing an effective date.

**BACKGROUND**

In preparation for future projects involving the expansion of electric and natural gas infrastructure, DME proposed to secure easements, tracts of land, and access. The projects necessitate the acquisition of a 3.00 acre tract of land located north of Airport Road, and east of Western Boulevard. Staff has been actively pursuing the transaction acquisition terms with the affected property owner beginning in September 2010, the result of which are embodied in the Contract of Sale. Staff recommends approval of the Contract of Sale in the substantial form as attached.

Delivery of Contract of Sale in final form is expected from the Seller prior to the convening of the November 19th, 2013 City Council meeting, otherwise this item will be pulled from the agenda.

Recommended approval authorizes staff to proceed to closing the purchase transaction with the Seller upon City Council approval of the ordinance.

**OPTIONS**

1. Recommend approval of the Ordinance
2. Do not recommend approval

**RECOMMENDATION**

Staff endorses approval of the Ordinance.

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

City Council Closed Session Briefing on the utility project September 14, 2010  
City Council Closed Session Briefing on the utility project January 4, 2011  
Public Utility Board Approval April 5, 2011  
City Council Approval April 19<sup>th</sup> Ordinance 2011-063  
Public Utility Board Closed Session briefing July 22, 2-013  
City Council Closed Session briefing August 6, 2013  
Public Utility Board Closed Session and Consent agenda approvals October 28, 2013  
City Council Executive Session November 5, 2013  
Public Utility Board Executive Session November 11, 2013

**FISCAL INFORMATION** \_\_\_\_\_

\$180,991.<sup>80</sup> plus standard and customary closing costs.

**BID INFORMATION**

N/A

**EXHIBITS**

1. Location Map
2. Contract of Sale

Prepared by:



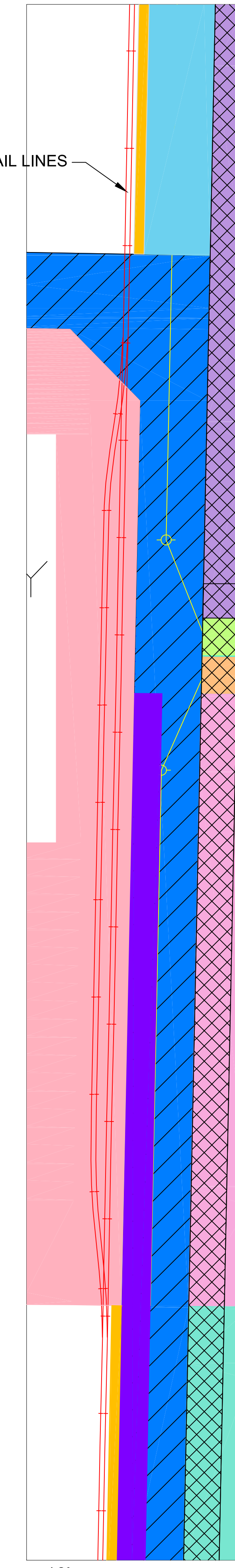
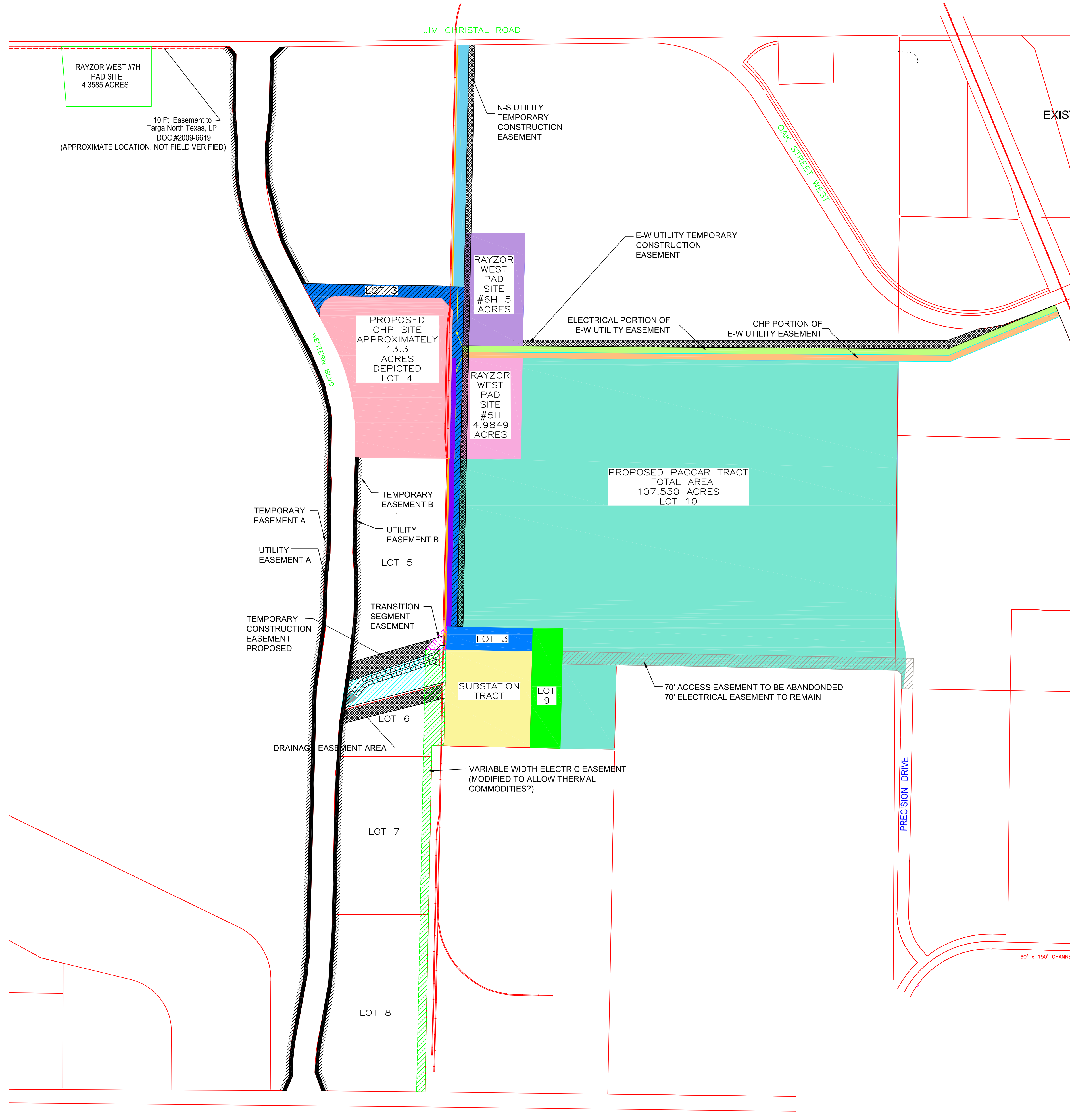
Mike Grim  
Executive Manager  
Power Legislative and Regulatory Affairs  
Denton Municipal Electric

Respectfully submitted:



Phil Williams  
General Manager  
Denton Municipal Electric

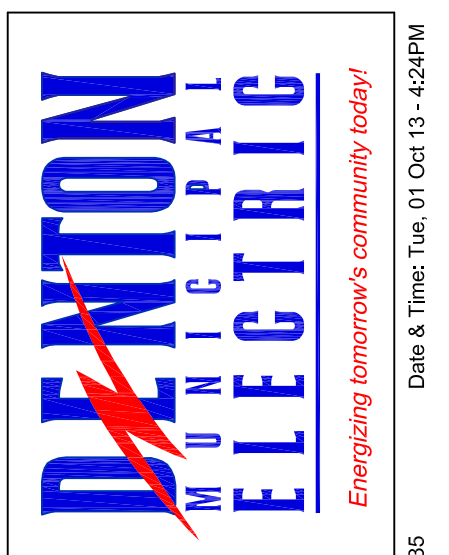
EXHIBIT 1



- PACCAR TRACT (TRACT 10)
- CHP PARCEL (TRACT 4)
- SUBSTATION TRACT
- DME ACCESS/UTILITY PARCEL (TRACT 3)
- RD WELLS EXPANSION STRIP PARCEL (TRACT 9)
- PAD SITE 5
- PAD SITE 6
- DME RAIL SPUR UTILITY EASEMENT
- E-W UTILITY EASEMENT CHP PORTION
- E-W UTILITY EASEMENT ELECTRIC PORTION
- N-S UTILITY EASEMENT
- RETAINED ACCESS EASEMENT
- ELECTRIC PORTION OF DME STRIP
- DRAINAGE EASEMENT AREA

10'  
27.5'  
65'

INFORMATION ON THIS DRAWING IS ACCURATE TO THE BEST OF OUR KNOWLEDGE. DENTON MUNICIPAL ELECTRIC MAKES NO GUARANTEE AS TO ACCURACY AND ASSUMES NO RESPONSIBILITY FOR USE OF THE INFORMATION BY ANY OTHER PERSON OR ORGANIZATION.



ELECTRIC ENGINEERING  
1659 SPENCER ROAD  
DENTON, TEXAS 76205  
(840) 348-7119

APPROVAL SIGNATURES	
ADMINISTRATOR Date	ADMIN_DATE Date
DISTRIBUTION_SUPER. Date	DIST_DATE Date
ENGINEER Date	ENG_DATE Date
DRAFTER Date	DRAFT_DATE Date
MAPPER Date	MAP_DATE Date

# DME\_RAYZOR\_SUMMARY

PROJECT DATA	
CONTRACTOR Contractor	CONTRACTOR_PHONE Phone
DISTRIBUTION_FOREMAN DISTRIBUTION FOREMAN	FOREMAN_PHONE PHONE
START_DATE Start date:	FINISH_DATE Finish date:
<b>STATUS</b>	
Project status:	

DRAWING DATA	
DRC_#:	
PROJECT:	
CREW MGR. #:	
TILE:	
SCALE:	
SHEET#:	



# EXHIBIT 2

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF DENTON, TEXAS, AUTHORIZING THE CITY MANAGER OR HIS DESIGNEE TO EXECUTE A CONTRACT OF SALE (HEREIN SO CALLED), AS ATTACHED HERETO AND MADE A PART HEREOF AS EXHIBIT "A", BY AND BETWEEN THE CITY OF DENTON (THE "CITY"), AND WESTPARK GROUP, L.P., A TEXAS LIMITED PARTNERSHIP (THE "SELLER"), CONTEMPLATING THE SALE BY SELLER AND PURCHASE BY CITY OF A 3.0 ACRE TRACT OF LAND, MORE OR LESS, FOR THE PURCHASE PRICE OF ONE HUNDRED EIGHTY THOUSAND NINE HUNDRED NINETY ONE AND 80/100 DOLLARS (\$180,991.80), SAID REAL PROPERTY BEING GENERALLY LOCATED IN THE \_\_\_\_ BLOCK OF \_\_\_\_\_ STREET, AND LOCATED IN THE \_\_\_\_\_ SURVEY, ABSTRACT NUMBER \_\_\_\_\_, DENTON COUNTY, TEXAS; AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE AND DELIVER ANY AND ALL OTHER DOCUMENTS NECESSARY TO ACCOMPLISH CLOSING OF THE TRANSACTIONS CONTEMPLATED BY THE CONTRACT OF SALE; AUTHORIZING THE EXPENDITURE OF FUNDS THEREFOR; AND PROVIDING AN EFFECTIVE DATE.

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The City Manager, or his designee, is hereby authorized to execute the Contract of Sale, by and between the City of Denton, as buyer and Westpark Group, L.P., as seller, in the form attached hereto and made a part hereof as Exhibit "A", with a purchase price of \$180,991.80, plus certain costs as prescribed in the Contract of Sale; and (ii) any and all other

documents necessary for closing the transaction contemplated by the Contract of Sale, as more particularly described therein.

SECTION 2. The City Manager is hereby authorized to make expenditures as set forth in the Contract of Sale.

SECTION 3. This ordinance shall become effective immediately upon its passage and approval.

PASSED AND APPROVED this the \_\_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
MARK A. BURROUGHS, MAYOR

ATTEST:  
JENNIFER WALTERS, CITY SECRETARY

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

APPROVED AS TO LEGAL FORM:  
ANITA BURGESS, CITY ATTORNEY

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

## **CONTRACT OF SALE**

THIS CONTRACT OF SALE ("**Contract**") is dated the \_\_\_\_ day of \_\_\_\_\_ 2013 ("**Effective Date**"), and is made by and between Westpark Group, L.P., a Texas limited partnership ("**Westpark**") and the City of Denton, a Texas home rule municipal corporation ("**Denton**").

### **RECITALS**

- A. Westpark owns certain tract of land being more particularly described hereinbelow.
- B. Westpark desires to sell to Denton, and Denton desires to buy from Westpark, said tract of land located in the corporate limits of the City of Denton, Texas, as specifically described hereinbelow.

NOW THEREFORE, in consideration of the exchange of real property, mutual covenants and agreements set forth in the Contract, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Westpark and Denton hereby agree to the following:

### **ARTICLE I: CONVEYANCES OF PROPERTY**

On the Closing Date (as hereinafter defined), Westpark shall grant and convey the below described Property interests to Denton, subject to the terms and provisions set forth below:

1.1 **Sale and Purchase of the Property.** Westpark agrees to sell and convey to Denton, and Denton agrees to purchase from Westpark the Property (as hereinafter defined), for the Purchase Price (as hereinafter defined), on and subject to the terms and conditions set forth in this Contract, the following grants and conveyances:

1.1.1 Fee Title to Land. Fee simple title to a certain 3.0 acre tract of land ("**Land**"), pursuant to the Special Warranty Deed ("**Deed**") attached hereto as **Appendix 1** (said Land being more particularly described in said Deed attached as **Appendix 1**), together with all of Westpark's rights and interests in and to all roads, streets, alleys, surface water privileges, association rights and easements belonging or appurtenant to the Land, rights of way, licenses, interests, and other rights and appurtenances appertaining thereto, as provided in the Deed.

The fee simple interest in the Land and appurtenant rights and interests granted pursuant to the foregoing are referred to herein as the "**Property**". The physical land area covered by the fee simple interest in the Land is referred to herein as the "**Property Area**".

1.2 **Minerals Excluded.** Westpark has previously sold and conveyed to RIL Mineral Holdings, L.P. ("**RILMH**") all of Westpark's right, title and interest in all minerals of every kind,

including oil, crude oil, natural gas, casing-head gas, other gas, other gaseous or liquid hydrocarbon minerals or substances, condensate, coal, ores, sulfur and other minerals of every kind and nature in and under and/or that may be produced from the Land (and other Property Areas) pursuant to those certain Mineral Deeds recorded as Document No. 2011-67794 and Document No. 2011-67798 of the Official Records of Denton County, Texas ("**Prior Mineral Conveyance**"). Westpark shall be permitted to execute and record a confirmatory Mineral Deed in form similar to and in furtherance of said existing Mineral Deeds to RILMH but with the final legal description of the Land or any other Property Area attached thereto ("**Confirmatory Mineral Deed**"). Nonetheless, to the extent Westpark continues to hold as of Closing any such minerals in and under and/or that may be produced from the Land (or any other Property Areas), Westpark, subject to the limitation of such reservation made herein, shall reserve, for itself, its successors and assigns all oil, gas and other minerals in, on and under and that may be produced from the Land ("**Mineral Reservation**"). Westpark, its successors and assigns shall not have the right to use or access the surface of the Land, in any way, manner or form, in connection with or related to the reserved oil, gas, and other minerals and/or related to exploration and/or production of the oil, gas and other minerals reserved herein, including without limitation, use or access of the surface of the Land for the location of any well or drill sites, well bores, whether vertical or any deviation from vertical, water wells, pit areas, seismic activities, tanks or tank batteries, pipelines, roads, electricity or other utility infrastructure, and/or for subjacent or lateral support for any surface facilities or well bores, or any other infrastructure or improvement of any kind or type in connection with or related to the reserved oil, gas and other minerals, and/or related to the exploration or production of same. With respect to the Prior Mineral Conveyance, Westpark also agrees to cause RILMH to deliver a surface waiver agreement at Closing waiving RILMH's rights to use the surface of the Land in the form attached hereto and made a part hereof as **Appendix 2** (the "**RILMH Surface Waiver**").

As used herein, the term "surface of the Land" shall include the area from the surface of the earth to a depth of five hundred feet (500') below the surface of the earth and all areas above the surface of the earth.

## **ARTICLE II: PURCHASE PRICE AND EARNEST MONEY**

2.1 **Purchase Price.** The Purchase Price to be paid to Westpark for the Property is the sum of \$180,991.80 ("**Purchase Price**").

2.2 **Earnest Money.** Denton shall deposit the sum of one thousand and No/100 Dollars (\$1,000.<sup>00</sup>), as Earnest Money (herein so called) Republic Title of Texas, Inc., 550 Bailey Avenue, Suite 100, Fort Worth, Texas 76107 (the "**Title Company**"), as escrow agent, on or before the Closing Date. All interest earned thereon shall become part of the Earnest Money and shall be applied or disposed of in the same manner as the original Earnest Money deposit, as provided in this Contract. If the purchase contemplated hereunder is consummated in accordance with the terms and the provisions hereof, the Earnest Money, together with all interest earned thereon, shall be applied to the Purchase Price at Closing. In all other events, the Earnest Money, and the interest accrued thereon, shall be disposed of by the Title Company as provided in this Contract.

2.3 **Independent Contract Consideration.** On or before the Closing Date, Denton shall deliver to the Title Company, payable to and for the benefit of Westpark, a check in the amount of One Hundred and No/100 Dollars (\$100.<sup>00</sup>) (the “**Independent Contract Consideration**”), which amount the parties hereby acknowledge and agree has been bargained for and agreed to as consideration for Westpark’s execution and delivery of the Contract. The Independent Contract Consideration is in addition to, and independent of any other consideration or payment provided in this Contract, is non-refundable, and shall be retained by Westpark notwithstanding any other provision of this Contract.

### **ARTICLE III: TITLE AND SURVEY**

3.1 **Title Commitment.** Denton may cause to be issued a current Commitment for Title Insurance (the “**Title Commitment**”) for the Property, issued by the Title Company. The Title Commitment shall set forth the state of title to the Property, including a list of any defects, encumbrances and other exceptions to title, and outstanding claims, interests or equities of any nature (each of which referred to herein as an “**Exception**”).

3.2 **Survey.** Denton may, at its expense, cause a current on the ground survey of the Property Area, or any part thereof, to be prepared by Gerry Curtis Associates or any other surveyor approved by both parties (the “**Survey**”). The Survey may include all matters prescribed by Denton. In any case, the description of the Land as set forth in the description provided by the Survey attached to the Deed shall be used to describe the Land in the Deed conveying the Land to Denton and shall be the description of the Land set forth in the Title Policy.

3.3 **Westpark’s Efforts to Cure.** Westpark shall take good faith efforts to assist Denton in curing or satisfying any Exceptions or defects depicted or revealed in the Survey, as set forth in the notice to Westpark by Denton (“**Objections**”). Notwithstanding the obligation of Westpark to provide good faith efforts in its assistance to Denton to cure any defects related to the Title or Survey of the Property, Westpark shall not be obligated to expend funds in such efforts or incur any liability or otherwise incur any economic burden. In the event Denton and Westpark cannot cure the Objections prior to Closing, Denton may elect to either (i) terminate this Contract; or (ii) waive the uncured Objections, which shall become Permitted Exceptions (as defined below), and upon such waiver, close the transaction contemplated by this Contract. The term “**Permitted Exceptions**” as used herein shall mean (i) the Roll-Back Taxes (as hereinafter defined), (ii) the Prior Mineral Conveyance and the Mineral Reservation, (iii) easements, restrictions, claims, rights of way, encroachments or other encumbrances or other matters whatsoever affecting the Property as shown in the Title Commitment or Survey, but excluding any matters which were subject to Objections and which Westpark actually cures, (iv) all municipal or other governmental zoning laws, regulations and ordinances, if any, affecting the herein-described Property and (v) any other matters affecting the Property which are of public record or would be disclosed by a physical inspection of the Property and/or an accurate survey of the Property. Notwithstanding anything to the contrary herein, Westpark shall provide to Denton, at or prior to Closing, the RILMH Surface Waiver, and shall use reasonable efforts to

provide to Denton, at or prior to Closing, evidence satisfactory to Denton and Westpark that any other owners of the rights to conduct mineral exploration and production activities (the "**Operations**") on the Property are prohibited from using or occupying in any way the surface of the Property in connection with such Operations.

3.4 **Title Policy.** At Closing, Denton, at Denton's sole cost and expense, may cause a standard Texas Owner Policy of Title Insurance ("**Title Policy**"), along with a T-19.1, T-19.2 or T-19.3 endorsement, as applicable, to be furnished to Denton, to the extent available. The Title Policy shall be issued by the Title Company, in the amount of the fair market value of the Property and insuring that Denton has indefeasible fee simple title to the Land, subject only to the Permitted Exceptions.

#### **ARTICLE IV: AS-IS SALE**

4.1 **AS-IS Sale.** Denton expressly acknowledges that the Property is being sold, conveyed, granted and accepted **AS-IS, WHERE-IS WITH ALL FAULTS**, and, except as expressly set forth in **Article VI**, below, Westpark makes no representations or warranties, express or implied, with respect to the physical condition or any other aspect of the Property or any real property encumbered by the Property, including without limitation: (i) the structural integrity of improvements on such properties, if any; (ii) the manner, construction, condition and state of repair or lack of repair of any improvements on such properties; (iii) the conformity of any improvements to any plans or specifications for such properties, including but not limited to any plans and specifications that may have been or which may be provided to Denton; (iv) the conformity of such properties to past, current or future applicable zoning or building code requirements or such properties' compliance with any other laws; (v) the financial earning capacity or history or expense history of the operation of such properties; (vi) the existence of soil instability, past soil repairs, soil additions or conditions of soil fill, such properties' susceptibility to landslides, sufficiency of undershoring or sufficiency of drainage to, from or across such properties; (vii) whether such properties are located wholly or partially in a flood plain or a flood hazard boundary or similar area or within any area that may be considered wetlands or jurisdictional waters of the United States; (viii) the existence or non-existence of underground or above ground storage tanks, asbestos, hazardous waste or other toxic or Hazardous Materials (as hereinafter defined) of any kind or any other environmental condition or whether such properties are in compliance with applicable laws; (ix) such properties' investment potential or resale at any future date, at a profit or otherwise; (x) any tax consequences of ownership of such properties, except as provided in **Section 7.3**, below; or (xi) any other matter whatsoever affecting the stability, integrity, other condition or status of the Property (collectively, the "**Property Conditions**"). **EXCEPT AS PROVIDED IN ARTICLE VI, BELOW, DENTON HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVES ANY AND ALL ACTUAL OR POTENTIAL RIGHTS IT MIGHT HAVE REGARDING ANY FORM OF WARRANTY, EXPRESS OR IMPLIED OR ARISING BY OPERATION OF LAW, INCLUDING, BUT IN NO WAY LIMITED TO, ANY WARRANTY OF QUANTITY, QUALITY, CONDITION, HABITABILITY, MERCHANTABILITY, SUITABILITY OR FITNESS FOR A PARTICULAR PURPOSE RELATED TO THE PROPERTY, ANY IMPROVEMENTS THEREON OR THE PROPERTY CONDITIONS, SUCH WAIVER BEING ABSOLUTE, COMPLETE, TOTAL AND UNLIMITED**

**IN ANY WAY.** This waiver fully applies to Westpark as well as all other Westpark Parties (as hereinafter defined) but does not apply to Westpark's predecessors in title to the Property who are not Westpark Parties. As used herein the "**Westpark Parties**" shall mean Westpark, Rayzor Investments, Ltd. ("**RIL**"), Jesse Newton Rayzor and Eugenia Porter Rayzor, and any other person that was a spouse, descendant or other relative of Jesse Newton Rayzor and/or Eugenia Porter Rayzor, or an affiliated entity of any of the foregoing.

4.2 **Information Disclaimer.** Any and all information related to the Property provided to Denton by Westpark (without implying any obligation to deliver such information, however) ("**Information**"), shall be delivered as an accommodation to Denton only, without any representation or warranty as to the completeness or accuracy of the data or other information contained therein, and all such Information is furnished to Denton solely as a courtesy, and Westpark has not verified the accuracy of any statements or other information therein contained, the method used to compile such Information nor the qualifications of the persons preparing such Information. The Information is provided on an **AS-IS, WHERE-IS BASIS, AND DENTON EXPRESSLY ACKNOWLEDGES THAT, IN CONSIDERATION OF THE AGREEMENTS HEREIN, WESTPARK MAKES NO REPRESENTATION, EXPRESS OR IMPLIED, OR ARISING BY OPERATION OF LAW, INCLUDING, BUT IN NO WAY LIMITED TO, ANY WARRANTY OF QUANTITY, QUALITY, CONDITION, MERCHANTABILITY, SUITABILITY OR FITNESS FOR A PARTICULAR PURPOSE AS TO THE INFORMATION.**

4.3 **Waiver of Compliance with Requirements.** Denton expressly acknowledges that it is not relying on (and hereby disclaims and renounces) any representations or warranties made by or on behalf of Westpark of any kind or nature whatsoever, except as expressly provided in **Article VI**, below. Denton acknowledges that the Property may not be in compliance with all laws that may apply to such Property or any part thereof and the continued ownership, maintenance, management and repair of such properties ("**Requirements**"). Denton shall be solely responsible for any and all Requirements.

4.4 **Environmental Waiver.** Without limitation, to the fullest extent permitted by law, and except as provided in **Article VI**, below, Denton, for itself and its successors and assigns, hereby releases Westpark from and waives any and all claims and liabilities against Westpark, related to or in connection with any environmental condition at such Property (or the presence of any matter or substance relating to the environmental condition of such Property), including, but not limited to, claims and/or liabilities relating to (in any manner whatsoever) any hazardous, toxic or dangerous materials or substances located in, at, about or under such Property, or for any and all claims or causes of action (actual or threatened) based upon, in connection with or arising out of: (i) the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. §§9601 et seq.) ("**CERCLA**"); (ii) the Resource Conservation and Recovery Act (42 U.S.C. §§6901 et seq.) ("**RCRA**"); (iii) the Superfund Amendments and Reauthorization Act (42 U.S.C. §§9601 et seq.) ("**SARA**"); or (iv) any other claim or cause of action (including any federal or state based statutory, regulatory or common law cause of action, including without limitation, the Texas Solid Waste Disposal Act) related to environmental matters or liability with respect to or affecting the Property. This waiver does not apply to any predecessors in title to Westpark.

4.5 **Assumption of Hazardous Materials Risks.** Without limitation to any of the above, Denton assumes the risk that Hazardous Materials may be present in, on or under the Property, and except as provided in **Article V, and Article VI**, below, hereby waives, releases and discharges forever, Westpark from any and all present or future claims or demands, and any and all damages, loss, injury, claims or costs, including fines, penalties and judgments arising from or in any way related to the condition of the Property or presence of any Hazardous Materials in, on or under the Property, whether or not arising from or attributed to the sole or concurrent negligence of Westpark. This waiver does not apply to any predecessors in title to Westpark.

4.6 **Parties Relying on Own Inspections.** Denton acknowledges and agrees that Westpark was unwilling to convey, grant and sell the Property unless Westpark was released as expressly set forth above. With respect to the waivers and agreements contained in **Article IV, Sections 4.1 through 4.5**, above, Denton and Westpark represent and warrant to the other that: they are (i) represented by legal counsel in connection with the sale contemplated by this Contract; (ii) each, with its counsel, has fully reviewed the disclaimers and waivers and agreements set forth in this Contract and understands their significance and effect; (iii) each is knowledgeable and experienced in the purchase, operation, ownership, refurbishing and sale of commercial real estate, and is fully able to evaluate the merits and risks of this transaction; and (iv) each is not in a significantly disparate bargaining position. As part of the provisions of this **Article IV**, but not as a limitation thereon, Denton agrees, represents and warrants that the matters released herein are not limited to matters which are known or disclosed. To the extent permitted by law, Denton hereby agrees, represents and warrants that it realizes and acknowledges that factual matters now unknown to it may have given or may hereafter give rise to causes of action, claims, demands, debts, controversies, damages, costs, losses and expenses which are presently unknown, unanticipated and unsuspected, and Denton further agrees, represents and warrants that the waivers and releases herein have been negotiated and agreed upon in light of that realization and that Denton nevertheless hereby intends to release, discharge and acquit Westpark from any such unknown causes of action, claims, demands, debts, controversies, damages, costs, losses and expenses which might in any way be included in the waivers and matters released as set forth in this **Article IV**.

4.6A. **Waivers Limited.** Notwithstanding anything to the contrary herein, any and all representations, disclaimers and waivers of any claims by Denton, all as may be prescribed in this Article IV, are made to the extent, and only to the extent, such is authorized or permitted under existing laws.

4.7 **Survival.** Notwithstanding anything herein to the contrary, all of the terms and provisions of **Article IV, Sections 4.1 through 4.6A** shall survive the Closing.

#### **ARTICLE V: INSPECTION**



5.1 **Tests.** Until the Closing, Denton and its agents, employees and contractors, at their sole risk and expense, shall have the right to enter upon the Property Area during normal business hours (and subject to advance notice as required below) for inspections, surveying, engineering and other reasonable testing and inspection purposes ("**Tests**"). All such inspections may include both non-intrusive inspections and studies (such as non-intrusive "Phase I Level" type tests with respect to environmental matters) which do not involve borings or any sampling of any material or media, including soil, surface water, or ground water and intrusive "Phase II Level" environmental or other intrusive testing or any borings or sampling of any material or media, including soil, surface water, or ground water. Without limiting the general authorization provided herein, Denton may conduct soil borings on the Property Area for the purpose of evaluating soil stability and characteristics for typical construction industry purposes related to its intended use of the Property without obtaining Westpark's prior approval. All soil borings shall be conducted in a commercially reasonable manner in accordance with generally accepted construction industry standards, and upon completion of all such soil borings, Denton shall restore the affected portion of the Property to substantially the same condition as existed prior to such soil borings. Any and all activities conducted by Denton shall be in accordance with applicable laws. Any entry upon the Property Area is referred to herein as an "**Entry**". All such activities shall be conducted in such a fashion so as to minimize interference with the use of the properties being inspected. Denton shall promptly repair any damage to the affected portion of the Property as a result of such Tests and restore same to its condition which existed prior to such Tests. Denton shall deliver to Westpark a copy of any report, summary or other documentation of the findings produced by or resulting from the Tests.

5.2 **Notice of Entry.** Prior to any Entry upon the Property Area to be inspected for any purpose permitted herein, Denton shall give prior notice to and shall coordinate such access as follows: Mr. Philip A. Baker (telephone 940/387-8711, fax 940/566-1591, The Rayzor Company, 400 West Oak Street, Suite 200, Denton, Texas 76201) or his successor or designee who will act as Westpark's agent with respect thereto. Such notice shall be given at least 24 hours prior to the proposed Entry and shall include the names of the individuals who will be entering the Property Area and the name of such individual's firm or company, the purpose of the inspection and specific activities which will be conducted by such individuals on such Property Area, the times during which such Entry shall occur and such other information as may be reasonably requested by Mr. Baker. The inspecting party shall fully cooperate with and follow any reasonable additional requirements or instructions given by Mr. Baker with respect to such Entry.

5.3 **Insurance.** Any consultant or contractor of Denton desiring to enter the Property to be inspected for any Tests shall only enter such Property Areas after submitting to Westpark certificates of insurance evidencing Commercial General Liability Insurance coverage in commercially reasonable amounts, but not to exceed the amount of ~~One Million~~ Five Hundred Thousand and No/100 Dollars (~~\$1,05~~000,000.00), covering such consultant's or contractor's operations on the Property to be inspected, with Westpark included as an additional insured thereunder and stating that such insurance is primary with regard to any other insurance maintained by Westpark.

5.4 **Termination.** Any term or provision of this Contract notwithstanding, the obligations of Denton specified in this Contract are wholly conditioned on Denton's having determined, in Denton's sole and absolute discretion, during the inspection provided by this **Article V**, based on such tests, examinations, studies, investigations and inspections of the Property Denton deems necessary or desirable, that Denton finds the Property suitable for Denton's purposes. If Denton determines, in its sole judgment, that the Property is not suitable, for any reason, for Denton's intended use or purpose, Denton may terminate this Contract by written notice to Westpark, as soon as reasonably practicable, but in any event prior to the Closing. In the event Denton elects to terminate this Contract pursuant to the terms of this **Section 5.4**, Denton will provide to Westpark copies of any and all non-confidential and non-privileged reports and studies obtained by Denton during or resulting from the Tests.

#### **ARTICLE VI: REPRESENTATIONS, WARRANTIES, COVENANTS AND AGREEMENTS**

6.1 **Representations and Warranties of Westpark.** Westpark represents and warrants to Denton, as of the Effective Date of this Contract and as of the Closing Date, except where specific reference is made to another date that:

- (a) Westpark has the full right, power and authority to sell and convey the Property as provided in this Contract and to carry out Westpark's obligations hereunder and this Contract, and all documents to be delivered by Westpark hereunder, are and shall be legal and binding upon Westpark.
- (b) Westpark has not received notice of, and has no other knowledge or information of, any pending or threatened judicial or administrative action, or any action pending or threatened by adjacent landowners or other persons against or affecting the Property.
- (c) Westpark has not contracted or entered into any agreement with any real estate broker, agent, finder, or any other party in connection with this transaction or taken any action which would result in any real estate broker commissions or finder's fee or other fees payable to any other party with respect to the transactions contemplated by this Contract.
- (d) All Leases, as defined in **Section 6.3(a)**, relating to the Property shall have expired or otherwise terminated on or before the date of Closing.
- (e) Westpark has not received notice of any violation of any law, statute, rule, regulation or ordinance related to or affecting the Property or Westpark's obligations under this Contract.
- (f) To Westpark's actual knowledge, without independent investigation, there are no Hazardous Materials (as hereinafter defined) which are or have been used, manufactured, placed or stored on the Property and/or real property encumbered by the Property. As used above, the term "**Hazardous Materials**" means any material or substance which is (i) defined as a "hazardous waste," "extremely

hazardous waste," "restricted hazardous waste," "hazardous material," "hazardous substance," or any similar formation under or pursuant to any state or federal statute or common law rule, (ii) designated as a "hazardous waste" pursuant to Section 311 of the Clean Water Act, 33 U.S.C. §1251 et seq. (33 U.S.C. §1321) or listed pursuant to Section 307 of the Clean Water Act (33 U.S.C. §1317), (iii) defined as a "hazardous waste" pursuant to Section 1004 of the Resource Conservation and Recovery Act, 44 U.S.C. §6901 et seq. (42 U.S.C. §6903) or (iv) defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. §9601 et seq. (42 U.S.C. §9601); provided, however, "Hazardous Materials" shall not, for purposes of this representation, include gasoline, diesel fuel or other petroleum products routinely used in connection with farm and ranch operations, nor shall such term include any pesticides, herbicides, cattle dipping solutions and other substances which are now or ever have been customarily used in connection with farm and ranch operations (and such exclusion from such term shall include items which were historically used in the farm and ranching industry for such purposes but which may now be banned or otherwise not so used). Westpark hereby informs Denton that it has not conducted an independent investigation in connection with the above representation and that Westpark has limited knowledge as to such matters and advises Denton to conduct independent investigations with respect to such matters as Denton may deem necessary or desirable to fully satisfy itself with respect to the environmental condition of the Property and/or real property encumbered by the Property, it being understood that the above representation is limited in nature and is only to Westpark's actual knowledge, and does not give a complete understanding of the environmental condition of the Property and/or real property encumbered by the Property.

- (g) Westpark is not a "foreign person" as defined in Section 1445 of the Internal Revenue Code of 1986, as amended.
- (h) Mr. Baker shall serve as the representative or agent of Westpark with respect to this Contract.

**6.2 Representations and Warranties of Denton and Westpark.** Denton and Westpark represent and warrant to each other that they have the power to execute, deliver and perform under this Contract, have taken all actions necessary to authorize the execution, delivery and performance of this Contract and that the parties executing this Contract and the conveyance documents exhibited hereto for and on behalf of Denton and Westpark have been duly authorized by Denton and Westpark to act in such capacity.

**6.3 Covenants and Agreements of Westpark.** Westpark covenants and agrees with Denton as follows:

- (a) Within ten (10) business days after the Effective Date, Westpark shall deliver to Denton, true, correct and complete copies of the following:
  - (i) All lease agreements and/or occupancy agreements and/or licenses of any kind or nature (if oral, Westpark shall provide to Denton in writing all material terms thereof) relating to the possession of the Property, or any part thereof, including any and all modifications, supplements, and amendments thereto (the “**Leases**”), provided that only those Leases which will remain in force after the Closing, if any, must be delivered to Denton.
- (b) From the Effective Date until the date of Closing and with respect to the Property, Westpark, shall:
  - (i) Not enter into any written or oral contract, lease, easement or right of way agreement, conveyance or any other agreement of any kind with respect to, or affecting, the Property that will not be fully performed on or before the Closing or would be binding on Denton or the Property after the date of Closing.
  - (ii) Not sell, assign, lease or convey any right, title or interest whatsoever in or to the Property, or create, or permit to exist, any lien, encumbrance, or charge thereon.
- (c) Westpark shall assist and cooperate in the platting activities of Denton, as set forth in **Section 6.4** below, including without limitation, execution of any applications or other materials related to ownership of the Land, in such processes.

#### 6.4 **Covenants and Agreements of Denton.**

- (a) Denton shall, prior to Closing, have obtained approval of a conveyance plat or other plat of the Land from the Planning and Zoning Commission or the Development Review Committee in accordance with the terms of the Denton Development Code, including without limitation, Sections 35.16.6, 35.16.17, 35.16.17.1 and 35.16.17.2 thereof, or, alternatively to the foregoing, Denton shall obtain any necessary approval of the transaction herein contemplated in lieu of a conveyance plat from the Planning and Zoning Commission and/or Development Review Committee. In the event Denton produces a conveyance plat or other plat in connection with this Contract, Westpark shall reasonably cooperate in the platting process and shall either execute a conveyance plat provided to it by Denton or provide objections to same to Denton, on or before five (5) business days after the conveyance plat or other plat is submitted to it by Westpark. Notwithstanding anything herein to the contrary, in no event shall a conveyance plat impose obligations on Westpark to dedicate easements or rights of way

across any of Westpark's other lands or impose any restrictions or other requirements with respect to Denton's such other lands.

6.5 Notwithstanding anything to the contrary contained in this Contract, the representations, warranties, covenants and agreements of Westpark contained in this Contract shall survive the Closing for a period of one year after the Closing Date, and shall not, in any circumstance, be merged with the Deed to be delivered at Closing pursuant to **Section 7.2**; provided, however, that the limitation upon the duration of the warranties of this Section 6.5 shall not apply to the warranties provided in the Deed.

## **ARTICLE VII: CLOSING**

7.1 **Date and Place of Closing.** The "**Closing**" (herein so called) shall take place in the offices of the Title Company and shall be accomplished through an escrow to be established with the Title Company, as escrowee. The "**Closing Date**" (herein sometimes called), shall occur before 5:00 PM on November 22, 2013, unless otherwise mutually agreed to by Denton and Westpark. The Closing Date as defined in this **Section 7.1** is the deadline by which Closing must occur and is intended to prevail over any conflicting terms provided in this Contract or the Appendices attached hereto.

### **7.2 Items to be Delivered at the Closing.**

- (a) At the Closing, Westpark shall deliver or cause to be delivered to the Title Company, the following items:
  - (i) The Deed for the Land, in form and substance identical to that attached hereto as **Appendix 1**, subject only to the Permitted Exceptions, duly executed by Westpark and acknowledged.
  - (ii) The RILMH Surface Waiver, in the form as attached hereto as **Appendix 2**, executed by RILMH and acknowledged.
  - (iii) Other items reasonably requested by the Title Company as administrative requirements for consummating the Closing.
  
- (b) At the Closing, Denton shall deliver to the Title Company, the following items:
  - (i) The sum equal to the Purchase Price as required by **Article II**.
  - (ii) Other items reasonably requested by the Title Company as administrative requirements for consummating the Closing.

7.3 **Adjustments at Closing.** Notwithstanding anything to the contrary contained in this Contract and without limiting the general application of the provisions of **Section 6.5**, above, the

provisions of this **Section 7.3** shall survive the Closing. The following items shall be adjusted or prorated between Westpark and Denton with respect to the Property:

7.3.1 General Proration. Ad valorem and similar taxes and assessments (the "**Taxes**") relating to the Property for the year in which the Closing occurs shall be prorated between Westpark and Denton as of the Closing Date, in accordance with Section 26.11 of the Texas Tax Code. In this regard the Title Company shall have each taxing unit certify Westpark's prorated tax liability for the year of closing which amounts will be paid by Westpark out of the proceeds of the sale.

7.3.2 Roll-Back Taxes. Westpark stipulates that, for purposes of assessing Taxes against the Property for prior years, the applicable central appraisal district has applied agricultural, open-space or other special use valuation methods ("**Special Use Valuation**") to arrive at the taxable value of the Property as permitted under the Texas Tax Code, and accordingly a change in land usage of the Property may result in an additional tax (in addition to Taxes for the year in which the Roll-Back Event, as hereinafter defined, occurs) being assessed against the Property (any such additional taxes, together with interest thereon, being referred to herein as "**Roll-Back Taxes**"). To the extent any Roll-Back Taxes exist, Westpark shall not be responsible for same.

7.4 **Possession at Closing.** Possession of the Property shall be delivered to Denton at Closing, subject to the Permitted Exceptions.

7.5 **Costs of Closing.** Each party is responsible for paying the legal fees of its counsel, in negotiating, preparing, and closing the transaction contemplated by this Contract. Westpark is responsible for paying fees, costs and expenses identified herein as being the responsibility of Westpark. Denton is responsible for paying fees, costs and expenses identified herein as being the responsibility of Denton. If the responsibility for such costs or expenses associated with closing the transaction contemplated by this Contract are not identified herein, such costs or expenses shall be allocated between the parties in the customary manner for closings of real property similar to the Property in Denton County, Texas.

## **ARTICLE VIII: DEFAULTS AND REMEDIES**

### **8.1 Westpark's Defaults and Denton's Remedies.**

8.1.1 Westpark's Defaults. Westpark is in default under this Contract on the occurrence of any one or more of the following events:

- (i) Any of Westpark's warranties or representations contained in this Contract are untrue on the Closing Date; or
- (ii) Westpark fails to meet, comply with or perform any covenant, agreement, condition precedent or obligation on Westpark's, as applicable, part

required within the time limits and in the manner required in this Contract;  
or

- (iii) Westpark fails to deliver at Closing, the items specified herein at **Section 7.2(a)** for any reason other than a default by Denton or termination of this Contract by Denton pursuant to the terms hereof prior to Closing.

8.1.2 Denton's Remedies. If Westpark is in default under this Contract, Denton, as Denton's sole and exclusive remedies for the default, may, at Denton's sole option, do either one of the following:

- (i) Terminate this Contract by written notice delivered to Westpark; or
- (ii) Enforce specific performance of this Contract against Westpark, requiring Westpark to convey the Property to Denton subject to no liens, encumbrances, exceptions, and conditions other than the Permitted Exceptions.

## 8.2 **Denton's Default and Westpark's Remedies.**

8.2.1 Denton's Default. Denton is in default under this Contract on the occurrence of any one or more of the following events:

- (i) Denton fails to meet, comply with or perform any covenant, agreement, condition precedent or obligation on Denton's part required within the time limits and in the manner required by this Contract; or
- (ii) Denton fails to deliver at Closing, the items specified in **Section 7.2(b)** of this Contract for any reason other than a default by Westpark under this Contract or termination of this Contract pursuant to the terms hereof prior to Closing.

8.2.2 Westpark's Remedy. If Denton is in default under this Contract, Westpark, as Westpark's sole and exclusive remedy for the default, may terminate this Contract by written notice delivered to Denton, whereupon neither party shall have any further rights or obligations hereunder.

8.3 Notwithstanding the foregoing, Westpark may pursue all rights and remedies available at law or in equity against Denton with respect to (i) any damages incurred by Westpark as a result of Denton's failure to comply with the insurance requirements provided for in this Contract, and (ii) all obligations under the various closing documents executed at Closing

## **ARTICLE IX: MISCELLANEOUS PROVISIONS**

9.1 **Notice**. Unless otherwise specified in a recorded instrument of conveyance of the Property under this Contract, all notices, demands, requests, and other communications

required hereunder shall be in writing, and shall be deemed to be delivered, upon the earlier to occur of (a) the date provided if provided by telephonic facsimile, and (b) the date of the deposit of, in a regularly maintained receptacle for the United States Mail, registered or certified, return receipt requested, postage prepaid, addressed as follows:

DENTON:

Richard Casner,  
First Assistant City Attorney  
City of Denton, Texas  
215 E. McKinney Street  
Denton, Texas 76201  
Phone: (940) 349-8333  
Fax: (940) 382-7923  
Richard.Casner@cityofdenton.com

Paul Williamson, Real Estate Manager  
City of Denton Texas  
Phone: (940) 349-8921  
Fax: (940) 349-8951  
Paul.Williamson@cityofdenton.com

With Copies To:

Pamela England, Real Estate Specialist  
City of Denton, Texas  
Phone: (940) 349-8928  
Fax: (940) 349-8951  
Pamela.England@cityofdenton.com

Michael S. Grim  
Executive Manager  
Power, Legislative and  
Regulatory Affairs  
City of Denton Texas  
Phone: (940) 349-7565  
Fax: (940) 349-7334  
Mike.grim@cityofdenton.com

RAYZOR:

David Mellina  
Mellina & Larson, P.C.  
1128 Fairmount Avenue  
Fort Worth, Texas 76104  
Phone: (817) 335-1200  
Fax: (817) 335-1221  
Dmellina@mellinalarson.com

Philip A. Baker, Vice President  
The Rayzor Company  
P.O. Box 336  
Phone: (940) 387-8711  
Denton, Texas 76202  
Fax: (940) 566-1591  
pabaker@rayzorcompany.com

Joanna Cloud  
Republic Title of Texas, Inc.  
550 Bailey Avenue, Suite 100  
Fort Worth, Texas 76107  
Phone: (817) 877-1481  
Fax: (817) 654-0008  
joannacloud@republictitle.com

**9.2 Governing Law and Venue.** This Contract is being executed and delivered and is intended to be performed in the State of Texas, the laws of Texas governing the validity,



construction, enforcement and interpretation of this Contract. This Contract is performable in, and the exclusive venue for any action brought with respect hereto shall lie in, COURTS OF COMPETENT JURISDICTION IN Denton County, Texas.

**9.3 Entirety and Amendments.** This Contract embodies the entire agreement between the parties and supersedes all prior agreements and understandings, if any, related to the Property, and may be amended or supplemented only in writing executed and authorized by the party against whom enforcement is sought.

**9.4 Further Assurances.** In addition to the acts and deeds recited in this Contract and contemplated to be performed, executed and/or delivered by Westpark and Denton, Westpark and Denton agree to perform, execute and/or deliver, or cause to be performed, executed and/or delivered at the Closing or after the Closing, any further deeds, acts, and assurances as are reasonably necessary to consummate the transactions contemplated hereby. Notwithstanding anything to the contrary contained in this Contract, the provisions of this **Section 9.4** shall survive Closing.

**9.5 Appendices.** Each Appendix which is referenced in, and attached to this Contract, is incorporated in and made a part of this Contract for all purposes.

**9.6 Assigns.** This Contract shall inure to the benefit of and shall bind the parties hereto and their respective legal representatives, successors and assigns; provided, however, no party may assign its rights under this Contract without the prior written consent of the other party.

**9.7 Time of the Essence.** Time is of the essence of this Contract.

**9.8 Taking Prior to Closing.** If the Property, or any portion thereof, becomes subject to a taking under the provisions of eminent domain prior to the Closing, Denton shall have the option of: (i) closing this transaction as provided herein (with no reduction in consideration), in which event Westpark shall assign to Denton at Closing all condemnation proceeds, if any, but only to the extent such proceeds accrue from a taking of the Land, as a result of such proceeding; or (ii) terminating this Contract, either in its entirety, or as to and only as to the portion of the Property subject to or affected by a taking ("Affected Property"), at the sole election of Denton, by giving Westpark written notice thereof within ten (10) business days from the date such party receives notice of such taking, in which event this Contract shall be deemed null and void, either in its entirety or only as to the Affected Property, as applicable to the election of Denton, and the parties hereto shall have no further obligations to or recourse against each other either under this Contract or as to this Contract, insofar as it covers such Affected Property of the Property, as applicable to the election of Denton.

In the event Denton shall elect to terminate this Contract as to the Affected Property, the Purchase Price, as provided in Section 1.3 and Section 2.1, above, shall be reduced by the product of 1.385 times the square footage included in the Affected Property.

~~Notwithstanding the foregoing, the parties agree if the Property or a portion thereof becomes subject to eminent domain, condemnation or other takings action brought, initiated or joined by~~

~~the City of Denton or any governmental authority controlled by the City of Denton or any procedural action materially connected therewith is initiated before Closing ("City Taking"), Westpark may terminate this Contract in its sole discretion.~~

9.9 **Severability.** In case any one or more of the provisions contained in this Contract shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Contract shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

9.10 **Rule of Construction.** The parties acknowledge that each party and its counsel has reviewed and revised this Contract, and the parties hereby agree that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Contract or any amendments or exhibits hereto.

9.11 **Business Days and Time References.** All references to "days" in this Contract shall be deemed for all purposes to be "business days" provided that the Closing Date as defined at **Section 7.1** herein prevails over any other timeframe which may arguably affect Closing. If the Closing Date or the day of performance of any act required under this Contract falls on a Saturday, Sunday or legal holiday ("All agencies closed" days defined by Texas State Auditor's office), then the Closing Date or the day for such performance, as the case may be, shall be the next following regular business day. References to particular times of day correspond to the time in Denton, Texas.

9.12 **Designation of Reporting Person.** Denton and Westpark hereby designate the Title Company as the "**Reporting Person**" with respect to the transaction contemplated under this Contract for purposes of complying with the regulations set forth in 26 C.F.R. Section 1.6045-4(e)(5).

9.13 **Counterparts.** This Contract may be executed in multiple counterparts, each of which shall, for all purposes, be deemed an original, but which together shall constitute one and same instrument, and the signature pages from any counterpart may be appended to any other counterpart to assemble fully executed documents, and counterparts of this Contract may also be exchanged via electronic facsimile machines and any electronic facsimile of any party's signature shall be deemed to be an original signature for all purposes; provided, however, that any signature pages transmitted by electronic facsimile shall nevertheless be followed by the exchange of hard copy originals.

9.14 **Waiver.** The waiver by any party of a breach of any provision of this Contract shall not be deemed a continuing waiver or a waiver of any subsequent breach whether of the same or another provision of this Contract.

9.15 **Delegation of Authority.** Authority to take any actions that are to be, or may be, taken by Denton under this Contract are hereby delegated by Denton, pursuant to approval of this

Contract by the City Council of Denton, Texas, to the General Manager of Denton Municipal Electric, or his designee.

9.16 **Expiration of Offer.** The execution of this Contract by Westpark constitutes, subject to the terms hereof, an irrevocable offer to sell the Property to Denton. Unless by 5:00 p.m., on \_\_\_\_\_, this Contract is accepted by Denton by action of the City Council of Denton, the offer of this Contract shall be automatically revoked and terminated.

9.17 **Appendices.** The following Appendices are attached hereto and made a part hereof:

- Appendix 1 – Deed
- Appendix 2 – RILMH Surface Waiver

IN WITNESS WHEREOF, this Contract is hereby executed as of the Effective Date.

***[The Balance of This Page Has Been Intentionally  
Left Blank – Signature Pages Follow.]***

**WESTPARK SIGNATURE PAGE**

**WESTPARK:**

WESTPARK GROUP, LP, a Texas limited partnership

By: Westpark Group GP, LLC, a Texas limited liability company, its general partner

By: The Rayzor Company, a Texas corporation, its sole manager

By: \_\_\_\_\_  
Philip A. Baker, Vice President

Executed by Westpark on the \_\_\_\_ day of \_\_\_\_\_ 2013.

**DENTON SIGNATURE PAGE**

**DENTON:**

CITY OF DENTON, a Texas municipal corporation

By: \_\_\_\_\_  
GEORGE C. CAMPBELL, CITY MANAGER

Executed by City of Denton on the \_\_\_\_\_ day of \_\_\_\_\_ 2013.

ATTEST:  
JENNIFER WALTERS, CITY SECRETARY

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

APPROVED AS TO LEGAL FORM:  
ANITA BURGESS, CITY ATTORNEY

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

**RECEIPT OF AGREEMENT BY TITLE COMPANY**

By its execution below, Title Company acknowledges receipt of an executed copy of this Contract. Title Company agrees to comply with, and be bound by, the terms and provisions of this Contract to perform its duties pursuant to the provisions of this Contract and comply with Section 6045(e) of the Internal Revenue Code of 1986, as amended from time to time, and as further set forth in any regulations or forms promulgated thereunder. The Effective Date of the Contract per the terms thereof is \_\_\_\_\_.

TITLE COMPANY:

REPUBLIC TITLE OF TEXAS, INC.

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

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

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

Contract receipt date: \_\_\_\_\_, 2013

**APPENDIX 1**

*Attached hereto and made a part hereof is the Deed.*





infrastructure or improvement of any kind or type in connection with or related to the reserved oil, gas and other minerals, and/or related to the exploration or production of same; provided, further, however, that the parties acknowledge that the minerals held by Grantor, if any, may not constitute all of the minerals under the Property and there may be third party holders of mineral rights ("Other Mineral Rights Holders") and/or the minerals may be subject to one or more existing oil and gas or other mineral leases, to the extent same are valid and subsisting ("Existing Mineral Leases") in favor of lessees thereunder ("Mineral Lessees"), and the forgoing waiver as to surface use shall not be construed to limit any of the existing rights of the Other Mineral Rights Holders or Mineral Lessees under the Existing Mineral Leases, nor shall Mineral Owner have any duty or obligation to obtain any waivers or other agreements from any such Other Mineral Rights Holders or Mineral Lessees with respect to limitations on surface use or otherwise, and in no event shall Mineral Owner have any liability or responsibility for any surface damage or injury to property or person as a result of the exploration and/or production of the RILMH Minerals by any Other Mineral Rights Holders or any Mineral Lessee, and Grantee shall pursue any such claims solely against such Mineral Lessee or Other Mineral Rights Holder, as applicable.

As used herein, the term "minerals" shall mean all of Grantor's right, title and interest in all minerals of every kind, including oil, crude oil, natural gas, casing-head gas, other gas, other gaseous or liquid hydrocarbon minerals or substances, condensate, coal, ores, sulphur and other minerals of every kind and nature in and under and/or that may be produced from the Property.

As used herein, the term "surface of the Property" shall include the area from the surface of the earth to a depth of five hundred feet (500') below the surface of the earth.

This Deed is executed by Grantor and accepted by Grantee subject to the following (collectively, the "Permitted Exceptions"): ;(i) the Roll-Back Taxes as hereinafter defined, (ii) the prior reservation of all minerals associated with the Land as contained in mineral deeds recorded under Instrument Number 2011-67794 and/or Instrument Number 2011-67798 and Instrument Number 2013-\_\_\_\_\_ in the official property records of Denton County, Texas; (iii) the encumbrances and matters listed in **Exhibit "B"** hereto [attach list of all "Permitted Exceptions" as defined in the Agreement] and (iv) all municipal or other governmental zoning laws, regulations and ordinances, if any, affecting the Property, and (v) any other matters affecting the Property of public record or which would be disclosed by a physical inspection of the Property or an accurate survey of the Property. "Roll-Back Taxes" as used herein shall mean any taxes or assessments assessed against the Property as a result of any change in land usage or ownership based on the Property having been assessed under

any agricultural, open-space or other special use valuation methods ("Special Use Valuation") to arrive at the taxable value of the Property as permitted under the Texas Tax Code.

Grantor hereby assigns to Grantee, without recourse or representation, any and all claims and causes of action that Grantor may have for or related to any defects in, or injury to, the Property.

TO HAVE AND TO HOLD the Property, together with all and singular the rights and appurtenances thereto in anywise belonging unto Grantee and Grantee's successors and assigns forever, subject to the Permitted Exceptions; and Grantor does hereby bind Grantor and Grantor's successors and assigns to WARRANT AND FOREVER DEFEND all and singular the Property, subject to the Permitted Exceptions, unto Grantee and Grantee's successors and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof when the claim is by, through, or under Grantor but not otherwise.

EXECUTED the \_\_\_\_\_ day of \_\_\_\_\_, 2013

WESTPARK GROUP, L.P., a Texas limited partnership

By: Westpark Group GP, LLC, a Texas limited liability company,  
its general partner

By: The Rayzor Company, a Texas corporation,  
its sole member

By: \_\_\_\_\_  
Philip A. Baker, Vice President

**ACKNOWLEDGMENT**

STATE OF TEXAS       §  
                                  §  
COUNTY OF DENTON   §

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2013, by Philip A. Baker, Vice President of The Rayzor Company, a Texas corporation, sole member of Westpark Group GP, LLC, a Texas limited liability company, general partner of Westpark Group, L.P., a Texas limited partnership, on behalf of said corporation.

GIVEN under my hand and seal of office this \_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
Notary Public, State of Texas

\_\_\_\_\_  
Notary's Printed Name

My Commission Expires: \_\_\_\_\_

~~Accepted this \_\_\_\_ day of \_\_\_\_\_, 2013 for the City of Denton, Texas (Ordinance No. 91-073).~~

~~By: \_\_\_\_\_  
Paul Williamson  
Manager, Real Estate and Capital Support~~

Upon Filing Return To:  
The City of Denton-Engineering  
Attn: Paul Williamson  
901-A Texas Street  
Denton, TX 76209

**Exhibit "A"**

*Description of the Property attached hereto.*

**Exhibit "B"**

*Permitted Exceptions*

**APPENDIX 2**

*Attached hereto and made a part hereof is the RILMH Surface Waiver.*

**WAIVER AND RELEASE OF SURFACE RIGHTS AGREEMENT**

STATE OF TEXAS                   §  
  §           **KNOW ALL PERSONS BY THESE PRESENTS:**  
COUNTY OF DENTON           §

This Waiver and Release of Surface Rights Agreement ("**Agreement**") is made and entered into as of \_\_\_\_ day of \_\_\_\_\_, 2013 by RIL MINERAL HOLDINGS, LP, a Texas limited partnership ("**Mineral Owner**") for the benefit of WESTPARK GROUP, L.P., a Texas limited partnership ("**Westpark**") and any other successor owners of the certain tract of land described hereinbelow as the Waiver Property, specifically including, without limitation, the City of Denton, Texas ("**City**").

**RECITALS:**

- A. Westpark is the surface owner of certain real property located in Denton County, Texas as more particularly described on **Exhibit "A"** (the "**Waiver Property**").
- B. Mineral Owner is the owner of the mineral estate relating to the Waiver Property (such minerals owned by Mineral Owner being referred to as the "**RILMH Minerals**").
- C. Westpark is selling and conveying the surface of the Waiver Property to the City on or about the date hereof (the City, together with any successors and assigns who own any portion of the surface of the Waiver Property is referred to as a "**Surface Owner**" with respect to the surface lands owned by it).
- D. Mineral Owner, as the current holder of the RILMH Minerals, has agreed to execute this instrument to confirm and agree that Mineral Owner waives and releases its right to use the surface of the Waiver Property as provided below.

**AGREEMENTS:**

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, Mineral Owner covenants and agrees as follows:

- 1. **Release and Waiver.** Mineral Owner waives and releases, on behalf of Mineral Owner and Mineral Owner's successors and assigns, all rights of ingress and egress and all other rights to enter upon or to use the surface of the Waiver Property or any part thereof in any way, manner or form, in connection with or related to the RILMH Minerals and/or related to exploration and/or production of the RILMH Minerals, including without limitation, use or access of the surface of the Property for the location of any well or drill sites, well bores, whether vertical or any deviation from vertical, water wells, pit areas, seismic activities, tanks or tank batteries, pipelines, roads, electricity or other utility infrastructure, and/or for subjacent or lateral support for any surface facilities or well bores, or any other infrastructure or improvement of any

kind or type in connection with or related to the RILMH Minerals, and/or related to the exploration or production of same; provided further, however, nothing herein shall prevent Mineral Owner or its successors and assigns from exploring for, developing and/or producing the RILMH Minerals in and under the Waiver Property by pooling or by directional drilling under the Waiver Property from well sites or mining sites located on other property; provided, further, however, that the parties acknowledge that the RILMH Minerals may not constitute all of the minerals under the Waiver Property and there may be third party holders of mineral rights ("**Other Mineral Rights Holders**") and/or the RILMH Minerals may be subject to one or more existing oil and gas or other mineral leases ("**Existing Mineral Leases**") in favor of lessees thereunder ("**Mineral Lessees**"), and the forgoing waiver as to surface use shall not be construed to limit any of the existing rights of the Other Mineral Rights Holders or Mineral Lessees under the Existing Mineral Leases, nor shall Mineral Owner have any duty or obligation to obtain any waivers or other agreements from any such Other Mineral Rights Holders or Mineral Lessees with respect to limitations on surface use or otherwise, and in no event shall Mineral Owner have any liability or responsibility for any surface damage or injury to property or person as a result of the exploration and/or production of the RILMH Minerals by any Other Mineral Rights Holders or any Mineral Lessee, and all Surface Owners shall pursue any such claims solely against such Mineral Lessee or Other Mineral Rights Holder, as applicable. As used herein, the term "surface of the Property" shall include the area from the surface of the earth to a depth of five hundred feet (500') below the surface of the earth and all areas above the surface of the earth.

2. **Current Holder of Rights.** Mineral Owner represents and warrants that Mineral Owner is the current holder of the RILMH Minerals.

3. **Successors and Assigns.** The acknowledgements and agreements of Mineral Owner hereunder shall (i) run with the Waiver Property for the benefit of Westpark and any future Surface Owner, specifically including, without limitation, the City, (ii) inure to the benefit of and be enforceable by Westpark as well as any future Surface Owner, specifically including, without limitation, the City, and its respective heirs, legal representatives, successors and assigns of and (iii) be binding upon and enforceable against Mineral Owner and its legal representatives, successors and permitted assigns.

4. **Other/Miscellaneous.**

(a) **Choice of Law.** THIS AGREEMENT SHALL BE GOVERNED BY THE LAWS OF THE UNITED STATES OF AMERICA AND THE INTERNAL LAWS OF THE STATE OF TEXAS, WITHOUT REGARD TO ITS CONFLICT OF RULES. THIS AGREEMENT IS PERFORMABLE IN, AND THE EXCLUSIVE VENUE FOR ANY ACTION BROUGHT WITH RESPECT HERETO, SHALL LIE IN COURTS OF COMPETENT JURISDICTION IN DENTON COUNTY, TEXAS.

(b) **Headings.** The titles and article headings contained herein are for purposes of identification only and shall not be considered in construing this Agreement.

(c) **Notices.** Any notice, report or demand by Westpark and/or Surface Owner to Mineral Owner with respect to this Agreement shall be in writing and shall be deemed to have been sufficiently given or served to Mineral Owner for all purposes upon Mineral Owner's receipt or refusal of receipt when sent by (i) registered or certified mail, return receipt requested, or (ii) personal hand delivery, or (iii) overnight courier service, to the Mineral Owner at the address shown beneath Mineral Owner's signature below.



EXECUTED to be effective as of the first date hereinabove written.

*[Signature pages follow.]*

**MINERAL OWNER:**

RIL MINERAL HOLDINGS, LP, a Texas limited partnership

By: RIL Mineral Holdings GP, LLC, a Texas limited liability company, its general partner

By: The Rayzor Company, a Texas corporation, its sole member

By: \_\_\_\_\_  
Philip A. Baker, Vice-President

**Address:**

c/o The Rayzor Company  
400 W. Oak, Suite 200  
Denton, Texas 76201  
Tel. No. (940) 387-8711  
Fax No. (940) 566-1591

THE STATE OF TEXAS           §  
  §  
COUNTY OF DENTON         §

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2013, by Philip A. Baker, Vice-President of The Rayzor Company, a Texas corporation, sole member of RIL Mineral Holdings GP, LLC, a Texas limited liability company, sole general partner of RIL Mineral Holdings, LP, a Texas limited partnership, on behalf of said limited partnership.

\_\_\_\_\_  
Notary Public, State of Texas

**After Recording Return To:**

Rayzor Investments, Ltd.  
c/o The Rayzor Company  
400 W. Oak, Suite 200  
Denton, Texas 76201

EXHIBIT "A"  
to Waiver and Release of Surface Rights Agreement

*Legal Description of Waiver Property.*

**AGENDA INFORMATION SHEET**

**AGENDA DATE:** November 19, 2013  
**DEPARTMENT:** Denton Municipal Electric  
**ACM:** Howard Martin, 349-8232

**SUBJECT**

Consider adoption of an ordinance authorizing the City Manager or his designee to execute a Contract of Sale (herein so called), by and between the City of Denton (the “City”), and Westpark Group, L.P., a Texas Limited Partnership (the “Seller”), contemplating the sale by Seller and purchase by the City of (I) fee simple to a 6.49 acre tract of land, more or less, and (II) a drainage easement encumbering a 1.6234 acre tract of land, more or less (collectively the “Property Interests”), for the purchase price of One Hundred and No/100 Dollars (\$100.<sup>00</sup>), said Property Interests being generally located east of Western Boulevard and North of Airport road, and located in the James Perry Survey, Abstract 1040, Denton County, Texas, authorizing the City Manager, or his designee, to execute and deliver any and all other documents necessary to accomplish closing of the transactions contemplated by the Contract of Sale (“Closing”) and documents contemplated by the Contract of Sale to be executed by the City after closing; authorizing the expenditure of funds therefor; and providing an effective date.

**BACKGROUND**

In preparation for future projects involving the expansion of electric and natural gas infrastructure, DME proposed to secure easements, tracts of land, and access. The projects necessitate the fee acquisition of a 6.4863 acre tract of land located north of Airport road, and east of Western Boulevard. This transaction also includes the grant of a 1.6234 acre drainage easement, and contribution from the property owner toward the drainage work and facilities. Staff has been actively pursuing the transaction acquisition terms with the affected property owner beginning in September 2010, the result of which are embodied in the Contract of Sale. Staff recommends approval of the Contract of Sale substantially in the form attached.

Delivery of Contract of Sale in final form is expected from the Seller prior to the convening of the November 19th, 2013 City Council meeting, otherwise this item will be pulled from the agenda.

Recommended approval authorizes staff to proceed to closing the purchase transaction with the Seller upon City Council approval of the ordinance.

**OPTIONS**

1. Recommend approval of the Ordinance
2. Do not recommend approval

**RECOMMENDATION**

Staff endorses approval of the Ordinance.

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

City Council Closed Session Briefing on the utility project September 14, 2010  
City Council Closed Session Briefing on the utility project January 4, 2011  
Public Utility Board Approval April 5, 2011  
City Council Approval April 19<sup>th</sup> Ordinance 2011-063  
Public Utility Board Closed Session briefing July 22, 2-013  
City Council Closed Session briefing August 6, 2013  
Public Utility Board Closed Session and Consent agenda approvals October 28, 2013  
City Council Executive Session November 5, 2013  
Public Utility Board Executive Session November 11, 2013

**FISCAL INFORMATION**

\$100.00 plus standard and customary closing costs.

**BID INFORMATION**

N/A

**EXHIBITS**

1. Location Map
2. Contract of Sale

Prepared by:



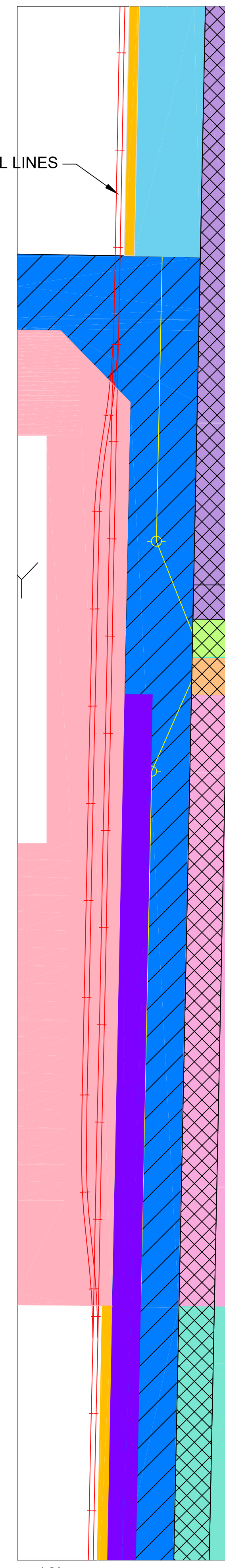
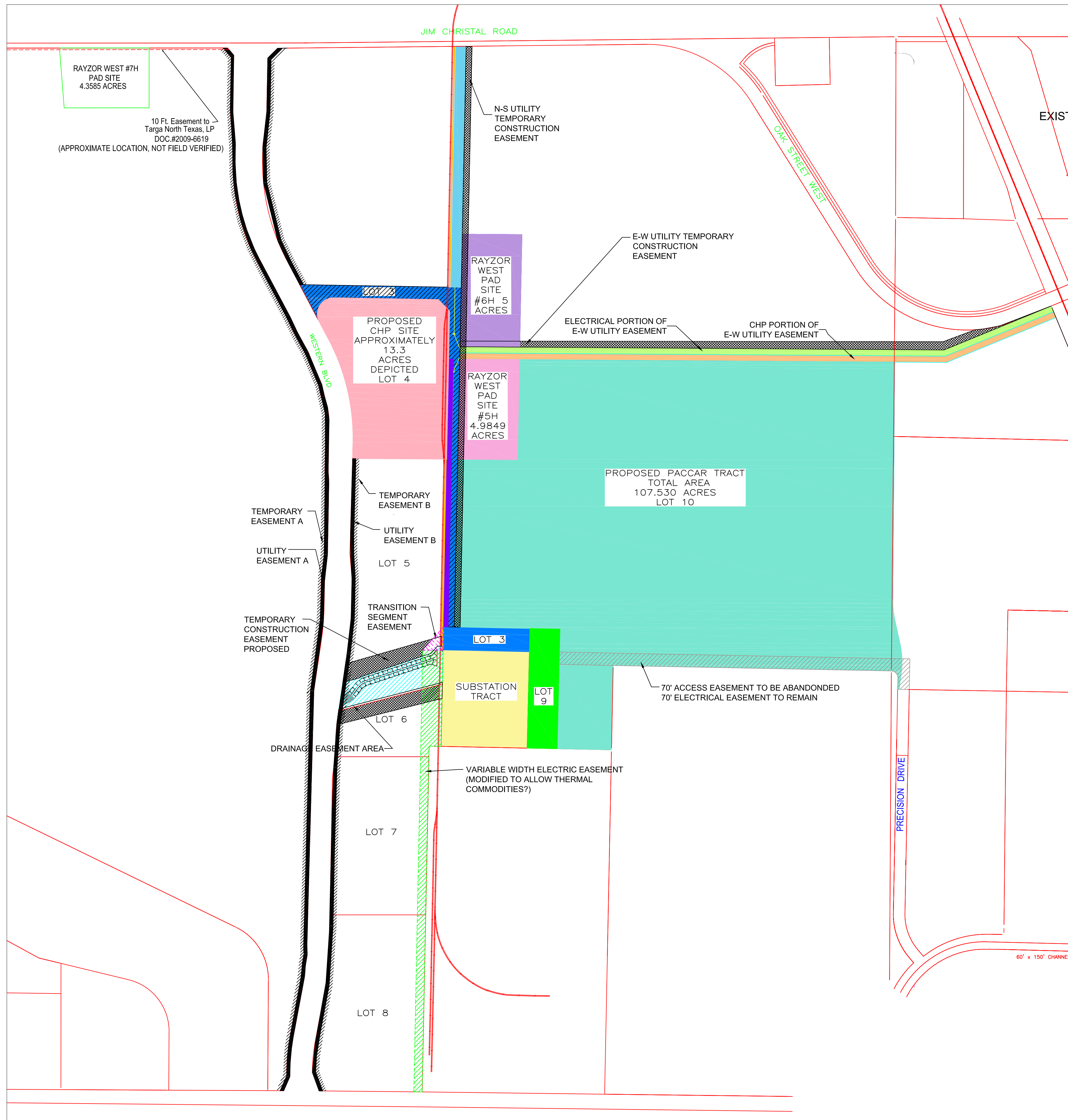
Mike Grim  
Executive Manager  
Power Legislative and Regulatory Affairs  
Denton Municipal Electric

Respectfully submitted:



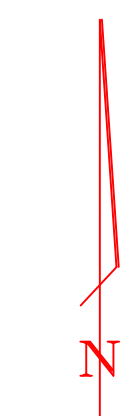
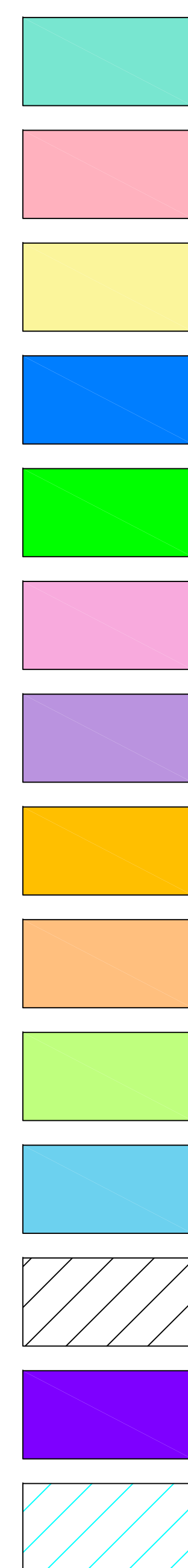
Phil Williams  
General Manager  
Denton Municipal Electric

EXHIBIT 1



10'  
27.5'  
65'

- PACCAR TRACT (TRACT 10)
- CHP PARCEL (TRACT 4)
- SUBSTATION TRACT
- DME ACCESS/UTILITY PARCEL (TRACT 3)
- RD WELLS EXPANSION STRIP PARCEL (TRACT 9)
- PAD SITE 5
- PAD SITE 6
- DME RAIL SPUR UTILITY EASEMENT
- E-W UTILITY EASEMENT CHP PORTION
- E-W UTILITY EASEMENT ELECTRIC PORTION
- N-S UTILITY EASEMENT
- RETAINED ACCESS EASEMENT
- ELECTRIC PORTION OF DME STRIP
- DRAINAGE EASEMENT AREA



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Energizing tomorrow's community today!

1659 SPENCER ROAD  
DENTON, TEXAS 76205  
(817) 348-7119

ELECTRIC ENGINEERING

APPROVAL SIGNATURES	
ADMINISTRATOR	ADMIN_DATE
DISTRIBUTION_SUPER	DIST_DATE
ENGINEER	ENG_DATE
DRAFTER	DRAFT_DATE
MAPPER	MAP_DATE

# DME\_RAYZOR\_SUMMARY

PROJECT DATA

CONTRACTOR	CONTRACTOR_PHONE
DISTRIBUTION_FOREMAN	FOREMAN_PHONE
START_DATE	FINISH_DATE
STATUS	

DRAWING DATA

DRC_#:
PROJECT:
CREW MGR. #:
TILE:
SCALE:
SHEET#:

INFORMATION ON THIS DRAWING IS ACCURATE TO THE BEST OF OUR KNOWLEDGE. DENTON MUNICIPAL ELECTRIC MAKES NO GUARANTEE AS TO ACCURACY AND ASSUMES NO RESPONSIBILITY FOR USE OF THE INFORMATION BY ANY OTHER PERSON OR ORGANIZATION.

# EXHIBIT 2

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF DENTON, TEXAS, AUTHORIZING THE CITY MANAGER OR HIS DESIGNEE TO EXECUTE A CONTRACT OF SALE (HEREIN SO CALLED), AS ATTACHED HERETO AND MADE A PART HEREOF AS EXHIBIT "A", BY AND BETWEEN THE CITY OF DENTON (THE "CITY"), AND WESTPARK GROUP, L.P., A TEXAS LIMITED PARTNERSHIP (THE "SELLER"), CONTEMPLATING THE SALE BY SELLER AND PURCHASE BY CITY OF (I) FEE SIMPLE TO A 6.49 ACRE TRACT OF LAND, MORE OR LESS, AND (II) A DRAINAGE EASEMENT ENCUMBERING A \_\_\_ ACRE TRACT OF LAND, MORE OR LESS (COLLECTIVELY THE "PROPERTY INTERESTS"), FOR THE PURCHASE PRICE OF ONE HUNDRED AND NO/100 DOLLARS (\$100.00), SAID PROPERTY INTERESTS BEING GENERALLY LOCATED IN THE \_\_\_ BLOCK OF \_\_\_\_\_ STREET, AND LOCATED IN THE \_\_\_\_\_ SURVEY, ABSTRACT NUMBER \_\_\_\_, DENTON COUNTY, TEXAS; AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE AND DELIVER ANY AND ALL OTHER DOCUMENTS NECESSARY TO ACCOMPLISH CLOSING OF THE TRANSACTIONS CONTEMPLATED BY THE CONTRACT OF SALE ("CLOSING") AND DOCUMENTS CONTEMPLATED BY THE CONTRACT OF SALE TO BE EXECUTED BY THE CITY AFTER CLOSING; AUTHORIZING THE EXPENDITURE OF FUNDS THEREFOR; AND PROVIDING AN EFFECTIVE DATE.

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The City Manager, or his designee, is hereby authorized to execute the Contract of Sale, by and between the City of Denton, as buyer and Westpark Group, L.P., as

seller, in the form attached hereto and made a part hereof as Exhibit “A”, with a purchase price of \$100.00, plus certain costs as prescribed in the Contract of Sale; and (ii) any and all other (a) documents necessary for closing the transaction contemplated by the Contract of Sale (“Closing”); and (b) documents contemplated by the Contract of Sale to be executed by the City after Closing, as more particularly described therein.

SECTION 2. The City Manager is hereby authorized to make expenditures as set forth in the Contract of Sale.

SECTION 3. This ordinance shall become effective immediately upon its passage and approval.

PASSED AND APPROVED this the \_\_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
MARK A. BURROUGHS, MAYOR

ATTEST:  
JENNIFER WALTERS, CITY SECRETARY

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

APPROVED AS TO LEGAL FORM:  
ANITA BURGESS, CITY ATTORNEY

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

## CONTRACT OF SALE

THIS CONTRACT OF SALE ("**Contract**") is dated the \_\_\_\_ day of \_\_\_\_\_ 2013 ("**Effective Date**"), and is made by and between Westpark Group, LP, a Texas limited partnership ("**Westpark**") and the City of Denton, a Texas home rule municipal corporation ("**Denton**").

### RECITALS

- A. Westpark owns certain tract of land being more particularly described hereinbelow.
- B. Westpark desires to sell to Denton, and Denton desires to buy from Westpark, said tract of land located in the corporate limits of the City of Denton, Texas, as specifically described hereinbelow, provided that Westpark desires to retain an access easement covering a portion of said land tract.
- C. Westpark further agrees to grant a drainage easement to Denton for the purpose of developing drainage improvements in connection with the property areas affected by this Contract.

NOW THEREFORE, in consideration of the exchange of real property, mutual covenants and agreements set forth in the Contract, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Westpark and Denton hereby agree to the following:

### ARTICLE I: CONVEYANCES OF PROPERTY

On the Closing Date (as hereinafter defined), Westpark shall grant and convey the below described Property interests to Denton, subject to the terms and provisions set forth below:

1.1 **Sale and Purchase of the Property.** Westpark agrees to sell and convey to Denton, and Denton agrees to purchase from Westpark the Property (as hereinafter defined), for the Purchase Price (as hereinafter defined), on and subject to the terms and conditions set forth in this Contract, the following grants and conveyances:

1.1.1 Fee Title to Land. Fee simple title to a certain 6.49 acre tract of land ("**Land**"), pursuant to the Special Warranty Deed ("**Deed**") attached hereto as **Appendix 1** (said Land being more particularly described in said Deed attached as **Appendix 1**), together with all of Westpark's rights and interests in and to all roads, streets, alleys, surface water privileges, association rights and easements belonging or appurtenant to the Land, rights of way, licenses, interests, and other rights and appurtenances appertaining thereto, as provided in the Deed, subject to a reserved access easement and covenants relating thereto.



1.1.2 Drainage Easement. A Drainage Easement (herein so called) extending in a southwesterly direction from the Denton Municipal Electric substation tract to the existing drainage structures adjacent to the east boundary of the Western Boulevard right of way ("**Drainage Easement Area**") pursuant to the form of Drainage Easement instrument ("**Drainage Easement Agreement**") attached hereto as Appendix 2 (said Drainage Easement Area being more particularly described in said Drainage Easement instrument attached hereto as Appendix 2). The Drainage Easement shall also include a temporary construction and access easement, as described therein.

The fee simple interest in the Land and rights in the drainage easement, together with any appurtenant rights and interests granted pursuant to the foregoing, are collectively referred to herein as the "**Property**". The physical land area covered by the fee simple interest in the Land and drainage easement is referred to herein as the "**Property Areas**".

1.2 **Minerals Excluded**. Westpark has previously sold and conveyed to RIL Mineral Holdings, L.P. ("**RILMH**") all of Westpark's right, title and interest in all minerals of every kind, including oil, crude oil, natural gas, casing-head gas, other gas, other gaseous or liquid hydrocarbon minerals or substances, condensate, coal, ores, sulfur and other minerals of every kind and nature in and under and/or that may be produced from the Land (and any other Property Areas) pursuant to those certain Mineral Deeds recorded as Document No. 2011-67794 and Document No. 2011-67798 in the Official Records of Denton County, Texas ("**Prior Mineral Conveyance**"). Westpark shall be permitted to execute and record a confirmatory Mineral Deed in form similar to and in furtherance of said existing Mineral Deeds to RILMH but with the final legal description of the Land or any other Property Area attached thereto ("**Confirmatory Mineral Deed**"). Nonetheless, to the extent Westpark continues to hold as of Closing any such minerals in and under and/or that may be produced from the Land (or any other Property Areas), Westpark, subject to the limitation of such reservation made herein, shall reserve, for itself, its successors and assigns all oil, gas and other minerals in, on and under and that may be produced from the Land ("**Mineral Reservation**"). Westpark, its successors and assigns shall not have the right to use or access the surface of the Land, in any way, manner or form, in connection with or related to the reserved oil, gas, and other minerals and/or related to exploration and/or production of the oil, gas and other minerals reserved herein, including without limitation, use or access of the surface of the Land for the location of any well or drill sites, well bores, whether vertical or any deviation from vertical, water wells, pit areas, seismic activities, tanks or tank batteries, pipelines, roads, electricity or other utility infrastructure, and/or for subjacent or lateral support for any surface facilities or well bores, or any other infrastructure or improvement of any kind or type in connection with or related to the reserved oil, gas and other minerals, and/or related to the exploration or production of same. With respect to the Prior Mineral Conveyance, Westpark also agrees to cause RILMH to deliver a surface waiver agreement at Closing waiving RILMH's rights to use the surface of the Land in the form attached hereto and made a part hereof as Appendix 3 (the "**RILMH Surface Waiver**").

As used herein, the term “surface of the Land” shall include the area from the surface of the earth to a depth of five hundred feet (500') below the surface of the earth and all areas above the surface of the earth.

**1.3 Access Relocation Agreement.** Denton and Westpark agree to all terms and conditions set forth in, and agree to execute and record at Closing, that certain Access Relocation Agreement (the "**Relocation Agreement**") which is attached hereto and made a part hereof for all purposes in **Appendix 4**. The Access Relocation Agreement contains Denton's agreement to terminate that certain Access Easement ("**Existing Access Easement**") recorded as Document No. 2007-20897, Official Records of Denton County, Texas and additional matters relating to the access relocation.

**1.4 Abandonment of Existing Drainage Easement.** The easement granted by the Drainage Easement Agreement will replace a drainage easement previously granted to the City of Denton and recorded as Instrument No. 2008-32334, Official Records of Denton County, Texas ("**Existing Drainage Easement**"), such instrument containing a provision allowing for abandonment of the Existing Drainage Easement in the event Denton and Westpark agree on a "Drainage Alternative" (that term described in the Existing Drainage Easement instrument). Denton and Westpark agree that the Drainage Easement Agreement constitutes a satisfactory Drainage Alternative and, as evidenced by its execution of the Drainage Easement Agreement, Denton will release and abandon the Existing Drainage Easement for all purposes.

**1.5 Drainage Work.** The parties agree that certain drainage facilities work more specifically described in **Appendix 5** attached hereto ("**Drainage Work**") shall be completed after Closing by Denton on or before the fourth anniversary of the Effective Date hereof ("**Completion Deadline**").

**1.5.1 Plans and Specifications.** The parties approve of the plans and specifications for the Drainage Work ("**Drainage Specifications**"), which are included as part of the attached **Appendix 5**.

**1.5.2 Performance of Drainage Work by Denton.** Denton shall perform all Drainage Work in a good and workmanlike manner in conformance with sound and acceptable engineering practices within the time periods provided herein. In performing the work or causing the work to be performed, Denton shall make adequate provisions for the safety and convenience of Rayzor with respect to its use of and operations on the Property Areas, as applicable, and shall cause all work to be cleaned up promptly in order to minimize disruption or inconvenience. All Drainage Work shall be conducted in full compliance with all applicable federal, state, municipal, or other laws, statutes, codes, restrictions, regulations, ordinances and orders.

**1.5.3 Payment of Drainage Work Costs.** In consideration of Denton's covenant and obligation to perform the Drainage Work as provided herein, at Closing, Westpark shall

pay and deliver to Denton, the sum of Three Hundred Fifty Thousand and No/100 Dollars (\$350,000.00) ("**Drainage Funds**") as payment for the Drainage Work.

1.5.4 Intentionally omitted.

1.5.5 Force Majeure. The deadline for completion of the Drainage Work may be extended by written notice from Denton to Westpark, but only if the need for such extension is for reasons of Force Majeure beyond Denton's control and only if Denton has been and is continuously and diligently pursuing completion of the same using its best reasonable efforts. "**Force Majeure**" means an event or circumstance which prevents one party from performing its obligations hereunder, which is not within the reasonable control of the claiming party, and which, by the exercise of due diligence, the claiming party is unable to overcome or avoid or cause to be avoided. Force Majeure shall include, without limitation, strike, stoppage in labor, riot, significant fire, flood or ice damage, tornados, invasion, insurgency, civil war, commotion, insurrection, blockades, embargoes, sabotage, epidemics, explosions, acts of terrorism, military or usurped power, order of any court granted in any bona fide legal proceeding or action, order of any civil, military or governmental authority (either de facto or de jure and including, without limitation, orders of governmental and administrative agencies that conflict with the terms of this Agreement), or acts of God or public enemies. Notwithstanding the above, claims by Denton for "Force Majeure" shall not include delays as a result of acts or omissions of Denton or governmental entities or agencies under the control of Denton.

1.5.6 Insufficient Drainage Funds. In the event that the Drainage Funds are not sufficient to complete the Drainage Work, then Denton shall be responsible for any remaining share of the deficiency.

1.5.7 Remedies. With respect to a failure of Denton to timely complete the Drainage Work in a timely manner, Westpark shall have the following rights and remedies: Westpark shall have the right to receive from Denton the return of the amount remaining of the \$350,000 Drainage Funds not expended by Denton related to the Drainage Work (the "Remaining Drainage Funds"), together with interest thereon at two percent (2%) per annum accruing on the Remaining Drainage Funds from the Effective Date hereof until the date of such payment (but if Westpark exercises this remedy, then upon payment of such amounts by Denton to Westpark, Denton shall no longer have any obligation to complete the Drainage Work and Westpark shall not have any further remedies against Denton with respect to the failure of Denton to construct the Drainage Work) ("**Refund Remedy**"). In the event a failure of Denton to timely complete the Drainage Work, if Westpark does not elect to pursue the Refund Remedy described above, Westpark shall have the right to construct the Drainage Work itself and to obtain reimbursement from Denton for all actual costs reasonably incurred by Westpark as a result of such undertaking, ~~plus all actual damages sustained by Westpark as a result of Denton's failure to timely complete the Drainage Work~~ ("**Takeover Remedy**"). In the event a failure of Denton to timely complete the Drainage Work, if Westpark does not elect to pursue the Refund Remedy or the Takeover Remedy described above, then Westpark shall have the right to specifically enforce Denton's obligations to construct the

Drainage Work ~~and/or to bring a claim against Denton for all damages sustained by Westpark as a result of Denton's failure to timely complete the Drive Improvements ("Other Remedies")~~.

1.5.8 All of the provisions of this **Section 1.5** shall survive the Closing and shall inure to the benefit of the parties successors and assigns.

## **ARTICLE II: PURCHASE PRICE AND EARNEST MONEY**

2.1 **Purchase Price.** The Purchase Price to be paid to Westpark for the Property is the sum of \$100.00 ("**Purchase Price**").

2.2 **Independent Contract Consideration.** On or before the Closing, Denton shall deliver to the Title Company, payable to and for the benefit of Westpark, a check in the amount of One Hundred and No/100 Dollars (\$100.<sup>00</sup>) (the "**Independent Contract Consideration**"), which amount the parties hereby acknowledge and agree has been bargained for and agreed to as consideration for Westpark's execution and delivery of the Contract. The Independent Contract Consideration is in addition to, and independent of any other consideration or payment provided in this Contract, is non-refundable, and shall be retained by Westpark notwithstanding any other provision of this Contract.

## **ARTICLE III: TITLE AND SURVEY**

3.1 **Title Commitment.** Denton may cause to be issued a current Commitment for Title Insurance (the "**Title Commitment**") for the Property, issued by Republic Title of Texas, Inc., 550 Bailey Avenue, Suite 100, Fort Worth, Texas 76107 ("**Title Company**"). The Title Commitment shall set forth the state of title to the Property, including a list of any defects, encumbrances and other exceptions to title, and outstanding claims, interests or equities of any nature (each of which referred to herein as an "**Exception**").

3.2 **Survey.** Denton may, at its expense, cause a current on the ground survey of the Property Area, or any part thereof, to be prepared (the "**Survey**") by Gerry Curtis Associates or any other surveyor approved by both parties. The Survey may include all matters prescribed by Denton. In any case, the description of the Land and real property encumbered by the Drainage Easement as set forth in the description provided by the Survey shall be used to describe the Land in the Deed and real property encumbered by the Drainage Easement conveying the Land to Denton and shall be the description of the Property set forth in the Title Policy.

3.3 **Westpark's Efforts to Cure.** Westpark shall take good faith efforts to assist Denton in curing or satisfying any Exceptions or defects depicted or revealed in the Survey, as set forth in the notice to Westpark by Denton ("**Objections**"). Notwithstanding the obligation of Westpark to provide good faith efforts in its assistance to Denton to cure any defects related to the Title or Survey of the Property, Westpark shall not be obligated to expend funds in such efforts or incur any liability or otherwise incur any economic burden. In the event Denton and Westpark cannot

cure the Objections prior to Closing, Denton may elect to either (i) terminate this Contract; or (ii) waive the uncured Objections, which shall become Permitted Exceptions (as defined below), and upon such waiver, close the transaction contemplated by this Contract. The term “**Permitted Exceptions**” as used herein shall mean (i) the Roll-Back Taxes (as hereinafter defined), (ii) the Prior Mineral Conveyance and the Mineral Reservation, (iii) easements, restrictions, claims, rights of way, encroachments or other encumbrances or other matters whatsoever affecting the Property as shown in the Title Commitment or Survey, but excluding any matters which were subject to Objections and which Westpark actually cures, (iv) all municipal or other governmental zoning laws, regulations and ordinances, if any, affecting the herein-described Property, (v) all reservations, terms or conditions affecting the Property as provided in the Deed and/or Relocation Agreement, and (vi) any other matters affecting the Property which are of public record or would be disclosed by a physical inspection of the Property and/or an accurate survey of the Property. Notwithstanding anything to the contrary herein, Westpark shall provide to Denton at or prior to Closing, the RILMH Surface Waiver, and shall use reasonable efforts to provide to Denton, at or prior to Closing, evidence satisfactory to Denton and Westpark that any other owners of the rights to conduct mineral exploration and production activities (the “**Operations**”) on the Property are prohibited from using or occupying in any way the surface of the Property in connection with such Operations.

3.4 **Title Policy.** At Closing, Denton, at Denton’s sole cost and expense, may cause a standard Texas Owner Policy of Title Insurance (“**Title Policy**”), along with a T-19.1, T-19.2 or T-19.3 endorsement, as applicable, to be furnished to Denton, to the extent available. The Title Policy shall be issued by the Title Company, in the amount of the fair market value of the Property and insuring that Denton has indefeasible fee simple title to the Land and holds valid easement rights in the Drainage Easement Area, subject only to the Permitted Exceptions.

#### **ARTICLE IV: AS-IS SALE**

4.1 **AS-IS Sale.** Denton expressly acknowledges that the Property is being sold, conveyed, granted and accepted **AS-IS, WHERE-IS WITH ALL FAULTS**, and, except as expressly set forth in **Article VI**, below, Westpark makes no representations or warranties, express or implied, with respect to the physical condition or any other aspect of the Property or any real property encumbered by the Property, including without limitation: (i) the structural integrity of improvements on such properties, if any; (ii) the manner, construction, condition and state of repair or lack of repair of any improvements on such properties; (iii) the conformity of any improvements to any plans or specifications for such properties, including but not limited to any plans and specifications that may have been or which may be provided to Denton; (iv) the conformity of such properties to past, current or future applicable zoning or building code requirements or such properties’ compliance with any other laws; (v) the financial earning capacity or history or expense history of the operation of such properties; (vi) the existence of soil instability, past soil repairs, soil additions or conditions of soil fill, such properties’ susceptibility to landslides, sufficiency of undershoring or sufficiency of drainage to, from or across such properties; (vii) whether such properties are located wholly or partially in a flood plain or a flood hazard boundary or similar area or within any area that may be considered

wetlands or jurisdictional waters of the United States; (viii) the existence or non-existence of underground or above ground storage tanks, asbestos, hazardous waste or other toxic or Hazardous Materials (as hereinafter defined) of any kind or any other environmental condition or whether such properties are in compliance with applicable laws; (ix) such properties' investment potential or resale at any future date, at a profit or otherwise; (x) any tax consequences of ownership of such properties, except as provided in **Section 7.3**, below; or (xi) any other matter whatsoever affecting the stability, integrity, other condition or status of the Property (collectively, the "**Property Conditions**"). **EXCEPT AS PROVIDED IN ARTICLE VI, BELOW, DENTON HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVES ANY AND ALL ACTUAL OR POTENTIAL RIGHTS IT MIGHT HAVE REGARDING ANY FORM OF WARRANTY, EXPRESS OR IMPLIED OR ARISING BY OPERATION OF LAW, INCLUDING, BUT IN NO WAY LIMITED TO, ANY WARRANTY OF QUANTITY, QUALITY, CONDITION, HABITABILITY, MERCHANTABILITY, SUITABILITY OR FITNESS FOR A PARTICULAR PURPOSE RELATED TO THE PROPERTY, ANY IMPROVEMENTS THEREON OR THE PROPERTY CONDITIONS, SUCH WAIVER BEING ABSOLUTE, COMPLETE, TOTAL AND UNLIMITED IN ANY WAY.** This waiver fully applies to Westpark as well as all other Westpark Parties (as hereinafter defined) but does not apply to Westpark's predecessors in title to the Property who are not Westpark Parties. As used herein the "**Westpark Parties**" shall mean Westpark, Rayzor Investments, Ltd. ("**RIL**"), Jesse Newton Rayzor and Eugenia Porter Rayzor, and any other person that was a spouse, descendant or other relative of Jesse Newton Rayzor and/or Eugenia Porter Rayzor, or an affiliated entity of any of the foregoing.

4.2 **Information Disclaimer.** Any and all information related to the Property provided to Denton by Westpark (without implying any obligation to deliver such information, however) ("**Information**"), shall be delivered as an accommodation to Denton only, without any representation or warranty as to the completeness or accuracy of the data or other information contained therein, and all such Information is furnished to Denton solely as a courtesy, and Westpark has not verified the accuracy of any statements or other information therein contained, the method used to compile such Information nor the qualifications of the persons preparing such Information. The Information is provided on an **AS-IS, WHERE-IS BASIS, AND DENTON EXPRESSLY ACKNOWLEDGES THAT, IN CONSIDERATION OF THE AGREEMENTS HEREIN, WESTPARK MAKES NO REPRESENTATION, EXPRESS OR IMPLIED, OR ARISING BY OPERATION OF LAW, INCLUDING, BUT IN NO WAY LIMITED TO, ANY WARRANTY OF QUANTITY, QUALITY, CONDITION, MERCHANTABILITY, SUITABILITY OR FITNESS FOR A PARTICULAR PURPOSE AS TO THE INFORMATION.**

4.3 **Waiver of Compliance with Requirements.** Denton expressly acknowledges that it is not relying on (and hereby disclaims and renounces) any representations or warranties made by or on behalf of Westpark of any kind or nature whatsoever, except as expressly provided in **Article VI**, below. Denton acknowledges that the Property may not be in compliance with all laws that may apply to such Property or any part thereof and the continued ownership, maintenance, management and repair of such properties ("**Requirements**"). Denton shall be solely responsible for any and all Requirements.

**4.4 Environmental Waiver.** Without limitation, to the fullest extent permitted by law, and except as provided in **Article VI**, below, Denton, for itself and its successors and assigns, hereby releases Westpark from and waives any and all claims and liabilities against Westpark, related to or in connection with any environmental condition at such Property (or the presence of any matter or substance relating to the environmental condition of such Property), including, but not limited to, claims and/or liabilities relating to (in any manner whatsoever) any hazardous, toxic or dangerous materials or substances located in, at, about or under such Property, or for any and all claims or causes of action (actual or threatened) based upon, in connection with or arising out of: (i) the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. §§9601 et seq.) ("**CERCLA**"); (ii) the Resource Conservation and Recovery Act (42 U.S.C. §§6901 et seq.) ("**RCRA**"); (iii) the Superfund Amendments and Reauthorization Act (42 U.S.C. §§9601 et seq.) ("**SARA**"); or (iv) any other claim or cause of action (including any federal or state based statutory, regulatory or common law cause of action, including without limitation, the Texas Solid Waste Disposal Act) related to environmental matters or liability with respect to or affecting the Property. This waiver does not apply to any predecessors in title to Westpark.

**4.5 Assumption of Hazardous Materials Risks.** Without limitation to any of the above, Denton assumes the risk that Hazardous Materials may be present in, on or under the Property and, except as provided in Article V and Article VI, below, hereby waives, releases and discharges forever, Westpark from any and all present or future claims or demands, and any and all damages, loss, injury, claims or costs, including fines, penalties and judgments arising from or in any way related to the condition of the Property or presence of any Hazardous Materials in, on or under the Property, whether or not arising from or attributed to the sole or concurrent negligence of Westpark. This waiver does not apply to any predecessors in title to Westpark.

**4.6 Parties Relying on Own Inspections.** Denton acknowledges and agrees that Westpark was unwilling to convey, grant and sell the Property unless Westpark was released as expressly set forth above. With respect to the waivers and agreements contained in **Article IV, Sections 4.1 through 4.5**, above, Denton and Westpark represent and warrant to the other that: they are (i) represented by legal counsel in connection with the sale contemplated by this Contract; (ii) each, with its counsel, has fully reviewed the disclaimers and waivers and agreements set forth in this Contract and understands their significance and effect; (iii) each is knowledgeable and experienced in the purchase, operation, ownership, refurbishing and sale of commercial real estate, and is fully able to evaluate the merits and risks of this transaction; and (iv) each is not in a significantly disparate bargaining position. As part of the provisions of this **Article IV**, but not as a limitation thereon, Denton agrees, represents and warrants that the matters released herein are not limited to matters which are known or disclosed. To the extent permitted by law, Denton hereby agrees, represents and warrants that it realizes and acknowledges that factual matters now unknown to it may have given or may hereafter give rise to causes of action, claims, demands, debts, controversies, damages, costs, losses and expenses which are presently unknown, unanticipated and unsuspected, and Denton further agrees, represents and warrants that the waivers and releases herein have been negotiated and agreed upon in light of that realization and that Denton nevertheless hereby intends to

release, discharge and acquit Westpark from any such unknown causes of action, claims, demands, debts, controversies, damages, costs, losses and expenses which might in any way be included in the waivers and matters released as set forth in this **Article IV**.

4.6.A **Waivers Limited.** Notwithstanding anything to the contrary herein, any and all representations, disclaimers and waivers of any claims by Denton, all as may be prescribed in this Article IV, are made to the extent, and only to the extent, such is authorized or permitted under existing laws.

4.7 **Survival.** Notwithstanding anything herein to the contrary, all of the terms and provisions of **Article IV, Sections 4.1 through 4.6.A** shall survive the Closing.

#### **ARTICLE V: INSPECTION**

5.1 **Tests.** Until the Closing, Denton and its agents, employees and contractors, at their sole risk and expense, shall have the right to enter upon the Property Areas during normal business hours (and subject to advance notice as required below) for inspections, surveying, engineering and other reasonable testing and inspection purposes ("**Tests**"). All such inspections may include both non-intrusive inspections and studies (such as non-intrusive "Phase I Level" type tests with respect to environmental matters) which do not involve borings or any sampling of any material or media, including soil, surface water, or ground water and intrusive "Phase II Level" environmental or other intrusive testing or any borings or sampling of any material or media, including soil, surface water, or ground water. Without limiting the general authorization provided herein, Denton may conduct routine soil borings on the Property Areas for the purpose of evaluating soil stability and characteristics for typical construction industry purposes related to its intended use of the Property. All soil borings shall be conducted in a commercially reasonable manner in accordance with generally accepted construction industry standards, and upon completion of all such soil borings, Denton shall restore the affected portion of the Property to substantially the same condition as existed prior to such soil borings. Any and all activities conducted by Denton shall be in accordance with applicable laws. Any entry upon the Property Areas is referred to herein as an "**Entry**". All such activities shall be conducted in such a fashion so as to minimize interference with the use of the properties being inspected. Denton shall promptly repair any damage to the affected portion of the Property as a result of such Tests and restore same to its condition which existed prior to such Tests. Denton shall deliver to Westpark a copy of any report, summary or other documentation of the findings produced by or resulting from the Tests.

5.2 **Notice of Entry.** Prior to any Entry upon the Property Areas to be inspected for any purpose permitted herein, Denton shall give prior notice to and shall coordinate such access as follows: Mr. Philip A. Baker (telephone 940/387-8711, fax 940/566-1591, The Rayzor Company, 400 West Oak Street, Suite 200, Denton, Texas 76201), or his successor or designee, who will act as Westpark's agent with respect thereto. Such notice shall be given at least 24 hours prior to the proposed Entry and shall include the names of the individuals who will be entering the Property Areas and the name of such individual's firm or company, the purpose of the inspection and specific activities which will be conducted by such individuals on such Property



Areas, the times during which such Entry shall occur and such other information as may be reasonably requested by Mr. Baker. The inspecting party shall fully cooperate with and follow any reasonable additional requirements or instructions given by Mr. Baker with respect to such Entry.

5.3 **Insurance.** Any consultant or contractor of Denton desiring to enter the Property to be inspected for any Tests shall only enter such Property Areas after submitting to Westpark certificates of insurance evidencing Commercial General Liability Insurance coverage in commercially reasonable amounts, but said required amount to not exceed Five Hundred Thousand One Million and No/100 Dollars (\$~~1,05~~00,000.00), covering such consultant's or contractor's operations on the Property to be inspected, with Westpark included as an additional insured thereunder and stating that such insurance is primary with regard to any other insurance maintained by Westpark.

5.4 **Termination.** Any term or provision of this Contract notwithstanding, the obligations of Denton specified in this Contract are wholly conditioned on Denton's having determined, in Denton's sole and absolute discretion, during the inspection provided by this **Article V**, based on such tests, examinations, studies, investigations and inspections of the Property Denton deems necessary or desirable, that Denton finds the Property suitable for Denton's purposes. If Denton determines, in its sole judgment, that the Property is not suitable, for any reason, for Denton's intended use or purpose, Denton may terminate this Contract by written notice to Westpark, as soon as reasonably practicable, but in any event prior to the Closing. In the event Denton elects to terminate this Contract pursuant to the terms of this **Section 5.4**, Denton will provide to Westpark copies of any and all non-confidential and non-privileged reports and studies obtained by Denton during or resulting from the Tests.

## **ARTICLE VI: REPRESENTATIONS, WARRANTIES, COVENANTS AND AGREEMENTS**

6.1 **Representations and Warranties of Westpark.** Westpark represents and warrants to Denton, as of the Effective Date of this Contract and as of the Closing Date, except where specific reference is made to another date that:

- (a) Westpark has the full right, power and authority to sell and convey the Property as provided in this Contract and to carry out Westpark's obligations hereunder and this Contract, and all documents to be delivered by Westpark hereunder, are and shall be legal and binding upon Westpark.
- (b) Westpark has not received notice of, and has no other knowledge or information of, any pending or threatened judicial or administrative action, or any action pending or threatened by adjacent landowners or other persons against or affecting the Property and/or real property encumbered by the Property.
- (c) Westpark has not contracted or entered into any agreement with any real estate broker, agent, finder, or any other party in connection with this transaction or taken any action which would result in any real estate broker commissions or

finder's fee or other fees payable to any other party with respect to the transactions contemplated by this Contract.

- (d) All Leases, as defined in **Section 6.3(a)**, relating to the Property and/or real property encumbered by the Property shall have expired or otherwise terminated on or before the date of Closing.
- (e) Westpark has not received notice of any violation of any law, statute, rule, regulation or ordinance related to or affecting the Property and/or real property encumbered by the Property or Westpark's obligations under this Contract.
- (f) To Westpark's actual knowledge, without independent investigation, there are no Hazardous Materials (as hereinafter defined) which are or have been used, manufactured, placed or stored on the Property and/or real property encumbered by the Property. As used above, the term "**Hazardous Materials**" means any material or substance which is (i) defined as a "hazardous waste," "extremely hazardous waste," "restricted hazardous waste," "hazardous material," "hazardous substance," or any similar formation under or pursuant to any state or federal statute or common law rule, (ii) designated as a "hazardous waste" pursuant to Section 311 of the Clean Water Act, 33 U.S.C. §1251 et seq. (33 U.S.C. §1321) or listed pursuant to Section 307 of the Clean Water Act (33 U.S.C. §1317), (iii) defined as a "hazardous waste" pursuant to Section 1004 of the Resource Conservation and Recovery Act, 44 U.S.C. §6901 et seq. (42 U.S.C. §6903) or (iv) defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. §9601 et seq. (42 U.S.C. §9601); provided, however, "Hazardous Materials" shall not, for purposes of this representation, include gasoline, diesel fuel or other petroleum products routinely used in connection with farm and ranch operations, nor shall such term include any pesticides, herbicides, cattle dipping solutions and other substances which are now or ever have been customarily used in connection with farm and ranch operations (and such exclusion from such term shall include items which were historically used in the farm and ranching industry for such purposes but which may now be banned or otherwise not so used). Westpark hereby informs Denton that it has not conducted an independent investigation in connection with the above representation and that Westpark has limited knowledge as to such matters and advises Denton to conduct independent investigations with respect to such matters as Denton may deem necessary or desirable to fully satisfy itself with respect to the environmental condition of the Property and/or real property encumbered by the Property, it being understood that the above representation is limited in nature and is only to Westpark's actual knowledge, and does not give a complete understanding of the environmental condition of the Property and/or real property encumbered by the Property.

- (g) Westpark is not a “foreign person” as defined in Section 1445 of the Internal Revenue Code of 1986, as amended.
- (h) Mr. Baker shall serve as Westpark’s representative or agent with respect to this Contract.

**6.2 Representations and Warranties of Denton and Westpark.** Denton and Westpark represent and warrant to each other that they have the power to execute, deliver and perform under this Contract, have taken all actions necessary to authorize the execution, delivery and performance of this Contract and that the parties executing this Contract and the conveyance documents exhibited hereto for and on behalf of Denton and Westpark have been duly authorized by Denton and Westpark to act in such capacity.

**6.3 Covenants and Agreements of Westpark.** Westpark covenants and agrees with Denton as follows:

- (a) Within ten (10) business days after the Effective Date, Westpark shall deliver to Denton, true, correct and complete copies of the following:
  - (i) All lease agreements and/or occupancy agreements and/or licenses of any kind or nature (if oral, Westpark shall provide to Denton in writing all material terms thereof) relating to the possession of the Property and Property Areas, or any part thereof, including any and all modifications, supplements, and amendments thereto (the “**Leases**”), provided that only those Leases which will remain in force after the Closing, if any, must be delivered to Denton.
- (b) From the Effective Date until the date of Closing and with respect to the Property and Property Areas, Westpark shall:
  - (i) Not enter into any written or oral contract, lease, easement or right of way agreement, conveyance or any other agreement of any kind with respect to, or affecting, the Property and Property Areas that will not be fully performed on or before the Closing or would be binding on Denton or the Property after the date of Closing.
  - (ii) Not sell, assign, lease or convey any right, title or interest whatsoever in or to the Property and Property Areas, or create, or permit to exist, any lien, encumbrance, or charge thereon.
- (c) Westpark shall assist and cooperate in the platting activities of Denton, as set forth in **Section 6.4** below, including without limitation, execution of any applications or other materials related to ownership of the Land, in such processes.

**6.4 Covenants and Agreements of Denton.**

- (a) Denton shall, prior to Closing, have obtained approval of a conveyance plat or other plat of the Land from the Planning and Zoning Commission or the Development Review Committee in accordance with the terms of the Denton Development Code, including without limitation, Sections 35.16.6, 35.16.17, 35.16.17.1 and 35.16.17.2 thereof, or, alternatively to the foregoing, Denton shall obtain any necessary approval of the transaction herein contemplated in lieu of a conveyance plat from the Planning and Zoning Commission and/or Development Review Committee. In the event Denton produces a conveyance plat or other plat in connection with this Contract, Westpark shall reasonably cooperate in the platting process and shall either execute a conveyance plat provided to it by Denton or provide objections to same to Denton, on or before five (5) business days after the conveyance plat or other plat is submitted to it by Westpark. Notwithstanding anything herein to the contrary, in no event shall a conveyance plat impose obligations on Westpark to dedicate easements or rights-of-way across any of Westpark's other lands or impose any restrictions or other requirements with respect to the Denton's such other lands.

6.5 Notwithstanding anything to the contrary contained in this Contract, the representations, warranties, covenants and agreements of Westpark contained in this Contract shall survive the Closing for a period of one year after the Closing Date, and shall not, in any circumstance, be merged with the Deed or Drainage Easement to be delivered at Closing pursuant to **Section 7.2**; provided, however, that the limitations upon the duration of the warranties in this Section 6.5 shall not apply to the warranties contained in the Deed.

## **ARTICLE VII: CLOSING**

7.1 **Date and Place of Closing.** The "**Closing**" (herein so called) shall take place in the offices of the Title Company and shall be accomplished through an escrow to be established with the Title Company, as escrowee. The "**Closing Date**" (herein sometimes called), shall occur on November 22, 2013, unless otherwise mutually agreed to by Denton and Westpark.

### **7.2 Items to be Delivered at the Closing.**

- (a) At the Closing, Westpark shall deliver or cause to be delivered to the Title Company, the following items:
- (i) The Deed for the Land, in form and substance identical to that attached hereto as **Appendix 1**, subject only to the Permitted Exceptions, executed by Westpark and acknowledged.
  - (ii) The Drainage Easement Agreement, in form and substance identical to that attached hereto as **Appendix 2**, executed by Westpark and acknowledged.

- (iii) The RILMH Surface Waiver, in the form as attached hereto as **Appendix 3**, executed by RILMH and acknowledged.
  - (iv) The Relocation Agreement, in the form as attached hereto as **Appendix 4**, executed by Westpark and acknowledged.
  - (v) The Drainage Funds, in the sum specified in and pursuant to the terms of **Section 1.5** herein.
  - (vi) Other items reasonably requested by the Title Company as administrative requirements for consummating the Closing.
- (b) At the Closing, Denton shall deliver to the Title Company, the following items:
- (i) The sum equal to the Purchase Price as required by **Article II**.
  - (ii) The Deed for the Land, in form and substance identical to that attached hereto as **Appendix 1**, executed by Denton, acknowledged, attested and approved as to form.
  - (iii) The Drainage Easement Agreement, in the form as attached hereto as **Appendix 2**, executed by Denton, acknowledged, attested and approved as to form.
  - (iv) The Relocation Agreement, in the form as attached hereto as **Appendix 4**, executed by Denton, acknowledged, attested and approved as to form.
  - (v) Other items reasonably requested by the Title Company as administrative requirements for consummating the Closing.

**7.3 Adjustments at Closing.** Notwithstanding anything to the contrary contained in this Contract, the provisions of this **Section 7.3** shall survive the Closing. The following items shall be adjusted or prorated between Westpark and Denton with respect to the Property:

**7.3.1 General Proration.** Ad valorem and similar taxes and assessments (the "**Taxes**") relating to the Land for the year in which the Closing occurs shall be prorated between Westpark and Denton as of the Closing Date, in accordance with Section 26.11 of the Texas Tax Code. In this regard the Title Company shall have each taxing unit certify Westpark's prorated tax liability for the year of closing which amounts will be paid by Westpark out of the proceeds of the sale.

**7.3.2 Roll-Back Taxes.** Westpark stipulates that, for purposes of assessing Taxes against the Land for prior years, the applicable central appraisal district has applied agricultural, open-space or other special use valuation methods ("**Special Use Valuation**") to arrive at the taxable value of the Land as permitted under the Texas Tax Code, and accordingly a change in land usage of

the Land may result in an additional tax (in addition to Taxes for the year in which the Roll-Back Event, as hereinafter defined, occurs) being assessed against the Land (any such additional taxes, together with interest thereon, being referred to herein as "**Roll-Back Taxes**"). To the extent any Roll-Back Taxes exist, Westpark shall not be responsible for same.

**7.4 Possession at Closing.** Possession of the Land and the rights conveyed in the Drainage Easement shall be delivered to Denton at Closing, subject to the Permitted Exceptions and Westpark's reserved rights therein.

**7.5 Costs of Closing.** Each party is responsible for paying the legal fees of its counsel, in negotiating, preparing, and closing the transaction contemplated by this Contract. Westpark is responsible for paying fees, costs and expenses identified herein as being the responsibility of Westpark. Denton is responsible for paying fees, costs and expenses identified herein as being the responsibility of Denton. If the responsibility for such costs or expenses associated with closing the transaction contemplated by this Contract are not identified herein, such costs or expenses shall be allocated between the parties in the customary manner for closings of real property similar to the Property in Denton County, Texas.

## **ARTICLE VIII: DEFAULTS AND REMEDIES**

### **8.1 Westpark's Defaults and Denton's Remedies.**

8.1.1 Westpark's Defaults. Westpark is in default under this Contract on the occurrence of any one or more of the following events:

- (i) Any of Westpark's warranties or representations contained in this Contract are untrue on the Closing Date; or
- (ii) Westpark fails to meet, comply with or perform any covenant, agreement, condition precedent or obligation on Westpark's, as applicable, part required within the time limits and in the manner required in this Contract; or
- (iii) Westpark fails to deliver at Closing, the items specified herein at **Section 7.2(a)** for any reason other than a default by Denton or termination of this Contract by Denton pursuant to the terms hereof prior to Closing.

8.1.2 Denton's Remedies. If Westpark is in default under this Contract, Denton, as Denton's sole and exclusive remedies for the default, may, at Denton's sole option, do either one of the following:

- (i) Terminate this Contract by written notice delivered to Westpark; or
- (ii) Enforce specific performance of this Contract against Westpark, requiring Westpark to convey the Property to Denton subject to no liens,

encumbrances, exceptions, and conditions other than the Permitted Exceptions.

**8.2 Denton’s Default and Westpark’s Remedies.**

8.2.1 Denton’s Default. Denton is in default under this Contract on the occurrence of any one or more of the following events:

- (i) Denton fails to meet, comply with or perform any covenant, agreement, condition precedent or obligation on Denton’s part required within the time limits and in the manner required by this Contract; or
- (ii) Denton fails to deliver at Closing, the items specified in **Section 7.2(b)** of this Contract for any reason other than a default by Westpark under this Contract or termination of this Contract pursuant to the terms hereof prior to Closing.

8.2.2 Westpark’s Remedy. Subject to the provisions of Section 8.3 and Section 8.4 below, if Denton is in default under this Contract, Westpark, as Westpark’s sole and exclusive remedy for the default, may terminate this Contract by written notice delivered to Denton, whereupon neither party shall have any further rights or obligations hereunder.

8.3 **No Limitation of Remedies Under Section 1.5 and Relocation Agreement.** The remedies provided for in **Section 1.5** and in the Relocation Agreement are not restricted or limited in any manner by this Article VIII.

8.4 Notwithstanding the foregoing, Westpark may pursue all rights and remedies available at law or in equity against Denton with respect to (i) any damages incurred by Westpark as a result of Denton's failure to comply with the insurance requirements provided for in this Contract; and (ii) all obligations under the various closing documents executed and/or required to be delivered at Closing.

**ARTICLE IX: MISCELLANEOUS PROVISIONS**

9.1 **Notice.** Unless otherwise specified in a recorded instrument of conveyance of the Property under this Contract, all notices, demands, requests, and other communications required hereunder shall be in writing, and shall be deemed to be delivered, upon the earlier to occur of (a) the date provided if provided by telephonic facsimile, and (b) the date of the deposit of, in a regularly maintained receptacle for the United States Mail, registered or certified, return receipt requested, postage prepaid, addressed as follows:

DENTON:

WESTPARK:

Richard Casner, First Assistant City Attorney  
City of Denton, Texas

David Mellina  
Mellina & Larson, P.C.

215 E. McKinney Street  
Denton, Texas 76201  
Phone: (940) 349-8333  
Fax: (940) 382-7923  
Richard.Casner@cityofdenton.com

1128 Fairmount Avenue  
Fort Worth, Texas 76104  
Phone: (817) 335-1200  
Fax: (817) 335-1221  
Dmellina@mellinalarson.com

Paul Williamson, Real Estate Manager  
City of Denton Texas  
Phone: (940) 349-8921

Philip A. Baker, Vice President  
The Rayzor Company  
P.O. Box 336  
Phone: (940) 387-8711  
Denton, Texas 76202  
Fax: (940) 566-1591  
pabaker@rayzorcompany.com

Fax: (940) 349-8951  
Paul.Williamson@cityofdenton.com

With Copies To:

Pamela England, Real Estate Specialist  
City of Denton, Texas  
Phone: (940) 349-8928

Joanna Cloud  
Republic Title of Texas, Inc.  
550 Bailey Avenue, Suite 100  
Fort Worth, Texas 76107

Fax: (940) 349-8951  
Pamela.England@cityofdenton.com

Phone: (817) 877-1481  
Fax: (817) 654-0008  
[joannacloud@republictitle.com](mailto:joannacloud@republictitle.com)

Michael S. Grim  
Executive Manager  
Power, Legislative and  
Regulatory Affairs  
City of Denton Texas  
Phone: (940) 349-7565  
Fax: (940) 349-7334  
[Mike.grim@cityofdenton.com](mailto:Mike.grim@cityofdenton.com)

**9.2 Governing Law and Venue.** This Contract is being executed and delivered and is intended to be performed in the State of Texas, the laws of Texas governing the validity, construction, enforcement and interpretation of this Contract. THIS CONTRACT IS PERFORMABLE IN, AND THE EXCLUSIVE VENUE FOR ANY ACTION BROUGHT WITH RESPECT HERETO SHALL LIE IN, COURTS OF COMPETENT JURISDICTION IN DENTON COUNTY, TEXAS.

**9.3 Entirety and Amendments.** This Contract embodies the entire agreement between the parties and supersedes all prior agreements and understandings, if any, related to the Property, and may be amended or supplemented only in writing executed and authorized by the party against whom enforcement is sought.



9.4 **Further Assurances.** In addition to the acts and deeds recited in this Contract and contemplated to be performed, executed and/or delivered by Westpark and Denton, Westpark and Denton agree to perform, execute and/or deliver, or cause to be performed, executed and/or delivered at the Closing or after the Closing, any further deeds, acts, and assurances as are reasonably necessary to consummate the transactions contemplated hereby. Notwithstanding anything to the contrary contained in this Contract, the provisions of this **Section 9.4** shall survive Closing.

9.5 **Appendices.** Each Appendix which is referenced in, and attached to this Contract, is incorporated in and made a part of this Contract for all purposes.

9.6 **Assigns.** This Contract shall inure to the benefit of and shall bind the parties hereto and their respective legal representatives, successors and assigns; provided, however, no party may assign its rights under this Contract without the prior written consent of the other party.

9.7 **Time of the Essence.** Time is of the essence of this Contract.

9.8 **Taking Prior to Closing.** If the Property, any real property encumbered by the Property, or any portion thereof, becomes subject to a taking under the provisions of eminent domain prior to the Closing, Denton shall have the option of: (i) closing this transaction as provided herein (with no reduction in consideration), in which event Westpark shall assign to Denton at Closing all condemnation proceeds, if any, but only to the extent such proceeds accrue from a taking of the Land, as a result of such proceeding; or (ii) terminating this Contract, either in its entirety or as to the portion of the Property subject to or affected by a taking (the "Affected Property"), at the sole election of Denton, by giving Westpark written notice thereof within ten (10) business days from the date such party receives notice of such taking, in which event this Contract shall be deemed null and void, either in its entirety or only as to the Affected Property, as applicable to the election of Denton, and the parties hereto shall have no further obligations to or recourse against each other either under this Contract, either in its entirety or insofar as the Contract includes the Affected Property, as applicable to the election of Denton.

~~Notwithstanding the foregoing, the parties agree if the Property or a portion thereof becomes subject to eminent domain, condemnation or other takings action brought, initiated or joined by the City of Denton or any governmental authority controlled by the City of Denton or any procedural action materially connected therewith is initiated before Closing ("City Taking"), Westpark may terminate this Contract in its sole discretion.~~

9.9 **Severability.** In case any one or more of the provisions contained in this Contract shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Contract shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

9.10 **Rule of Construction.** The parties acknowledge that each party and its counsel has reviewed and revised this Contract, and the parties hereby agree that the normal rule of

construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Contract or any amendments or exhibits hereto.

**9.11 Business Days and Time References.** All references to “days” in this Contract shall be deemed for all purposes to be “business days”. If the Closing Date or the day of performance of any act required under this Contract falls on a Saturday, Sunday or legal holiday ("All agencies closed" days defined by Texas State Auditor's office), then the Closing Date or the day for such performance, as the case may be, shall be the next following regular business day. References to particular times of day correspond to the time in Denton, Texas.

**9.12 Designation of Reporting Person.** Denton and Westpark hereby designate the Title Company as the “**Reporting Person**” with respect to the transaction contemplated under this Contract for purposes of complying with the regulations set forth in 26 C.F.R. Section 1.6045-4(e)(5).

**9.13 Counterparts.** This Contract may be executed in multiple counterparts, each of which shall, for all purposes, be deemed an original, but which together shall constitute one and same instrument, and the signature pages from any counterpart may be appended to any other counterpart to assemble fully executed documents, and counterparts of this Contract may also be exchanged via electronic facsimile machines and any electronic facsimile of any party’s signature shall be deemed to be an original signature for all purposes; provided, however, that any signature pages transmitted by electronic facsimile shall nevertheless be followed by the exchange of hard copy originals.**9.14 Waiver.** The waiver by any party of a breach of any provision of this Contract shall not be deemed a continuing waiver or a waiver of any subsequent breach whether of the same or another provision of this Contract.

**9.15 Delegation of Authority.** Authority to take any actions that are to be, or may be, taken by Denton under this Contract are hereby delegated by Denton, pursuant to approval of this Contract by the City Council of Denton, Texas, to the General Manager of Denton Municipal Electric, or his designee.

**9.16 Expiration of Offer.** The execution of this Contract by Westpark constitutes, subject to the terms hereof, an irrevocable offer to sell the Property to Denton. Unless by 5:00 p.m., on November 20, 2013, this Contract is accepted by Denton by action of the City Council of Denton, the offer of this Contract shall be automatically revoked and terminated.

**9.17 Appendices.** The following Appendices are attached hereto and made a part hereof:

- Appendix 1 – Deed
- Appendix 2 – Drainage Easement
- Appendix 3 – RILMH Surface Waiver
- Appendix 4 – Relocation Agreement
- Appendix 5 – Drainage Work and Drainage Specifications

IN WITNESS WHEREOF, this Contract is hereby executed as of the Effective Date.

***[The Balance of This Page Has Been Intentionally  
Left Blank – Signature Pages Follow.]***

**WESTPARK SIGNATURE PAGE**

**WESTPARK:**

WESTPARK GROUP, LP, a Texas limited partnership

By: Westpark Group GP, LLC, a Texas limited liability company, its general partner

By: The Rayzor Company, a Texas corporation, its sole manager

By: \_\_\_\_\_  
Philip A. Baker, Vice President

Executed by Westpark on the \_\_\_\_ day of \_\_\_\_\_ 2013.

**DENTON SIGNATURE PAGE**

**DENTON:**

CITY OF DENTON, a Texas municipal corporation

By: \_\_\_\_\_  
GEORGE C. CAMPBELL, CITY MANAGER

Executed by City of Denton on the \_\_\_\_ day of \_\_\_\_\_ 2013.

ATTEST:  
JENNIFER WALTERS, CITY SECRETARY

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

APPROVED AS TO LEGAL FORM:  
ANITA BURGESS, CITY ATTORNEY

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

## RECEIPT OF AGREEMENT BY TITLE COMPANY

By its execution below, Title Company acknowledges receipt of an executed copy of this Contract. Title Company agrees to comply with, and be bound by, the terms and provisions of this Contract to perform its duties pursuant to the provisions of this Contract and comply with Section 6045(e) of the Internal Revenue Code of 1986, as amended from time to time, and as further set forth in any regulations or forms promulgated thereunder. The Effective Date of the Contract per the terms thereof is \_\_\_\_\_.

TITLE COMPANY:

REPUBLIC TITLE OF TEXAS, INC.

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

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

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

Contract receipt date: \_\_\_\_\_, 2013







minerals and/or related to exploration and/or production of the oil, gas and other minerals reserved herein, including without limitation, use or access of the surface of the Property for the location of any well or drill sites, well bores, whether vertical or any deviation from vertical, water wells, pit areas, seismic activities, tanks or tank batteries, pipelines, roads, electricity or other utility infrastructure, and/or for subjacent or lateral support for any surface facilities or well bores, or any other infrastructure or improvement of any kind or type in connection with or related to the reserved oil, gas and other minerals, and/or related to the exploration or production of same; provided, further, however, that the parties acknowledge that the minerals held by Grantor, if any, may not constitute all of the minerals under the Property and there may be third party holders of mineral rights ("**Other Mineral Rights Holders**") and/or the minerals may be subject to one or more oil and gas or other mineral leases, to the extent same are valid and subsisting ("**Existing Mineral Leases**") in favor of lessees thereunder ("**Mineral Lessees**"), and the foregoing waiver as to surface use shall not be construed to limit any of the existing rights of the Other Mineral Rights Holders or Mineral Lessees under the Existing Mineral Leases, nor shall Mineral Owner have any duty or obligation to obtain any waivers or other agreements from any such Other Mineral Rights Holders or Mineral Lessees with respect to limitations on surface use or otherwise, and in no event shall Mineral Owner have any liability or responsibility for any surface damage or injury to property or person as a result of the exploration and/or production of the minerals by any Other Mineral Rights Holders or any Mineral Lessee, and Grantee shall pursue any such claims solely against such Mineral Lessee or Other Mineral Rights Holder, as applicable.

As used herein, the term "minerals" shall mean all of Grantor's right, title and interest in all minerals of every kind, including oil, crude oil, natural gas, casing-head gas, other gas, other gaseous or liquid hydrocarbon minerals or substances, condensate, coal, ores, sulphur and other minerals of every kind and nature in and under and/or that may be produced from the Property.

As used herein, the term "surface of the Property" shall include the area from the surface of the earth to a depth of five hundred feet (500') below the surface of the earth and all areas above the surface of the earth.

Grantor hereby retains from the conveyance of the Property perpetual and continuing easement rights within portions of the Property (the "**Retained Easement**" and the areas affected thereby the "**Retained Easement Areas**" described and illustrated in **Exhibit "B"** attached hereto), which Retained Easement is reserved for the benefit of and may be utilized solely by Grantor, RILMH, BC Rail Spur, LP ("**BCRS**") and their successors and assigns and any Designated Rights User (as hereinafter

defined), as applicable (collectively, the "**Benefitted Parties**") for the sole use of pedestrian and vehicular ingress and egress to and from the Applicable Properties (as hereinafter defined) and for the sole purpose of conducting operations related to (i) as concerns the Pad Sites, mineral exploration and production activities; and (ii) as concerns the Rail Spur Area, rail related activities. In no event shall the Retained Easement be utilized to access any property or property interests other than the Applicable Properties and Grantor stipulates that the western boundary of the Retained Easement Area may be fenced or otherwise enclosed south of the Pad Sites to prevent such access. As used herein the term "**Designated Rights User(s)**" shall mean any party who is designated in writing by the Grantor, RILMH or BCRS and any of their successors and assigns to use all or any portion of the rights under the Retained Easement, including any lessee under any mineral lease, oil company, contractor, utility company, pipeline company, water well service company, rail operator or other party if so designated to use such rights by Grantor, RILMH or BCRS or their successors and assigns. Any such Designated Rights User shall only be a Designated Rights User with respect to the rights so designated for use by such Designated Rights User.

The "**Applicable Properties**" as used herein shall mean (i) those certain tracts of land currently used for mineral exploration and productions described on **Exhibit "C"** attached hereto ("**Pad Sites**") and (ii) that certain area currently used for rail spur operations as described on **Exhibit "D"** attached hereto ("**Rail Spur Area**"). Without limitation to the rights of the Benefitted Parties in and to the Retained Easements, the Retained Easements shall inure to the benefit of the parties owning fee title and/or easement rights within the Applicable Properties (whether the user is fee owner, easement holder or a Designated Rights User of the foregoing) and to the benefit of all future users of all or any portion of the Applicable Properties.

The Retained Easement is subject to the following restrictions and limitations:

(i) Grantee may construct and maintain a fence, including gates ("**Fencing**"), in the Retained Easement Area at (a) a location at or near the intersection of the Drive Area, as defined below, and Western Boulevard; and (b) a location south of the south line of Lot 11, Block A, Westpark Addition, City of Denton, Denton County, Texas, as depicted in that certain Plat recorded as Instrument No. \_\_\_\_\_, Real Property Records, Denton County, Texas, each Fencing site to be finally determined by Grantee, in its sole discretion; provided, however, (i) Grantee must give Grantor ~~oree~~ advance notice of the type, dimensions and location of proposed gates within the Fencing and will cooperate with Grantor and modify the proposed gates and locations as may be reasonably requested by Grantor so as to insure that the gates will be of such dimensions and locations so that all vehicles anticipated to be used by the Benefitted

Parties within the Retained Easement Area will be able to pass through such gates in a reasonable manner and (ii) Grantee shall otherwise at all times provide the applicable Benefitted Parties with all access devices and/or means of access as may be reasonably necessary or desirable so as to ensure that the applicable Benefitted Parties will have free and unobstructed access through the Retained Easement Area to the Applicable Properties, as provided and limited herein, at all times.

(ii) All vehicles shall comply with all rules and regulations of the Texas Department of Motor Vehicles, as if the Drive Area was a public highway, including without limitation, standard per axle weight limitations;

(iii) Parking upon and/or blocking the Drive Area is prohibited;

(iv) Possession of alcohol or firearms on the Retained Easement Area is prohibited;

(v) A maximum speed limit of 20 miles per hour shall be observed at all times;

(vi) Littering is prohibited;

(vii) The Benefitted Parties and Designated Rights Users shall not cause damage or degradation to the surface of the Drive Area, except ordinary wear and tear as may be occasioned by normal use thereof, as permitted herein.

Grantor has agreed to convey the Property to Grantee hereunder only if certain restrictions are reserved for the benefit of Grantor, and accordingly, Grantee agrees to, and accepts this Deed subject to the following restrictions and covenants ("**Restrictions and Covenants**"):

(1) By the fourth anniversary of the Effective Date hereof, subject to events of Force Majeure, Grantee shall build and complete an improved driveway on, over and through a portion of the Property described and illustrated on **Exhibit "E"** attached hereto and made a part hereof for all purposes (such driveway area, the "**Drive Area**" and driveway paving and other improvements, the "**Drive Improvements**"), such Drive Improvements to be constructed by Grantee at Grantee's sole expense and maintained by Grantee at Grantee's sole expense. Grantee covenants to construct the Drive Improvements pursuant to building and construction standards more particularly detailed in the Drive Improvements Specifications List, which is attached hereto at **Exhibit "F"** ("**Improvements Specifications**"). The Drive Improvements will be deemed completed when the

Drive Improvements are capable of being used for their intended purpose, substantially in accordance with the Improvements Specifications.

(2) No structures, other than the Fencing, may be constructed, installed or erected on, over, in, across, under or through any portion of the Drive Area other than the Drive Improvements, so that there shall always be free and uninterrupted access through the Drive Area ("**No Build Restriction**"); provided, however, that Grantee is permitted to situate aerial wires and cables above the surface of the Drive Area at or above a vertical height that conforms to Denton Municipal Electric standards that meet or exceed minimum vertical heights required by the National Electrical Safety Code.

(3) The portion of the Property particularly described in **Exhibit "G"** attached hereto (the "**Utility Line Area**") may be used by Grantee for the following purposes and no others: Grantee may install, erect, operate, maintain and service: (i) one or more underground and/or above ground electric transmission and/or distribution power and/or communication lines, each consisting of a variable number of wires and cables, along with all necessary, convenient or desirable appurtenances, attachments and supporting structures, including without limitation, foundations, guy wires and guy anchorages, and structural components and (ii) one or more thermal energy commodities pipelines, consisting of, without limitation, heated and/or chilled water, compressed air and/or steam pipelines and return pipelines related to such thermal energy commodities, and all necessary, convenient, or desirable appurtenances and supporting structures.

As used herein, "Force Majeure" means an event or circumstance which prevents one party from performing its obligations hereunder, which is not within the reasonable control of the claiming party, and which, by the exercise of due diligence, the claiming party is unable to overcome or avoid or cause to be avoided. Force Majeure shall include, without limitation, strike, stoppage in labor, riot, significant fire, flood or ice damage, tornados, invasion, insurgency, civil war, commotion, insurrection, blockades, embargoes, sabotage, epidemics, explosions, acts of terrorism, military or usurped power, order of any court granted in any bona fide legal proceeding or action, order of any civil, military or governmental authority (either de facto or de jure and including, without limitation, orders of governmental and administrative agencies that conflict with the terms of this Agreement) or acts of God or public enemies. Notwithstanding the above, claims by Grantee for "Force Majeure" shall not include delays as a result of acts or omissions of Grantee or any governmental entities or agencies under the control of Denton.

Grantor, its successors and assigns, shall and hereby do indemnify, defend and hold harmless, and hereby release, the Grantee, its officers, agents, elected officials and employees from all suits, losses, damages, actions and/or claims of any character, name and/or description incurred or brought for or on account of

any injuries or damages received or sustained by any person, persons or property on account of or related to the operations of the Grantor, the Benefitted Parties, and/or Designated Rights Users, and their agents, employees, contractors, subcontractors, successors and assigns (collectively, the “**Using Parties**”), on the Retained Easement Areas or on account of or related to any action or omission of the Using Parties related to the rights reserved herein, and/or the occupation of Grantee owned property or property interests by the Using Parties, in connection with or related to the rights reserved herein; and shall pay any loss, damage, claim and any judgment, with costs, and including reasonable attorney’s fees and costs related thereto, which may be incurred by, occasioned upon or be obtained against the Grantee, its officers, agents, elected officials and employees, growing out of or related to such injury or damage, INCLUDING BUT NOT LIMITED TO, LIABILITY, CLAIMS, LOSSES, AND/OR DAMAGES ARISING FROM OR CAUSED, IN WHOLE OR IN PART, BY THE NEGLIGENCE, OF ANY KIND, TYPE OR DEGREE, OF THE GRANTEE, ITS OFFICERS, AGENTS, ELECTED OFFICIALS AND/OR EMPLOYEES. IT IS UNDERSTOOD AND AGREED THAT THE INDEMNITY AND RELEASE PROVIDED FOR HEREIN IS EXTENDED BY THE GRANTOR, ITS SUCCESSORS AND ASSIGNS, TO INDEMNIFY, RELEASE AND PROTECT THE CITY OF DENTON, TEXAS, ITS OFFICERS, AGENTS, ELECTED OFFICIALS AND EMPLOYEES, FROM AND AGAINST ITS OWN NEGLIGENCE WHETHER THAT NEGLIGENCE IS THE SOLE OR THE CONTRIBUTING OR CONCURRENT CAUSE OF THE RESULTANT LIABILITY, CLAIM, LOSS OR DAMAGE.

The above Restrictions and Covenants shall apply in perpetuity and shall touch, concern and run with and burden the Property and shall inure to the benefit of and be enforceable by Grantor, the Benefitted Parties and their successors and assigns of any portion of the Applicable Properties. In the event of a failure of Grantee to timely complete the Drive Improvements, Grantor shall have the right to construct the Drive Improvements itself and to obtain reimbursement from Grantee for all actual costs of construction reasonably incurred by Grantor as a result of such undertaking, ~~plus all actual damages sustained by Grantor as a result of Grantee’s failure to timely complete the Drive Improvements~~<sup>[A1]</sup> (“**Takeover Remedy**”). In the event a failure of Grantee to timely complete the Drive Improvements, if Grantor does not elect to pursue the Takeover Remedy described above, then Grantor shall have the right to specifically enforce Grantee’s obligations to construct the Drive Improvements ~~and/or to bring a claim against Grantee for all damages sustained by Grantor as a result of Grantee’s failure to timely complete the Drive Improvements~~ (“**Other Remedies**”). In the event any one or more persons, firms, or other entities shall violate or attempt to violate any of

the other provisions of the Restrictions and Covenants (other than the obligation to construct the Drive Improvements, the remedies for which are discussed above), Grantor, the Benefitted Parties and their successors and assigns may institute and prosecute, as their sole and exclusive remedy, ~~(i) any proceeding at law or in equity to abate, prevent, or enjoin any such violation or attempted violation. And/or (ii) with respect to any failure of Grantee to timely complete the Drive Improvements, Grantor shall have the right to construct the Drive Improvements and to obtain reimbursement from proceeding at law for claims against Grantee for all actual costs reasonably incurred damages sustained by Grantors such parties as a result of such undertaking ("Takeover Costs") violation.~~ Before exercising any remedy above for the violation or attempted violation of the Restrictions and Covenants, Grantor will give the then current owner of the Property ("**Current Owner**") written notice of the violation or attempted violation at issue ("**Violation Notice**"), and the Current Owner shall have until the expiration of the Cure Period (as defined below) to cure the violation. The Violation Notice will be valid if delivered to the address of the Current Owner as set forth in this Special Warranty Deed (the "**Specified Address**"), as may be changed pursuant to notice in writing by the owner of the Property to Grantor. The Violation Notice shall be deemed delivered on the earlier of: (1) actual receipt, if delivered in person or by courier at the Specified Address, with evidence of delivery; or (2) upon deposit with the United States Postal Service, certified mail, return receipt requested, postage prepaid, addressed to the Specified Address. The "**Cure Period**" during which the Current Owner shall have an opportunity to cure the violation shall be ninety (90) days after the Violation Notice has been given; provided; however, if it is not reasonably possible for the Current Owner to cure the violation set forth in the Violation Notice within said ninety (90) day Cure Period but the Current Owner commenced the cure of the violation within a reasonable period after the Violation Notice was given and diligently and continuously pursued said cure and is diligently continuing the pursuit of said cure (with all of the forgoing prerequisites to be certified in a written notice delivered by Current Owner to Grantor prior to the expiration of the initial ninety day Cure Period detailing the steps taken to cure the violation and specifying why additional time is reasonably needed), then the Cure Period shall be extended for an additional period of time as may be reasonably necessary for the Current Owner to complete the cure but only so long as the Current Owner is diligently and continuously pursuing the cure, and in any case the additional period shall not exceed sixty (60) business days (so that the Cure Period as may be extended pursuant to the above shall not exceed a total of 150 days after the Violation Notice was given). ~~Notwithstanding the foregoing, if the violation specified in a Violation Notice is substantially the same violation that has previously been identified in any prior Violation Notice to the Current Owner causing the violation, then Grantor shall have no duty to give a Violation Notice or provide Current Owner with an opportunity to cure same (although Grantor may elect in its sole discretion to nonetheless give such~~

~~notice and opportunity to cure), and instead may immediately pursue its remedies as provided upon discovery of the violation.~~ No delay in enforcing the provisions of the Restrictions and Covenants with respect to any breach or violation thereof shall impair, damage, or waive the right of any party entitled to enforce the same to obtain relief against or recover for the continuation or repetition of such breach or violation or any similar breach or violation thereof at any later time or times. Each contract for sale, deed, deed of trust, or other instrument which may hereafter be executed with respect to any property situated within the Property shall be deemed to have been executed, delivered, and accepted subject to all of the provisions contained herein and all such provisions shall, without further action, be incorporated by reference therein, regardless of whether any such instrument specifically refers to or recites all or any part of the Restrictions and Covenants.

This Deed is executed by Grantor and accepted by Grantee subject to the following (collectively, the "**Permitted Exceptions**"): (i) the Roll-Back Taxes as hereinafter defined, (ii) the prior reservation of all minerals associated with the Land as contained in Special Warranty Deed recorded under Instrument No. 2011-67794 and/or Instrument No. 2011-67798 and Instrument No. 2013-\_\_\_\_\_ in the Deed Records of Denton County, Texas (iii) all encumbrances and other matters listed in **Exhibit "H"** hereto [**attach list of all "Permitted Exceptions" as defined in the Agreement**] (iv) all municipal or other governmental zoning laws, regulations and ordinances, if any, affecting the Property, and (v) any other matters affecting the Property of public record or which would be disclosed by a physical inspection of the Property or an accurate survey of the Property. "**Roll-Back Taxes**" as used herein shall mean any taxes or assessments assessed against the Property as a result of any change in land usage or ownership based on the Property having been assessed under any agricultural, open-space or other special use valuation methods ("**Special Use Valuation**") to arrive at the taxable value of the Property as permitted under the Texas Tax Code.

Grantor hereby assigns to Grantee, without recourse or representation, any and all claims and causes of action that Grantor may have for or related to any defects in, or injury to, the Property.

TO HAVE AND TO HOLD the Property, together with all and singular the rights and appurtenances thereto in anywise belonging unto Grantee and Grantee's successors and assigns forever, subject to the Permitted Exceptions; and Grantor does hereby bind Grantor and Grantor's successors and assigns to WARRANT AND FOREVER DEFEND all and singular the Property, subject to the Permitted Exceptions, unto Grantee and Grantee's successors and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof when the claim is by, through,

or under Grantor but not otherwise.

*[Grantor's Signature Page and Grantee's Acceptance Page follow below.]*





**GRANTEE'S ACCEPTANCE OF THE  
PROPERTY BY THIS DEED AND ALL  
TERMS AND PROVISIONS,  
RESTRICTIONS AND COVENANTS  
INCLUDED HEREIN:**

**GRANTEE:**

**CITY OF DENTON, TEXAS:**

By: \_\_\_\_\_  
George C. Campbell,  
City Manager

ATTEST:  
JENNIFER WALTERS, CITY SECRETARY

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

APPROVED AS TO LEGAL FORM:  
ANITA BURGESS, CITY ATTORNEY

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





**EXHIBIT "B"**

Description of the Retained Easement Area attached hereto.

## **EXHIBIT "C"**

Description of Applicable Property (Pad Site Areas) attached hereto.

## **EXHIBIT "D"**

Description of Applicable Property (Rail Spur Area) attached hereto.

**EXHIBIT "E"**

Description of the Drive Area attached hereto.



## EXHIBIT "F"

- Drive Improvements Specifications<sup>[A2]</sup>

- ~~The surface of a 20' wide, 8" thick reinforced concrete drive from Western Blvd across the railroad spur to a point 100' south of the last turn radius.~~
- ~~Subgrade for the concrete drive may consist of a lime or cement stabilized subgrade, based on a geotechnical investigation.~~
- ~~From the end of the concrete drive south the access drive will be 20' wide and will must be constructed of 8" thick flexbase per TXDOT Spec Item 247.~~
- ~~A geogrid and geofabric separator may be placed under the flexbase drive, based on the geotechnical investigation.~~
- ~~The access drive will accommodate a with reinforced concrete and shall be constructed to support heavy truck with an inside turning radius of 120 feet traffic traveling on the Drive Area.~~
- ~~The access drive will include a rail crossing the full width of the access drive, along with any drainage and improvements necessary due to the driveway embankment width of the drive shall be 30 feet and shall be sufficient to support two way travel of heavy truck traffic (including eighteen wheel tractor trailers), emergency vehicles and similar usage, and in any case the eastern side of the Drive Area shall be located adjacent to the eastern boundary of the Property.~~
- ~~These drainage improvements will consist of culverts or storm drain systems, designed in accordance with City of Denton standards.~~

The design truck will have the following characteristics:

- ~~At least three articulation points~~
- ~~A minimum of seven axles~~
- ~~Critical ground clearance of not more than 12 inches~~
- ~~A total length of approximately 110 feet~~
- ~~An inside turning radius of 120 feet~~
- ~~The rail crossing will consist of a new Precast Concrete Crossing, with 9' wide panels with rubber inserts using new 7"x9"x9" ties, and the existing rails.~~
- ~~If any curb is constructed, Grantee shall install curb cuts for vehicular access to the Pad Sites where they adjoin the Drive Area, with the specific curb cut points to be specified by Grantor prior to construction.~~

- Grantee shall use concrete panels and other concrete components to construct and reinforce the area where the Drive Improvements cross the Rail Spur Area.
- Grantee shall satisfy additional specifications that will be developed upon the evaluation and recommendations of Trac-Work, Inc. or similar railway construction company, as provided below: [REDACTED].
- The final Drive Improvements Specifications whether prepared by Grantor, Grantee or a third party appointed by either, must be delivered to Grantor and approved in writing by Grantor prior to commencement of any groundbreaking in the Retained Easement Areas.

## **EXHIBIT "G"**

Description of the Utility Line Area attached hereto.

**EXHIBIT "H"**

**Permitted Exceptions**



**DRAINAGE EASEMENT**

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

**THE STATE OF TEXAS       §  
  §  
COUNTY OF DENTON       §**

**KNOW ALL MEN BY THESE PRESENTS:**

THAT, **Westpark Group, LP**, hereinafter called "**Grantor**," for and in consideration of the sum of **ONE DOLLAR and NO CENTS (\$1.00)** and other good and valuable consideration to Grantor in hand paid by the **CITY OF DENTON, TEXAS**, a Texas home rule municipal corporation (hereinafter called "**Grantee**") (Grantee's address being 215 E. McKinney, Denton, Texas 76201), the receipt and sufficiency of which are hereby acknowledged, does by these presents grant, bargain, sell and convey to the Grantee, a perpetual easement and the free and uninterrupted use, liberty and privilege of the passage, in, along, upon and across certain property, owned by Grantor and situated in Denton County, Texas, in the \_\_\_\_\_ Survey, Abstract No. \_\_\_\_\_, and being more particularly described on **Exhibit "A"** and illustrated on **Exhibit "B"**, which are attached hereto and made a part hereof by reference as if fully set forth herein (the "**Easement Property**").

In addition to the Drainage Easement granted above, Grantor hereby further grants and conveys to Grantee a temporary construction and access easement in, along, over, upon and across a tract of land fifty feet (50') in width adjacent to the Easement Property, as more particularly described in **Exhibit "B-1"**, attached hereto and made a part hereof (the "**Temporary Easement Lands**"), for the purpose of access, storage, staging, and construction related purposes. Subject to events of Force Majeure, as defined in the Contract of Sale, as described below. The temporary easement granted herein shall expire upon the earlier to occur of (i) four (4) years from the date hereof; and (ii) completion of the Drainage Work, as defined in that certain Contract of Sale, dated \_\_\_\_\_, by and between Grantor and Grantee.

And it is further agreed that Grantee, in consideration of the benefits above set out, will have the right to remove from the Easement Property and Temporary Easement Lands, such fences, buildings, trees and other vegetation and other obstructions as may now or hereafter be found upon said Easement Property and Temporary Easement Lands; but only to the extent necessary to complete the construction of the below described Drainage Facilities and maintain same thereafter; provided, however Grantee will take reasonable efforts that are necessary to minimize interference with and removal of any of such items.

The easement rights granted herein are for the purpose of constructing, reconstructing, installing, repairing, and perpetually maintaining public drainage and appurtenant connections and related facilities ("**Drainage Facilities**"), said Drainage Facilities to be located in, along, upon and across said Easement Property, with the right and privilege at all times of the Grantee herein, it or its agents, employees, workmen and representatives to have ingress, egress, and regress in, along, upon and across said Easement Property for the purpose of making additions to, improvements on and repairs to said Drainage Facilities or any part thereof.

Grantor shall have no obligation to construct or maintain the Drainage Facilities but reserves the right to construct such infrastructure improvements upon the property owned by Grantor that adjoins or is in the vicinity of the Easement Property ("**Grantor's Adjoining Property**") or otherwise develop the Grantor's Adjoining Property so that water runoff therefrom will be directed to and/or connected with the Drainage Facilities, in accordance and in compliance with all City of Denton ordinances, rules and regulations, to collect and drain same. Grantor hereby further reserves to itself, its successors and assigns, all rights in and to the Easement Property and the right to use and enjoy the surface and subsurface thereof for any and all purposes whatsoever, so long as the exercise of such rights and such use does not unreasonably interfere with the rights herein granted to Grantee. Grantor specifically reserves the right of passage over the Easement Property, so long as such use does not unreasonably interfere with the rights granted herein to Grantee. Grantor RESERVES AND RETAINS THE RIGHTS BY, TO AND FOR THE BENEFIT OF GRANTOR, ITS SUCCESSORS AND ASSIGNS to use the Easement Property for the location, construction, reconstruction, relocation and operation of such pipelines, transmission lines, drainage lines and other facilities ("**Grantor Facilities**") necessary or desired for the conduct of Grantor's development of the Grantor's Adjoining Property so long as Grantor's use of such groundspace does not unreasonably interfere with the rights herein granted to Grantee. In the event that Grantor, or Grantor's successors and assigns, chooses to locate Grantor Facilities within the Easement Property pursuant to Grantor's reservation of its right to do so and such Grantor Facilities are reasonably expected to affect the Drainage Facilities, then such Grantor Facilities shall require the written approval of the City Engineer, such approval not to be unreasonably withheld, conditioned or delayed. If the installation of the Grantor Facilities disturbs the Drainage Facilities (a "**Grantor Installation Disturbance**"), then upon completion of the installation of the Grantor Facilities, Grantor shall promptly restore the Drainage Facilities to substantially the same condition as existed immediately prior to the installation of the Grantor Facilities using industry standard materials and methods; provided, however, in remedying any Grantor Installation Disturbance, Grantor will not be required to incur any cost or obligation to improve, expand or upgrade the Drainage Facilities to a state or condition exceeding the condition that existed immediately prior to the installation of the Grantor Facilities, including without limitation any improvements, expansions or upgrades to the Drainage Facilities necessary to comply with then-current applicable federal, state, municipal, or other laws, statutes, codes, restrictions, regulations, ordinances and orders, which improvements, expansions or upgrades shall be Grantee's responsibility and at its sole cost and expense as set forth hereinbelow.

The grant of easement rights hereunder is made subject to any of the following as they relate to the Easement Property: (i) the prior mineral conveyance recorded in mineral deeds as Document No. 2011-67794 and Document No. 2011-67798 of the Official Records of Denton County, Texas, (ii) easements, restrictions, claims, rights of way, encroachments or other encumbrances or other matters listed on Exhibit "C" attached hereto, (iii) all municipal or other governmental zoning laws, regulations and ordinances and (iv) any other matters affecting this Drainage Easement which are of public record or would be disclosed by a physical inspection of the Easement Property and/or an accurate survey of the Easement Property.

The easement for the Easement Property as provided for herein is made on an "AS IS" basis, and Grantee expressly acknowledges that, in consideration of the agreements of Grantor herein, Grantor MAKES NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, OR ARISING BY OPERATION OF LAW. The easement rights conveyed hereunder do not

include any right or interest whatsoever in any minerals in, under or that may be produced from the Easement Property.

Grantee, at its sole cost and expense, shall perform or cause all work necessary in connection with the Drainage Facilities (the "**Work**") to be performed in a good and workmanlike manner in conformance with sound and acceptable engineering practices as expeditiously as possible. In performing the Work or causing the Work to be performed, Grantee shall make adequate provisions for the safety and convenience of Grantor, its agents, representatives, employees, licensees, and invitees, and shall cause all of the Work to be cleaned up promptly in order to minimize disruption or inconvenience, and coordinate the Work with Grantor's contractors and subcontractors. Grantee shall at all times construct, keep, maintain, use, operate or remove the Drainage Facilities in a safe manner and in full compliance with all applicable federal, state, municipal, or other laws, statutes, codes, restrictions, regulations, ordinances and orders. **Grantor shall have no obligation, monetary or non-monetary, to maintain the Easement Property.**

By its acceptance and execution hereof, Grantee hereby accepts and approves that this Drainage Easement constitutes the "Drainage Alternative" and further constitutes written notice as contemplated in that certain Drainage Easement recorded as Instrument No. 2008-32334 in the Official Records of Denton County, Texas ("**Existing Drainage Easement**"). Grantee hereby releases, waives, relinquishes and abandons forever the Existing Drainage Easement.

**TO HAVE AND TO HOLD** unto the said City of Denton, Texas as aforesaid for the purposes aforesaid the premises above described. This easement, together with the provisions of this grant, shall constitute a covenant running with the land for the benefit of Grantee, its successors and assigns and the benefit of Grantor, its successors and assigns.

**Witness** my hand to be effective this \_\_\_\_ day of \_\_\_\_\_, 2013 ("**Effective Date**").

**Westpark Group, LP**, a Texas limited partnership

By: Westpark Group GP, LLC, a Texas limited liability company,  
its general partner

By: The Rayzor Company, a Texas corporation  
its sole member

By: \_\_\_\_\_  
Philip A. Baker, Vice President



**ACKNOWLEDGMENT**

**THE STATE OF TEXAS     §**  
**§**  
**COUNTY OF DENTON       §**

This instrument was acknowledged before me on this the \_\_\_\_\_ day of \_\_\_\_\_, 2013, by Philip A. Baker, Vice President of The Rayzor Company, a Texas corporation, as the sole member of Westpark Group GP, LLC, a Texas limited liability company, the general partner of Westpark Group, LP, a Texas limited partnership, on behalf of said limited partnership.

\_\_\_\_\_  
Notary Public - State of Texas

My commission expires:\_\_\_\_\_

**GRANTEE'S ACCEPTANCE OF ALL TERMS AND PROVISIONS OF THIS DRAINAGE EASEMENT AND RELEASE AND ABANDONMENT OF EXISTING DRAINAGE EASEMENT**

CITY OF DENTON, TEXAS,  
a Texas municipal corporation

By: \_\_\_\_\_  
George C. Campbell, City Manager

Executed by City of Denton on this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

ATTEST:  
Jennifer Walters, City Secretary

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

APPROVED AS TO LEGAL FORM:  
Anita Burgess, City Attorney

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



**EXHIBIT "A"**

Legal Description of Easement Property

See attached description

**EXHIBIT "B"**

Drawing of Easement Property

See attached description

**EXHIBIT “B-1”**

Temporary Easement Lands  
See attached description

## EXHIBIT "C"

List of specific exceptions.

**APPENDIX 3**

*Attached hereto and made a part hereof is the RILMH Surface Waiver.*

**WAIVER AND RELEASE OF SURFACE RIGHTS AGREEMENT**

STATE OF TEXAS           §  
  §           **KNOW ALL PERSONS BY THESE PRESENTS:**  
COUNTY OF DENTON       §

This Waiver and Release of Surface Rights Agreement ("**Agreement**") is made and entered into as of \_\_\_\_ day of \_\_\_\_\_, 2013 by RIL MINERAL HOLDINGS, LP, a Texas limited partnership ("**Mineral Owner**") for the benefit of WESTPARK GROUP, L.P., a Texas limited partnership ("**Westpark**") and any other successor owners of the certain tract of land described hereinbelow as the Waiver Property, specifically including, without limitation, the City of Denton, Texas ("**City**").

**RECITALS:**

- A. Westpark is the surface owner of certain real property located in Denton County, Texas as more particularly described on **Exhibit "A"** (the "**Waiver Property**").
- B. Mineral Owner is the owner of the mineral estate relating to the Waiver Property (such minerals owned by Mineral Owner being referred to as the "**RILMH Minerals**").
- C. Westpark is selling and conveying the surface of the Waiver Property to the City on or about the date hereof (the City, together with any successors and assigns who own any portion of the surface of the Waiver Property is referred to as a "**Surface Owner**" with respect to the surface lands owned by it).
- D. Mineral Owner, as the current holder of the RILMH Minerals, has agreed to execute this instrument to confirm and agree that Mineral Owner waives and releases its right to use the surface of the Waiver Property as provided below.

**AGREEMENTS:**

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, Mineral Owner covenants and agrees as follows:

- 1. **Release and Waiver.** Mineral Owner waives and releases, on behalf of Mineral Owner and Mineral Owner's successors and assigns, all rights of ingress and egress and all other rights to enter upon or to use the surface of the Waiver Property or any part thereof in any way, manner or form, in connection with or related to the RILMH Minerals and/or related to exploration and/or production of the RILMH Minerals, including without limitation, use or access of the surface of the Property for the location of any well or drill sites, well bores, whether vertical or any deviation from vertical, water wells, pit areas, seismic activities, tanks or tank batteries, pipelines, roads, electricity or other utility infrastructure, and/or for subjacent or lateral



support for any surface facilities or well bores, or any other infrastructure or improvement of any kind or type in connection with or related to the RILMH Minerals, and/or related to the exploration or production of same; provided further, however, nothing herein shall prevent Mineral Owner or its successors and assigns from exploring for, developing and/or producing the RILMH Minerals in and under the Waiver Property by pooling or by directional drilling under the Waiver Property from well sites or mining sites located on other property; provided, further, however, that the parties acknowledge that the RILMH Minerals may not constitute all of the minerals under the Waiver Property and there may be third party holders of mineral rights ("**Other Mineral Rights Holders**") and/or the RILMH Minerals may be subject to one or more existing oil and gas or other mineral leases ("**Existing Mineral Leases**") in favor of lessees thereunder ("**Mineral Lessees**"), and the forgoing waiver as to surface use shall not be construed to limit any of the existing rights of the Other Mineral Rights Holders or Mineral Lessees under the Existing Mineral Leases, nor shall Mineral Owner have any duty or obligation to obtain any waivers or other agreements from any such Other Mineral Rights Holders or Mineral Lessees with respect to limitations on surface use or otherwise, and in no event shall Mineral Owner have any liability or responsibility for any surface damage or injury to property or person as a result of the exploration and/or production of the RILMH Minerals by any Other Mineral Rights Holders or any Mineral Lessee, and all Surface Owners shall pursue any such claims solely against such Mineral Lessee or Other Mineral Rights Holder, as applicable. As used herein, the term "surface of the Property" shall include the area from the surface of the earth to a depth of five hundred feet (500') below the surface of the earth and all areas above the surface of the earth.

2. **Current Holder of Rights.** Mineral Owner represents and warrants that Mineral Owner is the current holder of the RILMH Minerals.

3. **Successors and Assigns.** The acknowledgements and agreements of Mineral Owner hereunder shall (i) run with the Waiver Property for the benefit of Westpark and any future Surface Owner, specifically including, without limitation, the City, (ii) inure to the benefit of and be enforceable by Westpark as well as any future Surface Owner, specifically including, without limitation, the City, and its respective heirs, legal representatives, successors and assigns of and (iii) be binding upon and enforceable against Mineral Owner and its legal representatives, successors and permitted assigns.

4. **Other/Miscellaneous.**

(a) **Choice of Law.** THIS AGREEMENT SHALL BE GOVERNED BY THE LAWS OF THE UNITED STATES OF AMERICA AND THE INTERNAL LAWS OF THE STATE OF TEXAS, WITHOUT REGARD TO ITS CONFLICT OF RULES. THIS AGREEMENT IS PERFORMABLE IN, AND THE EXCLUSIVE VENUE FOR ANY ACTION BROUGHT WITH RESPECT HERETO, SHALL LIE IN COURTS OF COMPETENT JURISDICTION IN DENTON COUNTY, TEXAS.

(b) **Headings.** The titles and article headings contained herein are for purposes of identification only and shall not be considered in construing this Agreement.

(c) **Notices.** Any notice, report or demand by Westpark and/or Surface Owner to Mineral Owner with respect to this Agreement shall be in writing and shall be deemed to have been sufficiently given or served to Mineral Owner for all purposes upon Mineral Owner's receipt or refusal of receipt when sent by (i) registered or certified mail,

return receipt requested, or (ii) personal hand delivery, or (iii) overnight courier service, to the Mineral Owner at the address shown beneath Mineral Owner's signature below.

EXECUTED to be effective as of the first date hereinabove written.

*[Signature pages follow.]*

**MINERAL OWNER:**

RIL MINERAL HOLDINGS, LP, a Texas limited partnership

By: RIL Mineral Holdings GP, LLC, a Texas limited liability company, its general partner

By: The Rayzor Company, a Texas corporation, its sole member

By: \_\_\_\_\_  
Philip A. Baker, Vice-President

**Address:**  
c/o The Rayzor Company  
400 W. Oak, Suite 200  
Denton, Texas 76201  
Tel. No. (940) 387-8711  
Fax No. (940) 566-1591

THE STATE OF TEXAS           §  
  §  
COUNTY OF DENTON           §

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2013, by Philip A. Baker, Vice-President of The Rayzor Company, a Texas corporation, sole member of RIL Mineral Holdings GP, LLC, a Texas limited liability company, sole general partner of RIL Mineral Holdings, LP, a Texas limited partnership, on behalf of said limited partnership.

\_\_\_\_\_  
Notary Public, State of Texas

**After Recording Return To:**

Rayzor Investments, Ltd.  
c/o The Rayzor Company  
400 W. Oak, Suite 200  
Denton, Texas 76201

**Exhibit "A"**

*Description of the Waiver Property attached hereto.*



## **ACCESS RELOCATION AGREEMENT**

THIS ACCESS RELOCATION AGREEMENT ("**Agreement**") is made as of the \_\_\_\_ day of \_\_\_\_\_, 2013 ("**Effective Date**"), by and between (i) WESTPARK GROUP, L.P., a Texas limited partnership ("**Westpark**") and (ii) the City of Denton, a municipal corporation ("**City**").

### **RECITALS:**

A. Westpark is the owner of certain real property located in portions of the James Perry Survey, Abstract No. 1040 and the Eugene Puchalski Survey, Abstract 996, and including portions of Lot 2A, Block A, according to the conveyance plat (the "**2011 Plat**") recorded under Document No. 2011-116, Plat Records, Denton County, Texas (said property owned by Westpark being referred to herein as the "**Westpark Property**").

B. Westpark has previously granted and conveyed to City certain access easement rights pursuant to that certain Access Easement ("**Existing Access Easement**") recorded as Document No. 2007-20897, Official Records, Denton County, Texas, which provides access to the City for access to and from Precision Drive (a public road running North-South) to an existing tract of land owned by the City known as Lot, 1 Block 1, R. D. Wells Interchange Addition according to the Plat thereof recorded in Cabinet C, Page 117, Plat Records, Denton County, Texas (collectively, the "**City Tract**"). The easement areas covered by the Existing Access Easement are referred to herein as the "**Existing Access Easement Areas**".

C. Westpark desires that the Existing Access Easement be terminated in its entirety, with access to the City Tract to instead be provided through a tract of land ("**Alternative Access Parcel**") described on Exhibit "A" attached hereto which is being conveyed by Westpark to the City pursuant to a Conveyance Deed dated as of even date herewith and recorded simultaneously with this Agreement (the "**Conveyance Deed**"); and the City acknowledges that the Alternative Access Parcel will provide adequate alternative access for the City.

D. In the Conveyance Deed, City has agreed that it will construct certain Drive Improvements (as defined in the Conveyance Deed) within the Alternative Access Parcel.

E. City has agreed that the Existing Access Easement shall terminate in its entirety upon the earlier to occur of (i) City's completion of the Drive Improvements or (ii) 4 years after the Effective Date hereof.

F. Westpark and City wish to evidence their agreements with respect to the foregoing.

## **AGREEMENTS:**

NOW, THEREFORE, in consideration of the premises and the covenants contained herein, Westpark and City agree as follows:

**1. Construction of Alternative Access Improvements.** The City shall construct the Drive Improvements as defined in and in accordance with the provisions of the Conveyance Deed.

**2. Release of Existing Access Easement Agreement.** The Existing Access Easement shall terminate in its entirety upon the earlier to occur of (i) City's completion of the Improvements or (ii) 4 years after the Effective Date (the first such event to occur being referred to as the "**Termination Effective Date**"). Within 15 business days after City completes the Drive Improvements in accordance with the provisions of the Conveyance Deed, City agrees to give written notice thereof to Westpark and to execute and record a Release of Easement in form attached hereto as **Exhibit "B"** ("**Release Agreement**") fully releasing all rights under the Existing Access Easement effective as of the Termination Effective Date. ~~Westpark shall join in the execution of the Release Agreement to acknowledge and stipulate to the matters set forth therein; Westpark shall join in the execution of the Release Agreement to acknowledge and stipulate to the matters set forth therein~~ provided, however, that in any case, regardless of whether the Drive Improvements have been completed (and regardless of any Force Majeure extensions of the deadline for City to complete same under the Conveyance Deed), if not sooner terminated by virtue of the completion of the Drive Improvements as set forth above, the Existing Access Easement shall automatically terminate and be of no further force or effect whatsoever on the date which is four (4) years after the Effective Date hereof ("**Outside Termination Date**"). In the event the City has not previously executed and recorded a Release Agreement, City covenants and agrees to execute and record the Release Agreement within 10 business days after the Outside Termination Date, but failure to deliver the Release Agreement in such instance shall not limit or impair the automatic termination of the Existing Access Easement, and the Existing Access Easement shall in any and all events be null and void and of no further effect as of the Outside Termination Date.

**3. Notices.** Any notice required or permitted to be given hereunder by one party to the other shall be in writing and the same shall be given and shall be deemed to have been served and given if (i) delivered in person to the address set forth hereinbelow for the party to whom the notice is given, (ii) placed in the United States mail, return receipt requested, addressed to such party at the address hereinafter specified, (iii) deposited into the custody of Federal Express Corporation to be sent by Federal Express Overnight Delivery or other reputable overnight carrier for next day delivery, addressed to such party at the address hereinafter specified, or (iv) provided by facsimile transmission to such party at the fax number listed below, provided that such transmission is confirmed by machine generated confirmation on the date of such

transmission.

(a) The address of Westpark for all purposes under this Agreement and for all notices hereunder shall be:

c/o The Rayzor Company  
Attn: Philip A. Baker  
400 West Oak Street, Suite 200  
Denton, Texas 76201  
Fax: (940) 566-1591  
Telephone: (940) 387-8711

(b) The address of City for all purposes under this Agreement and for all notices hereunder shall be:

City of Denton  
215 E. McKinney  
Denton, Texas 76201  
Attn: City Manager  
Fax: (940) 349-8596  
Telephone: (940) 349-8307

(c) From time to time any party may designate another address within the 48 contiguous states of the United States of America for all purposes of this Agreement by recording an address notice ("**Recorded Address Notice**") in the Denton County, Texas Real Property Records, with a certification therein that a copy of such Recorded Address Notice has been sent to the other party(ies) hereto as of the date of such recordation in the same manner as any other notice as provided above, and the address change specified in such Recorded Address Notice shall be deemed effective fifteen (15) business days after such Recorded Address Change Notice has been so recorded. Any Future Owner may also record a Recorded Address Notice by identifying such party as a Future Owner and specifying its address for notice purposes in the Denton County, Texas Real Property Records, all in the same manner as provided in this subsection (c) (with a copy of the Recorded Address Notice sent to all other parties at their address listed above or as reflected in a Recorded Address Notice).

**4. Covenants Run with the Land.** All of the rights and obligations hereof (i) shall be binding upon and inure to the benefit of the parties hereto, their heirs, successors in interest, assigns and personal representatives and (ii) shall be equitable servitudes and covenants which touch and concern and shall run with the Existing Access Easement Area. The provisions hereof shall inure to the benefit of any future party that acquires all or any portion of the Existing Access Easement Area (a "**Future Owner**"). Subject to a Future Owner recording a Recorded Address Notice in the manner specified above, the Future Owner shall be considered a party hereto and shall have the

right to enforce against the City the termination of the rights under the Existing Access Easement upon the occurrence of a termination as set forth in **Section 2** hereinabove, including, without limitation, enforcement of the City's obligation to execute, deliver and record the Release Agreement, it being acknowledged that a Future Owner may acquire lands affected by the Existing Access Easement Areas in reliance on the agreements set forth herein.

**5. Severability.** In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

**6. Terminology.** The captions beside the section numbers of this Agreement are for reference only and shall not modify or affect this Agreement in any manner whatsoever. Wherever required by the context, any gender shall include any other gender, the singular shall include the plural, and the plural shall include the singular. Whenever this Agreement imposes an obligation upon a party to perform an action (e.g. construction) such obligation shall be deemed satisfied if such party has caused such obligation to be performed regardless of whether such party has itself performed such action; provided however, that nothing shall relieve such party from responsibility for complying with or causing compliance with the terms and provisions of this Agreement.

**7. Rule of Construction.** The parties acknowledge that each party and its counsel has reviewed and revised this Agreement, and the parties hereby agree that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any amendments or exhibits hereto.

**8. Entire Agreement; Governing Law.** This Agreement (including the exhibits hereto) contains the entire agreement between the parties, and no oral statements or prior written matter not specifically incorporated herein shall be of any force and effect. This Agreement shall be interpreted in accordance with the substantive laws of the State of Texas and performable in Denton County, Denton, Texas. SOLE AND EXCLUSIVE VENUE FOR ANY ACTION BROUGHT WITH RESPECT HERETO SHALL LIE IN COURTS OF COMPETENT JURISDICTION IN DENTON COUNTY, TEXAS.

~~**9. Attorney's Fees.** If any action at law or in equity is necessary to enforce or interpret the terms of this Agreement, the prevailing party or parties shall be entitled to reasonable attorney's fees, costs and necessary disbursements in addition to any other relief to which such party or parties may be entitled.~~

**10-9. Counterparts.** This Agreement may be executed in multiple counterparts,



each of which shall, for all purposes, be deemed an original, but which together shall constitute one and same instrument, and the signature pages from any counterpart may be appended to any other counterpart to assemble fully executed documents, and counterparts of this Agreement may also be exchanged via electronic facsimile machines and any electronic facsimile of any party's signature shall be deemed to be an original signature for all purposes; provided, however, that any signature pages transmitted by electronic facsimile shall nevertheless be followed by the exchange of hard copy originals.

**11.10. Waiver.** The waiver by any party of a breach of any provision of this Agreement shall not be deemed a continuing waiver or a waiver of any subsequent breach whether of the same or another provision of this Agreement.

**12.11. Exhibits.** The following Exhibits are attached hereto and incorporated herein by reference:

- Exhibit "A" – Alternative Access Parcel
- Exhibit "B" – Release Agreement

Executed to be effective as of the Effective Date first above written.

**[The balance of this page has been intentionally left blank – signature pages for each party follow]**

**WESTPARK SIGNATURE PAGE**

**WESTPARK:**

WESTPARK GROUP, LP,  
a Texas limited partnership

By: Westpark Group GP, LLC,  
a Texas limited liability company,  
its general partner

By: The Rayzor Company,  
a Texas corporation,  
its sole member

By: \_\_\_\_\_  
Philip A. Baker, Vice President

THE STATE OF TEXAS §  
  §  
COUNTY OF DENTON §

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 2013, by Philip A. Baker, Vice President of The Rayzor Company, a Texas corporation, the sole member of Westpark Group GP, LLC, a Texas limited liability company, the sole general partner of Westpark Group, LP, a Texas limited partnership, on behalf of said limited partnership.

\_\_\_\_\_  
Notary Public, State of Texas

\_\_\_\_\_  
Notary's Printed Name

My Commission Expires: \_\_\_\_\_

**CITY SIGNATURE PAGE**

**CITY:**

CITY OF DENTON, TEXAS, a Texas municipal corporation

By: \_\_\_\_\_  
George C. Campbell, City Manager

Executed by City of Denton on this \_\_\_\_ day of \_\_\_\_\_, 2013.

ATTEST:  
Jennifer Walters, City Secretary

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

APPROVED AS TO LEGAL FORM:  
Anita Burgess, City Attorney

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

**ACKNOWLEDGMENT**

STATE OF TEXAS                   §  
  §  
COUNTY OF DENTON           §

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2013, by George C. Campbell, City Manager of the City of Denton, Texas, on behalf of the City of Denton, Texas.

GIVEN under my hand and seal of office this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
Notary Public, State of Texas

\_\_\_\_\_  
Notary's Printed Name

My Commission Expires: \_\_\_\_\_

Accepted this \_\_\_\_\_ day of \_\_\_\_\_, 2013 for the City of Denton, Texas  
(Resolution No. 91-073).

By: \_\_\_\_\_  
Paul Williamson  
Manager, Real Estate and Capital Support

After recording, please return to:  
City of Denton  
Utilities Engineering Department  
901-A Texas Street  
Denton, Texas 76209  
Attention: Paul Williamson

## **EXHIBIT "A"**

### Alternative Access Parcel

See attached description

**EXHIBIT "B"**

Release Agreement

**RELEASE OF EASEMENT**

STATE OF TEXAS

§

**KNOW ALL PERSONS BY THESE PRESENTS:**

COUNTY OF DENTON

§

§

This Release of Easement is made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ by the CITY OF DENTON, a municipal corporation ("**City**"), for the benefit of WESTPARK GROUP, L.P., a Texas limited partnership ("**Westpark**") and all future owners of lands affected by the herein below described Easement and joined herein by Westpark.

**RECITALS:**

A. Westpark granted and conveyed to City certain access easement rights pursuant to the certain Access Easement recorded as Document No. 2007-20897, Official Records, Denton County, Texas (the "**Easement**"); and

B. Westpark and/or its affiliate has conveyed, by Deed dated \_\_\_\_\_, recorded in \_\_\_\_\_, to the City fee simple title, to other lands providing the City with alternative access that was previously provided under the easement.

C. In consideration of Westpark and/or its affiliate conveying such other land for alternative access, City has agreed to fully terminate the Easement and release all of its rights and interests in and to the Easement.

**RELEASE AND TERMINATION:**

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, City has RELEASED, RELINQUISHED, ABANDONED, DISCHARGED and QUITCLAIMED, and by these presents does forever RELEASE, RELINQUISH, ABANDON, DISCHARGE and QUITCLAIM unto Westpark and its successors and assigns all of City's rights in and to the Easement and all rights, titles and interests appurtenant to the Easement, which Easement shall be deemed and hereby is fully terminated in all respects and shall no further force or effect whatsoever. Notwithstanding the foregoing, City expressly reserves and retains any and all easements, rights-of-way and any other rights or interests, other than the Easement, whether acquired, obtained, owned or claimed by the City or public, by, through or under conveyance, dedication by plat or other express dedication, implied dedication, prescription or by any other manner or means, in or to lands in which the Easement

may cover, include, cross or overlap, including without limitation, that certain Electric Utility Easement (“Electric Easement”) dated on or about December 29, 2006, recorded as Instrument No. 2007-20899. Additionally, Westpark stipulates, for itself and its successors and assigns, that the existing access of City over and across the lands encumbered by the Electric Easement, including without limitation, all infrastructure located therein or thereon, constitutes “reasonable access” and does not “materially interfere” with Grantor’s use, as contemplated in the Electric Easement.

*[CITY OF DENTON signature pages follow below.]*

EXECUTED to be effective as of the first date hereinabove written.

WESTPARK GROUP, LP, a Texas limited partnership

By: Westpark Group GP, LLC, a Texas limited liability company,  
its general partner

By: The Rayzor Company, a Texas corporation,  
its sole member

By: \_\_\_\_\_  
Philip A. Baker, Vice President

THE STATE OF TEXAS §

\_\_\_\_\_ §

COUNTY OF DENTON §

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 2013, by Philip A. Baker, Vice President of The Rayzor Company, a Texas corporation, the sole member of Westpark Group GP, LLC, a Texas limited liability company, the sole general partner of Westpark Group, LP, a Texas limited partnership, on behalf of said limited partnership.

\_\_\_\_\_  
Notary Public, State of Texas



**CITY:**

**CITY OF DENTON, TEXAS:**

By: \_\_\_\_\_  
George C. Campbell,  
City Manager

ATTEST:  
JENNIFER WALTERS, CITY SECRETARY

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

APPROVED AS TO LEGAL FORM:  
ANITA BURGESS, CITY ATTORNEY

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

THE STATE OF TEXAS §  
  §  
COUNTY OF DENTON §

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 2013, by \_\_\_\_\_, \_\_\_\_\_ of the City of Denton, a municipality, on behalf of said municipality.

Public, State of Texas \_\_\_\_\_ Notary

y's Printed Name \_\_\_\_\_ Notar

My Commission Expires: \_\_\_\_\_

Accepted this \_\_\_\_\_ day of \_\_\_\_\_, 2013 for the City of Denton, Texas (Resolution No. 91-073).

By: \_\_\_\_\_  
\_\_\_\_\_ Paul Williamson  
Manager, Real Estate and Capital Support

After recording, please return to:  
City of Denton  
Utilities Engineering Department  
901-A Texas Street  
Denton, Texas 76209  
Attention: Paul Williamson

## **APPENDIX 5**

*Drainage Work and Drainage Specifications attached hereto.*

**AGENDA INFORMATION SHEET**

**AGENDA DATE:** November 19, 2013  
**DEPARTMENT:** Denton Municipal Electric  
**ACM:** Howard Martin, 349-8232

**SUBJECT**

Consider adoption of an ordinance authorizing the City Manager or his designee to execute a Contract of Sale (herein so called), by and between the City of Denton (the "City"), and Westpark Group, L.P., a Texas Limited Partnership ("Westpark") and Rayzor Investments, Ltd., a Texas Limited Partnership ("Rayzor") (Westpark and Rayzor collectively, the "Seller"), contemplating the sale by seller and purchase by the City of certain Easements (herein so called) related to gas, electric, communication, and thermal commodity purposes, for the purchase price of One Hundred and No/100 Dollars (\$100.00), the Real Property being encumbered by the easements being generally located along both sides of Western Boulevard between Airport road and Jim Christal road, and located in the John Scott Survey, Abstract 1222, the Thomas Toby Survey, Abstract Number 1285, the James Perry Survey, Abstract Number 1040, and the John Bacon Survey, Abstract Number 1541, Denton County, Texas; authorizing the City Manager, or his designee, to execute and deliver any and all other documents necessary to accomplish closing of the transactions contemplated by the Contract of Sale; authorizing the expenditure of funds therefore; and providing an effective date.

**BACKGROUND**

In preparation for future projects involving the expansion of electric and natural gas infrastructure, DME proposed to secure easements, tracts of land, and access. The projects necessitate acquisition of utility easements, temporary construction easements, and easement amendments. Staff has been actively pursuing the transaction acquisition terms with the affected property owner beginning in September 2010, the result of which are embodied in the Contract of Sale. Staff recommends approval of the Contract of Sale in the substantial form as attached.

Delivery of Contract of Sale in final form is expected from the Seller prior to the convening of the November 19th, 2013 City Council meeting, otherwise this item will be pulled from the agenda.

Recommended approval authorizes staff to proceed to closing the purchase transaction with the Seller upon City Council approval of the ordinance.

**OPTIONS**

1. Recommend approval of the Ordinance
2. Do not recommend approval

**RECOMMENDATION**

Staff endorses approval of the Ordinance.

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

City Council Closed Session Briefing on the utility project September 14, 2010  
City Council Closed Session Briefing on the utility project January 4, 2011  
Public Utility Board Approval April 5, 2011  
City Council Approval April 19<sup>th</sup> Ordinance 2011-063  
Public Utility Board Closed Session briefing July 22, 2-013  
City Council Closed Session briefing August 6, 2013  
Public Utility Board Closed Session and Consent agenda approvals October 28, 2013  
City Council Executive Session November 5, 2013  
Public Utility Board Executive Session November 11, 2013

**FISCAL INFORMATION**

\$100.00 plus standard and customary closing costs.

**BID INFORMATION**

N/A

**EXHIBITS**

1. Location Map
2. Contract of Sale

Prepared by:



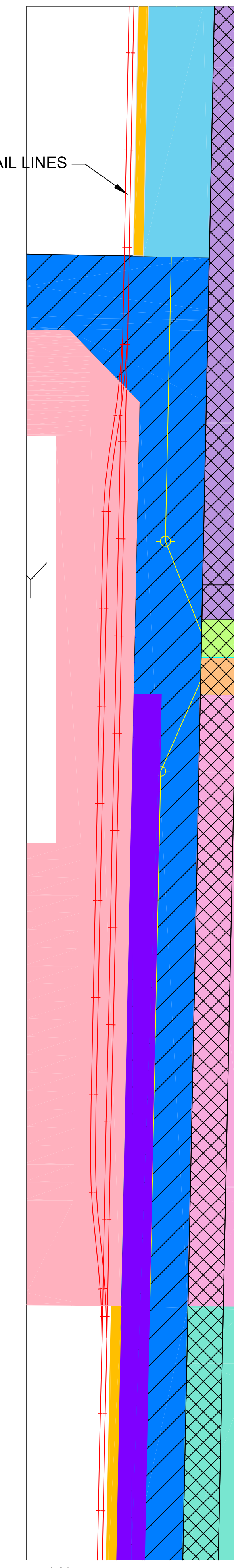
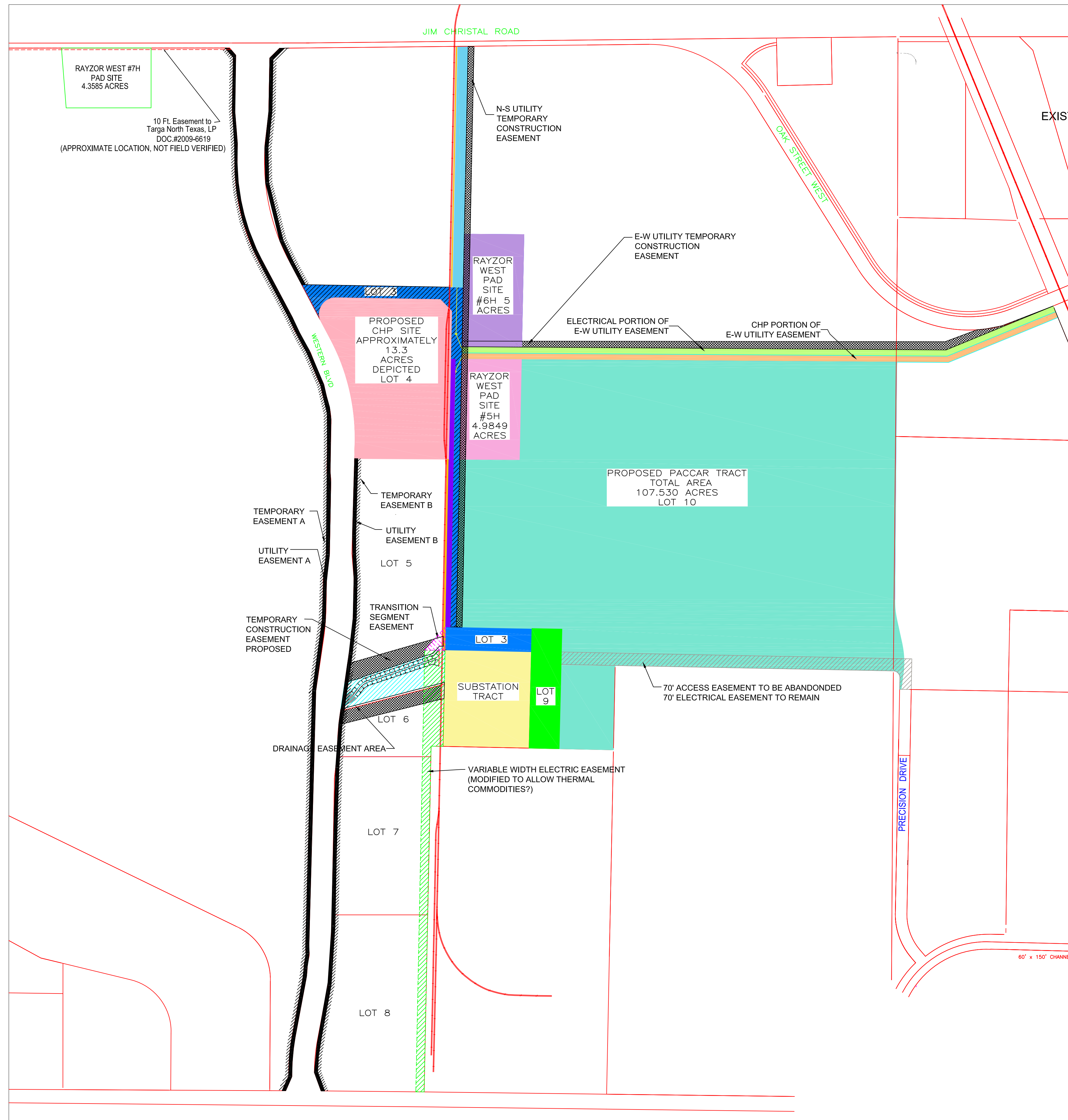
Mike Grim  
Executive Manager  
Power Legislative and Regulatory Affairs  
Denton Municipal Electric

Respectfully submitted:



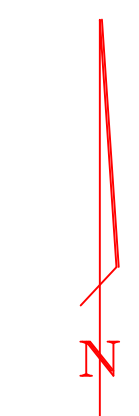
Phil Williams  
General Manager  
Denton Municipal Electric

EXHIBIT 1



10'  
27.5'  
65'

- PACCAR TRACT (TRACT 10)
- CHP PARCEL (TRACT 4)
- SUBSTATION TRACT
- DME ACCESS/UTILITY PARCEL (TRACT 3)
- RD WELLS EXPANSION STRIP PARCEL (TRACT 9)
- PAD SITE 5
- PAD SITE 6
- DME RAIL SPUR UTILITY EASEMENT
- E-W UTILITY EASEMENT CHP PORTION
- E-W UTILITY EASEMENT ELECTRIC PORTION
- N-S UTILITY EASEMENT
- RETAINED ACCESS EASEMENT
- ELECTRIC PORTION OF DME STRIP
- DRAINAGE EASEMENT AREA



**DENTON MUNICIPAL ELECTRIC**  
 Energizing tomorrow's community today!  
 Date & Time: Tue, 01 Oct '13 - 4:24PM  
 Login: z231726

**ELECTRIC ENGINEERING**  
 1659 SPENCER ROAD  
 DENTON, TEX 76205  
 (840) 348-7119

APPROVAL SIGNATURES	
ADMINISTRATOR Date	ADMIN_DATE Date
DISTRIBUTION_SUPER. Date	DIST_DATE Date
ENGINEER Date	ENG_DATE Date
DRAFTER Date	DRAFT_DATE Date
MAPPER Date	MAP_DATE Date

# DME\_RAYZOR\_SUMMARY

**PROJECT DATA**

CONTRACTOR Contractor	CONTRACTOR_PHONE Phone
DISTRIBUTION_FOREMAN DISTRIBUTION FOREMAN	FOREMAN_PHONE PHONE
START_DATE Start date:	FINISH_DATE Finish date:
<b>STATUS</b>	
Project status:	

**DRAWING DATA**

DRC_#:
PROJECT:
CREW MGR. #:
TILE:
SCALE:
SHEET#:

INFORMATION ON THIS DRAWING IS ACCURATE TO THE BEST OF OUR KNOWLEDGE. DENTON MUNICIPAL ELECTRIC MAKES NO GUARANTEE AS TO ACCURACY AND ASSUMES NO RESPONSIBILITY FOR USE OF THE INFORMATION BY ANY OTHER PERSON OR ORGANIZATION.

# EXHIBIT 2

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF DENTON, TEXAS, AUTHORIZING THE CITY MANAGER OR HIS DESIGNEE TO EXECUTE A CONTRACT OF SALE (HEREIN SO CALLED), AS ATTACHED HERETO AND MADE A PART HEREOF AS EXHIBIT "A", BY AND BETWEEN THE CITY OF DENTON (THE "CITY"), AND WESTPARK GROUP, L.P., A TEXAS LIMITED PARTNERSHIP ("WESTPARK") AND RAYZOR INVESTMENTS, LTD., A TEXAS LIMITED PARTNERSHIP ("RAYZOR") (WESTPARK AND RAYZOR COLLECTIVELY, THE "SELLER"), CONTEMPLATING THE SALE BY SELLER AND PURCHASE BY CITY OF CERTAIN EASEMENTS (HEREIN SO CALLED) RELATED TO GAS, ELECTRIC, COMMUNICATION AND THERMAL COMMODITY RELATED PURPOSES, FOR THE PURCHASE PRICE OF ONE HUNDRED AND NO/100 DOLLARS (\$100.00), THE REAL PROPERTY BEING ENCUMBERED BY THE EASEMENTS BEING GENERALLY LOCATED IN THE \_\_\_\_ BLOCK OF \_\_\_\_\_ STREET, AND LOCATED IN THE \_\_\_\_\_ SURVEY, ABSTRACT NUMBER \_\_\_\_, DENTON COUNTY, TEXAS; AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE AND DELIVER ANY AND ALL OTHER DOCUMENTS NECESSARY TO ACCOMPLISH CLOSING OF THE TRANSACTIONS CONTEMPLATED BY THE CONTRACT OF SALE; AUTHORIZING THE EXPENDITURE OF FUNDS THEREFOR; AND PROVIDING AN EFFECTIVE DATE.

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The City Manager, or his designee, is hereby authorized to execute the Contract of Sale, by and between the City of Denton, as buyer and Westpark Group, L.P. and

Rayzor Investments, Ltd., collectively as seller, in the form attached hereto and made a part hereof as Exhibit "A", with a purchase price of \$100.00, plus certain costs as prescribed in the Contract of Sale; and (ii) any and all other documents necessary for closing the transaction contemplated by the Contract of Sale.

SECTION 2. The City Manager is hereby authorized to make expenditures as set forth in the Contract of Sale.

SECTION 3. This ordinance shall become effective immediately upon its passage and approval.

PASSED AND APPROVED this the \_\_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
MARK A. BURROUGHS, MAYOR

ATTEST:  
JENNIFER WALTERS, CITY SECRETARY

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

APPROVED AS TO LEGAL FORM:  
ANITA BURGESS, CITY ATTORNEY

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



## CONTRACT OF SALE

THIS CONTRACT OF SALE ("**Contract**") is dated the \_\_\_\_ day of \_\_\_\_\_ 2013 ("**Effective Date**"), and is made by and between Rayzor Investments, Ltd., a Texas limited partnership ("**RIL**"), Westpark Group, L.P., a Texas limited partnership ("**Westpark**") (RIL and Westpark referred to collectively as "**Rayzor**"), and the City of Denton, a Texas home rule municipal corporation ("**Denton**").

### **RECITALS**

- A. Rayzor owns certain tracts of land being more particularly described hereinbelow.
- B. Rayzor desires to sell to Denton, and Denton desires to buy from Rayzor, easements that will cover and apply to areas located in the corporate limits of the City of Denton, Texas, as specifically described hereinbelow.
- C. Rayzor previously granted to Denton certain electrical easements and the parties now desire to modify those existing easements.

NOW THEREFORE, in consideration of the exchange of real property, mutual covenants and agreements set forth in the Contract, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Rayzor and Denton hereby agree to the following:

### ARTICLE I: CONVEYANCES OF EASEMENTS

On the Closing Date (as hereinafter defined), Rayzor (either or both of RIL and Westpark, as applicable) shall grant and convey the below described easement interests to Denton, subject to the terms and provisions set forth below:

1.1 **Sale and Purchase of the Easements.** Rayzor agrees to sell and convey to Denton, and Denton agrees to purchase from Rayzor, for the Purchase Price (as hereinafter defined), on and subject to the terms and conditions set forth in this Contract, the following grants and conveyances:

1.1.1 Utility Easement A. A utility easement in, on, along and through certain tracts running along the west side of Western Boulevard, extending from Jim Christal southward to Airport Road ("**Utility Easement A Area**") pursuant to the form of Easement instrument ("**Utility Easement A Agreement**") attached hereto as Appendix 1 (said Utility Easement A Area being more particularly described in said Easement instrument attached hereto as Appendix 1).

1.1.2 Utility Easement B. A utility easement in, on, along and through certain tracts running along the east side of Western Boulevard, extending from Jim Christal southward to Airport Road ("**Utility Easement B Area**") pursuant to the form of Easement instrument ("**Utility Easement B Agreement**") attached hereto as Appendix 2 (said Utility Easement B Area being more particularly described in said Easement instrument attached hereto as Appendix 2).

1.1.3 Temporary Work Easement A. A temporary easement in, on, along and through certain tracts running along the Utility Easement A Area ("**Temporary Work Easement A Area**") pursuant to the form of Temporary Work Easement instrument ("**Temporary Work Easement A Agreement**") attached hereto as Appendix 3 (said Temporary Work Easement A Area being more particularly described in said Easement instrument attached hereto as Appendix 3).

1.1.4 Temporary Work Easement B. A temporary easement in, on, along and through certain tracts running along the Utility Easement B Area ("**Temporary Work Easement B Area**") pursuant to the form of Temporary Work Easement instrument ("**Temporary Work Easement B Agreement**") attached hereto as Appendix 4 (said Temporary Work Easement B Area being more particularly described in said Easement instrument attached hereto as Appendix 4).

1.1.5 N-S Easement. An electric easement extending along an existing railroad spur southward from Jim Christal ("**N-S Easement Area**") pursuant to the form of Easement instrument ("**N-S Easement Agreement**") attached hereto as Appendix 5 (said N-S Easement Area being more particularly described in said Easement instrument attached hereto as Appendix 5).

1.1.5.A. N-S Temporary Work Easement. A temporary easement in, on, along and through certain tracts running along the N-S Easement Area ("**N-S Temporary Work Easement Area**") pursuant to the form of the N-S Temporary Work Easement instrument ("**N-S Temporary Work Easement Agreement**") attached hereto as Appendix 5AA (said N-S Temporary Work Easement Area being more particularly described in said Easement instrument attached hereto as Appendix 5AA). The N-S Temporary Work Easement and all uses permitted thereunder are subject to the Seller's reserved Access Area, the terms of which are contained in the N-S Easement Agreement.

1.1.6 Transition Segment Easement. An easement located west of the northwest corner of Lot 1, Block 1 R.D. Wells Interchange (as labeled on Conveyance Plat Instrument No. 2011-116 in the Official Records of Denton County, Texas) (such easement area the "**Transition Segment Easement Area**") pursuant to the form of Easement instrument ("**Transition Segment Easement Agreement**") attached hereto as Appendix 5A (said Transition Segment Area being more particularly described in said Easement instrument attached hereto as Appendix 5A).

1.1.7 10-Foot Rail Spur Easement. An easement extending southward from Jim Christal Road within an existing rail spur line ("**10-Foot Rail Spur Easement Area**") pursuant to the form of Easement instrument ("**10-Foot Rail Spur Easement**") attached hereto as Appendix 6 (said 10-Foot Rail Spur Easement Area being more particularly described in said Easement instrument attached hereto as Appendix 6).

1.1.8 E-W Utility Easement. An easement extending east and west along the north boundary of a 107-acre tract proposed to be sold to Paccar, Inc. ("**E-W Utility Easement Area**") pursuant to the form of Easement instrument ("**E-W Utility Easement**") attached hereto as Appendix 7

(said E-W Utility Easement Area consisting of an Electric Portion and a CHP Portion all being more particularly described in said Easement instrument attached hereto as Appendix 7).

1.1.9 E-W Temporary Work Easement. A temporary easement in, on, along and through certain tracts running along the E-W Easement Area ("**E-W Temporary Work Easement Area**") pursuant to the form of the E-W Temporary Easement instrument ("**E-W Temporary Work Easement Agreement**") attached hereto as Appendix 7A (said E-W Temporary Work Easement Area being more particularly described in said Easement instrument attached hereto as Appendix 7A).

The easement rights and interests granted pursuant to the foregoing are referred to herein as the "**Easements**". The physical land areas covered by the easement rights are referred to herein as the "**Easement Areas**". Narrative descriptions of the Easement Areas contained above are merely for convenience to attempt to generally identify the applicable Easement Areas. The descriptions of the Easement Areas in the attached Appendices shall control.

1.2 **Easement Modifications**. In addition to the grants and conveyances discussed above, Denton and Rayzor hereby agree that, at Closing, they will enter into certain modification agreements (collectively, the "**Modification Agreements**") to modify the terms and conditions of certain existing easement rights previously granted to the City of Denton as follows:

1.2.1 ~~Intentionally omitted.Easement Instrument No. 2007-20905. The parties will enter into a modification agreement to amend that certain Electric Utility Easement, dated December 29, 2006 and recorded February 21, 2007 as Instrument Number 2007-20905 as Easement in the Official Records of Denton County, Texas, pursuant to that certain easement modification instrument ("**Modification A**"), attached hereto as Appendix 8.~~

1.2.2 Easement Instrument No. 2007-20906. The parties will enter into a modification agreement to amend that certain Electric Utility Easement, dated December 29, 2006 and recorded February 21, 2007 as Instrument Number 2007-20906 as Easement in the Official Records of Denton County, Texas, pursuant to that certain easement modification instrument ("**Modification B**"), attached hereto as Appendix 9.

1.2.3 Easement Instrument No. 2007-20898. The parties will enter into a modification agreement to amend that certain Electric Utility Easement, dated December 29, 2006 and recorded February 21, 2007 as Instrument Number 2007-20898 as Easement in the Official Records of Denton County, Texas, pursuant to that certain easement modification instrument ("**Modification C**"), attached hereto as Appendix 10.

1.2.4 ~~Intentionally omitted.Easement Instrument No. 2007-20899. The parties will enter into a modification agreement to amend that certain Electric Utility Easement, dated December 29, 2006 and recorded February 21, 2007 as Instrument Number 2007-20899 as Easement in the Official Records of Denton County, Texas, pursuant to that certain easement modification instrument ("**Modification D**"), attached hereto as Appendix 11.~~

The easements to be modified by the Modification Agreements pursuant to the foregoing sections 1.2.1 through 1.2.4 are referred to herein as the "**Existing Easements**". The physical land areas covered by the Existing Easements are referred to herein as the "**Existing Easement Areas**".

1.3 **Minerals Excluded.** Rayzor has previously sold and conveyed to RIL Mineral Holdings, L.P. ("**RILMH**") all of Rayzor's right, title and interest in all minerals of every kind, including oil, crude oil, natural gas, casing-head gas, other gas, other gaseous or liquid hydrocarbon minerals or substances, condensate, coal, ores, sulfur and other minerals of every kind and nature in and under and/or that may be produced from the Easement Areas pursuant to those certain Mineral Deeds recorded as Document No. 2011-67794 and Document No. 2011-67798 (as to the Westpark lands) and Document No. 2011-67797 (as to the RIL lands) of the Official Records of Denton County, Texas ("**Prior Mineral Conveyance**"). Rayzor shall be permitted to execute and record a confirmatory Mineral Deed in form similar to and in furtherance of said existing Mineral Deeds to RILMH but with the final legal description of the Easement Areas attached thereto ("**Confirmatory Mineral Deed**"). Nonetheless, to the extent Rayzor continues to hold as of Closing any such minerals in and under and/or that may be produced from the Easement Areas, none of the grants of rights under the Easements shall include any right or interest in such minerals. With respect to the Prior Mineral Conveyance, Rayzor agrees to cause RILMH to deliver a surface waiver agreement at Closing waiving RILMH's rights to use the surface of any of the Easement Areas (but not those areas of the temporary work easements defined in Appendices 3, 4, 5AA and 7A) in the form attached hereto and made a part hereof as **Appendix 12** (the "**RILMH Surface Waiver**").

## **ARTICLE II: PURCHASE PRICE AND EARNEST MONEY**

2.1 **Purchase Price.** The Purchase Price to be paid to Rayzor for the Easements is the sum of \$100.00 ("**Purchase Price**").

2.2 **Independent Contract Consideration.** On or before the Closing Date, Denton shall deliver to the Title Company (defined below), payable to and for the benefit of Rayzor, a check in the amount of One Hundred and No/100 Dollars (\$100.<sup>00</sup>) (the "**Independent Contract Consideration**"), which amount the parties hereby acknowledge and agree has been bargained for and agreed to as consideration for Rayzor's execution and delivery of the Contract. The Independent Contract Consideration is in addition to, and independent of any other consideration or payment provided in this Contract, is non-refundable, and shall be retained by Rayzor notwithstanding any other provision of this Contract.

## **ARTICLE III: TITLE AND SURVEY**

3.1 **Title Commitment.** Denton may cause to be issued a current Commitment for Title Insurance (the "**Title Commitment**") for the Easements, issued by Republic Title of Texas, Inc., 550 Bailey Avenue, Suite 100, Fort Worth, Texas 76107 ("**Title Company**"). The Title Commitment shall set forth

the state of title to the Easements, including a list of any defects, encumbrances and other exceptions to title, and outstanding claims, interests or equities of any nature (each of which referred to herein as an "**Exception**"); provided, however, the Title Commitment shall not cover the easement estates created under the Existing Easements.

3.2 **Survey.** Denton may, at its expense, cause a current on the ground survey of the Easement Areas, or any part thereof, to be prepared by Gerry Curtis Associates or any other surveyor approved by both parties (the "**Survey**"). The Survey may include all matters prescribed by Denton. In any case, the description of the Easements as set forth in the description provided by the Survey shall be used to describe the Easement Areas in the instruments conveying the Easements to Denton and shall be the description of the Easement Areas set forth in the Title Policy.

3.3 **Rayzor's Efforts to Cure.** Rayzor shall take good faith efforts to assist Denton in curing or satisfying any Exceptions or defects depicted or revealed in the Survey, as set forth in the notice to Rayzor by Denton ("**Objections**"). Notwithstanding the obligation of Rayzor to provide good faith efforts in its assistance to Denton to cure any defects related to the Title or Survey of the Easements, Rayzor shall not be obligated to expend funds in such efforts or incur any liability or otherwise incur any economic burden. In the event Denton and Rayzor cannot cure the Objections prior to Closing, Denton may elect to either (i) terminate this Contract or (ii) waive the uncured Objections, which shall become Permitted Exceptions (as defined below), and upon such waiver, close the transaction contemplated by this Contract. The term "**Permitted Exceptions**" as used herein shall mean (i) the Prior Mineral Conveyance, (ii) easements, restrictions, claims, rights of way, encroachments or other encumbrances or other matters whatsoever affecting the Easements as shown in the Title Commitment or Survey, but excluding any matters which were subject to Objections and which Rayzor actually cures ("**Specific Exceptions**"), (iii) all municipal or other governmental zoning laws, regulations and ordinances, if any, affecting the herein-described Easements and (iv) any other matters affecting the Easements which are of public record or would be disclosed by a physical inspection of the Easement Areas and/or an accurate survey of the Easement Areas. Notwithstanding anything to the contrary herein, Rayzor shall provide to Denton, prior to the Closing Date, the RILMH Surface Waiver, and shall use reasonable efforts to provide to Denton, at or prior to Closing, evidence satisfactory to Denton and Rayzor that any other owners of the rights to conduct mineral exploration and production activities (the "**Operations**") in the Easement Areas (the "Mineral Lessees") are prohibited from using or occupying in any way the surface of the Easement Areas in connection with such Operations. Without limitation to the Permitted Exceptions referenced in each Easement instrument, Specific Exceptions shall be specifically listed in the instruments for the various Easements as contemplated therein.

3.4 **Title Policy.** At Closing, Denton, at Denton's sole cost and expense, may cause a standard Texas Owner Policy of Title Insurance ("**Title Policy**"), along with a T-19.1, T-19.2 or T-19.3 endorsement, as applicable, to be furnished to Denton, to the extent available. The Title Policy shall be issued by the Title Company, in the amount of the fair market value of the Easements and insuring that Denton has valid easement rights to the Easements, subject only to the Permitted Exceptions.

#### **ARTICLE IV: AS-IS SALE**

4.1 **AS-IS Sale.** Denton expressly acknowledges that the Easements are being sold, conveyed, granted and accepted **AS-IS, WHERE-IS WITH ALL FAULTS**, and, except as expressly set forth in **Article VI**, below, Rayzor makes no representations or warranties, express or implied, with respect to the physical condition or any other aspect of the Easements or any real property encumbered by the Easements, including without limitation: (i) the structural integrity of improvements on such properties, if any; (ii) the manner, construction, condition and state of repair or lack of repair of any improvements on such properties; (iii) the conformity of any improvements to any plans or specifications for such properties, including but not limited to any plans and specifications that may have been or which may be provided to Denton; (iv) the conformity of such properties to past, current or future applicable zoning or building code requirements or such properties' compliance with any other laws; (v) the financial earning capacity or history or expense history of the operation of such properties; (vi) the existence of soil instability, past soil repairs, soil additions or conditions of soil fill, such properties' susceptibility to landslides, sufficiency of undershoring or sufficiency of drainage to, from or across such properties; (vii) whether such properties are located wholly or partially in a flood plain or a flood hazard boundary or similar area or within any area that may be considered wetlands or jurisdictional waters of the United States; (viii) the existence or non-existence of underground or above ground storage tanks, asbestos, hazardous waste or other toxic or Hazardous Materials (as hereinafter defined) of any kind or any other environmental condition or whether such properties are in compliance with applicable laws; (ix) such properties' investment potential or resale at any future date, at a profit or otherwise; (x) any tax consequences of ownership of such properties; or (xi) any other matter whatsoever affecting the stability, integrity, other condition or status of the Easements (collectively, the "**Easement Conditions**"). **EXCEPT AS PROVIDED IN ARTICLE VI, BELOW, DENTON HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVES ANY AND ALL ACTUAL OR POTENTIAL RIGHTS IT MIGHT HAVE REGARDING ANY FORM OF WARRANTY, EXPRESS OR IMPLIED OR ARISING BY OPERATION OF LAW, INCLUDING, BUT IN NO WAY LIMITED TO, ANY WARRANTY OF QUANTITY, QUALITY, CONDITION, HABITABILITY, MERCHANTABILITY, SUITABILITY OR FITNESS FOR A PARTICULAR PURPOSE RELATED TO THE EASEMENTS, ANY IMPROVEMENTS THEREON OR THE EASEMENT CONDITIONS, SUCH WAIVER BEING ABSOLUTE, COMPLETE, TOTAL AND UNLIMITED IN ANY WAY.** This waiver fully applies to Rayzor as well as all other Rayzor Parties (as hereinafter defined) but does not apply to Rayzor's predecessors in title to the Easements who are not Rayzor Parties. As used herein the "**Rayzor Parties**" shall mean Westpark, RIL, Jesse Newton Rayzor and Eugenia Porter Rayzor, and any other person that was a spouse, descendant or other relative of Jesse Newton Rayzor and/or Eugenia Porter Rayzor, or an affiliated entity of any of the foregoing.

4.2 **Information Disclaimer.** Any and all information related to the Easements provided to Denton by Rayzor (without implying any obligation to deliver such information, however) ("**Information**"), shall be delivered as an accommodation to Denton only, without any representation or warranty as to the completeness or accuracy of the data or other information contained therein, and all such Information is furnished to Denton solely as a courtesy, and Rayzor has not verified the accuracy of any statements or other information therein contained, the method used to compile such Information nor the qualifications of the persons preparing such Information. The Information is provided on an **AS-IS, WHERE-IS BASIS, AND DENTON EXPRESSLY ACKNOWLEDGES THAT, IN CONSIDERATION OF THE AGREEMENTS HEREIN, RAYZOR MAKES NO REPRESENTATION, EXPRESS OR IMPLIED, OR**

**ARISING BY OPERATION OF LAW, INCLUDING, BUT IN NO WAY LIMITED TO, ANY WARRANTY OF QUANTITY, QUALITY, CONDITION, MERCHANTABILITY, SUITABILITY OR FITNESS FOR A PARTICULAR PURPOSE AS TO THE INFORMATION.**

4.3 **Waiver of Compliance with Requirements.** Denton expressly acknowledges that it is not relying on (and hereby disclaims and renounces) any representations or warranties made by or on behalf of Rayzor of any kind or nature whatsoever, except as expressly provided in **Article VI**, below. Denton acknowledges that the Easements may not be in compliance with all laws that may apply to such Easements or any part thereof and the continued ownership, maintenance, management and repair of such properties ("**Requirements**"). Denton shall be solely responsible for any and all Requirements.

4.4 **Environmental Waiver.** Without limitation, to the fullest extent permitted by law, and except as provided in **Article VI**, below, Denton, for itself and its successors and assigns, hereby releases Rayzor from and waives any and all claims and liabilities against Rayzor, related to or in connection with any environmental condition in or on the Easements (or the presence of any matter or substance relating to the environmental condition of such Easements), including, but not limited to, claims and/or liabilities relating to (in any manner whatsoever) any hazardous, toxic or dangerous materials or substances located in, at, about or under such Easements, or for any and all claims or causes of action (actual or threatened) based upon, in connection with or arising out of: (i) the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. §§9601 et seq.) ("**CERCLA**"); (ii) the Resource Conservation and Recovery Act (42 U.S.C. §§6901 et seq.) ("**RCRA**"); (iii) the Superfund Amendments and Reauthorization Act (42 U.S.C. §§9601 et seq.) ("**SARA**"); or (iv) any other claim or cause of action (including any federal or state based statutory, regulatory or common law cause of action, including without limitation, the Texas Solid Waste Disposal Act) related to environmental matters or liability with respect to or affecting the Easements. This waiver does not apply to any predecessors in title to Rayzor.

4.5 **Assumption of Hazardous Materials Risks.** Without limitation to any of the above, Denton assumes the risk that Hazardous Materials may be present in, on or under the Easement Areas, and except as provided in Article V and Article VI, below, hereby waives, releases and discharges forever, Rayzor from any and all present or future claims or demands, and any and all damages, loss, injury, claims or costs, including fines, penalties and judgments arising from or in any way related to the condition of the Easements or presence of any Hazardous Materials in, on or under the Easements, whether or not arising from or attributed to the sole or concurrent negligence of Rayzor. This waiver does not apply to any predecessors in title to Rayzor.

4.6 **Parties Relying on Own Inspections.** Denton acknowledges and agrees that Rayzor was unwilling to convey, grant and sell the Easements unless Rayzor was released as expressly set forth above. With respect to the waivers and agreements contained in **Article IV, Sections 4.1 through 4.5**, above, Denton and Rayzor represent and warrant to the other that: they are (i) represented by legal counsel in connection with the sale contemplated by this Contract; (ii) each, with its counsel, has fully reviewed the disclaimers and waivers and agreements set forth in this Contract and understands their significance and effect; (iii) each is knowledgeable and experienced in the purchase, operation, ownership, refurbishing and sale of commercial real estate, and is fully able to evaluate the merits and

risks of this transaction; and (iv) each is not in a significantly disparate bargaining position. As part of the provisions of this **Article IV**, but not as a limitation thereon, Denton agrees, represents and warrants that the matters released herein are not limited to matters which are known or disclosed. To the extent permitted by law, Denton hereby agrees, represents and warrants that it realizes and acknowledges that factual matters now unknown to it may have given or may hereafter give rise to causes of action, claims, demands, debts, controversies, damages, costs, losses and expenses which are presently unknown, unanticipated and unsuspected, and Denton further agrees, represents and warrants that the waivers and releases herein have been negotiated and agreed upon in light of that realization and that Denton nevertheless hereby intends to release, discharge and acquit Rayzor from any such unknown causes of action, claims, demands, debts, controversies, damages, costs, losses and expenses which might in any way be included in the waivers and matters released as set forth in this **Article IV**.

4.6.A **Waivers Limited.** Notwithstanding anything to the contrary herein, any and all representations, disclaimers and waivers of any claims by Denton, all as may be prescribed in this Article IV, are made to the extent, and only to the extent, such is authorized or permitted under existing laws.

4.7 **Survival.** Notwithstanding anything herein to the contrary, all of the terms and provisions of **Article IV, Sections 4.1 through 4.6.A** shall survive the Closing.

#### **ARTICLE V: INSPECTION**

5.1 **Tests.** Until the Closing, Denton and its agents, employees and contractors, at their sole risk and expense, shall have the right to enter upon the Easement Areas during normal business hours (and subject to advance notice as required below) for inspections, surveying, engineering and other reasonable testing and inspection purposes ("**Tests**"). All such inspections may include both non-intrusive inspections and studies (such as non-intrusive "Phase I Level" type tests with respect to environmental matters) which do not involve borings or any sampling of any material or media, including soil, surface water, or ground water and intrusive "Phase II Level" environmental or other intrusive testing or any borings or sampling of any material or media, including soil, surface water, or ground water. Without limiting the general authorization provided herein, Denton may conduct routine soil borings on the Easement Areas for the purpose of evaluating soil stability and characteristics for typical construction industry purposes related to its intended use of the Easements. All soil borings shall be conducted in a commercially reasonable manner in accordance with generally accepted construction industry standards, and upon completion of all such soil borings, Denton shall restore the affected portion of the Easements to substantially the same condition as existed prior to such soil borings. Any and all activities conducted by Denton shall be in accordance with applicable laws. Any entry upon the Easement Areas is referred to herein as an "**Entry**". All such activities shall be conducted in such a fashion so as to minimize interference with the use of the properties being inspected. Denton shall promptly repair any damage to the affected portion of the Easements as a result of such Tests and restore same to its condition which existed prior to such Tests. Denton shall deliver to Rayzor a copy of any report, summary or other documentation of the findings produced by or resulting from the Tests.



5.2 **Notice of Entry.** Prior to any Entry upon the Easement Areas to be inspected for any purpose permitted herein, Denton shall give prior notice to and shall coordinate such access as follows: Mr. Philip A. Baker (telephone 940/387-8711, fax 940/566-1591, The Rayzor Company, 400 West Oak Street, Suite 200, Denton, Texas 76201), or his successor or designee, who will act as Rayzor's agent with respect thereto. Such notice shall be given at least 24 hours prior to the proposed Entry and shall include the names of the individuals who will be entering the Easement Areas and the name of such individual's firm or company, the purpose of the inspection and specific activities which will be conducted by such individuals on such Easement Areas, the times during which such Entry shall occur and such other information as may be reasonably requested by Mr. Baker. The inspecting party shall fully cooperate with and follow any reasonable additional requirements or instructions given by Mr. Baker with respect to such Entry.

5.3 **Insurance.** Any consultant or contractor of Denton desiring to enter the Easement Areas to be inspected for any Tests shall only enter such Easement Areas after submitting to Rayzor certificates of insurance evidencing Commercial General Liability Insurance coverage in commercially reasonable amounts, but not less than the amount of ~~Five Hundred Thousand~~~~One Million~~ and No/100 Dollars (\$~~1,05~~00,000.00), covering such consultant's or contractor's operations in the Easements to be inspected, with Rayzor included as an additional insured thereunder and stating that such insurance is primary with regard to any other insurance maintained by Rayzor.

5.4 **Termination.** Any term or provision of this Contract notwithstanding, the obligations of Denton specified in this Contract are wholly conditioned on Denton's having determined, in Denton's sole and absolute discretion, during the inspection provided by this **Article V**, based on such tests, examinations, studies, investigations and inspections of the Easements and Easement Areas Denton deems necessary or desirable, that Denton finds the Easement Areas suitable for Denton's purposes. If Denton determines, in its sole judgment, that the Easement Areas are not suitable, for any reason, for Denton's intended use or purpose, Denton may terminate this Contract by written notice to Rayzor, as soon as reasonably practicable, but in any event prior to the Closing. In the event Denton elects to terminate this Contract pursuant to the terms of this **Section 5.4**, Denton will provide to Rayzor copies of any and all non-confidential and non-privileged reports and studies obtained by Denton during or resulting from the Tests.

## **ARTICLE VI: REPRESENTATIONS, WARRANTIES, COVENANTS AND AGREEMENTS**

6.1 **Representations and Warranties of Rayzor.** Rayzor represents and warrants to Denton, as of the Effective Date of this Contract and as of the Closing Date, except where specific reference is made to another date that:

- (a) Rayzor has the full right, power and authority to sell and convey the Easements and to execute and deliver the Modification Agreements as provided in this Contract and to carry out Rayzor's obligations hereunder and this Contract, and all documents to be delivered by Rayzor hereunder, are and shall be legal and binding upon Rayzor.
- (b) Rayzor has not received notice of, and has no other knowledge or information of, any pending or threatened judicial or administrative action, or any action pending or

threatened by adjacent landowners or other persons against or affecting the Easements and/or real property encumbered by the Easements.

- (c) Rayzor has not contracted or entered into any agreement with any real estate broker, agent, finder, or any other party in connection with this transaction or taken any action which would result in any real estate broker commissions or finder's fee or other fees payable to any other party with respect to the transactions contemplated by this Contract.
- (d) All Leases, as defined in **Section 6.3(a)**, shall have expired or otherwise terminated on or before the date of Closing.
- (e) Rayzor has not received notice of any violation of any law, statute, rule, regulation or ordinance related to or affecting the Easements and/or real property encumbered by the Easements or Rayzor's obligations under this Contract.
- (f) To Rayzor's actual knowledge, without independent investigation, there are no Hazardous Materials (as hereinafter defined) which are or have been used, manufactured, placed or stored on the Easements and/or real property encumbered by the Easements. As used above, the term "**Hazardous Materials**" means any material or substance which is (i) defined as a "hazardous waste," "extremely hazardous waste," "restricted hazardous waste," "hazardous material," "hazardous substance," or any similar formation under or pursuant to any state or federal statute or common law rule, (ii) designated as a "hazardous waste" pursuant to Section 311 of the Clean Water Act, 33 U.S.C. §1251 et seq. (33 U.S.C. §1321) or listed pursuant to Section 307 of the Clean Water Act (33 U.S.C. §1317), (iii) defined as a "hazardous waste" pursuant to Section 1004 of the Resource Conservation and Recovery Act, 44 U.S.C. §6901 et seq. (42 U.S.C. §6903) or (iv) defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. §9601 et seq. (42 U.S.C. §9601); provided, however, "Hazardous Materials" shall not, for purposes of this representation, include gasoline, diesel fuel or other petroleum products routinely used in connection with farm and ranch operations, nor shall such term include any pesticides, herbicides, cattle dipping solutions and other substances which are now or ever have been customarily used in connection with farm and ranch operations (and such exclusion from such term shall include items which were historically used in the farm and ranching industry for such purposes but which may now be banned or otherwise not so used). Rayzor hereby informs Denton that it has not conducted an independent investigation in connection with the above representation and that Rayzor has limited knowledge as to such matters and advises Denton to conduct independent investigations with respect to such matters as Denton may deem necessary or desirable to fully satisfy itself with respect to the environmental condition of the Easements and/or real property encumbered by the Easements, it being understood that the above representation is limited in nature and is only to Rayzor's actual knowledge, and does not give a complete understanding of the environmental condition of the Easements and/or real property encumbered by the Easements.

- (g) Rayzor is not a “foreign person” as defined in Section 1445 of the Internal Revenue Code of 1986, as amended.

**6.2 Representations and Warranties of Denton and Rayzor.** Denton and Rayzor represent and warrant to each other that they have the power to execute, deliver and perform under this Contract, have taken all actions necessary to authorize the execution, delivery and performance of this Contract and that the parties executing this Contract and the conveyance documents exhibited hereto for and on behalf of Denton and Rayzor have been duly authorized by Denton and Rayzor to act in such capacity.

**6.3 Covenants and Agreements of Rayzor.** Rayzor covenants and agrees with Denton as follows:

- (a) Within ten (10) business days after the Effective Date, Westpark shall deliver to Denton, with respect to the Westpark's portion of the Easements, and RIL shall deliver to Denton, with respect to the RIL's portion of the Easements true, correct and complete copies of the following:
  - (i) All lease agreements and/or occupancy agreements and/or licenses of any kind or nature (if oral, Rayzor shall provide to Denton in writing all material terms thereof) relating to the possession of the Easements, Easement Areas or Existing Easement Areas, or any part thereof, including any and all modifications, supplements, and amendments thereto (the “**Leases**”), provided that only those Leases remaining in force after the Closing must be delivered to Denton.
  - (b) From the Effective Date until the date of Closing and with respect to the Easements, Rayzor, whether acting collectively, or individually as Westpark and/or RIL shall:
    - (i) Not enter into any written or oral contract, lease, easement or right of way agreement, conveyance or any other agreement of any kind with respect to, or affecting, the Easements, Easement Areas or Existing Easement Areas, that will not be fully performed on or before the Closing or would encumber or negatively affect Denton's ability to exercise its rights under the Easements after the date of Closing.
    - (ii) Not sell, assign, lease or convey any right, title or interest whatsoever in or to the property areas covered by the Easement Areas, or create, or permit to exist, any lien, encumbrance, or charge thereon.

**6.4** Notwithstanding anything to the contrary contained in this Contract, the representations, warranties, covenants and agreements of Rayzor contained in this Contract shall survive the Closing for a period of one year after the Closing Date, and shall not, in any circumstance, be merged with the Easements and/or the Modification Agreements to be delivered at Closing pursuant to **Section 7.2**.

## **ARTICLE VII: CLOSING**

7.1 **Date and Place of Closing.** The "**Closing**" (herein so called) shall take place in the offices of the Title Company and shall be accomplished through an escrow to be established with the Title Company, as escrowee. The "**Closing Date**" (herein sometimes called), shall occur before 5:00 PMon November 22, 2013, unless otherwise mutually agreed to by Denton and Rayzor. The Closing Date as defined in this **Section 7.1** is an absolute deadline by which Closing must occur and is intended to prevail over any conflicting terms provided in this Contract or the Appendices attached hereto.

7.2 **Items to be Delivered at the Closing.**

- (a) At the Closing, Rayzor shall deliver or cause to be delivered to the Title Company, the following items:
- (i) Utility Easement A, in the form as attached hereto as **Appendix 1** executed by RIL and acknowledged.
  - (ii) Utility Easement B, in the form as attached hereto as **Appendix 2** executed by Westpark and acknowledged.
  - (iii) Temporary Work Easement A, in the form as attached hereto as **Appendix 3**, executed by RIL and acknowledged.
  - (iv) Temporary Work Easement B, in the form as attached hereto as **Appendix 4**, executed by Westpark and acknowledged.
  - (v) The N-S Utility Easement, in the form as attached hereto as **Appendix 5**, executed by Westpark and acknowledged.
  - (va) The N-S Temporary Work Easement, in the form attached hereto as **Appendix 5AA**, executed by Westpark and acknowledged.
  - (vi) The Transition Segment Easement, in the form as attached hereto as **Appendix 5A**, executed by Westpark and acknowledged.
  - (vii) The 10-Foot Rail Spur Easement, in the form as attached hereto as **Appendix 6**, executed by Westpark and acknowledged.
  - (viii) The E-W Utility Easement, in the form as attached hereto as **Appendix 7**, duly executed by Westpark and RIL and acknowledged.
  - (viii)b) The E-W Temporary Work Easement, in the form attached hereto as **Appendix 7A**, executed by Westpark and RIL and acknowledged.
  - (ix) ~~Intentionally omitted. Modification Agreement A, in the form as attached hereto as **Appendix 8**, executed by RIL and acknowledged.~~

- (x) Modification Agreement B, in the form as attached hereto as **Appendix 9**, executed by RIL and acknowledged.
  - (xi) Modification Agreement C, in the form as attached hereto as **Appendix 10**, executed by Westpark and acknowledged.
  - (xii) ~~Intentionally omitted. Modification Agreement D, in the form as attached hereto as **Appendix 11**, executed by Westpark and acknowledged.~~
  - (xiii) The RILMH Surface Waiver, in the form as attached hereto as **Appendix 12**, executed by RILMH and acknowledged.
  - (xiv) Intentionally omitted.
  - (xv) Other items reasonably requested by the Title Company as administrative requirements for consummating the Closing.
- (b) At the Closing, Denton shall deliver to the Title Company, the following items:
- (i) The sum required by **Article II, Section 2.1**.
  - (ii) ~~Intentionally omitted. Modification Agreement A, in the form as attached hereto as **Appendix 8**, executed by Denton, attested and approved as to legal form.~~
  - (iii) Modification Agreement B, in the form as attached hereto as **Appendix 9**, executed by Denton, attested and approved as to legal form.
  - (iv) Modification Agreement C, in the form as attached hereto as **Appendix 10**, executed by Denton, attested and approved as to legal form.
  - (v) ~~Intentionally omitted. Modification Agreement D, in the form as attached hereto as **Appendix 11**, executed by Denton, attested and approved as to legal form.~~
  - (vi) Other items reasonably requested by the Title Company as administrative requirements for consummating the Closing.

**7.3 RESERVED.**

**7.4 Right to Enter at Closing.** The rights and interests in and to the Easements shall be delivered to Denton at Closing, subject to the Permitted Exceptions and Rayzor's reserved rights therein.

**7.5 Costs of Closing.** Each party is responsible for paying the legal fees of its counsel, in negotiating, preparing, and closing the transaction contemplated by this Contract. Rayzor is

responsible for paying fees, costs and expenses identified herein as being the responsibility of Rayzor. Denton is responsible for paying fees, costs and expenses identified herein as being the responsibility of Denton. If the responsibility for such costs or expenses associated with closing the transaction contemplated by this Contract are not identified herein, such costs or expenses shall be allocated between the parties in the customary manner for closings of real property similar to the Easements in Denton County, Texas.

## **ARTICLE VIII: DEFAULTS AND REMEDIES**

### **8.1 Rayzor's Defaults and Denton's Remedies.**

8.1.1 Rayzor's Defaults. Rayzor is in default under this Contract on the occurrence of any one or more of the following events:

- (i) Any of Rayzor's warranties or representations contained in this Contract are untrue on the Closing Date;
- (ii) Rayzor fails to meet, comply with or perform any covenant, agreement, condition precedent or obligation on Rayzor's, as applicable, part required within the time limits and in the manner required in this Contract; or
- (iii) Rayzor fails to deliver at Closing, the items specified in **Section 7.2(a)** of this Contract for any reason other than a default by Denton or termination of this Contract by Denton pursuant to the terms hereof prior to Closing.

8.1.2 Denton's Remedies. If Rayzor is in default under this Contract, Denton, as Denton's sole and exclusive remedies for the default, may, at Denton's sole option, do either one of the following:

- (i) Terminate this Contract by written notice delivered to Rayzor; or
- (ii) Enforce specific performance of this Contract against Rayzor, requiring Rayzor to convey the Easements to Denton subject to no liens, encumbrances, exceptions, and conditions other than those shown on the Title Commitment and/or listed in the Permitted Exceptions.

### **8.2 Denton's Default and Rayzor's Remedies.**

8.2.1 Denton's Default. Denton is in default under this Contract on the occurrence of any one or more of the following events:

- (i) Denton fails to meet, comply with or perform any covenant, agreement, condition precedent or obligation on Denton's part required within the time limits and in the manner required by this Contract; or

- (ii) Denton fails to deliver at Closing, the items specified in **Section 7.2(b)** of this Contract for any reason other than a default by Rayzor under this Contract or termination of this Contract pursuant to the terms hereof prior to Closing.

8.2.2 Rayzor's Remedy. If Denton is in default under this Contract, Rayzor, as Rayzor's sole and exclusive remedy for the default, may terminate this Contract by written notice delivered to Denton, whereupon neither party shall have any further rights or obligations hereunder.

8.3 **No Limitation of Remedies In Easements**. None of the above remedy provisions shall limit or abridge the rights and obligations of the parties under the Easements if the Closing occurs. The remedies provided for in the Easements are not restricted or limited in any manner by this Article VIII.

8.4 Notwithstanding the foregoing, Rayzor may pursue all rights and remedies available at law or in equity against Denton with respect to (i) any damages incurred by Rayzor as a result of Denton's failure to comply with the insurance requirements provided for in this Contract, and (ii) all obligations under the various closing documents executed at Closing.

#### **ARTICLE IX: MISCELLANEOUS PROVISIONS**

9.1 **Notice**. Unless otherwise specified in a recorded instrument of conveyance of the Easements under this Contract, all notices, demands, requests, and other communications required hereunder shall be in writing, and shall be deemed to be delivered, upon the earlier to occur of (a) the date provided if provided by telephonic facsimile, and (b) the date of the deposit of, in a regularly maintained receptacle for the United States Mail, registered or certified, return receipt requested, postage prepaid, addressed as follows:

**DENTON:**

Richard Casner,  
First Assistant City Attorney  
City of Denton, Texas  
215 E. McKinney Street  
Denton, Texas 76201  
Phone: (940) 349-8333  
Fax: (940) 382-7923  
Richard.Casner@cityofdenton.com

Paul Williamson, Real Estate Manager  
City of Denton, Texas  
Phone: (940) 349-8921  
Fax: (940) 349-8951  
Paul.Williamson@cityofdenton.com

**RAYZOR:**

David Mellina  
Mellina & Larson, P.C.  
1128 Fairmount Avenue  
Fort Worth, Texas 76104  
Phone: (817) 335-1200  
Fax: (817) 335-1221  
Dmellina@mellinalarson.com

Philip A. Baker, Vice President  
The Rayzor Company  
P.O. Box 336  
Denton, Texas 76202  
Phone: (940) 387-8711  
Fax: (940) 566-1591  
PABaker@Rayzorcompany.com

Mike Grim  
Executive Manager  
Power, Legislative and  
Regulatory Affairs  
City of Denton, Texas  
Phone: (940) 349-7565  
Fax: (940) 349-7334  
Mike.grim@cityofdenton.com

With Copies To:

Pamela England, Real Estate Specialist  
City of Denton, Texas  
Phone: (940) 349-8928  
Fax: (940) 349-8951  
Pamela.England@cityofdenton.com

Joanna Cloud  
Republic Title of Texas, Inc.  
550 Bailey Avenue, Suite 100  
Fort Worth, Texas 76107  
Phone: (817) 877-1481  
Fax: (817) 654-0008  
joannacloud@republictitle.com

9.2 **Governing Law and Venue.** This Contract is being executed and delivered and is intended to be performed in the State of Texas, the laws of Texas governing the validity, construction, enforcement and interpretation of this Contract. THIS CONTRACT IS PERFORMABLE IN, AND THE EXCLUSIVE VENUE FOR ANY ACTION BROUGHT WITH RESPECT HERETO, SHALL LIE IN COURTS OF COMPETENT JURISDICTION IN DENTON COUNTY, TEXAS.

9.3 **Entirety and Amendments.** This Contract embodies the entire agreement between the parties and supersedes all prior agreements and understandings, if any, related to the Easements, and may be amended or supplemented only in writing executed and authorized by the party against whom enforcement is sought.

9.4 **Further Assurances.** In addition to the acts and deeds recited in this Contract and contemplated to be performed, executed and/or delivered by Rayzor and Denton, Rayzor and Denton agree to perform, execute and/or deliver, or cause to be performed, executed and/or delivered at the Closing or after the Closing, any further deeds, acts, and assurances as are reasonably necessary to consummate the transactions contemplated hereby. Notwithstanding anything to the contrary contained in this Contract, the provisions of this **Section 9.4** shall survive Closing.

9.5 **Appendices.** Each Appendix which is referenced in, and attached to this Contract, is incorporated in and made a part of this Contract for all purposes.

9.6 **Assigns.** This Contract shall inure to the benefit of and shall bind the parties hereto and their respective legal representatives, successors and assigns; provided, however, no party may assign its rights under this Contract without the prior written consent of the other party.

9.7 **Time of the Essence.** Time is of the essence of this Contract.



9.8 **Taking Prior to Closing.** If the Easements, any real property encumbered by the Easements, or any portion thereof, becomes subject to a taking under the provisions of eminent domain prior to the Closing, Denton shall have the option of: (i) closing this transaction as provided herein (with no reduction in consideration), in which event Rayzor shall assign to Denton at Closing all condemnation proceeds, if any, but only to the extent such proceeds accrue from a taking of the Easements, as a result of such proceeding; or (ii) terminating this Contract, either in its entirety or as to the portion of the Easements subject to or affected by a taking ("Affected Property"), by giving Rayzor written notice thereof within ten (10) business days from the date such party receives notice of such taking, in which event this Contract shall be deemed null and void, either in its entirety or only as to the Affected Property, and the parties hereto shall have no further obligations to or recourse against each other either under this Contract either in its entirety or insofar as the Contract includes the Affected Property, applicable to the election of Denton.

~~Notwithstanding the foregoing, the parties agree that if the Property or any portion thereof becomes subject to eminent domain, condemnation or other takings action brought, initiated or joined by the City of Denton or any governmental authority controlled by the City of Denton or any procedural action materially connected therewith is initiated before Closing ("**City Taking**"), Rayzor may terminate this Contract, in its sole discretion.~~

9.9 **Severability.** In case any one or more of the provisions contained in this Contract shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Contract shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

9.10 **Rule of Construction.** The parties acknowledge that each party and its counsel has reviewed and revised this Contract, and the parties hereby agree that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Contract or any amendments or exhibits hereto.

9.11 **Business Days and Time References.** All references to "days" in this Contract shall be deemed for all purposes to be "business days" provided that the Closing Date as defined at **Section 7.1** herein prevails over any other timeframe which may arguably affect Closing. If the Closing Date or the day of performance of any act required under this Contract falls on a Saturday, Sunday or legal holiday ("All agencies closed" days defined by Texas State Auditor's office), then the Closing Date or the day for such performance, as the case may be, shall be the next following regular business day. References to particular times of day correspond to the time in Denton, Texas.

9.12 **Designation of Reporting Person.** Denton and Rayzor hereby designate the Title Company as the "**Reporting Person**" with respect to the transaction contemplated under this Contract for purposes of complying with the regulations set forth in 26 C.F.R. Section 1.6045-4(e)(5).

9.13 **Counterparts.** This Contract may be executed in multiple counterparts, each of which shall, for all purposes, be deemed an original, but which together shall constitute one and same instrument, and the signature pages from any counterpart may be appended to any other counterpart to assemble fully executed documents, and counterparts of this Contract may also be exchanged via electronic facsimile

machines and any electronic facsimile of any party's signature shall be deemed to be an original signature for all purposes; provided, however, that any signature pages transmitted by electronic facsimile shall nevertheless be followed by the exchange of hard copy originals.

9.14 **Waiver.** The waiver by any party of a breach of any provision of this Contract shall not be deemed a continuing waiver or a waiver of any subsequent breach whether of the same or another provision of this Contract.

9.15 **Delegation of Authority.** Authority to take any actions that are to be, or may be, taken by Denton under this Contract are hereby delegated by Denton, pursuant to approval of this Contract by the City Council of Denton, Texas, to the General Manager of Denton Municipal Electric, or his designee.

9.16 **Expiration of Offer.** The execution of this Contract by Rayzor constitutes, subject to the terms hereof, an irrevocable offer to sell the Easements to Denton. Unless by 5:00 p.m. on November 20, 2013 this Contract is accepted by Denton by action of the City Council of Denton, the offer of this Contract shall be automatically revoked and terminated.

9.17 **Appendices.** The following Appendices are attached hereto and made a part hereof:

- Appendix 1 – Utility Easement A
- Appendix 2 – Utility Easement B
- Appendix 3 – Temporary Work Easement A
- Appendix 4 – Temporary Work Easement B
- Appendix 5 – N-S Utility Easement
- Appendix 5AA – N-S Temporary Work Easement
- Appendix 5A – Transition Segment Easement
- Appendix 6 – 10-Foot Rail Spur Easement
- Appendix 7 – E-W Utility Easement
- Appendix 7A – E-W Temporary Work Easement
- Appendix 8 – ~~Intentionally omitted. Modification Agreement A~~
- Appendix 9 – Modification Agreement B
- Appendix 10 – Modification Agreement C
- Appendix 11 – ~~Intentionally omitted. Modification Agreement D~~
- Appendix 12 – RILMH Surface Waiver

IN WITNESS WHEREOF, this Contract is hereby executed as of the Effective Date.

***[The Balance of This Page Has Been Intentionally  
Left Blank – Signature Pages Follow.]***

**RAYZOR SIGNATURE PAGE**

**RIL:**

RAYZOR INVESTMENTS, LTD., a Texas limited partnership

By: The Rayzor Company, a Texas corporation,  
its general partner

By: \_\_\_\_\_  
Philip A. Baker, Vice President

Executed by RIL on the \_\_\_\_\_ day of \_\_\_\_\_ 2013.

**WESTPARK:**

WESTPARK GROUP, LP, a Texas limited partnership

By: Westpark Group GP, LLC, a Texas limited liability company,  
its general partner

By: The Rayzor Company, a Texas corporation,  
its sole manager

By: \_\_\_\_\_  
Philip A. Baker, Vice President

Executed by Westpark on the \_\_\_\_ day of \_\_\_\_\_ 2013.

**DENTON SIGNATURE PAGE**

**DENTON:**

CITY OF DENTON, a Texas municipal corporation

By: \_\_\_\_\_  
GEORGE C. CAMPBELL, CITY MANAGER

Executed by City of Denton on the \_\_\_\_\_ day of \_\_\_\_\_ 2013.

ATTEST:  
JENNIFER WALTERS, CITY SECRETARY

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

APPROVED AS TO LEGAL FORM:  
ANITA BURGESS, CITY ATTORNEY

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

**RECEIPT OF AGREEMENT BY TITLE COMPANY**

By its execution below, Title Company acknowledges receipt of an executed copy of this Contract. Title Company agrees to comply with, and be bound by, the terms and provisions of this Contract to perform its duties pursuant to the provisions of this Contract and comply with Section 6045(e) of the Internal Revenue Code of 1986, as amended from time to time, and as further set forth in any regulations or forms promulgated thereunder. The Effective Date of the Contract per the terms thereof is \_\_\_\_\_.

TITLE COMPANY:

REPUBLIC TITLE OF TEXAS, INC.

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

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

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

Contract receipt date: \_\_\_\_\_, 2013

**APPENDIX 1**

*Attached hereto and made a part hereof is the Utility Easement A.*

## EASEMENT

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

THE STATE OF TEXAS     §  
  §  
COUNTY OF DENTON     §

**KNOW ALL MEN BY THESE PRESENTS:**

THAT, **Rayzor Investments, Ltd.**, whether one or more, hereinafter called "**Grantor**," for and in consideration of the sum of **ONE DOLLAR and NO CENTS (\$1.00)** and other good and valuable consideration to Grantor in hand paid by the **CITY OF DENTON, TEXAS**, hereinafter called "**Grantee**," the receipt and sufficiency of which are hereby acknowledged, does by these presents grant, bargain, sell and convey to the Grantee, a perpetual easement and the free and uninterrupted use, liberty and privilege of the passage in, along, upon, under and across certain property areas, owned by Grantor and situated in Denton County, Texas, in the \_\_\_\_\_ Survey, Abstract No. \_\_\_\_\_ and being more particularly described and illustrated in **Exhibit "A"** which is attached hereto and made a part hereof by reference as if fully set forth herein (such property areas, collectively, the "**Easement Property**").

And it is further agreed that Grantee, in consideration of the benefits above set out, will have the right to remove from the Easement Property, such fences, buildings, trees and vegetation and other obstructions as may now or hereafter be found upon said Easement Property; but only to the extent necessary to complete the construction of the below described Facilities and maintain same thereafter; provided, however Grantee will take reasonable efforts that are necessary to minimize interference with and removal of any of such items.

The easement rights granted herein are for the purpose of installing, erecting, operating, maintaining and/or servicing:

- (i) one high pressure gas pipeline and/or one low pressure gas pipeline, along with all necessary or desirable appurtenances, attachments, and supporting structures, including without limitation, surface mounted equipment, conduits, cathodic protection equipment and aerial markers, clearly marked and identified every 7500 feet, at right of way crossings and at turns or bends of the pipelines.
- (ii) one or more thermal energy commodities pipelines, consisting of, without limitation, heated and/or chilled water, compressed air and/or steam pipelines and return pipelines related to such thermal energy commodities, and all necessary, convenient, or desirable appurtenances and supporting structures; and
- (iii) one or more underground electric distribution power and/or communication lines, each consisting of a variable number of wires and cables, along with all necessary, convenient or desirable appurtenances, attachments and supporting structures.

As used herein, a "high pressure gas pipeline" shall mean a pipeline that: (1) transports gas to a distribution center, storage facility, or large volume customer that is not down-stream from a distribution center; (2) operates at a hoop stress of 20 percent or more of Specified Minimum Yield Strength (SMYS); or (3) transports gas within a storage field. a pipeline capable of delivering gas at pressures at

~~or above one hundred pounds per square inch gauge (100 psig).~~ A "low pressure gas pipeline" is a pipeline that is not a high pressure gas pipeline.

The matters described in the above paragraphs (i) through (iii) are collectively referred to herein as the "**Facilities**". The easement rights granted herein include the right and privilege at all times of the Grantee herein, it or its agents, employees, workmen and representatives to have ingress, egress, and regress in, along, upon and across said Easement Property for the purpose of making additions to, improvements on and repairs to said Facilities or any part thereof.

Notwithstanding the foregoing, except for surface structures and appurtenances reasonably necessary and ancillary to the operation of the Facilities, including but not limited to manholes and transformers, all Facilities will be located under the surface of said Easement Property at a depth at least 48 inches (for high pressure gas pipeline) or 36 inches (for all other Facilities, including low pressure gas pipelines and CHP commodities pipelines) as measured from the top of the casing, conduit or other applicable upper extremity of the given Facility or Facilities to the existing ground level contour, except and provided that, where said Facilities cross any drainage ditch, creek, slough or other waterway, the same shall be buried at the place of such crossing at least 48 inches (or 36 inches, as applicable) below the bottom of such drainage ditch, creek, slough or waterway.

Grantor hereby further reserves to itself, its successors and assigns, all rights in and to the Easement Property and the right to use and enjoy the surface and subsurface thereof for any and all purposes whatsoever, so long as the exercise of such rights and such use does not unreasonably interfere with the rights herein granted to Grantee. Grantor specifically reserves the right of passage over the Easement Property. Grantor RESERVES AND RETAINS THE RIGHTS BY, TO AND FOR THE BENEFIT OF GRANTOR, ITS SUCCESSORS AND ASSIGNS to use the Easement Property for the location, construction, reconstruction, relocation and operation of such pipelines, transmission lines, drainage lines and other facilities ("**Grantor Facilities**") necessary or desired for the conduct of Grantor's development of the Grantor's adjoining property so long as Grantor's use of such groundspace does not unreasonably interfere with the rights herein granted to Grantee. In the event that Grantor, or Grantor's successors and assigns, chooses to locate Grantor Facilities within the Easement Property pursuant to Grantor's reservation of its right to do so and such Grantor Facilities are reasonably expected to affect the Facilities, then such Grantor Facilities shall require the written approval of the City Engineer, such approval not to be unreasonably withheld, conditioned or delayed. If the installation of the Grantor Facilities disturbs the Facilities (a "**Grantor Installation Disturbance**"), then upon completion of the installation of the Grantor Facilities, Grantor shall promptly restore the Facilities to substantially the same condition as existed immediately prior to the installation of the Grantor Facilities using industry standard materials and methods; provided, however, in remedying any Grantor Installation Disturbance, Grantor will not be required to incur any cost or obligation to improve, expand or upgrade the Facilities to a state or condition exceeding the condition that existed immediately prior to the installation of the Grantor Facilities, including without limitation any improvements, expansions or upgrades to the Facilities necessary to comply with then-current applicable federal, state, municipal, or other laws, statutes, codes, restrictions, regulations, ordinances and orders, which improvements, expansions or upgrades shall be Grantee's responsibility and at its sole cost and expense as set forth hereinbelow.

The grant of easement rights hereunder is made subject to any of the following as they relate to the Easement Property: (i) the prior mineral conveyance recorded in a mineral deed as Document No. 2011-67797 of the Official Records of Denton County, Texas, (ii) easements, restrictions, claims, rights



of way, encroachments or other encumbrances or other matters listed on **Exhibit "B"** attached hereto, (iii) all municipal or other governmental zoning laws, regulations and ordinances and (iv) any other matters affecting this Easement which are of public record or would be disclosed by a physical inspection of the Easement Property and/or an accurate survey of the Easement Property.

The easement for the Easement Property as provided for herein is made on an "AS IS" basis, and Grantee expressly acknowledges that, in consideration of the agreements of Grantor herein, Grantor MAKES NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, OR ARISING BY OPERATION OF LAW. The easement rights conveyed hereunder do not include any right or interest whatsoever in any minerals in, under or that may be produced from the Easement Property.

Grantee, at its sole cost and expense, shall perform or cause to be performed all work necessary in connection with the Facilities (the "**Work**") in a good and workmanlike manner in conformance with sound and acceptable engineering practices as expeditiously as possible. In performing the Work or causing the Work to be performed, Grantee shall make adequate provisions for the safety and convenience of Grantor, its agents, representatives, employees, licensees, and invitees, and shall cause all of the Work to be cleaned up promptly in order to minimize disruption or inconvenience, and coordinate the Work with Grantor's contractors and subcontractors. Grantee shall at all times construct, keep, maintain, use, operate or remove the Facilities in a safe manner and in full compliance with all applicable federal, state, municipal, or other laws, statutes, codes, restrictions, regulations, ordinances and orders. **Grantor shall have no obligation, monetary or non-monetary, to maintain the Easement Property.**

This easement, together with the provisions of this grant, shall constitute a covenant running with the land for the benefit of Grantee, its successors and assigns. The rights hereby granted may ~~not~~ be assigned, ~~either in whole or in part, either in whole or in part, without Grantor's prior written consent, which consent shall not be unreasonably withheld.~~

**TO HAVE AND TO HOLD** unto the said City of Denton, Texas as aforesaid for the purposes aforesaid the premises above described.

**Witness** my hand to be effective this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

Rayzor Investments, Ltd., a Texas limited partnership

By: The Rayzor Company, a Texas corporation, its general partner

By: \_\_\_\_\_  
Philip A. Baker, Vice President

**ACKNOWLEDGMENT**

**THE STATE OF TEXAS     §**  
**§**  
**COUNTY OF DENTON       §**

This instrument was acknowledged before me on this the \_\_\_\_\_ day of \_\_\_\_\_, 2013, by Philip A. Baker, Vice President of The Rayzor Company, a Texas corporation, as general partner of Rayzor Investments, Ltd., a Texas limited partnership, on behalf of said limited partnership.

\_\_\_\_\_  
Notary Public - State of Texas

My commission expires:\_\_\_\_\_

After recording, please return to:  
City of Denton  
Utilities Engineering Department  
901-A Texas Street  
Denton, Texas 76209  
Attention: Paul Williamson

**EXHIBIT "A"**

Legal Description and Survey Illustrations of Easement Property

See attached descriptions.

**EXHIBIT "B"**

List of specific exceptions attached hereto.

**APPENDIX 2**

*Attached hereto and made a part hereof is the Utility Easement B.*

## EASEMENT

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

THE STATE OF TEXAS     §  
  §  
COUNTY OF DENTON     §

### KNOW ALL MEN BY THESE PRESENTS:

THAT, **Westpark Group, LP**, whether one or more, hereinafter called "**Grantor**," for and in consideration of the sum of **ONE DOLLAR and NO CENTS (\$1.00)** and other good and valuable consideration to Grantor in hand paid by the **CITY OF DENTON, TEXAS**, hereinafter called "**Grantee**," the receipt and sufficiency of which are hereby acknowledged, does by these presents grant, bargain, sell and convey to the Grantee, a perpetual easement and the free and uninterrupted use, liberty and privilege of the passage in, along, upon, under and across certain property areas, owned by Grantor and situated in Denton County, Texas, **in the \_\_\_\_\_ Survey, Abstract No. \_\_\_\_\_**, and being more particularly described and illustrated in **Exhibit "A"** which is attached hereto and made a part hereof by reference as if fully set forth herein (such property areas, collectively, the "**Easement Property**").

And it is further agreed that Grantee, in consideration of the benefits above set out, will have the right to remove from the Easement Property, such fences, buildings, trees and vegetation and other obstructions as may now or hereafter be found upon said Easement Property; but only to the extent necessary to complete the construction of the below described Facilities and maintain same thereafter; provided, however Grantee will take reasonable efforts that are necessary to minimize interference with and removal of any of such items.

The easement rights granted herein are for the purposes of installing, erecting, operating, maintaining and/or servicing:

- (i) one underground low pressure gas pipeline, along with all necessary or desirable appurtenances, attachments, and supporting structures, including without limitation, surface mounted equipment, conduits, cathodic protection equipment and aerial markers.
- (ii) one or more underground electric distribution lines and/or communication lines, each consisting of a variable number of wires and cables, along with all necessary, convenient or desirable appurtenances.

As used herein, a "low pressure gas pipeline" shall mean any pipeline that is not a high pressure gas pipeline. A high pressure gas pipeline is a pipeline that: (1) transports gas to a distribution center, storage facility, or large volume customer that is not down-stream from a distribution center; (2) operates at a hoop stress of 20 percent or more of Specified Minimum Yield Strength (SMYS); or (3) transports gas within a storage field.

The matters described in the above paragraph (i) are collectively referred to herein as the "**Facilities**". The easement rights granted herein include the right and privilege at all times of the Grantee herein, it or its agents, employees, workmen and representatives to have ingress, egress, and regress in, along, upon and across said Easement Property for the purpose of making additions to, improvements on and repairs to said Facilities or any part thereof.

Notwithstanding the foregoing, except for surface structures and appurtenances reasonably necessary and ancillary to operation of the low pressure gas pipeline, all Facilities will be located under the surface of said Easement Property at a depth of at least 36 inches as measured from the top of the casing, conduit or other applicable upper extremity of the given Facility or Facilities to the existing ground level contour, except and provided that, where said Facilities cross any drainage ditch, creek, slough or other waterway, the same shall be buried at the place of such crossing at least 36 inches below the bottom of such drainage ditch, creek, slough or other waterway.

Grantor hereby further reserves to itself, its successors and assigns, all rights in and to the Easement Property and the right to use and enjoy the surface and subsurface thereof for any and all purposes whatsoever, so long as the exercise of such rights and such use does not unreasonably interfere with the rights herein granted to Grantee. Grantor specifically reserves the right of passage over the Easement Property. Grantor RESERVES AND RETAINS THE RIGHTS BY, TO AND FOR THE BENEFIT OF GRANTOR, ITS SUCCESSORS AND ASSIGNS to use the Easement Property for the location, construction, reconstruction, relocation and operation of such pipelines, transmission lines, drainage lines and other facilities ("**Grantor Facilities**") necessary or desired for the conduct of Grantor's development of the Grantor's adjoining property so long as Grantor's use of such groundspace does not unreasonably interfere with the rights herein granted to Grantee. In the event that Grantor, or Grantor's successors and assigns, chooses to locate Grantor Facilities within the Easement Property pursuant to Grantor's reservation of its right to do so and such Grantor Facilities are reasonably expected to affect the Facilities, then such Grantor Facilities shall require the written approval of the City Engineer, such approval not to be unreasonably withheld, conditioned or delayed. If the installation of the Grantor Facilities disturbs the Facilities (a "**Grantor Installation Disturbance**"), then upon completion of the installation of the Grantor Facilities, Grantor shall promptly restore the Facilities to substantially the same condition as existed immediately prior to the installation of the Grantor Facilities using industry standard materials and methods; provided, however, in remedying any Grantor Installation Disturbance, Grantor will not be required to incur any cost or obligation to improve, expand or upgrade the Facilities to a state or condition exceeding the condition that existed immediately prior to the installation of the Grantor Facilities, including without limitation any improvements, expansions or upgrades to the Facilities necessary to comply with then-current applicable federal, state, municipal, or other laws, statutes, codes, restrictions, regulations, ordinances and orders, which improvements, expansions or upgrades shall be Grantee's responsibility and at its sole cost and expense as set forth hereinbelow.

The grant of easement rights hereunder is made subject to any of the following as they relate to the Easement Property: (i) the prior mineral conveyances recorded in mineral deeds as Document No. 2011-67794 and Document No. 2011-67798 of the Official Records of Denton County, Texas, (ii) easements, restrictions, claims, rights of way, encroachments or other encumbrances or other matters listed on **Exhibit "B"** attached hereto, (iii) all municipal or other governmental zoning laws, regulations and ordinances and (iv) any other matters affecting this Easement which are of public record or would be disclosed by a physical inspection of the Easement Property and/or an accurate survey of the Easement Property.

The easement for the Easement Property as provided for herein is made on an "AS IS" basis, and Grantee expressly acknowledges that, in consideration of the agreements of Grantor herein, Grantor MAKES NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, OR ARISING BY OPERATION OF LAW. The easement rights conveyed hereunder do not include any right or interest whatsoever in any minerals in, under or that may be produced from the Easement Property.

Grantee, at its sole cost and expense, shall perform or cause to be performed all work necessary in connection with the Facilities (the "**Work**") in a good and workmanlike manner in conformance with sound and acceptable engineering practices as expeditiously as possible. In performing the Work or causing the Work to be performed, Grantee shall make adequate provisions for the safety and convenience of Grantor, its agents, representatives, employees, licensees, and invitees, and shall cause all of the Work to be cleaned up promptly in order to minimize disruption or inconvenience, and coordinate the Work with Grantor's contractors and subcontractors. Grantee shall at all times construct, keep, maintain, use, operate or remove the Facilities in a safe manner and in full compliance with all applicable federal, state, municipal, or other laws, statutes, codes, restrictions, regulations, ordinances and orders. **Grantor shall have no obligation, monetary or non-monetary, to maintain the Easement Property.**

This easement, together with the provisions of this grant, shall constitute a covenant running with the land for the benefit of Grantee, its successors and assigns. The rights hereby granted may ~~not~~ be assigned, either in whole or in part, ~~without Grantor's prior written consent, which consent shall not be unreasonably withheld.~~

**TO HAVE AND TO HOLD** unto the said City of Denton, Texas as aforesaid for the purposes aforesaid the premises above described.

**Witness** my hand to be effective this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

Westpark Group, LP, a Texas limited partnership

By: Westpark Group GP, LLC, a Texas limited liability company,  
its general partner

By: The Rayzor Company, a Texas  
corporation, its sole member

By: \_\_\_\_\_  
Philip A. Baker, Vice President

#### **ACKNOWLEDGMENT**

**THE STATE OF TEXAS     §**  
**§**  
**COUNTY OF DENTON     §**

This instrument was acknowledged before me on \_\_\_\_\_, 2013, by Philip A. Baker, Vice President of The Rayzor Company, a Texas corporation, sole member of Westpark Group GP, LLC, a Texas limited liability company, general partner of Westpark Group, LP, a Texas limited partnership, on behalf of said corporation.

\_\_\_\_\_  
Notary Public - State of Texas  
My commission expires: \_\_\_\_\_



After recording, please return to:  
City of Denton  
Utilities Engineering Department  
901-A Texas Street  
Denton, Texas 76209  
Attention: Paul Williamson

**EXHIBIT "A"**

Legal Description and Survey Illustrations of Easement Property

See attached descriptions.

**EXHIBIT "B"**

List of specific exceptions attached hereto.

**APPENDIX 3**

*Attached hereto and made a part hereof is the Temporary Work Easement A.*



Property, Grantee shall remove all debris, surplus material, and construction equipment and leave the property substantially equal in appearance to the condition existing prior to construction, except for any fences, signage, buildings, other obstructions and/or trees and shrubs that were removed pursuant to the rights granted herein.

The term of this grant shall expire four years after the Effective Date hereof as set forth below (the fourth anniversary of Effective Date, the "Expiration Date"). On the Expiration Date, this easement and all rights and interests granted hereby will automatically terminate for all purposes; provided, however, that upon request by Grantor at any time after the Expiration Date, Grantee shall nonetheless execute a release of easement instrument and record the same in the Official Records of Denton County, Texas in form reasonably satisfactory to Grantor to further evidence and confirm such termination.

The easement rights conveyed hereunder do not include any right or interest whatsoever in any minerals in, under or that may be produced from the Property.

The grant of easement rights hereunder is made subject to any of the following as they relate to the Property: (i) the prior mineral conveyances recorded in a mineral deed as Document No. 2011-67797 of the Official Records of Denton County, Texas, (ii) easements, restrictions, claims, rights of way, encroachments or other encumbrances or other matters listed on **Exhibit "B"** attached hereto, (iii) all municipal or other governmental zoning laws, regulations and ordinances and (iv) any other matters affecting this Easement which are of public record or would be disclosed by a physical inspection of the Property and/or an accurate survey of the Property.

TO HAVE AND TO HOLD unto the said City of Denton, Texas as aforesaid for the purposes aforesaid the premises above described.

Witness my hand, to be effective this the \_\_\_\_\_ day of \_\_\_\_\_, 2013 ("**Effective Date**").

GRANTOR:

RAYZOR INVESTMENTS, LTD., a Texas limited partnership

By: The Rayzor Company, a Texas corporation, its general partner

By: \_\_\_\_\_  
Philip A. Baker, Vice President

ACKNOWLEDGMENT

THE STATE OF TEXAS       §  
  §  
COUNTY OF DENTON       §

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 2013, by Philip A. Baker, Vice President of The Rayzor Company, a Texas corporation, general partner of Rayzor Investments, LTD., a Texas limited partnership, on behalf of said corporation.

\_\_\_\_\_  
Notary Public, in and for the State of Texas  
My Commission Expires:\_\_\_\_\_

AFTER RECORDING RETURN TO:  
City of Denton – Engineering Department  
901-A Texas Street  
Denton, Texas 76209  
Attn: Paul Williamson



**Exhibit "A"**

*Description of the temporary easement Property attached hereto*

**Exhibit "B"**

*List of specific exceptions.*

**APPENDIX 4**

*Attached hereto and made a part hereof is the Temporary Work Easement B.*



Property, Grantee shall remove all debris, surplus material, and construction equipment and leave the property substantially equal in appearance to the condition existing prior to construction, except for any fences, signage, buildings, other obstructions and/or trees and shrubs that were removed pursuant to the rights granted herein.

The term of this grant shall expire four years after the Effective Date hereof as set forth below (the fourth anniversary of Effective Date, the "Expiration Date"). On the Expiration Date, this easement and all rights and interests granted hereby will automatically terminate for all purposes; provided, however, that upon request by Grantor at any time after the Expiration Date, Grantee shall nonetheless execute a release of easement instrument and record the same in the Official Records of Denton County, Texas in form reasonably satisfactory to Grantor to further evidence and confirm such termination.

The easement rights conveyed hereunder do not include any right or interest whatsoever in any minerals in, under or that may be produced from the Property.

The grant of easement rights hereunder is made subject to any of the following as they relate to the Property: (i) the prior mineral conveyances recorded in mineral deeds as Document No. 2011-67794 and Document No. 2011-67798 of the Official Records of Denton County, Texas, (ii) easements, restrictions, claims, rights of way, encroachments or other encumbrances or other matters listed on **Exhibit "B"** attached hereto, (iii) all municipal or other governmental zoning laws, regulations and ordinances and (iv) any other matters affecting this Easement which are of public record or would be disclosed by a physical inspection of the Property and/or an accurate survey of the Property.

TO HAVE AND TO HOLD unto the said City of Denton, Texas as aforesaid for the purposes aforesaid the premise above described.

Witness my hand, to be effective this \_\_\_\_\_ day of \_\_\_\_\_, 2013 ("**Effective Date**").

GRANTOR:

WESTPARK GROUP, LP, a Texas limited partnership

By: Westpark Group GP, LLC, a Texas limited liability company, its general partner

By: The Rayzor Company, a Texas corporation, its sole member

By: \_\_\_\_\_  
Philip A. Baker, Vice President

ACKNOWLEDGMENT

THE STATE OF TEXAS       §  
  §  
COUNTY OF DENTON       §

This instrument was acknowledged before me on \_\_\_\_\_, 2013,  
by Philip A. Baker, Vice President of The Rayzor Company, a Texas corporation, sole member  
of Westpark Group GP, LLC, a Texas limited liability company, general partner of Westpark  
Group, LP, a Texas limited partnership, on behalf of said corporation.

\_\_\_\_\_  
Notary Public, in and for the State of Texas  
My Commission Expires: \_\_\_\_\_

AFTER RECORDING RETURN TO:  
City of Denton – Engineering Department  
901-A Texas Street  
Denton, Texas 76209  
Attn: Paul Williamson

**Exhibit "A"**

*Description of the temporary easement Property attached hereto.*

**Exhibit "B"**

*List of specific exceptions.*



**APPENDIX 5**

*Attached hereto and made a part hereof is the N-S Utility Easement.*

**EASEMENT**

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

**THE STATE OF TEXAS       §**  
**§**                   **KNOW ALL MEN BY THESE PRESENTS:**  
**COUNTY OF DENTON       §**

THAT, **Westpark Group, L.P.**, whether one or more, hereinafter called "**Grantor**," for and in consideration of the sum of **ONE DOLLAR and NO CENTS (\$1.00)** and other good and valuable consideration to Grantor in hand paid by the **City of Denton, Texas**, hereinafter called "**Grantee**," the receipt and sufficiency of which are hereby acknowledged, does by these presents grant, bargain, sell and convey to the Grantee, a perpetual easement and the free and uninterrupted use, liberty and privilege of the passage in, along, upon, under and across certain property areas, owned by Grantor and situated in Denton County, Texas, **in the \_\_\_\_\_ Survey, Abstract No. \_\_\_\_\_** and being more particularly described and illustrated in **Exhibit "A"** which is attached hereto and made a part hereof by reference as if fully set forth herein (such property areas, collectively, the "**Easement Property**").

And it is further agreed that Grantee, in consideration of the benefits above set out, will have the right to remove from the Easement Property, such fences, buildings, trees and vegetation and other obstructions as may now or hereafter be found upon said Easement Property; but only to the extent necessary to complete the construction of the below described Facilities and maintain same thereafter; provided, however Grantee will take reasonable efforts that are necessary to minimize interference with and removal of any of such items.

The easement rights granted herein are for the purpose of erecting, installing, operating, maintaining and servicing thereon:

- (i) one or more underground and/or above ground electric transmission and/or distribution power and/or communication lines, each consisting of a variable number of wires and cables, along with all necessary, convenient or desirable appurtenances, attachments and supporting structures, including without limitation, foundations, guy wires and guy anchorages, and structural components;
- (ii) one high pressure gas pipeline and/or one low pressure gas pipeline, along with all necessary or desirable appurtenances, attachments, and supporting structures, including without limitation, surface mounted equipment, conduits, cathodic protection equipment and aerial markers; and
- (iii) one or more thermal energy commodities pipelines, consisting of, without limitation, heated and/or chilled water, compressed air and/or steam pipelines and return pipelines related to such thermal energy commodities, and all necessary, convenient, or desirable appurtenances and supporting structures.

As used herein, a "high pressure gas pipeline" shall mean a pipeline that: (1) transports gas to a distribution center, storage facility, or large volume customer that is not down-stream from a distribution center; (2) operates at a hoop stress of 20 percent or more of Specified Minimum Yield Strength (SMYS); or (3) transports gas within a storage field, capable of delivering gas at pressures at or above

~~one hundred pounds per square inch gauge (100 psig).~~ A "low pressure gas pipeline" is a pipeline that is not a high pressure gas pipeline.

The matters described in paragraphs (i) through (iii), above are collectively referred to herein as the "**Facilities**". The easement rights granted herein include the right and privilege at all times of the Grantee, it or its agents, employees, workmen and representatives to have ingress, egress, and regress in, along, upon and across said Easement Property for the purpose of making additions to, improvements on and repairs to said Facilities or any part thereof.

Notwithstanding the foregoing, except for (i) poles and structures affixed to the surface of the ground in order to provide direct structural support reasonably necessary and ancillary to operation of aerial Facilities and (ii) surface structures and appurtenances reasonably necessary and ancillary to the operation of the underground Facilities, all Facilities will be located either (a) under the surface of said Easement Property at a depth of at least 48 inches (for high pressure gas pipeline) or 36 inches (for all other Facilities, including low pressure gas pipelines and thermal energy commodities pipelines) as measured from the top of the casing, conduit or other applicable upper extremity of the given Facility or Facilities to the existing ground level contour, except and provided that, where said Facilities cross any drainage ditch, creek, slough or other waterway, the same shall be buried at the place of such crossing at least 48 inches (or 36 inches, as applicable) below the bottom of such drainage ditch, creek, slough or other waterway or (b) above said Easement Property at or above a vertical height that conforms to Denton Municipal Electric Standards and that meets or exceeds minimum vertical heights required by the National Electric Safety Code; provided, however, that, all surface and subsurface uses by Grantee are prohibited in the below defined Access Area, as further provided herein.

Grantor hereby further reserves to itself, its successors and assigns, all rights in and to the Easement Property and the right to use and enjoy the surface and subsurface thereof for any and all purposes whatsoever, so long as the exercise of such rights and such use does not unreasonably interfere with the rights herein granted to Grantee. Grantor specifically reserves the right of passage over the Easement Property. Grantor RESERVES AND RETAINS THE RIGHTS BY, TO AND FOR THE BENEFIT OF GRANTOR, ITS SUCCESSORS AND ASSIGNS to use the Easement Property for the location, construction, reconstruction, relocation and operation of such pipelines, transmission lines, drainage lines and other facilities ("**Grantor Facilities**") necessary or desired for the conduct of Grantor's development of the Grantor's adjoining property so long as Grantor's use of such groundspace does not unreasonably interfere with the rights herein granted to Grantee. In the event that Grantor, or Grantor's successors and assigns, chooses to locate Grantor Facilities within the Easement Property pursuant to Grantor's reservation of its right to do so and such Grantor Facilities are reasonably expected to affect the Facilities, then such Grantor Facilities shall require the written approval of the City Engineer, such approval not to be unreasonably withheld, conditioned or delayed. If the installation of the Grantor Facilities disturbs the Facilities (a "**Grantor Installation Disturbance**"), then upon completion of the installation of the Grantor Facilities, Grantor shall promptly restore the Facilities to substantially the same condition as existed immediately prior to the installation of the Grantor Facilities using industry standard materials and methods; provided, however, in remedying any Grantor Installation Disturbance, Grantor will not be required to incur any cost or obligation to improve, expand or upgrade the Facilities to a state or condition exceeding the condition that existed immediately prior to the installation of the Grantor Facilities, including without limitation any improvements, expansions or upgrades to the Facilities necessary to comply with then-current applicable federal, state, municipal, or other laws, statutes, codes, restrictions, regulations, ordinances and orders, which improvements, expansions or upgrades shall be Grantee's responsibility and at its sole cost and expense as set forth hereinbelow.

Without limitation to the foregoing reservations, Grantor specifically reserves for itself, its successors, assigns and licensees, the right to access, use and travel on, over, across and through the easternmost thirty (30) feet of the Easement Property consisting of a strip that extends southward from the north boundary of the Easement property along and adjacent to the east boundary of the Easement Property and ending at the south boundary of the Easement Property (that 30-foot strip, the "**Access Area**") for pedestrian and vehicular ingress and egress to and from the pad site areas lying adjacent to the Easement Property, including vehicular use of eighteen wheel vehicles, other heavy load vehicles and other transportation vehicles and equipment necessary or desired by Grantor, its successors, assigns or licensees relative to the pad site operations.

Except as otherwise provided herein, All surface uses and all sub-surface uses are prohibited on, in, under, through, or in any way touching the surface or sub-surface of the Access Area. Grantee, its successors and assigns, and Grantee's agents, employees, representatives, contractors or designees are prohibited from all surface uses and are prohibited from constructing, installing, affixing, erecting, locating or placing any structures on the surface of the Access Area and below the surface of the Access Area; provided, that (i) overhanging aerial lines, wires and other structures may be located above the surface of the Access Area at or above a vertical height that conforms to Denton Municipal Electric Standards and that meets or exceeds minimum vertical heights required by the National Electric Safety Code; and (ii) roughly perpendicular underground crossings of the Facilities may be located below the surface of the Access Area.

The grant of easement rights hereunder is made subject to any of the following as they relate to the Easement Property: (i) the prior mineral conveyances recorded in mineral deeds as Document No. 2011-67794 and Document No. 2011-67798 of the Official Records of Denton County, Texas, (ii) easements, restrictions, claims, rights of way, encroachments or other encumbrances or other matters listed on **Exhibit "B"** attached hereto, (iii) all municipal or other governmental zoning laws, regulations and ordinances and (iv) any other matters affecting this Easement which are of public record or would be disclosed by a physical inspection of the Easement Property and/or an accurate survey of the Easement Property.

The easement for the Easement Property as provided for herein is made on an "AS IS" basis, and Grantee expressly acknowledges that, in consideration of the agreements of Grantor herein, Grantor MAKES NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, OR ARISING BY OPERATION OF LAW. The easement rights conveyed hereunder do not include any right or interest whatsoever in any minerals in, under or that may be produced from the Easement Property.

Grantee, at its sole cost and expense, shall perform or cause to be performed all work necessary in connection with the Facilities (the "**Work**") in a good and workmanlike manner in conformance with sound and acceptable engineering practices as expeditiously as possible. In performing the Work or causing the Work to be performed, Grantee shall make adequate provisions for the safety and convenience of Grantor, its agents, representatives, employees, licensees, and invitees, and shall cause all of the Work to be cleaned up promptly in order to minimize disruption or inconvenience, and coordinate the Work with Grantor's contractors and subcontractors. Grantee shall at all times construct, keep, maintain, use, operate or remove the Facilities in a safe manner and in full compliance with all applicable federal, state, municipal, or other laws, statutes, codes, restrictions, regulations, ordinances and orders. **Grantor shall have no obligation, monetary or non-monetary, to maintain the Easement Property.**

This easement, together with the provisions of this grant, shall constitute a covenant running with the land for the benefit of Grantee, its successors and assigns. The rights hereby granted may ~~not~~

be assigned, either in whole or in part, ~~without Grantor's prior written consent, which consent shall not be unreasonably withheld.~~

**TO HAVE AND TO HOLD** unto the City of Denton, Texas as aforesaid for the purposes aforesaid the premises above described.

**Witness** my hand to be effective this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

Westpark Group, LP, a Texas limited partnership

By: Westpark Group GP, LLC, a Texas limited liability company,  
its general partner

By: The Rayzor Company, a Texas  
corporation, its sole member

By: \_\_\_\_\_  
Philip A. Baker, Vice President

**ACKNOWLEDGMENT**

**THE STATE OF TEXAS     §**  
**§**  
**COUNTY OF DENTON     §**

This instrument was acknowledged before me on \_\_\_\_\_, 2013, by Philip A. Baker, Vice President of The Rayzor Company, a Texas corporation, sole member of Westpark Group GP, LLC, a Texas limited liability company, general partner of Westpark Group, L.P., a Texas limited partnership, on behalf of said corporation.

\_\_\_\_\_  
Notary Public - State of Texas

My commission expires: \_\_\_\_\_

After recording, please return to:  
City of Denton  
Utilities Engineering Department  
901-A Texas Street  
Denton, Texas 76209  
Attention: Paul Williamson

**EXHIBIT "A"**

Legal Description and Survey Illustrations of Easement Property

See attached descriptions.

**EXHIBIT "B"**

List of specific exceptions attached hereto.

**APPENDIX 5AA**

*Attached hereto and made a part hereof is the N-S Temporary Work Easement.*





Property, Grantee shall remove all debris, surplus material, and construction equipment and leave the property substantially equal in appearance to the condition existing prior to construction, except for any fences, signage, buildings, other obstructions and/or trees and shrubs that were removed pursuant to the rights granted herein.

The term of this grant shall expire four years after the Effective Date hereof as set forth below (the fourth anniversary of Effective Date, the "Expiration Date"). On the Expiration Date, this easement and all rights and interests granted hereby will automatically terminate for all purposes; provided, however, that upon request by Grantor at any time after the Expiration Date, Grantee shall nonetheless execute a release of easement instrument and record the same in the Official Records of Denton County, Texas in form reasonably satisfactory to Grantor to further evidence and confirm such termination.

The easement rights conveyed hereunder do not include any right or interest whatsoever in any minerals in, under or that may be produced from the Property.

The grant of easement rights hereunder is made subject to any of the following as they relate to the Property: (i) the prior mineral conveyances recorded in mineral deeds as Document No. 2011-67794 and Document No. 2011-67798 of the Official Records of Denton County, Texas, (ii) easements, restrictions, claims, rights of way, encroachments or other encumbrances or other matters listed on **Exhibit "B"** attached hereto, (iii) all municipal or other governmental zoning laws, regulations and ordinances and (iv) any other matters affecting this Easement which are of public record or would be disclosed by a physical inspection of the Property and/or an accurate survey of the Property.

TO HAVE AND TO HOLD unto the said City of Denton, Texas as aforesaid for the purposes aforesaid the premise above described.

Witness my hand, to be effective this \_\_\_\_\_ day of \_\_\_\_\_, 2013 ("**Effective Date**").

GRANTOR:

WESTPARK GROUP, LP, a Texas limited partnership

By: Westpark Group GP, LLC, a Texas limited liability company, its general partner

By: The Rayzor Company, a Texas corporation, its sole member

By: \_\_\_\_\_  
Philip A. Baker, Vice President

ACKNOWLEDGMENT

THE STATE OF TEXAS       §  
  §  
COUNTY OF DENTON       §

This instrument was acknowledged before me on \_\_\_\_\_, 2013,  
by Philip A. Baker, Vice President of The Rayzor Company, a Texas corporation, sole member  
of Westpark Group GP, LLC, a Texas limited liability company, general partner of Westpark  
Group, LP, a Texas limited partnership, on behalf of said corporation.

\_\_\_\_\_  
Notary Public, in and for the State of Texas  
My Commission Expires: \_\_\_\_\_

AFTER RECORDING RETURN TO:  
City of Denton – Engineering Department  
901-A Texas Street  
Denton, Texas 76209  
Attn: Paul Williamson

**Exhibit "A"**

*Description of the temporary easement Property attached hereto*

**Exhibit "B"**

*List of specific exceptions.*

**APPENDIX 5A**

*Attached hereto and made a part hereof is the Transition Segment Easement.*

**EASEMENT**

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

**THE STATE OF TEXAS     §  
  §  
COUNTY OF DENTON     §**

**KNOW ALL MEN BY THESE PRESENTS:**

THAT, **Westpark Group, LP**, whether one or more, hereinafter called "**Grantor**," for and in consideration of the sum of **ONE DOLLAR and NO CENTS (\$1.00)** and other good and valuable consideration to Grantor in hand paid by the **City of Denton, Texas**, hereinafter called "**Grantee**," the receipt and sufficiency of which are hereby acknowledged, does by these presents grant, bargain, sell and convey to the Grantee, a perpetual easement and the free and uninterrupted use, liberty and privilege of the passage in, along, upon, under and across certain property areas, owned by Grantor and situated in Denton County, Texas, **in the \_\_\_\_\_ Survey, Abstract No. \_\_\_\_\_** and being more particularly described and illustrated in **Exhibit "A"** which is attached hereto and made a part hereof by reference as if fully set forth herein (such property areas, collectively, the "**Easement Property**").

And it is further agreed that Grantee, in consideration of the benefits above set out, will have the right to remove from the Easement Property, such fences, buildings, trees and vegetation and other obstructions as may now or hereafter be found upon said Easement Property; but only to the extent necessary to complete the construction of the below described Facilities and maintain same thereafter; provided, however Grantee will take reasonable efforts that are necessary to minimize interference with and removal of any of such items.

The easement rights granted herein are for the purpose of erecting, installing, operating, maintaining and servicing thereon:

- (i) one or more underground and/or above ground electric transmission and/or distribution power and/or communication lines, each consisting of a variable number of wires and cables, along with all necessary, convenient or desirable appurtenances, attachments and supporting structures, including without limitation, foundations, guy wires and guy anchorages, and structural components;
- (ii) one or more thermal energy commodities pipelines, consisting of, without limitation, heated and/or chilled water, compressed air and/or steam pipelines and return pipelines related to such thermal energy commodities, and all necessary, convenient, or desirable appurtenances and supporting structures; and
- (iii) one high pressure gas pipeline and/or one low pressure gas pipeline, along with all necessary or desirable appurtenances, attachments, and supporting structures, including without limitation, surface mounted equipment, conduits, cathodic protection equipment and aerial markers, clearly marked and identified every 75500 feet, at right of way crossings and at turns or bends of the pipeline(s).

As used herein, a "high pressure gas pipeline" shall mean a pipeline that: (1) transports gas to a distribution center, storage facility, or large volume customer that is not down-stream from a distribution center; (2) operates at a hoop stress of 20 percent or more of Specified Minimum Yield Strength (SMYS); or (3) transports gas within a storage field. A "low pressure gas pipeline" is a pipeline that is not a high pressure gas pipeline.

The matters described in paragraphs (i) through (iii), above are collectively referred to herein as the "**Facilities**". The easement rights granted herein include the right and privilege at all times of the Grantee, it or its agents, employees, workmen and representatives to have ingress, egress, and regress in, along, upon and across said Easement Property for the purpose of making additions to, improvements on and repairs to said Facilities or any part thereof.

Notwithstanding the foregoing, except for (i) poles and structures affixed to the surface of the ground in order to provide direct structural support to aerial Facilities and (ii) surface structures and appurtenances reasonably necessary and ancillary to the operation of the underground Facilities, all Facilities will be located either (a) under the surface of said Easement Property at a depth of at least 48 inches (for high pressure gas pipeline) or 36 inches (for all other Facilities, including low pressure gas pipelines and CHP commodities pipelines) as measured from the top of the casing, conduit or other applicable upper extremity of the given Facility or Facilities to the existing ground level contour, except and provided that, where said Facilities cross any drainage ditch, creek, slough or other waterway, the same shall be buried at the place of such crossing at least 48 inches (or 36 inches, as applicable) below the bottom of such drainage ditch, creek, slough or other waterway or (b) above said Easement Property at or above a vertical height that conforms to Denton Municipal Electric Standards and that meets or exceeds minimum vertical heights required by the National Electric Safety Code.

Grantor hereby further reserves to itself, its successors and assigns, all rights in and to the Easement Property and the right to use and enjoy the surface and subsurface thereof for any and all purposes whatsoever, so long as the exercise of such rights and such use does not unreasonably interfere with the rights herein granted to Grantee. Grantor specifically reserves the right of passage over the Easement Property. Grantor RESERVES AND RETAINS THE RIGHTS BY, TO AND FOR THE BENEFIT OF GRANTOR, ITS SUCCESSORS AND ASSIGNS to use the Easement Property for the location, construction, reconstruction, relocation and operation of such pipelines, transmission lines, drainage lines and other facilities ("**Grantor Facilities**") necessary or desired for the conduct of Grantor's development of the Grantor's adjoining property so long as Grantor's use of such groundspace does not unreasonably interfere with the rights herein granted to Grantee. In the event that Grantor, or Grantor's successors and assigns, chooses to locate Grantor Facilities within the Easement Property pursuant to Grantor's reservation of its right to do so and such Grantor Facilities are reasonably expected to affect the Facilities, then such Grantor Facilities shall require the written approval of the City Engineer, such approval not to be unreasonably withheld, conditioned or delayed. If the installation of the Grantor Facilities disturbs the Facilities (a "**Grantor Installation Disturbance**"), then upon completion of the installation of the Grantor Facilities, Grantor shall promptly restore the Facilities to substantially the same condition as existed immediately prior to the installation of the Grantor Facilities using industry standard materials and methods; provided, however, in remedying any Grantor Installation Disturbance, Grantor will not be required to incur any cost or obligation to improve, expand or upgrade the Facilities to a state or condition exceeding the condition that existed immediately prior to the installation of the Grantor Facilities, including without limitation any improvements, expansions or upgrades to the Facilities necessary to comply with then-current applicable federal, state, municipal, or other laws, statutes, codes, restrictions, regulations, ordinances



and orders, which improvements, expansions or upgrades shall be Grantee's responsibility and at its sole cost and expense as set forth hereinbelow.

The grant of easement rights hereunder is made subject to any of the following as they relate to the Easement Property: (i) the prior mineral conveyances recorded in mineral deeds as Document No. 2011-67794 and Document No. 2011-67798 of the Official Records of Denton County, Texas, (ii) easements, restrictions, claims, rights of way, encroachments or other encumbrances or other matters listed on **Exhibit "B"** attached hereto, (iii) all municipal or other governmental zoning laws, regulations and ordinances and (iv) any other matters affecting this Easement which are of public record or would be disclosed by a physical inspection of the Easement Property and/or an accurate survey of the Easement Property.

The easement for the Easement Property as provided for herein is made on an "AS IS" basis, and Grantee expressly acknowledges that, in consideration of the agreements of Grantor herein, Grantor MAKES NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, OR ARISING BY OPERATION OF LAW. The easement rights conveyed hereunder do not include any right or interest whatsoever in any minerals in, under or that may be produced from the Easement Property.

Grantee, at its sole cost and expense, shall perform or cause to be performed all work necessary in connection with the Facilities (the "**Work**") in a good and workmanlike manner in conformance with sound and acceptable engineering practices as expeditiously as possible. In performing the Work or causing the Work to be performed, Grantee shall make adequate provisions for the safety and convenience of Grantor, its agents, representatives, employees, licensees, and invitees, and shall cause all of the Work to be cleaned up promptly in order to minimize disruption or inconvenience, and coordinate the Work with Grantor's contractors and subcontractors. Grantee shall at all times construct, keep, maintain, use, operate or remove the Facilities in a safe manner and in full compliance with all applicable federal, state, municipal, or other laws, statutes, codes, restrictions, regulations, ordinances and orders. **Grantor shall have no obligation, monetary or non-monetary, to maintain the Easement Property.**

This easement, together with the provisions of this grant, shall constitute a covenant running with the land for the benefit of Grantee, its successors and assigns. The rights hereby granted may ~~not~~ be assigned, either in whole or in part, ~~without Grantor's prior written consent, which consent shall not be unreasonably withheld.~~

**TO HAVE AND TO HOLD** unto the City of Denton, Texas as aforesaid for the purposes aforesaid the premises above described.

**Witness** my hand to be effective this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

Westpark Group, LP, a Texas limited partnership

By: Westpark Group GP, LLC, a Texas limited liability company,  
its general partner

By: The Rayzor Company, a Texas  
corporation, its sole member

By: \_\_\_\_\_  
Philip A. Baker, Vice President

**ACKNOWLEDGMENT**

**THE STATE OF TEXAS     §**  
**§**  
**COUNTY OF DENTON       §**

This instrument was acknowledged before me on \_\_\_\_\_, 2013, by Philip A. Baker, Vice President of The Rayzor Company, a Texas corporation, sole member of Westpark Group GP, LLC, a Texas limited liability company, general partner of Westpark Group, LP, a Texas limited partnership, on behalf of said corporation.

\_\_\_\_\_  
Notary Public - State of Texas

My commission expires:\_\_\_\_\_

After recording, please return to:  
City of Denton  
Utilities Engineering Department  
901-A Texas Street  
Denton, Texas 76209  
Attention: Paul Williamson

**EXHIBIT "A"**

Legal Description and Survey Illustrations of Easement Property

See attached descriptions.

**EXHIBIT "B"**

List of specific exceptions attached hereto.

**APPENDIX 6**

*Attached hereto and made a part hereof is the 10-Foot Rail Spur Easement.*

**EASEMENT**

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

**THE STATE OF TEXAS     §**  
**§**  
**COUNTY OF DENTON       §**

**KNOW ALL MEN BY THESE PRESENTS:**

THAT, **Westpark Group, LP**, whether one or more, hereinafter called "**Grantor**," for and in consideration of the sum of **ONE DOLLAR and NO CENTS (\$1.00)** and other good and valuable consideration to Grantor in hand paid by the **CITY OF DENTON, TEXAS**, hereinafter called "**Grantee**," the receipt and sufficiency of which are hereby acknowledged, does by these presents grant, bargain, sell and convey to the Grantee, a perpetual easement and the free and uninterrupted use, liberty and privilege of the passage in, along, upon and across certain property, except as expressly provided otherwise herein, such property owned by Grantor and situated in Denton County, Texas, in **the \_\_\_\_\_ Survey, Abstract No. \_\_\_\_\_**, and being more particularly described and illustrated in **Exhibit "A"** which is attached hereto and made a part hereof by reference as if fully set forth herein (the "**Easement Property**").

And it is further agreed that Grantee, in consideration of the benefits above set out, will have the right to remove from the Easement Property trees and vegetation as may now or hereafter be found upon said Easement Property.

The easement rights granted herein are for the purpose of occupying, locating and overhanging through the Defined Aerial Space (as defined below) of the Easement Property one or more above-ground electric transmission and/or distribution power and/or communication lines, each consisting of a variable number of wires and cables, along with all necessary, convenient or desirable appurtenances, attachments and supporting structures, and structural components (collectively, the "**Lines**"); provided that all of Grantee's easement rights and interests granted herein are subject to the following:

All surface uses and all sub-surface uses are prohibited on, in, under, through, or in any way touching the surface or sub-surface of the Easement Property. Grantee, its successors and assigns, and Grantee's agents, employees, representatives, contractors or designees are prohibited from all surface uses and are prohibited from constructing, installing, affixing, erecting, locating or placing any structures on the surface of the Easement Property and below the surface of the Easement Property. All Lines must be located above the surface of the Easement Property at or above a vertical height that conforms to Denton Municipal Electric Standards and that meets or exceeds minimum vertical heights required by the National Electric Safety Code ("**Minimum Height**"), such aerial space located within the Easement Property and at or above Minimum Height being defined as the "**Defined Aerial Space**". Any poles, anchors, guy wires and all other surface-based Line support structures, even if directly supporting the Lines, must not be affixed to or located on the surface of the Easement Property, below the surface of the Easement Property or below the Minimum Height within the Easement Property.

Grantor hereby further reserves to itself, its successors and assigns, all rights in and to the Easement Property and the exclusive right to use and enjoy the surface and subsurface thereof for any and all purposes whatsoever, so long as the exercise of such rights and such use does not

unreasonably interfere with the rights herein granted to Grantee. Grantor specifically reserves the right of passage over the Easement Property. Grantor RESERVES AND RETAINS THE RIGHTS BY, TO AND FOR THE BENEFIT OF GRANTOR, ITS SUCCESSORS AND ASSIGNS to use the Easement Property for the location, construction, reconstruction, relocation and operation of such rail lines and track, pipelines, transmission lines, drainage lines and other facilities ("**Grantor Facilities**") necessary or desired for the conduct of Grantor's rail operations and/or development of the Grantor's adjoining property so long as Grantor's use of such groundspace does not unreasonably interfere with the rights herein granted to Grantee. In the event that Grantor, or Grantor's successors and assigns, chooses to locate Grantor Facilities within the Easement Property pursuant to Grantor's reservation of its right to do so and such Grantor Facilities are reasonably expected to affect the Lines, then such Grantor Facilities shall require the written approval of the City Engineer, such approval not to be unreasonably withheld, conditioned or delayed. If the installation of the Grantor Facilities disturbs the Lines (a "**Grantor Installation Disturbance**"), then upon completion of the installation of the Grantor Facilities, Grantor shall promptly restore the Lines to substantially the same condition as existed immediately prior to the installation of the Grantor Facilities using industry standard materials and methods; provided, however, in remedying any Grantor Installation Disturbance, Grantor will not be required to incur any cost or obligation to improve, expand or upgrade the Lines to a state or condition exceeding the condition that existed immediately prior to the installation of the Grantor Facilities, including without limitation any improvements, expansions or upgrades to the Lines necessary to comply with then-current applicable federal, state, municipal, or other laws, statutes, codes, restrictions, regulations, ordinances and orders, which improvements, expansions or upgrades shall be Grantee's responsibility and at its sole cost and expense as set forth herein below. Notwithstanding the above, it is acknowledged that Grantee's easement rights are permitted only within the Defined Aerial Space and so long as Grantor's Facilities are not located (i) any closer than any clearance, set back or separation distance requirement prescribed by the National Electric Safety Code; and (ii) within-in-within the Defined Aerial Space, Grantor shall not be deemed to be interfering with Grantee's rights granted herein or the Lines.

The grant of easement rights hereunder is made subject to any of the following as they relate to the Easement Property: (i) the prior mineral conveyances recorded in mineral deeds as Document No. 2011-67794 and Document No. 2011-67798 of the Official Records of Denton County, Texas, (ii) easements, restrictions, claims, rights of way, encroachments or other encumbrances or other matters listed on **Exhibit "B"** attached hereto, (iii) all municipal or other governmental zoning laws, regulations and ordinances and (iv) any other matters affecting this Easement which are of public record or would be disclosed by a physical inspection of the Easement Property and/or an accurate survey of the Easement Property.

Without limitation to the above, Grantee acknowledges that a rail spur strip along the western portion of the Easement Property is subject to an easement, covenants and other restrictions relating to a railroad spur track situated thereon. Grantee shall comply with the covenants, restrictions and other terms and conditions which are more specifically defined in the Confirmation and Restatement of Easement Rights instrument recorded on \_\_\_\_\_ as Instrument No. \_\_\_\_ in the official records of Denton County, Texas.

The easement for the Easement Property as provided for herein is made on an "AS IS" basis, and Grantee expressly acknowledges that, in consideration of the agreements of Grantor herein, Grantor MAKES NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, OR ARISING BY OPERATION OF LAW. The easement rights conveyed hereunder do not include any right or interest whatsoever in any minerals in, under or that may be produced from the Easement Property.

Grantee, at its sole cost and expense, shall perform or cause to be performed all work necessary in connection with the Lines (the "**Work**") in a good and workmanlike manner in conformance with sound and acceptable engineering practices as expeditiously as possible. In performing the Work or causing the Work to be performed, Grantee shall make adequate provisions for the safety and convenience of Grantor, its agents, representatives, employees, licensees, and invitees, and shall cause all of the Work to be cleaned up promptly in order to minimize disruption or inconvenience, and coordinate the Work with Grantor's contractors and subcontractors. Grantee shall at all times construct, keep, maintain, use, operate or remove the Lines in a safe manner and in full compliance with all applicable federal, state, municipal, or other laws, statutes, codes, restrictions, regulations, ordinances and orders. **Grantor shall have no obligation, monetary or non-monetary, to maintain the Easement Property.**

This easement, together with the provisions of this grant, shall constitute a covenant running with the land for the benefit of Grantee, its successors and assigns and the benefit of Grantor, its successors and assigns. The rights hereby granted may ~~not~~ be assigned, either in whole or in part, ~~without Grantor's prior written consent, which consent shall not be unreasonably withheld.~~

**TO HAVE AND TO HOLD** unto the said City of Denton, Texas as aforesaid for the purposes aforesaid the premises above described.

**Witness** my hand to be effective this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

**WESTPARK GROUP, LP, a Texas limited partnership**

By: Westpark Group GP, LLC, a Texas limited liability company,  
its general partner

By: The Rayzor Company, a Texas corporation,  
its sole member

By: \_\_\_\_\_  
Philip A. Baker, Vice President

THE STATE OF TEXAS     §  
  §  
COUNTY OF DENTON     §

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 2013, by Philip A. Baker, Vice President of The Rayzor Company, a Texas corporation, sole member of Westpark Group GP, LLC, a Texas limited liability company, general partner of Westpark Group, LP, a Texas limited partnership, on behalf of said corporation.

\_\_\_\_\_



Notary Public, State of Texas  
My commission expires: \_\_\_\_\_

After recording, please return to:  
City of Denton  
Utilities Engineering Department  
901-A Texas Street  
Denton, Texas 76209  
Attention: Paul Williamson

**EXHIBIT "A"**

Legal Description and Survey Illustrations of Easement Property

See attached descriptions

**EXHIBIT "B"**

List of specific exceptions attached hereto.

**APPENDIX 7**

*Attached hereto and made a part hereof is the E-W Utility Easement.*

**EASEMENT**

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

**THE STATE OF TEXAS**                    §  
   §                    **KNOW ALL MEN BY THESE PRESENTS:**  
**COUNTY OF DENTON**                    §

THAT, **Rayzor Investments, Ltd. and Westpark Group, L.P.**, whether one or more, hereinafter collectively called "**Grantor**," for and in consideration of the sum of **ONE DOLLAR and NO CENTS (\$1.00)** and other good and valuable consideration to Grantor in hand paid by the **CITY OF DENTON, TEXAS**, hereinafter called "**Grantee**," the receipt and sufficiency of which are hereby acknowledged, does by these presents grant, bargain, sell and convey to the Grantee, a perpetual easement and the free and uninterrupted use, liberty and privilege of the passage in, along, upon, under and across certain property areas, owned by Grantor and situated in Denton County, Texas, in the \_\_\_\_ Survey, Abstract No. \_\_\_\_ and being more particularly described and illustrated in **Exhibit "A"** attached hereto (the "**Electric Portion**") and **Exhibit "B"** attached hereto (the "**CHP Portion**"). The land area covered by Electric Portion and CHP Portion together forms the "**Easement Property**".

And it is further agreed that Grantee, in consideration of the benefits above set out, will have the right to remove from the Easement Property, such fences, buildings, trees and vegetation and other obstructions as may now or hereafter be found upon said Easement Property; but only to the extent necessary to complete the construction of the below described Facilities and maintain same thereafter; provided, however Grantee will take reasonable efforts that are necessary to minimize interference with and removal of any of such items.

The easement rights granted herein are for the following purposes:

(1) The easement rights within the Electric Portion are for the purposes of erecting, operating, maintaining and servicing one or more underground and/or above ground electric transmission and/or distribution power and/or communication lines, each consisting of a variable number of wires and cables, along with all necessary, convenient or desirable appurtenances, attachments and supporting structures, including without limitation, foundations, guy wires and guy anchorages, and structural components (all such lines, wires, structures and components, collectively, the "**Electric Facilities**"), with the right and privilege at all times of the Grantee herein, it or its agents, employees, workmen and representatives to have ingress, egress, and regress in, along, upon and across said Easement Property for the purpose of making additions to, improvements on and repairs to said Electric Facilities or any part thereof.

(2) The easement rights within the CHP Portion are for the purposes of installing, operating, maintaining and servicing (i) one undergroundsubsurface high pressure gas pipeline and/or one undergroundsubsurface low pressure gas pipeline, along with all necessary or desirable appurtenances, attachments, and supporting structures, including without limitation, surface mounted equipment, conduits, cathodic protection equipment and aerial markers; and (ii) one or more undergroundsubsurface thermal energy commodities pipelines, consisting of, without limitation, heated and/or chilled water, compressed air and/or steam pipelines and return

pipelines related to such thermal energy commodities, and all necessary, convenient, or desirable appurtenances and supporting structures (the matters described in the above paragraphs (i) and (ii) are collectively referred to herein as the "**CHP Facilities**"), with the right and privilege at all times of the Grantee herein, it or its agents, employees, workmen and representatives to have ingress, egress, and regress in, along, upon and across said Easement Property for the purpose of making additions to, improvements on and repairs to said CHP Facilities or any part thereof.

The CHP Facilities together with the Electric Facilities are collectively referred to herein as the "**Facilities**".

As used herein, a "high pressure gas pipeline" shall mean a pipeline that: (1) transports gas to a distribution center, storage facility, or large volume customer that is not down-stream from a distribution center; (2) operates at a hoop stress of 20 percent or more of Specified Minimum Yield Strength (SMYS); or (3) transports gas within a storage field. A "low pressure gas pipeline" is a pipeline that is not a high pressure gas pipeline.

~~As used herein, a "high pressure gas pipeline" shall mean a pipeline capable of delivering gas at pressures at or above one hundred pounds per square inch gauge (100 psig). A "low pressure gas pipeline" is a pipeline that is not a high pressure gas pipeline.~~

Notwithstanding the foregoing, except for (i) poles and structures affixed to the surface of the ground in order to provide direct structural support reasonably necessary and ancillary to the operation of aerial Facilities and (ii) surface structures and appurtenances reasonably necessary and ancillary to the operation of the Facilities, all Facilities will be located either (a) under the surface of said Easement Property at a depth of at least 48 inches (for high pressure gas pipeline) or 36 inches (for all other Facilities, including low pressure gas pipelines and CHP Facilities pipelines) as measured from the top of the casing, conduit or other applicable upper extremity of the given Facility or Facilities to the existing ground level contour, except and provided that, where said Facilities cross any drainage ditch, creek, slough or other waterway, the same shall be buried at the place of such crossing at least 48 inches (or 36 inches, as applicable) below the bottom of such drainage ditch, creek, slough or other waterway or (b) above said Easement Property at or above a vertical height that conforms to Denton Municipal Electric Standards and that meets or exceeds minimum vertical heights required by the National Electric Safety Code.

Any poles erected and maintained in support of the Electric Facilities must be located on the Easement's centerline, which is the east-west line constituting the common boundary between the Electric Portion and the CHP Portion ("**Centerline**").

All right, title and interest in and to any portion of the Electric Portion shall automatically terminate, expire and be deemed abandoned for all purposes upon the occurrence of an "**Electric Termination Event**". An Electric Termination Event occurs if:

- (a) Title to that certain tract of land described on Exhibit "C" attached hereto ("**Southern Tract**") is not conveyed to Paccar, Inc. ("**Paccar**") by conveyance deed recorded in the Official Records of Denton County, Texas on or before 5:00 PM CST on December 31, 2013; or

- (b) The following three conditions have not each occurred by the tenth anniversary of the Effective Date hereof (such anniversary date being the "**Relocation Deadline**"):
- (i) The Grantee has removed or caused to be removed all surface and above-ground electric transmission lines, wires, poles, and all related structural facilities ("**Transmission Line Facilities**") currently located within the easement areas ("**Prior Electric Easement Areas**") authorized by that certain easement instrument recorded as Document No. 2007-20899 in the Official Records of Denton County, Texas ("**Prior Electric Easement**"); provided, however, that any sub-surface electric distribution lines located within the Prior Electric Easement Areas and authorized by the Prior Electric Existing Easement are exempt from this removal requirement; and
  - (ii) The Transmission Line Facilities removed from the Prior Electric Easement Areas have been relocated to the Electric Portion at the expense of the owner of the servient or burdened property; and
  - (iii) All rights to locate and maintain any such Transmission Line Facilities within the Prior Electric Easement Areas have been terminated and released, less and except any rights related to the sub-surface electric distribution lines described in paragraph (b)(i), above, by instrument executed by Grantee and recorded in the Official Records of Denton County, Texas.

(c) Nothing contained herein shall be construed to require Grantee to remove the Transmission Line Facilities from the Prior Electric Easement Areas.<sup>[cd1]</sup>

If an Electric Termination Event occurs as prescribed hereinabove, then the Grantee's Easement rights and interests will be automatically reduced (requiring no affirmative undertaking by Grantor) such that the only uses or purposes permitted or allowable within the Easement Property will be those uses or purposes listed hereinabove in paragraph (2) and will be permitted or allowable in, within, on and through only the CHP Portion.

Grantor hereby further reserves to itself, its successors and assigns, all rights in and to the Easement Property and the right to use and enjoy the surface and subsurface thereof for any and all purposes whatsoever, so long as the exercise of such rights and such use does not unreasonably interfere with the rights herein granted to Grantee. Grantor specifically reserves the right of passage over the Easement Property. Grantor RESERVES AND RETAINS THE RIGHTS BY, TO AND FOR THE BENEFIT OF GRANTOR, ITS SUCCESSORS AND ASSIGNS to use the Easement Property for the location, construction, reconstruction, relocation and operation of such pipelines, transmission lines, drainage lines and other facilities ("**Grantor Facilities**") necessary or desired for the conduct of Grantor's development of the Grantor's adjoining property so long as Grantor's use of such groundspace does not unreasonably interfere with the rights herein granted to Grantee. In the event that Grantor, or Grantor's successors and assigns, chooses to locate Grantor Facilities within the Easement Property pursuant to Grantor's reservation of its right to do so and such Grantor Facilities are reasonably expected to affect the Facilities, then such Grantor Facilities shall require the written approval of the City Engineer, such approval not to be unreasonably withheld, conditioned or delayed. If the installation of the Grantor Facilities disturbs the Facilities (a "**Grantor Installation Disturbance**"), then upon completion of the installation of the Grantor Facilities, Grantor shall promptly restore the Facilities to substantially the same condition as existed immediately prior to the installation of the Grantor Facilities using industry standard materials and methods; provided, however, in remedying any

Grantor Installation Disturbance, Grantor will not be required to incur any cost or obligation to improve, expand or upgrade the Facilities to a state or condition exceeding the condition that existed immediately prior to the installation of the Grantor Facilities, including without limitation any improvements, expansions or upgrades to the Facilities necessary to comply with then-current applicable federal, state, municipal, or other laws, statutes, codes, restrictions, regulations, ordinances and orders, which improvements, expansions or upgrades shall be Grantee's responsibility and at its sole cost and expense as set forth hereinbelow.

The grant of easement rights hereunder is made subject to any of the following as they relate to the Easement Property: (i) the prior mineral conveyances recorded in mineral deeds as Document No. 2011-67794 and Document No. 2011-67797 of the Official Records of Denton County, Texas, (ii) easements, restrictions, claims, rights of way, encroachments or other encumbrances or other matters listed on **Exhibit "D"** attached hereto, (iii) all municipal or other governmental zoning laws, regulations and ordinances and (iv) any other matters affecting this Easement which are of public record or would be disclosed by a physical inspection of the Easement Property and/or an accurate survey of the Easement Property.

The easement for the Easement Property as provided for herein is made on an "AS IS" basis, and Grantee expressly acknowledges that, in consideration of the agreements of Grantor herein, Grantor MAKES NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, OR ARISING BY OPERATION OF LAW. The easement rights conveyed hereunder do not include any right or interest whatsoever in any minerals in, under or that may be produced from the Easement Property.

Grantee, at its sole cost and expense, shall perform or cause to be performed all work necessary in connection with the Facilities (the "**Work**") in a good and workmanlike manner in conformance with sound and acceptable engineering practices as expeditiously as possible. In performing the Work or causing the Work to be performed, Grantee shall make adequate provisions for the safety and convenience of Grantor, its agents, representatives, employees, licensees, and invitees, and shall cause all of the Work to be cleaned up promptly in order to minimize disruption or inconvenience, and coordinate the Work with Grantor's contractors and subcontractors. Grantee shall at all times construct, keep, maintain, use, operate or remove the Facilities in a safe manner and in full compliance with all applicable federal, state, municipal, or other laws, statutes, codes, restrictions, regulations, ordinances and orders. **Grantor shall have no obligation, monetary or non-monetary, to maintain the Easement Property.**

This easement, together with the provisions of this grant, shall constitute a covenant running with the land for the benefit of Grantee, its successors and assigns and the benefit of Grantor, its successors and assigns. The rights hereby granted may ~~not~~ be assigned, either in whole or in part, ~~without Grantor's prior written consent, which consent shall not be unreasonably withheld.~~

**TO HAVE AND TO HOLD** unto the said City of Denton, Texas as aforesaid for the purposes aforesaid the premises above described.

*[Signature pages follow.]*



**Witness** my hand to be effective this \_\_\_\_\_ day of \_\_\_\_\_, 2013 ("**Effective Date**").

**Rayzor Investments, Ltd., a Texas limited partnership**

By: The Rayzor Company, a Texas corporation,  
its general partner

By: \_\_\_\_\_  
Philip A. Baker, Vice President

**ACKNOWLEDGMENT**

**THE STATE OF TEXAS     §**  
**§**  
**COUNTY OF DENTON     §**

This instrument was acknowledged before me on this the \_\_\_\_\_ day of \_\_\_\_\_, 2013, by Philip A. Baker, Vice President of The Rayzor Company, a Texas corporation, as general partner of Rayzor Investments, Ltd., a Texas limited partnership, on behalf of said limited partnership.

\_\_\_\_\_  
Notary Public - State of Texas

My commission expires: \_\_\_\_\_

**Westpark Group, LP, a Texas limited partnership**

By: Westpark Group GP, LLC, a Texas limited liability company,  
its general partner

By: The Rayzor Company, a Texas  
corporation, its sole member

By: \_\_\_\_\_  
Philip A. Baker, Vice President

**ACKNOWLEDGMENT**

**THE STATE OF TEXAS     §**  
**§**  
**COUNTY OF DENTON     §**

This instrument was acknowledged before me on this \_\_\_\_ day of \_\_\_\_\_,  
2013, by Philip A. Baker, Vice President of The Rayzor Company, a Texas corporation, sole member of  
Westpark Group GP, LLC, a Texas limited liability company, general partner of Westpark Group, LP, a  
Texas limited partnership, on behalf of said corporation.

\_\_\_\_\_  
Notary Public - State of Texas

My commission expires:\_\_\_\_\_

***[City of Denton Signatures on the following page.]***

**GRANTEE'S ACCEPTANCE OF EASEMENT AND ALL TERMS AND PROVISIONS HEREIN:**

CITY OF DENTON, TEXAS, a Texas municipal corporation

By: \_\_\_\_\_  
George C. Campbell, City Manager

Executed by City of Denton on this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

ATTEST:  
Jennifer Walters, City Secretary

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

APPROVED AS TO LEGAL FORM:  
Anita Burgess, City Attorney

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

**ACKNOWLEDGMENT**

STATE OF TEXAS                   §  
  §  
COUNTY OF DENTON           §

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2013, by George C. Campbell, City Manager of the City of Denton, Texas, on behalf of the City of Denton, Texas.

GIVEN under my hand and seal of office this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
Notary Public, State of Texas

\_\_\_\_\_  
Notary's Printed Name

My Commission Expires: \_\_\_\_\_

After recording, please return to:  
City of Denton  
Utilities Engineering Department  
901-A Texas Street  
Denton, Texas 76209  
Attention: Paul Williamson

**EXHIBIT "A"**

Legal Description and Survey Illustration of Electric Portion

See attached descriptions.

**EXHIBIT "B"**

Legal Description and Survey Illustration of the CHP Portion

See attached descriptions

**EXHIBIT "C"**

Legal Description and Survey Illustration of the Southern Property

See attached descriptions

**EXHIBIT "D"**

List of specific exceptions attached hereto



**APPENDIX 7A**

*Attached hereto and made a part hereof is the E-W Temporary Work Easement.*



under and across said Property. It is specifically stipulated by Grantor and Grantee that the scope of the access, construction and grading activities shall further include the clearing and removal of vegetation and trees that exist within the Property. Upon conclusion of the construction within the Property, Grantee shall remove all debris, surplus material, and construction equipment and leave the property substantially equal in appearance to the condition existing prior to construction, except for any fences, signage, buildings, other obstructions and/or trees and shrubs that were removed pursuant to the rights granted herein.

The term of this grant shall expire four years after the earlier to occur of (i) the date Grantee shall have acquired a Notice to Proceed issued by the Texas Commission on Environmental Quality, or (ii) fifteen (15) years from the Effective Date ~~the Effective Date hereof as set forth below (the fourth anniversary of Effective Date,~~ (the "Expiration Date"). On the Expiration Date, this easement and all rights and interests granted hereby will automatically terminate for all purposes; provided, however, that upon request by Grantor at any time after the Expiration Date, Grantee shall nonetheless execute a release of easement instrument and record the same in the Official Records of Denton County, Texas in form reasonably satisfactory to Grantor to further evidence and confirm such termination.

The easement rights conveyed hereunder do not include any right or interest whatsoever in any minerals in, under or that may be produced from the Property.

The grant of easement rights hereunder is made subject to any of the following as they relate to the Property: (i) the prior mineral conveyances recorded in a mineral deed as Document No. 2011-67797 of the Official Records of Denton County, Texas, (ii) easements, restrictions, claims, rights of way, encroachments or other encumbrances or other matters listed on **Exhibit "B"** attached hereto, (iii) all municipal or other governmental zoning laws, regulations and ordinances and (iv) any other matters affecting this Easement which are of public record or would be disclosed by a physical inspection of the Property and/or an accurate survey of the Property.

TO HAVE AND TO HOLD unto the said City of Denton, Texas as aforesaid for the purposes aforesaid the premises above described.

Witness my hand, to be effective this the \_\_\_\_\_ day of \_\_\_\_\_, 2013 ("Effective Date").

*[Signature pages follow below.]*

**GRANTOR:**

**RAYZOR INVESTMENTS, LTD., a Texas limited partnership**

By: The Rayzor Company, a Texas corporation, its general partner

By: \_\_\_\_\_  
Philip A. Baker, Vice President

**ACKNOWLEDGMENT**

THE STATE OF TEXAS           §  
  §  
COUNTY OF DENTON           §

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 2013, by Philip A. Baker, Vice President of The Rayzor Company, a Texas corporation, general partner of Rayzor Investments, LTD., a Texas limited partnership, on behalf of said corporation.

\_\_\_\_\_  
Notary Public, in and for the State of Texas  
My Commission Expires:\_\_\_\_\_

**Westpark Group, L.P., a Texas limited partnership**

By: Westpark Group GP, LLC, a Texas limited liability company,  
its general partner

By: The Rayzor Company, a Texas  
corporation, its sole member

By: \_\_\_\_\_  
Philip A. Baker, Vice President

**ACKNOWLEDGMENT**

**THE STATE OF TEXAS           §**  
**§**  
**COUNTY OF DENTON           §**

This instrument was acknowledged before me on this \_\_\_\_ day of \_\_\_\_\_, 2013, by Philip A. Baker, Vice President of The Rayzor Company, a Texas corporation, sole member of Westpark Group GP, LLC, a Texas limited liability company, general partner of Westpark Group, LP, a Texas limited partnership, on behalf of said corporation.

\_\_\_\_\_  
Notary Public - State of Texas

My commission expires:\_\_\_\_\_

AFTER RECORDING RETURN TO:  
City of Denton – Engineering Department  
901-A Texas Street  
Denton, Texas 76209  
Attn: Paul Williamson

**Exhibit "A"**

*Description of the temporary work easement Property attached hereto*

**Exhibit "B"**

*List of specific exceptions.*

## **APPENDIX 8**

| ~~*Intentionally omitted. Attached hereto and made a part hereof is the Modification A.*~~



**AMENDMENT TO ELECTRIC UTILITY EASEMENT No. 1**

STATE OF TEXAS \_\_\_\_\_ §  
\_\_\_\_\_ § \_\_\_\_\_ KNOW ALL MEN BY THESE PRESENTS: COUNTY OF DENTON  
\_\_\_\_\_ §

This Amendment to Electric Utility Easement No. 1, is executed effective this \_\_\_\_\_ day of \_\_\_\_\_, 2013, by and between **Rayzor Investments, LTD.**, a Texas limited partnership (hereinafter referred to as "**RAYZOR**"), and the **City of Denton, Texas**, a Texas home rule municipal corporation (hereinafter referred to as "**CITY**"), to wit:

**WITNESSETH**

~~**WHEREAS, RAYZOR**, on or about December 29, 2006, granted to the **CITY**, pursuant to that certain Electric Utility Easement (hereinafter referred to as the "**EASEMENT**"), a perpetual and non-exclusive easement for erecting, operating, maintaining, and servicing thereon one or more electric power and/or communication lines, each consisting of a variable number of wires, cables, and all necessary or desirable appurtenances, attachments, and complete supporting structures, including foundations, guy wires and guy anchorages, and structural components, as more particularly described in, and as evidenced by the recordation of the **EASEMENT** under Clerk's Instrument Number 2007-20905, Real Property Records, Denton County, Texas; and~~

~~**WHEREAS, RAYZOR** and **CITY** have entered into that certain agreements whereby **RAYZOR** is conveying to **CITY** easements over and through certain lands owned by **RAYZOR** or its affiliates; and~~

~~**WHEREAS, RAYZOR** holds title and interest to all those certain tracts of land, being more particularly described in the conveyance to Rayzor Investments Ltd., by Deed dated December 4, 1985, and recorded in Volume 1796, Page 601, Real Property Records, Denton County, Texas; and~~

~~**WHEREAS, RAYZOR** is subject to and bound by the terms of the **EASEMENT**; and~~

~~**WHEREAS, RAYZOR** and **CITY** desire to amend the **EASEMENT** to provide height and depth restrictions, as set forth herein.~~

~~**NOW, THEREFORE,** in consideration of Ten and NO/100 Dollars (\$10.<sup>00</sup>) and other good and valuable consideration, including the mutual promises contained herein, the receipt and sufficiency of which is acknowledged by all parties hereto, **RAYZOR** and **CITY** do hereby agree as follows:~~

~~1. The EASEMENT is amended by inserting immediately after the second paragraph the following language:~~

~~Notwithstanding the foregoing, except for poles and structures affixed to the surface of the ground in order to provide direct structural support reasonably necessary and ancillary to the operation of aerial LINES, all LINES will be located either (a) under the surface of said EASEMENT PROPERTY at a depth of at least 36 inches as measured from the top of the casing, conduit or other applicable upper extremity of the given LINE or LINES to the existing ground level contour, except and provided that, where said LINES cross any drainage ditch, creek, slough or other waterway, the same shall be buried at the place of such crossing at least 36 inches below the bottom of such drainage ditch, creek, slough or waterway or (b) above said EASEMENT PROPERTY at or above a vertical height that conforms to Denton Municipal Electric standards and that meets or exceeds minimum vertical heights required by the National Electric Safety Code.~~

~~2. The EASEMENT, as amended hereby, shall be subject to all terms, conditions and provisions of this Amendment to Electric Utility Easement No. 1, ("**Amendment**"), as if originally included therein.~~

~~3. Except as expressly amended by this Amendment, the EASEMENT shall be and remain valid, subsisting and effective as originally provided. **RAYZOR** and **CITY** do hereby ratify, adopt, and confirm the EASEMENT, as amended hereby, and stipulate that same is in full force and effect, and agree to be bound thereby.~~

~~Dated to be effective as set forth above.~~

~~**CITY OF DENTON, TEXAS**~~

~~By: \_\_\_\_\_  
George C. Campbell,  
City Manager~~

~~ATTEST:  
JENNIFER WALTERS, CITY SECRETARY~~

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

APPROVED AS TO LEGAL FORM:  
ANITA BURGESS, CITY ATTORNEY

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

**ACKNOWLEDGMENT**

STATE OF TEXAS \_\_\_\_\_ §

\_\_\_\_\_ §

COUNTY OF DENTON \_\_\_\_\_ §

\_\_\_\_\_ This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 2013, by George C. Campbell, City Manager of the City of Denton, Texas, on behalf of the City of Denton, Texas.

\_\_\_\_\_ GIVEN under my hand and seal of office this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_ Notary Public, State of Texas

\_\_\_\_\_

\_\_\_\_\_ Notary's Printed Name

\_\_\_\_\_

\_\_\_\_\_ My Commission Expires: \_\_\_\_\_

**RAYZOR:**

~~RAYZOR INVESTMENTS, LTD.,  
a Texas limited partnership~~

~~By: The Rayzor Company, a Texas corporation,  
its general partner~~

~~By: \_\_\_\_\_  
Philip A. Baker - Vice President~~

**ACKNOWLEDGMENT**

~~STATE OF TEXAS §  
\_\_\_\_\_  
COUNTY OF DENTON §~~

~~\_\_\_\_\_ This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2013, by Philip A. Baker, Vice President of The Rayzor Company, a Texas corporation, general partner of Rayzor Investments, LTD., a Texas limited partnership, on behalf of said corporation.~~

~~\_\_\_\_\_ GIVEN under my hand and seal of office this \_\_\_\_\_ day of \_\_\_\_\_, 2013.~~

~~\_\_\_\_\_ Notary Public, State of Texas~~

~~\_\_\_\_\_  
\_\_\_\_\_  
Notary's Printed Name~~

~~\_\_\_\_\_  
My Commission Expires: \_\_\_\_\_~~

## **APPENDIX 9**

*Attached hereto and made a part hereof is the Modification B.*

## AMENDMENT TO ELECTRIC UTILITY EASEMENT No. 1

STATE OF TEXAS           §  
  §  
COUNTY OF DENTON      §

KNOW ALL MEN BY THESE PRESENTS:

This Amendment to Electric Utility Easement No. 1, is executed effective this \_\_\_\_\_ day of \_\_\_\_\_, 2013, by and between **Rayzor Investments, LTD.**, a Texas limited partnership (hereinafter referred to as "**RAYZOR**"), and the **City of Denton, Texas**, a Texas home rule municipal corporation (hereinafter referred to as "**CITY**"), to wit:

### WITNESSETH

**WHEREAS, RAYZOR**, on or about December 29, 2006, granted to the **CITY**, pursuant to that certain Electric Utility Easement (hereinafter referred to as the "**EASEMENT**"), a perpetual and non-exclusive easement for erecting, operating, maintaining, and servicing thereon one or more electric power and/or communication lines, each consisting of a variable number of wires, cables, and all necessary or desirable appurtenances, attachments, and complete supporting structures, including foundations, guy wires and guy anchorages, and structural components, as more particularly described in, and as evidenced by the recordation of the **EASEMENT** under Clerk's Instrument Number 2007-20906, Real Property Records, Denton County, Texas; and

**WHEREAS, RAYZOR** and **CITY** have entered into that certain agreements whereby **RAYZOR** is conveying to **CITY** easements over and through certain lands owned by **RAYZOR** or its affiliates; and

**WHEREAS, RAYZOR** holds title and interest to all those certain tracts of land, being more particularly described in the conveyance to Rayzor Investments Ltd., by Deed dated December 4, 1985, and recorded in Volume 1796, Page 601, Real Property Records, Denton County, Texas; and

**WHEREAS, RAYZOR** is subject to and bound by the terms of the **EASEMENT**;  
and

**WHEREAS, RAYZOR and CITY** desire to amend the EASEMENT to provide height and depth restrictions, as set forth herein.

**NOW, THEREFORE,** in consideration of Ten and NO/100 Dollars (\$10.<sup>00</sup>) and other good and valuable consideration, including the mutual promises contained herein, the receipt and sufficiency of which is acknowledged by all parties hereto, **RAYZOR and CITY** do hereby agree as follows:

1. The EASEMENT is amended by inserting the following underlined language into the first paragraph:

"...guy anchorages, and structural components and one or more thermal energy commodities pipelines, consisting of, without limitation, heated and/or chilled water, compressed air and/or steam pipelines and return pipelines related to such thermal energy commodities, and all necessary, convenient, or desirable appurtenances and supporting structures (collectively, the "LINES") in, on, over, under, and across..."

2. The EASEMENT is amended by inserting immediately after the second paragraph the following language:

Notwithstanding the foregoing, except for (i) poles and structures affixed to the surface of the ground in order to provide direct structural support related reasonably necessary and ancillary to the operation of aerial LINES and (ii) surface structures and appurtenances reasonably necessary and ancillary to the operation of the LINES, all LINES constructed after the effective date of this Amendment to Electric Utility Easement No. 1 will be located either (a) under the surface of said EASEMENT PROPERTY at a depth of at least 36 inches as measured from the top of the casing, conduit or other applicable upper extremity of the given LINE or LINES to the existing ground level contour, except and provided that, where said LINES cross any drainage ditch, creek, slough or other waterway, the same shall be buried at the place of such crossing at least 36 inches below the bottom of such drainage ditch, creek, slough or waterway or (b) above said EASEMENT PROPERTY at or above a vertical height that conforms to Denton Municipal Electric standards and that meets or exceeds minimum vertical heights required by the National Electric Safety Code.

3. The EASEMENT, as amended hereby, shall be subject to all terms,

conditions and provisions of this Amendment to Electric Utility Easement No. 1, (“**Amendment**”), as if originally included therein.

4. Except as expressly amended by this Amendment, the EASEMENT shall be and remain valid, subsisting and effective as originally provided. **RAYZOR** and **CITY** do hereby ratify, adopt, and confirm the EASEMENT, as amended hereby, and stipulate that same is in full force and effect, and agree to be bound thereby.

Dated to be effective as set forth above.

**CITY OF DENTON, TEXAS**

By: \_\_\_\_\_  
George C. Campbell,  
City Manager

ATTEST:  
JENNIFER WALTERS, CITY SECRETARY

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

APPROVED AS TO LEGAL FORM:  
ANITA BURGESS, CITY ATTORNEY

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

**RAYZOR INVESTMENTS, LTD.,**  
a Texas limited partnership

By: The Rayzor Company,  
a Texas corporation,  
its general partner

By: \_\_\_\_\_  
Philip A. Baker  
Vice President



**ACKNOWLEDGMENT**

STATE OF TEXAS                    §  
   §  
COUNTY OF DENTON            §

      This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2013, by George C. Campbell, City Manager of the City of Denton, Texas, on behalf of the City of Denton, Texas.

      GIVEN under my hand and seal of office this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
Notary Public, State of Texas

\_\_\_\_\_  
Notary's Printed Name

My Commission Expires: \_\_\_\_\_

**ACKNOWLEDGMENT**

STATE OF TEXAS                    §  
   §  
COUNTY OF DENTON            §

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2013, by Philip A. Baker, Vice President of The Rayzor Company, a Texas corporation, general partner of Rayzor Investments, LTD., a Texas limited partnership, on behalf of said corporation.

GIVEN under my hand and seal of office this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
Notary Public, State of Texas

\_\_\_\_\_  
Notary's Printed Name

My Commission Expires: \_\_\_\_\_

## **APPENDIX 10**

*Attached hereto and made a part hereof is the Modification C.*

## AMENDMENT TO ELECTRIC UTILITY EASEMENT No. 1

STATE OF TEXAS           §  
  §  
COUNTY OF DENTON       §

KNOW ALL MEN BY THESE PRESENTS:

This Amendment to Electric Utility Easement No. 1, is executed effective this \_\_\_\_\_ day of \_\_\_\_\_, 2013, by and between **Westpark Group, LP, a Texas limited partnership** (hereinafter referred to as "**WESTPARK**"), and the **City of Denton, Texas**, a Texas home rule municipal corporation (hereinafter referred to as "**CITY**"), to wit:

### WITNESSETH

**WHEREAS, WESTPARK**, on or about December 29, 2006, granted to the **CITY**, pursuant to that certain Electric Utility Easement (hereinafter referred to as the "**EASEMENT**"), a perpetual and non-exclusive easement for erecting, operating, maintaining, and servicing thereon one or more electric power and/or communication lines, each consisting of a variable number of wires, cables, and all necessary or desirable appurtenances, attachments, and complete supporting structures, including foundations, guy wires and guy anchorages, and structural components, as more particularly described in, and as evidenced by the recordation of the **EASEMENT** under Clerk's Instrument Number 2007-20898, Real Property Records, Denton County, Texas; and

**WHEREAS, WESTPARK** and **CITY** have entered into that certain agreements whereby **WESTPARK** is conveying to **CITY** easements over and through certain lands owned by **WESTPARK** or its affiliates; and

**WHEREAS, WESTPARK** holds title and interest to all those certain tracts of land, being more particularly described in the conveyance to Westpark Group, LP, by Deed dated January 1, 2002, and recorded as Instrument Number 2006-40956, Real Property Records, Denton County, Texas; and

**WHEREAS, WESTPARK** is subject to and bound by the terms of the **EASEMENT**; and

**WHEREAS, WESTPARK and CITY** desire to amend the EASEMENT to provide height and depth restrictions, as set forth herein.

**NOW, THEREFORE,** in consideration of Ten and NO/100 Dollars (\$10.<sup>00</sup>) and other good and valuable consideration, including the mutual promises contained herein, the receipt and sufficiency of which is acknowledged by all parties hereto, **WESTPARK and CITY** do hereby agree as follows:

1. The EASEMENT is amended by inserting the following underlined language into the first paragraph:

"...guy anchorages, and structural components ~~and one or more thermal energy commodities pipelines, consisting of, without limitation, heated and/or chilled water, compressed air and/or steam pipelines and return pipelines related to such thermal energy commodities, and all necessary, convenient, or desirable appurtenances and supporting structures and one high pressure gas pipeline (a pipeline capable of delivering gas at pressures at or above 100 psig.) and/or one low pressure gas pipeline, (a pipeline that is not a high pressure gas pipeline),~~ along with all necessary or desirable appurtenances, attachments, and supporting structures, including without limitation, surface mounted equipment, conduits, cathodic protection equipment and aerial markers (collectively, the "LINES") in, on, over, under, and across..."

2. The EASEMENT is further amended by inserting immediately after the second paragraph the following language:

Notwithstanding the foregoing, except for (i) poles and structures affixed to the surface of the ground in order to provide direct structural support reasonably necessary and ancillary to the operation of aerial LINES and (ii) surface structures and appurtenances reasonably necessary and ancillary to the operation of the LINES, all LINES constructed after the effective date of this Amendment to Electric Utility Easement No. 1 will be located either (a) under the surface of said EASEMENT PROPERTY at a depth of at least 48 inches (for high pressure gas pipeline) or 36 inches (for all other LINES, including low pressure gas pipeline and thermal energy commodities pipelines) as measured from the top of the casing, conduit or other applicable upper extremity of the given LINE or LINES to the existing ground level contour, except and provided that, where said LINES cross any drainage ditch, creek, slough or other waterway, the

same shall be buried at the place of such crossing at least 48 inches (or 36 inches, as applicable) below the bottom of such drainage ditch, creek, slough or waterway or (b) above said EASEMENT PROPERTY at or above a vertical height that conforms to Denton Municipal Electric standards and that meets or exceeds minimum vertical heights required by the National Electric Safety Code.

2. The EASEMENT, as amended hereby, shall be subject to all terms, conditions and provisions of this Amendment to Electric Utility Easement No. 1, (“**Amendment**”), as if originally included therein.

3. The following definitions shall be added to Easement:

“High pressure gas pipeline” shall mean a pipeline that: (1) transports gas to a distribution center, storage facility, or large volume customer that is not down-stream from a distribution center; (2) operates at a hoop stress of 20 percent or more of Specified Minimum Yield Strength (SMYS); or (3) transports gas within a storage field. A “low pressure gas pipeline” is a pipeline that is not a high pressure gas pipeline.

3. Except as expressly amended by this Amendment, the EASEMENT shall be and remain valid, subsisting and effective as originally provided. **WESTPARK** and **CITY** do hereby ratify, adopt, and confirm the EASEMENT, as amended hereby, and stipulate that same is in full force and effect, and agree to be bound thereby.

Dated to be effective as set forth above.

**CITY OF DENTON, TEXAS:**

By: \_\_\_\_\_  
George C. Campbell,  
City Manager

ATTEST:  
JENNIFER WALTERS, CITY SECRETARY

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

APPROVED AS TO LEGAL FORM:  
ANITA BURGESS, CITY ATTORNEY

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

**ACKNOWLEDGMENT**

STATE OF TEXAS                    §  
  §  
COUNTY OF DENTON            §

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2013, by George C. Campbell, City Manager of the City of Denton, Texas, on behalf of the City of Denton, Texas.

GIVEN under my hand and seal of office this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
Notary Public, State of Texas

\_\_\_\_\_  
Notary's Printed Name

My Commission Expires: \_\_\_\_\_

**WESTPARK:**

WESTPARK GROUP, LP, a Texas limited partnership

By: Westpark Group GP, LLC,  
a Texas limited liability company,  
its general partner

By: The Rayzor Company,  
a Texas corporation,  
its sole member

By: \_\_\_\_\_  
Philip A. Baker - Vice President

**ACKNOWLEDGMENT**

STATE OF TEXAS            §  
  §  
COUNTY OF DENTON       §

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2013, by Philip A. Baker, Vice President of The Rayzor Company, a Texas corporation, sole member of Westpark Group GP, LLC, a Texas limited liability company, general partner of Westpark Group, LP, a Texas limited partnership, on behalf of said corporation.

GIVEN under my hand and seal of office this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
Notary Public, State of Texas

\_\_\_\_\_  
Notary's Printed Name

My Commission Expires: \_\_\_\_\_



## APPENDIX 11

~~Intentionally omitted. Attached hereto and made a part hereof is the Modification D.~~

~~AMENDMENT TO ELECTRIC UTILITY EASEMENT No. 1~~

~~STATE OF TEXAS \_\_\_\_\_ §~~

~~\_\_\_\_\_ § \_\_\_\_\_ KNOW ALL MEN BY THESE PRESENTS:~~

~~COUNTY OF DENTON \_\_\_\_\_ §~~

~~This Amendment to Electric Utility Easement No. 1, is executed effective this \_\_\_\_\_ day of \_\_\_\_\_, 2013, by and between Westpark Group, LP, a Texas limited partnership (hereinafter referred to as "WESTPARK"), and the City of Denton, Texas, a Texas home rule municipal corporation (hereinafter referred to as "CITY"), to wit:~~

~~WITNESSETH~~

~~WHEREAS, WESTPARK, on or about December 29, 2006, granted to the CITY, pursuant to that certain Electric Utility Easement (hereinafter referred to as the "EASEMENT"), a perpetual and non-exclusive easement for erecting, operating, maintaining, and servicing thereon one or more electric power and/or communication lines, each consisting of a variable number of wires, cables, and all necessary or desirable appurtenances, attachments, and complete supporting structures, including foundations, guy wires and guy anchorages, and structural components, as more particularly described in, and as evidenced by the recordation of the EASEMENT under Clerk's Instrument Number 2007-20899, Real Property Records, Denton County, Texas; and~~

~~WHEREAS, WESTPARK and CITY have entered into that certain agreements whereby WESTPARK is conveying to CITY easements over and through certain lands owned by WESTPARK or its affiliates; and~~

~~WHEREAS, WESTPARK holds title and interest to all those certain tracts of land, being more particularly described in the conveyance to Westpark Group, L.P. by Deed dated January 1, 2002, and recorded as Instrument Number 2006-40956 in the Real Property Records, Denton County, Texas; and~~

~~WHEREAS, WESTPARK is subject to and bound by the terms of the EASEMENT; and~~

~~WHEREAS, WESTPARK and CITY desire to amend the EASEMENT to provide height and depth restrictions, as set forth herein.~~

~~NOW, THEREFORE, in consideration of Ten and NO/100 Dollars (\$10.<sup>00</sup>) and other good and valuable consideration, including the mutual promises contained herein, the receipt and sufficiency of which is acknowledged by all parties hereto, WESTPARK and CITY do hereby agree as follows:~~

~~1. The EASEMENT is amended by inserting immediately after the second paragraph the following language:~~

~~Notwithstanding the foregoing, except for poles and structures affixed to the surface of the ground in order to provide direct structural support reasonably necessary and ancillary to operation of aerial LINES, all LINES will be located either (a) under the surface of said EASEMENT PROPERTY at a depth at least 36 inches as measured from the top of the casing, conduit or other applicable upper extremity of the given LINE or LINES to the existing ground level contour, except and provided that, where said LINES cross any drainage ditch, creek, slough or other waterway, the same shall be buried at the place of such crossing at least 36 inches below the bottom of such drainage ditch, creek, slough or waterway or (b) above said EASEMENT PROPERTY at or above a vertical height that conforms to Denton Municipal Electric standards and that meets or exceeds minimum vertical heights required by the National Electric Safety Code.~~

~~2. The EASEMENT, as amended hereby, shall be subject to all terms, conditions and provisions of this Amendment to Electric Utility Easement No. 1, ("Amendment"), as if originally included therein.~~

~~3. Except as expressly amended by this Amendment, the EASEMENT shall be and remain valid, subsisting and effective as originally provided. WESTPARK and CITY do hereby ratify, adopt, and confirm the EASEMENT, as amended hereby, and stipulate that same is in full force and effect, and agree to be bound thereby.~~

~~Dated to be effective as set forth above.~~

~~*[Signature pages follow below]*~~

~~CITY OF DENTON, TEXAS:~~

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

~~\_\_\_\_\_ George C. Campbell,~~

~~\_\_\_\_\_ City Manager~~

**ATTEST:**

**JENNIFER WALTERS, CITY SECRETARY**

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

**APPROVED AS TO LEGAL FORM:**

**ANITA BURGESS, CITY ATTORNEY**

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

ACKNOWLEDGMENT

STATE OF TEXAS \_\_\_\_\_ §

\_\_\_\_\_ §

COUNTY OF DENTON \_\_\_\_\_ §

\_\_\_\_\_

\_\_\_\_\_ This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2013, by George C. Campbell, City Manager of the City of Denton, Texas, on behalf of the City of Denton, Texas.

\_\_\_\_\_ GIVEN under my hand and seal of office this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
\_\_\_\_\_  
Notary Public, State of Texas

\_\_\_\_\_  
\_\_\_\_\_  
Notary's Printed Name

\_\_\_\_\_  
\_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

**WESTPARK:**

**WESTPARK GROUP, LP, a Texas limited partnership**

**By: ~~Westpark Group GP, LLC,~~**

**a Texas limited liability company,**

**its general partner**

**By: ~~The Rayzor Company, a Texas corporation,~~**

**its sole member**

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

**Philip A. Baker - Vice President**



ACKNOWLEDGMENT

STATE OF TEXAS \_\_\_\_\_ §

\_\_\_\_\_ §

COUNTY OF DENTON \_\_\_\_\_ §

~~\_\_\_\_\_ This instrument was acknowledged before me on the \_\_\_ day of \_\_\_\_\_, 2013, by Philip A. Baker, Vice President of The Rayzor Company, a Texas corporation, sole member of Westpark Group GP, LLC, a Texas limited liability company, general partner of Westpark Group, LP, a Texas limited partnership, on behalf of said corporation.~~

~~GIVEN under my hand and seal of office this \_\_\_\_\_ day of \_\_\_\_\_, 2013.~~

\_\_\_\_\_  
\_\_\_\_\_  
Notary Public, State of Texas

\_\_\_\_\_

\_\_\_\_\_  
**Notary's Printed Name**

\_\_\_\_\_  
**My Commission Expires: \_\_\_\_\_**

## **APPENDIX 12**

*Attached hereto and made a part hereof is the RILMH Surface Waiver.*

**WAIVER AND RELEASE OF SURFACE RIGHTS AGREEMENT**

STATE OF TEXAS           §  
  §           **KNOW ALL PERSONS BY THESE PRESENTS:**  
COUNTY OF DENTON      §

This Waiver and Release of Surface Rights Agreement ("**Agreement**") is made and entered into as of \_\_\_\_ day of \_\_\_\_\_, 2013 by RIL MINERAL HOLDINGS, LP, a Texas limited partnership ("**Mineral Owner**") for the benefit of WESTPARK GROUP, L.P., a Texas limited partnership ("**Westpark**"), RAYZOR INVESTMENTS, LTD., a Texas limited partnership ("**RIL**"), and any other Surface User (as hereinafter defined) of those certain tracts of land described hereinbelow as the Waiver Property, specifically including, without limitation, the City of Denton, Texas ("**City**").

**RECITALS:**

A. Westpark and/or RIL are the surface owners of certain tracts of real property located in Denton County, Texas as more particularly described in the following exhibits which are attached hereto:

- **Exhibit "A"** describing the Utility Easement A Area,
- **Exhibit "B"** describing the Utility Easement B Area,
- **Exhibit "C" describing the Temporary Easement A Area,**
- **Exhibit "D" describing the Temporary Easement B Area,**
- **Exhibit "CE"** describing the N-S Utility Easement Area,
- **Exhibit "E-1" describing the Temporary N-S Easement Area,**
- **Exhibit "DF"** describing the 10-Foot Rail Spur Easement Area,
- **Exhibit "EG"** describing the E-W Utility Easement Area, **and**
- **Exhibit "G-1" describing the Temporary E-W Easement Area, and**
- **Exhibit "FH"** describing the Transition Segment Easement Area.

The tracts described in the above listed areas are referred to herein, collectively as the "**Waiver Property**".

B. RIL is the surface owner of a portion of the Waiver Property.

C. Mineral Owner is the owner of the mineral estate relating to the Waiver Property (such minerals owned by Mineral Owner being referred to as the "**RILMH Minerals**").

D. Westpark and RIL are granting certain easement rights as to the surface of the Waiver Property to the City on or about the date hereof (the City, together with any successors and assigns who own any portion of the surface of the Waiver Property or hold easement or

other possessory rights to the surface is referred to as a "**Surface User**" with respect to the surface lands owned by it).

E. Mineral Owner, as the current holder of the RILMH Minerals, has agreed to execute this instrument to confirm and agree that Mineral Owner waives and releases its right to use the surface of the Waiver Property as provided below.

#### **AGREEMENTS:**

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, Mineral Owner covenants and agrees as follows:

1. **Release and Waiver.** Mineral Owner waives and releases, on behalf of Mineral Owner and Mineral Owner's successors and assigns, all rights of ingress and egress and all other rights to enter upon or to use the surface of the Waiver Property or any part thereof in any way, manner or form, in connection with or related to the RILMH Minerals and/or related to exploration and/or production of the RILMH Minerals, including without limitation, use or access of the surface of the Property for the location of any well or drill sites, well bores, whether vertical or any deviation from vertical, water wells, pit areas, seismic activities, tanks or tank batteries, pipelines, roads, electricity or other utility infrastructure, and/or for subjacent or lateral support for any surface facilities or well bores, or any other infrastructure or improvement of any kind or type in connection with or related to the RILMH Minerals, and/or related to the exploration or production of same; provided further, however, nothing herein shall prevent Mineral Owner or its successors and assigns from exploring for, developing and/or producing the RILMH Minerals in and under the Waiver Property by pooling or by directional drilling under the Waiver Property from well sites or mining sites located on other property; provided, further, however, that the parties acknowledge that the RILMH Minerals may not constitute all of the minerals under the Waiver Property and there may be third party holders of mineral rights ("**Other Mineral Rights Holders**") and/or the RILMH Minerals may be subject to one or more existing oil and gas or other mineral leases ("**Existing Mineral Leases**") in favor of lessees thereunder ("**Mineral Lessees**"), and the forgoing waiver as to surface use shall not be construed to limit any of the existing rights of the Other Mineral Rights Holders or Mineral Lessees under the Existing Mineral Leases, nor shall Mineral Owner have any duty or obligation to obtain any waivers or other agreements from any such Other Mineral Rights Holders or Mineral Lessees with respect to limitations on surface use or otherwise, and in no event shall Mineral Owner have any liability or responsibility for any surface damage or injury to property or person as a result of the exploration and/or production of the RILMH Minerals by any Other Mineral Rights Holders or any Mineral Lessee, and all Surface Owners shall pursue any such claims solely against such Mineral Lessee or Other Mineral Rights Holder, as applicable. As used herein, the term "surface of the Property" shall include the area from the surface of the earth to a depth of five hundred feet (500') below the surface of the earth and all areas above the surface of the earth.

2. **Current Holder of Rights.** Mineral Owner represents and warrants that Mineral Owner is the current holder of the RILMH Minerals.

3. **Successors and Assigns.** The acknowledgements and agreements of Mineral Owner hereunder shall (i) run with the Waiver Property for the benefit of Westpark, RIL and any future Surface User, specifically including, without limitation, the City, (ii) inure to the benefit of and be enforceable by Westpark or RIL as well as any future Surface User, specifically

including, without limitation, the City, and its respective heirs, legal representatives, successors and assigns of and (iii) be binding upon and enforceable against Mineral Owner and its legal representatives, successors and permitted assigns.

4. **Other/Miscellaneous.**

(a) **Choice of Law.** THIS AGREEMENT SHALL BE GOVERNED BY THE LAWS OF THE UNITED STATES OF AMERICA AND THE INTERNAL LAWS OF THE STATE OF TEXAS, WITHOUT REGARD TO ITS CONFLICT OF RULES. THIS AGREEMENT IS PERFORMABLE IN, AND THE EXCLUSIVE VENUE FOR ANY ACTION BROUGHT WITH RESPECT HERETO, SHALL LIE IN COURTS OF COMPETENT JURISDICTION IN DENTON COUNTY.

(b) **Headings.** The titles and article headings contained herein are for purposes of identification only and shall not be considered in construing this Agreement.

(c) **Notices.** Any notice, report or demand by Westpark, RIL and/or Surface Owner to Mineral Owner with respect to this Agreement shall be in writing and shall be deemed to have been sufficiently given or served to Mineral Owner for all purposes upon Mineral Owner's receipt or refusal of receipt when sent by (i) registered or certified mail, return receipt requested, or (ii) personal hand delivery, or (iii) overnight courier service, to the Mineral Owner at the address shown beneath Mineral Owner's signature below.

EXECUTED to be effective as of the first date hereinabove written.

**MINERAL OWNER:**

RIL MINERAL HOLDINGS, LP, a Texas limited partnership

By: RIL Mineral Holdings GP, LLC, a Texas limited liability company, its general partner

By: The Rayzor Company, a Texas corporation, its sole member

By: \_\_\_\_\_  
Philip A. Baker, Vice-President

**Address:**

c/o The Rayzor Company  
400 W. Oak, Suite 200  
Denton, Texas 76201  
Tel. No. (940) 387-8711  
Fax No. (940) 566-1591

**Acknowledgement**

THE STATE OF TEXAS           §  
  §  
COUNTY OF DENTON           §

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 2013, by Philip A. Baker, Vice-President of The Rayzor Company, a Texas corporation, sole member of RIL Mineral Holdings GP, LLC, a Texas limited liability company, sole general partner of RIL Mineral Holdings, LP, a Texas limited partnership, on behalf of said limited partnership.

\_\_\_\_\_  
Notary Public, State of Texas

**After Recording Return To:**

Rayzor Investments, Ltd.  
c/o The Rayzor Company  
400 W. Oak, Suite 200  
Denton, Texas 76201

**Exhibit "A"**

*Description of the Utility Easement A Area attached hereto.*

| **[REMAINING EXHIBITS "B" THROUGH "FH" WILL BE ATTACHED]**



**AGENDA INFORMATION SHEET**

**AGENDA DATE:** November 19, 2013

**DEPARTMENT:** Denton Municipal Electric

**ACM:** Howard Martin, 349-8232



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**SUBJECT**

Consider adoption of an ordinance authorizing the City Manager or his designee to execute a Termination Agreement (the “Agreement”) between Rayzor Investments, Ltd., a Texas Limited Partnership and Westpark Group, LP, a Texas Limited Partnership (collectively, the “Seller”) and the City of Denton, Texas (“Buyer”), terminating that contract dated effective April 19, 2011, City of Denton Ordinance No. 2011-063, relating to the sale and purchase of certain real property and real property interests located generally in the vicinity of Western Boulevard, between Airport road and Jim Christal road, Denton, Texas; and providing for an effective date.

**BACKGROUND**

The City entered into a contract for the land rights necessary to complete an electric and natural gas utility infrastructure project in April of 2011 (Ordinance 2011-063). The scope of the project and surrounding land use has changed necessitating an alternative location, easements, and rights of way. New contract documents have been approved by separate action. Delivery of those contract documents in final form is expected prior to the convening of the November 19th, 2013 City Council meeting, otherwise this item will be pulled from the agenda.

**OPTIONS**

1. Recommend approval of the Ordinance
2. Do not recommend approval

**RECOMMENDATION**

Staff endorses approval of the Ordinance.

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

- City Council Closed Session Briefing on the utility project September 14, 2010
- City Council Closed Session Briefing on the utility project January 4, 2011
- Public Utility Board Approval April 5, 2011
- City Council Approval April 19<sup>th</sup> Ordinance 2011-063
- Public Utility Board Closed Session briefing July 22, 2-013
- City Council Closed Session briefing August 6, 2013
- Public Utility Board Closed Session and Consent agenda approvals October 28, 2013
- City Council Executive Session November 5, 2013
- Public Utility Board Executive Session November 11, 2013

**FISCAL INFORMATION**

N/A

**BID INFORMATION**

N/A

**EXHIBITS**

1. Location Map
2. Ordinance
3. Termination Agreement

Prepared by:



Mike Grim  
Executive Manager  
Power Legislative and Regulatory Affairs  
Denton Municipal Electric

Respectfully submitted:



Phil Williams  
General Manager  
Denton Municipal Electric



# **EXHIBIT 2**

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF DENTON, TEXAS AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE A TERMINATION AGREEMENT (THE “AGREEMENT”) BETWEEN RAYZOR INVESTMENTS, LTD., A TEXAS LIMITED PARTNERSHIP AND WESTPARK GROUP, LP, A TEXAS LIMITED PARTNERSHIP (COLLECTIVELY, THE “SELLER”) AND THE CITY OF DENTON, TEXAS (“BUYER”), AS ATTACHED HERETO AND MADE A PART HEREOF, TERMINATING THAT CONTRACT DATED EFFECTIVE APRIL 19, 2011, CITY OF DENTON ORDINANCE NO. 2011-063, RELATING TO THE SALE AND PURCHASE OF CERTAIN REAL PROPERTY AND REAL PROPERTY INTERESTS LOCATED GENERALLY IN THE VICINITY OF WESTERN BOULEVARD, BETWEEN AIRPORT ROAD AND JIM CHRISTAL ROAD, DENTON, TEXAS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the parties executed a certain written Contract with an effective date of April 19, 2011 by City of Denton Ordinance No. 2011-063, for the sale of real property and real property interests located generally in the vicinity of Western Boulevard, between Airport Road and Jim Christal Road in Denton, Texas;

WHEREAS, Buyer and Seller now desire to terminate all further obligations between them arising out of said Contract and to release each other of and from any further performance thereunder; and

WHEREAS, the City Council finds that the Agreement is in the public interest; NOW, THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The findings and recitations contained in the preamble of this ordinance are incorporated herein by reference.

SECTION 2. The City Manager, or his designee, is hereby authorized to execute the Agreement on behalf of the City.

SECTION 3. This ordinance shall become effective immediately upon its passage and approval.

PASSED AND APPROVED this the \_\_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
MARK A. BURROUGHS, MAYOR

ATTEST:  
JENNIFER WALTERS, CITY SECRETARY

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

APPROVED AS TO LEGAL FORM:  
ANITA BURGESS, CITY ATTORNEY

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

# EXHIBIT 3

## TERMINATION AGREEMENT

STATE OF TEXAS

§

COUNTY OF DENTON

§

§

This Termination Agreement ("**Agreement**") is made and entered into on this \_\_\_\_\_ day of \_\_\_\_\_, 2013, by and between RAYZOR INVESTMENTS, LTD., a Texas limited partnership ("**Rayzor**"), WESTPARK GROUP, LP, a Texas limited partnership ("**Westpark**"), and the CITY OF DENTON, a Texas municipal home rule corporation ("**Buyer**"). Rayzor and Westpark are referred to herein collectively as "**Seller**".

### RECITALS:

A. Heretofore, the undersigned parties executed a certain written Contract with an effective date of April 19, 2011 ("**Contract**"), for the sale of real property located generally in the vicinity of Western Boulevard, between Airport Road and Jim Christal Road in Denton, Texas, as further described therein.

B. Closing did not occur pursuant to the Contract.

C. Seller and Buyer now desire to terminate all further obligations between them arising out of said Contract and to release each other of and from any further performance thereunder.

### AGREEMENTS:

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements contained herein, each of the undersigned parties for itself, its respective heirs, successors, legal representatives and assigns agrees as follows:

1. The Contract is hereby terminated in all respects.
2. Seller releases Buyer and Buyer releases Seller of and from any and all claims, debts, demands, causes of action, damages, injuries and liabilities arising out of the above described Contract.

*[Signature pages follow.]*

IN WITNESS WHEREOF, the undersigned have executed this Agreement to be effective as of the date first above written.

**RAYZOR:**

RAYZOR INVESTMENTS, LTD., a Texas limited partnership

By: The Rayzor Company, a Texas corporation, its general partner

By: \_\_\_\_\_  
Philip A. Baker, Vice President

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

**WESTPARK:**

WESTPARK GROUP, LP, a Texas limited partnership

By: Westpark Group GP, LLC,  
a Texas limited liability company  
its general partner

By: The Rayzor Company,  
a Texas corporation  
its sole member

By: \_\_\_\_\_  
Philip A. Baker  
Vice President

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

*[Buyer signature page follows below.]*

**BUYER:**

CITY OF DENTON, TEXAS

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

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

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

Executed by Buyer on the \_\_\_\_\_ day of \_\_\_\_\_, 2013.

ATTEST: JENNIFER WALTERS, CITY SECRETARY

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

APPROVED AS TO LEGAL FORM:  
ANITA BURGESS, CITY ATTORNEY

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



**AGENDA INFORMATION SHEET**

**AGENDA DATE:** November 19, 2013

**DEPARTMENT:** Parks and Recreation



**ACM:** John Cabrales, Jr.

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**SUBJECT**

Consider approval of a resolution allowing the Denton Community Theatre to be the sole participant permitted to sell alcoholic beverages at the Beaujolais and More event on November 21, 2013, upon certain conditions; authorizing the City Manager or his designee to execute an agreement in conformity with this resolution; and providing for an effective date. Staff recommends allowing the Denton Community Theatre to sell alcohol at the Beaujolais and More event in the Civic Center.

**BACKGROUND**

Beaujolais and More will be held for the seventh year at the Civic Center, the only facility in Quakertown Park where alcohol is permitted with approval of City Council.

**RECOMMENDATION**

Staff recommends approval of the resolution and agreement as submitted.

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

An ordinance was adopted on October 6, 2009, requiring approval by City Council for an event to sell alcohol in the Civic Center. This is the fourth request by Denton Community Theatre since the adoption of the ordinance; all previous requests have been approved.

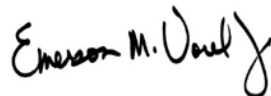
**FISCAL INFORMATION**

None

**EXHIBIT**

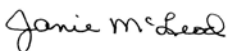
Resolution and Agreement

Respectfully submitted:



Emerson Vorel  
Director of Parks and Recreation

Prepared by:



Janie McLeod  
Community Events Coordinator

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION ALLOWING THE DENTON COMMUNITY THEATRE TO BE THE SOLE PARTICIPANT PERMITTED TO SELL ALCOHOLIC BEVERAGES AT THE BEAUJOLAIS AND MORE EVENT ON NOVEMBER 21, 2013, UPON CERTAIN CONDITIONS; AUTHORIZING THE CITY MANAGER OR HIS DESIGNEE TO EXECUTE AN AGREEMENT IN CONFORMITY WITH THIS RESOLUTION; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Denton (“City”) is the owner of the Civic Center; and

WHEREAS, the consumption of alcoholic beverages is allowed in the Civic Center pursuant to City of Denton Code, §22-32 (b); and

WHEREAS, the City Council finds that it is in the public interest to select only one vendor of alcoholic beverages at the Beaujolais and More; and

WHEREAS, the Denton Community Theatre has requested that they be the sole participant allowed to distribute/sell alcoholic beverages at this year’s Beaujolais and More on November 21, 2013; and

WHEREAS, the Parks, Recreation, and Beautification Board has recommended that Denton Community Theatre be the sole participant allowed to distribute/sell alcoholic beverages at the Beaujolais and More; and

WHEREAS, the City agrees with the recommendation of the Parks, Recreation, and Beautification Board; NOW, THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY RESOLVES:

SECTION 1. Denton Community Theatre shall be the sole participant allowed to distribute/sell alcoholic beverages at the Beaujolais and More on November 21, 2013 at the Civic Center upon the following conditions:

1. They shall be responsible to obtain the temporary license and permit for distributing/selling alcoholic beverages approved by appropriate state agency;
2. They shall provide the security necessary for the distribution/sale of alcoholic beverages;
3. They shall provide general comprehensive liability insurance from a responsible carrier, with the City as an additional insured, in the amount of \$500,000.00;
4. They agree to indemnify the City of Denton against any liability incident to the distributing/selling of alcoholic beverages at the Beaujolais.

SECTION 2. The City Manager or his designee is authorized to execute an agreement in conformity with this Resolution, which shall be substantially in the form of the agreement attached hereto and made a part hereof by reference.

SECTION 3. This Resolution shall become effective immediately upon its passage and approval.

PASSED AND APPROVED this the \_\_\_\_\_ day of \_\_\_\_\_, 2013.

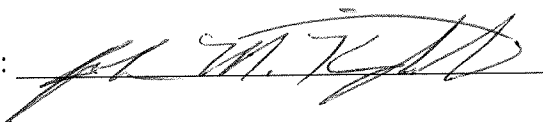
\_\_\_\_\_  
MARK A. BURROUGHS, MAYOR

ATTEST:  
JENNIFER WALTERS, CITY SECRETARY

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

APPROVED AS TO LEGAL FORM:  
ANITA BURGESS, CITY ATTORNEY

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



**CIVIC CENTER AGREEMENT FOR  
DENTON COMMUNITY THEATRE BEAUJOLAIS AND MORE EVENT**

STATE OF TEXAS           §

COUNTY OF DENTON       §

This Agreement, made this \_\_\_\_\_ day of \_\_\_\_\_, 2013, by and between the City of Denton, a municipal corporation, hereinafter referred to as the "CITY" and DENTON COMMUNITY THEATRE.

WITNESSETH, that in consideration of the covenants and agreements herein contained, the parties hereto do mutually agree as follows:

**ARTICLE 1  
GENERAL**

The City grants to DENTON COMMUNITY THEATRE the exclusive privilege to distribute/sell alcoholic beverages, subject to the exceptions and conditions hereinafter set forth, for the BEAUJOLAIS AND MORE on NOVEMBER 21, 2013 to be held at the Civic Center. This privilege does not extend beyond the date of the BEAUJOLAIS AND MORE for the year 2013.

**ARTICLE 2  
SCOPE OF SERVICES**

DENTON COMMUNITY THEATRE in order to exercise the privilege to distribute/sell alcoholic beverages must perform the following:

- A. DENTON COMMUNITY THEATRE shall be solely responsible for the rental and payment for any booth space necessary for the distribution/sale of alcoholic beverages at the BEAUJOLAIS AND MORE.
- B. DENTON COMMUNITY THEATRE shall be solely responsible to obtain any temporary license and permit necessary for the distribution/sale of alcoholic beverages at the BEAUJOLAIS AND MORE.
- C. DENTON COMMUNITY THEATRE shall be solely responsible for the obtaining and paying for any security necessary for their distribution/sale of alcoholic beverages at the BEAUJOLAIS AND MORE.

DENTON COMMUNITY THEATRE'S failure to do any of the above and to show proper proof of compliance shall waive their right to exercise the privilege of distributing/selling alcoholic beverages at the BEAUJOLAIS AND MORE.

**ARTICLE 3**  
**LOCAL RULES AND REGULATION**

DENTON COMMUNITY THEATRE agrees to abide by all municipal, county, state and federal laws, ordinances, rules and regulations and specifically, without limitation, the Denton Civic Center Rules and Regulations, to obtain all necessary and proper licenses, permits and authorizations, and to comply with the requirements of any duly authorized person acting in connection therewith. DENTON COMMUNITY THEATRE shall pay all taxes, if any, of every nature and description arising out of or in any manner connected with the distribution/sale of alcoholic beverages.

DENTON COMMUNITY THEATRE will exercise reasonable care and due diligence in their distribution/sale of alcoholic beverages at the BEAUJOLAIS AND MORE.

**ARTICLE 4**  
**INDEMNITY AGREEMENT**

DENTON COMMUNITY THEATRE shall indemnify and save and hold harmless the CITY and its officers, agents, and employees from and against any and all liability, claims, demands, losses, and expenses, including but not limited to, court costs and reasonable attorney fees incurred by the CITY, and including, without limitation, damages for bodily and personal injury, death and property damage, resulting from the negligent acts or omissions of DENTON COMMUNITY THEATRE or its officers, shareholders, agents, or employees in the execution, operation, or performance of this Agreement.

Nothing in this Agreement shall be construed to create a liability to any person who is not a party to this Agreement, and nothing herein shall waive any of the parties' defenses, both at law or equity, to any claim, cause of action, or litigation filed by anyone not a party to this Agreement, including the defense of governmental immunity, which defenses are hereby expressly reserved.

**ARTICLE 5**  
**INSURANCE**

During the performance of the Agreement, DENTON COMMUNITY THEATRE shall maintain the following insurance with an insurance company licensed to do business in the State of Texas by the State Insurance Commission or any successor agency that has a rating with Best Rate Carriers of at least an A- or above:

- A. Comprehensive General Liability Insurance with bodily injury limits of not less than \$500,000 for each occurrence and not less than \$500,000 in the aggregate, and with property damage limits of not less than \$100,000 for each occurrence and not less than \$100,000 in the aggregate.
- B. Liquor/Dram Shop Liability in the amount of \$250,000 per occurrence for any event occurring on City-owned property where alcohol will be provided or served.

- C. DENTON COMMUNITY THEATRE shall furnish insurance certificates or insurance policies at the CITY'S request to evidence such coverages. The insurance policies shall name the CITY as an additional insured on all such policies, and shall contain a provision that such insurance shall not be canceled or modified without written notice to the CITY and DENTON COMMUNITY THEATRE. In such event, DENTON COMMUNITY THEATRE shall, prior to the effective date of the change or cancellation, serve substitute policies furnishing the same coverage.

**ARTICLE 6**  
**NOTICES**

All notices, communications, and reports required or permitted under this Agreement shall be personally delivered or mailed to the respective parties by depositing same in the United States mail to the address shown below, certified mail, return receipt requested, unless otherwise specified herein. Mailed notices shall be deemed communicated as of three (3) days' mailing:

To DENTON COMMUNITY THEATRE:	To CITY:
DENTON COMMUNITY THEATRE	CITY OF DENTON:
Mike Barrow, Managing Director	City Manager
214 W. Hickory	215 E. McKinney
Denton, TX 76201	Denton, Texas 76201

All notices shall be deemed effective upon receipt by the party to whom such notice is given, or within three (3) days' mailing.

**ARTICLE 7**  
**ENTIRE AGREEMENT**

This Agreement, consisting of five (5) pages and no exhibits, constitutes the complete and final expression of the agreement of the parties, and is intended as a complete and exclusive statement of the terms of their agreements, and supersedes all prior contemporaneous offers, promises, representations, negotiations, discussions, communications, and agreements which may have been made in connection with the subject matter hereof.

**ARTICLE 8**  
**SEVERABILITY**

If any provision of this Agreement is found or deemed by a court of competent jurisdiction to be invalid or unenforceable, it shall be considered severable from the remainder of this Agreement and shall not cause the remainder to be invalid or unenforceable. In such event, the parties shall reform this Agreement to replace such stricken provision with a valid and enforceable provision which comes as close as possible to expressing the intention of the stricken provision.

**ARTICLE 9**  
**DISCRIMINATION PROHIBITED**

In performing the services required hereunder, DENTON COMMUNITY THEATRE shall not discriminate against any person on the basis of race, color, religion, sex, national origin or ancestry, age, or physical handicap.

**ARTICLE 10**  
**PERSONNEL**

DENTON COMMUNITY THEATRE represents that it has or will secure, at its own expense, all personnel required to perform all the services required under this Agreement. Such personnel shall not be employees or officers of, or have any contractual relations with the CITY.

**ARTICLE 11**  
**ASSIGNABILITY**

DENTON COMMUNITY THEATRE shall not assign any interest in this Agreement, and shall not transfer any interest in this Agreement (whether by assignment, novation, or otherwise) without the prior written consent of the CITY.

**ARTICLE 12**  
**MODIFICATION**

No waiver or modification of this Agreement or of any covenant, condition, or limitation herein contained shall be valid unless in writing and duly executed by the party to be charged therewith, and no evidence of any waiver or modification shall be offered or received in evidence in any proceeding arising between the parties hereto out of or affecting this Agreement, or the rights or obligations of the parties hereunder, and unless such waiver or modification is in writing and duly executed; and the parties further agree that the provisions of this section will not be waived unless as set forth herein.

**ARTICLE 13**  
**MISCELLANEOUS**

- A. Venue of any suit or cause of action under this Agreement shall lie exclusively in Denton County, Texas. This Agreement shall be construed in accordance with the laws of the State of Texas.
- B. The captions of this Agreement are for informational purposes only, and shall not in any way affect the substantive terms or conditions of this Agreement.

IN WITNESS HEREOF, the City of Denton, Texas has caused this Agreement to be executed by its duly authorized City Manager, and DENTON COMMUNITY THEATRE has executed this Agreement through its duly authorized undersigned officer on this the \_\_\_\_\_ day of \_\_\_\_\_, 2013.

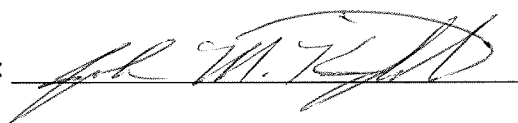
CITY OF DENTON, TEXAS

\_\_\_\_\_  
GEORGE C. CAMPBELL, CITY MANAGER


ATTEST:  
JENNIFER WALTERS, CITY SECRETARY

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

APPROVED AS TO LEGAL FORM:  
ANITA BURGESS, CITY ATTORNEY

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

DENTON COMMUNITY THEATRE

BY:  \_\_\_\_\_  
MIKE BARROW, MANAGING DIR.

WITNESS:

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



**AGENDA INFORMATION SHEET**

**AGENDA DATE:** November 19, 2013

**DEPARTMENT:** Finance

**ACM:** Bryan Langley *LBL*

---

**SUBJECT**

Consider approval of a resolution creating a Special Citizens Bond Advisory Committee for the proposed 2014 Bond Election; establishing a charge for the committee; and declaring an effective date.

**BACKGROUND**

The City Council has indicated a preference for a fifty (50) member Citizen Bond Advisory Committee (7 appointments for each City Council member and a committee chair). To solicit public interest, staff posted a notice and application on the City of Denton's website concerning the appointment process. Citizens interested in serving on the bond advisory committee were encouraged to notify the City Council or City Secretary's Office. In addition, the notice has been distributed on social media channels as well. The City Council made twenty appointments to the Citizens Bond Advisory Committee on November 5th, and additional appointments are expected as a separate agenda item on November 19th.

The purpose of this agenda item is to create the Citizen Bond Advisory Committee and establish the charge of the committee. A resolution is attached which formally creates the Committee and establishes their charge.

**PRIOR ACTION/REVIEW**

On October 7, 2013, the City Council discussed the proposed 2014 Bond Program and received presentations from City staff regarding the initial project list. The City Council recommended a fifty (50) member Citizen Bond Advisory Committee with seven appointments by each council member and a committee chair.

On November 5, 2013, the City Council discussed the proposed bond election and appointed members to the Citizen Bond Advisory Committee.

**EXHIBITS**

1. Resolution

Respectfully submitted:

*Chuck Springer*

Chuck Springer, 349-8260  
Director of Finance

EXHIBIT 1

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION CREATING A SPECIAL CITIZENS BOND ADVISORY COMMITTEE FOR THE PROPOSED 2014 BOND ELECTION; ESTABLISHING A CHARGE FOR THE COMMITTEE; AND DECLARING AN EFFECTIVE DATE.

WHEREAS, the City Council wishes to ask the citizens of Denton to consider authorizing General Obligation bonds in November 2014 for the purpose of public improvements in the community over the next six years; and

WHEREAS, the City Council has determined that it would be advisable to create a Special Citizens Bond Advisory Committee to provide recommendations on the specific projects that may be financed with the General Obligation bonds; and

WHEREAS, the City Council requests that the Committee focus on basic facilities, infrastructure, drainage improvements, and the Downtown area as a priority in the bond program, and requests the development of a six-year capital program that addresses regulatory concerns, enhances public safety, improves operational efficiency, promotes energy efficiency and rehabilitates existing structures to meet current demand; and

WHEREAS, while the City Council's intent is to focus on existing facilities and infrastructure, the committee will also need to evaluate new facilities and infrastructure that may have synergistic relationships to the facilities, infrastructure and areas being evaluated; and

WHEREAS, the City Council has asked staff to develop a prioritized list of projects that addresses the City Council's goals and strategies as a point of departure for committee evaluation and consideration which is a similar process used by the Citizen Bond Advisory Committee in 2012 and was endorsed as a beneficial tool by the committee leaders in 2012; NOW, THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY RESOLVES:

SECTION 1. A Special Citizens Bond Advisory Committee shall be composed of no more than fifty-one (51) persons who shall reside within the City of Denton, seven of whom shall be appointed by each member of the City Council and the committee chair or co-chairs shall be appointed by the full City Council. Appointments made on November 5, 2013, November 19, 2013, and on any subsequent City Council meeting are hereby confirmed and accepted. The Committee shall perform its functions in accordance with this resolution.

SECTION 2. A Special Citizens Bond Advisory Committee shall make recommendations to the City Council on the dollar amounts and capital projects to be considered by the public in the November 2014 election.

SECTION 3. The City Council requests the Special Citizens Bond Advisory Committee to consider inclusion of the reconstruction of Fire Station No. 3 and Fire Station No. 4 in their recommended capital projects for the November 2014 election.

SECTION 4. The City Council requests the Special Citizens Bond Advisory Committee to consider inclusion of the reconstruction of City Streets in the minimum amount of twelve (12) million dollars in their recommended capital projects for the November 2014 election.

SECTION 5. The City Council requests the Special Citizens Bond Advisory Committee to consider funding for public art as part of the recommended capital projects for the November 2014 election based on the City Council approved public art policy.

SECTION 6. The Citizen Bond Advisory Committee appointments will end and the Committee shall be formally dissolved on August 1, 2014.

PASSED AND APPROVED this the \_\_\_\_\_ day of November, 2013.

\_\_\_\_\_  
MARK A. BURROUGHS, MAYOR

ATTEST:  
JENNIFER WALTERS, CITY SECRETARY

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

APPROVED AS TO LEGAL FORM:  
ANITA BURGESS, CITY ATTORNEY

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

**AGENDA INFORMATION SHEET**

**AGENDA DATE:** November 19, 2013

**DEPARTMENT:** Finance

**ACM:** Bryan Langley *LB*

---

**SUBJECT**

Consider appointments to the Citizens Bond Advisory Committee for the proposed 2014 Bond Election.

**BACKGROUND**

During prior discussions, the City Council has indicated a preference for a fifty (50) member Citizen Bond Advisory Committee (7 appointments for each City Council member and a committee chair). To solicit public interest, staff posted a notice and application on the City of Denton's website concerning the appointment process. Citizens interested in serving on the Bond Advisory Committee were encouraged to notify the City Council or City Secretary's Office. In addition, the notice has been distributed on social media channels as well.

On November 5, 2013, the City Council made twenty appointments to the Citizens Bond Advisory Committee. The purpose of this item is to request additional City Council appointments to the Citizens Bond Advisory Committee. The November 5<sup>th</sup> appointments and a listing of interested citizens are attached as Exhibits 1 and 2.

In addition, the resolution creating and presenting a charge for the Citizens Bond Advisory Committee will also be presented to the City Council for consideration on November 19, 2013.

**PRIOR ACTION/REVIEW**

On October 7, 2013, the City Council discussed the proposed 2014 Bond Program and received presentations from City staff regarding the initial project list. The City Council recommended a fifty (50) member Citizen Bond Advisory Committee with seven appointments by each council member and a committee chair appointed by the full council.

On November 5, 2013, the City Council discussed the proposed bond election and appointed members to the Citizen Bond Advisory Committee.

**EXHIBITS**

1. Committee Appointments
2. Applications List

Respectfully submitted:

*Chuck Springer*

Chuck Springer, 349-8260  
Director of Finance

# 2014 CITIZENS BOND COMMITTEE APPOINTMENTS

## Appointed by Council Member Engelbrecht

<u>Name:</u>	<u>Address:</u>	<u>Phone:</u>	<u>Email address:</u>
Karen DeVinney	1820 West Oak St	940-380-0348	drkjdev@aol.com
Alex Lieban	2208 Parkside Dr	940-597-8720	alieban@verizon.net

## Appointed by Council Member Gregory

<u>Name:</u>	<u>Address:</u>	<u>Phone:</u>	<u>Email address:</u>
Sharon Barnhill	3329 Hummingbird Ln	940-390-6303	momster9@verizon.net
Janet Shelton	4 Timbergreen Circle	940-300-4119	jwshelton@verizon.net
Dale Tampke	2400 Southridge Dr	740-591-9021	dale.tampke@unt.edu

## Appointed by Council Member Hawkins

<u>Name:</u>	<u>Address:</u>	<u>Phone:</u>	<u>Email address:</u>
Joe Alfred			
Scott Campbell	2420 Oakridge St	940-535-8057	rollingsalmon@gmail.com
Glen Farris	108 W. Oak St, Ste D	940-300-6743	glenfarris@gmail.com
Larry Parker	2801 Spencer Rd #15101	817-915-0568	lparker@dentondepot.com

## Appointed by Council Member Kamp

<u>Name:</u>	<u>Address:</u>	<u>Phone:</u>	<u>Email address:</u>
Hank Dickenson			
Mary Ann McDuff	2233 Hollyhill Ln	940-435-2300	mamcduff74@verizon.net
Randy Robinson	2913 Destin Dr	940-387-3550	
Alyssa Stevenson	311 E. Hickory St #132	409-363-3603	aly.m.stevenson@gmail.com

## Appointed by Council Member King

<u>Name:</u>	<u>Address:</u>	<u>Phone:</u>	<u>Email address:</u>
Tim Crouch	3800 Lariat Rd	940-565-9370	tim@thecrouchgroup.com
Reggie Hill	3206 Belmont St	940-565-9274	hilltennis@aol.com
Greg Johnson	1696 S. Loop 288	940-594-7717	gjohnson@v-re.com
Gustav Seligmann	6 Oak Forrest Circle	940-395-0294	gus@unt.edu

## Appointed by Council Member Roden

<u>Name:</u>	<u>Address:</u>	<u>Phone:</u>	<u>Email address:</u>
Colette Johnson			
Keith Shelton	621 Grove St	940-387-4715	shelton@unt.edu
Kimberly Villarreal Thaggard			

## Exhibit 2

# APPLICATIONS FOR 2014 CITIZENS BOND COMMITTEE

<u>Name:</u>	<u>Address:</u>	<u>Phone:</u>	<u>Email address:</u>	<u>District:</u>
Sharon Barnhill	3329 Hummingbird Ln	940-390-6303	momster9@verizon.net	2
Rosanne Ciccica	3620 Big Horn Trail	214-766-1662	rciccica@live.com	4
Tim Crouch	3800 Lariat Rd	940-565-9370	tim@thecrouchgroup.com	3
Karen DeVinney	1820 West Oak St	940-380-0348	drkjdev@aol.com	3
Jean Greenlaw	2600 Sheraton Rd	940-383-4786	j.greenlaw1@verizon.net	2
Jamie Harrington	2408 Kariba Ln	817-797-0008	jamie@totallythebomb.com	4
Alex Lieban	2208 Parkside Dr	940-597-8720	alieban@verizon.net	3
Anyah Martinez	708 Smokerise Circle	940-595-4001	anyahmartinez@yahoo.com	4
Mary Ann McDuff	2233 Hollyhill Ln	940-435-2300	mamcduff74@verizon.net	4
Carol Phillips	2013 Tremont Circle	940-391-9608	carol.phillips16@verizon.net	4
Batavia Russel	2302 Jacqueline Dr	214-289-5369	bataviarussell@gmail.com	4
Gustav Seligmann	6 Oak Forrest Circle	940-395-0294	gus@unt.edu	4
Janet Shelton	4 Timbergreen Circle	940-300-4119	jwshelton@verizon.net	4
Keith Shelton	621 Grove St	940-387-4715	shelton@unt.edu	1
Daniel Speelman	3410 Lipizzan Dr	214-557-3900	dlspeelman@verizon.net	4
Dale Tampke	2400 Southridge Dr	740-591-9021	dale.tampke@unt.edu	4
Allison Wing	1529 Angelina Bend Dr	817-229-5491	allisonmortonwing@gmail.com	1

### Applications Received After November 5th:


<u>Name:</u>	<u>Address:</u>	<u>Phone:</u>	<u>Email address:</u>	<u>District:</u>
Claralynn Barnes	2416 Royal Acres Dr	940-566-0034	barnesc5@verizon.net	2
Vicki Byrd	2512 Timber Trail	940-453-4603	vltbyrd@verizon.net	1
Brendan Carroll	2223 Houston Pl	940-230-2447	brendan.carroll@2223.org	3
Victoria DeCuir	1008 Hillcrest St	940-594-7935	victoriadecuir@gmail.com	3
Don Edwards	2308 Crestwood Pl	940-312-3975	dedwards@twu.edu	2
Sarah Hoffman	3412 Oriole Ln	940-368-6240	sarahgwynne@gmail.com	2
Brian Holt	1512 Manten Blvd	214-417-5680	bholt68@gmail.com	2
Don King	1404 Vista Verde Ct	940-383-3207	donandjoycemarie@verizon.net	4
Julie Leal	3513 Chapel Hill Ln	940-783-1183	juliealeal@gmail.com	2
Linnie McAdams	1426 Kendolph Dr	940-206-4412	l.m.mcadams@att.net	4
Lilyan Prado-Carrillo	6504 Corral Ln	940-594-4509	lilyan.prado@gmail.com	4
Dan Proctor	3109 Anysa Ln	940-453-2331	dan@denton-therapy.com	1
Russ Stukel	1005 Ridgecrest Circle	940-368-5512	stukel@unt.edu	4



**AGENDA INFORMATION SHEET**

**DATE:** November 19, 2013

**DEPARTMENT:** Water & Wastewater Utilities

**ACM:** Howard Martin, 349-8232 

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**SUBJECT:**

Consider adoption of an ordinance of the City of Denton, Texas updating impact fees by Amending Chapter 26, "Utilities," section 26-210 through section 26-232 of the City of Denton Code of Ordinances; adopting revised land use assumptions and capital improvements plans for Water and Wastewater Impact Fees; establishing new service areas for Water and Wastewater impact fees; establishing new maximum impact fees per service unit and impact fees to be collected; creating schedules for the assessment and collection of impact fees; repealing conflicting ordinances and resolutions; providing for a severability clause; providing for a penalty not to exceed \$2,000 for each violation thereof; and providing an effective date.

**BACKGROUND:**

Impact fees provide the means for recovering a portion of the cost of adding capacity to the water and wastewater system to provide service to any new growth that creates new demand. The City of Denton first adopted impact fees for the Water and Wastewater Utilities in 1998. Texas Local Government Code Chapter 395 governs the imposition of impact fees and requires the City to update its impact fees at least every five years. Denton's impact fees were updated in 2003 and 2008 and another update is required in 2013. Three documents have been produced for the impact fee update: land use assumptions, 10-year Water and Wastewater capital improvements plans, and an impact fee study.

Land use assumptions, prepared by Planning Department staff, include a description of the Water and Wastewater service areas and projections of changes in land uses, densities, intensities, and population in those service areas over the next ten years. Land use assumptions forecast the timing and mix of single family, multi-family and other development in the service area. The land use assumptions incorporated into the 2013 impact fee update are included as Exhibit A in the attached Ordinance.

The 10-year Water and Wastewater capital improvements plans (CIP) identify the capital projects and associated costs required to support growth in the service area over the 10-year study period based on the land use assumptions document, Water and Wastewater demand forecasts, hydraulic modeling, and the Water and Wastewater master plans. A memo prepared by engineering consultant Freese and Nichols describes the calculations used in the 10-year Water Capital Improvements Plan and the 10-year Wastewater Capital Improvements Plan prepared by the city's Engineering Department staff is included as Exhibit B in the attached Ordinance

Impact fee consultant Duncan and Associates used these documents to prepare the 2013 Water and Wastewater impact fee study. This study calculates the costs to provide a new customer with water or wastewater service, which become the maximum impact fee amounts allowed under Chapter 395. The Council may choose to collect Water and Wastewater fees at any amount up to

the maximums set by the impact fee study. The 2013 impact fee study is included as Exhibit A in the attached Ordinance.

Both the Water and Wastewater service areas are currently divided into two zones that have different impact fees reflecting the differing cost of service for those areas. The impact fee study also considered adding an infill zone in response to the Council's desire to encourage infill development. Revised Maps showing the proposed Water impact fee zones that include the addition of an infill zone (1A) and the proposed single Wastewater impact fee zone are included as Exhibits C and D in the attached Ordinance.

**WATER SUMMARY:**

The maximum calculated impact fees along with recommendations from staff, the PUB, and the CIAC are summarized below.

The staff recommendation incorporates several factors. First, inflation has increased construction costs about 14 percent since 2008 while impact fees have been static since then. Second, because impact fees and rates are major sources of revenue, adjusting one affects the other. Staff considered this link as well as how Denton's rates and impact fees compare to comparable cities. Third, Water impact fees were not adopted at the maximum level in 2008. The staff recommendation seeks to balance these factors to provide reasonable impact fees along with reasonable rates.

On August 26 the Public Utilities Board passed a Water impact fee recommendation to add an infill zone and set fees at the revised staff-recommended levels of \$3,100 for Zone 1A (the new infill zone), \$3,900 for Zone 1B (the rest of the existing Zone 1), and \$4,500 for Zone 2.

On September 11, 2013, the Capital Improvements Advisory Committee passed a Water impact fee recommendation to add an infill zone but to set fees at the original staff-recommended levels of \$2,700 for Zone 1A (the new infill zone), \$4,100 for Zone 1B (the rest of the existing Zone 1), and \$4,900 for Zone 2. CIAC members stated that they wish for new customers to pay for the cost of their impact rather than that cost being borne by ratepayers, and that a lower impact fee for Zone 1A would encourage infill development.

Staff also produced recommended fee levels for an infill zone in addition to the current Water impact fee zones. This staff recommendation was also revised to incorporate the PUB and CIAC comments discussed above. Both the PUB and CIAC recommend adoption of an infill zone for the Water impact fees only.

Water Impact Fee Recommendations with Infill Zone

	<u>Zone 1A (infill)</u>	<u>Zone 1B (rest)</u>	<u>Zone 2</u>
<i>Max Impact Fee</i>	\$3,167	\$5,250	\$5,753
Revised Staff Recommendation	\$3,100	\$3,900	\$4,500
PUB Recommendation	\$3,100	\$3,900	\$4,500
CIAC Recommendation	\$2,700	\$4,100	\$4,900

Staff presented the impact fee study results and the recommendations to the City Council from the PUB and CIAC at a City Council Work Session on October 7<sup>th</sup> and held a Public Hearing on

the November 5<sup>th</sup> City Council Meeting. No one from the public wished to speak on the item at the public hearing. Staff received no further direction and prepared the final ordinance in accordance with the staff recommendation and PUB recommendation that was presented to the City Council on the October 7<sup>th</sup> and November 5<sup>th</sup> meetings.

**WASTEWATER SUMMARY:**

The maximum impact fee calculated in the study for each zone, as well as the staff, PUB, and CIAC recommendations are summarized below.

Wastewater Zone 2, covering north Denton, has not experienced customer growth and is not expected to be developed within the next five to seven years. Combining the current Zone 1 and Zone 2 will simplify administration of fees while recognizing that little to no impact fee revenue and no impact fee-eligible capital expenditure is likely to occur in Zone 2 in the near future.

Wastewater Impact Fee Recommendations

Combined Zone 1 and Zone 2

<i>Max Impact Fee</i>	\$2,851
Staff Recommendation	\$2,200
PUB Recommendation	\$2,200
CIAC Recommendation	\$2,200

On August 26, 2013, the Public Utilities Board passed a Wastewater impact fee recommendation to combine the existing Zone 1 and Zone 2, not create an infill zone, and set the fee at the staff-recommended level of \$2,200 for the combined Zone 1 and Zone 2.

On September 11, 2013, the Capital Improvements Advisory Committee also passed a Wastewater impact fee recommendation to combine the existing Zone 1 and Zone 2, not create an infill zone, and set the fee at the staff-recommended level of \$2,200 for the combined Zone 1 and Zone 2.

Staff presented the impact fee study results and the recommendations to the City Council from the PUB and CIAC at a City Council Work Session on October 7<sup>th</sup> and held a Public Hearing on the November 5<sup>th</sup> City Council Meeting. No one from the public wished to speak on the item at the public hearing. Staff received no further direction and prepared the final ordinance in accordance with the staff recommendation, PUB and CIAC recommendation that was presented to the City Council on the October 7<sup>th</sup> and November 5<sup>th</sup> meetings.

**RECOMMENDATIONS:**

**For Water**

Staff recommends adopting an infill zone for Water. Staff recommends adoption of Water impact fees at the levels of \$3,100 for Zone 1A (the new infill zone), \$3,900 for Zone 1B (the rest of the existing Zone 1), and \$4,500 for Zone 2. This is also consistent with the recommendation of the Public Utilities Board.

**For Wastewater**

Staff recommends combining the existing Zone 1 and Zone 2 into a single Zone 1 and not creating an infill zone for Wastewater. Staff recommends setting the Wastewater fee at \$2,200 for the combined Zone 1 and Zone 2. This is also consistent with the recommendation of the Public Utilities Board and Capital Improvements Advisory Committee.

**EXHIBITS:**

1. Ordinance

Respectfully submitted:

A handwritten signature in black ink that reads "Howard Martin". The signature is written in a cursive style with a horizontal line above the text.

---

Howard Martin  
ACM, Utilities

Prepared by:  
Tim Fisher, P.E.  
Water Utilities Division Manager

# EXHIBIT 1

ORDINANCE NO. 2013-\_\_\_\_\_

AN ORDINANCE OF THE CITY OF DENTON, TEXAS UPDATING IMPACT FEES BY AMENDING CHAPTER 26, "UTILITIES," SECTION 26-210 THROUGH SECTION 26-232 OF THE CITY OF DENTON CODE OF ORDINANCES; ADOPTING REVISED LAND USE ASSUMPTIONS AND CAPITAL IMPROVEMENTS PLANS FOR WATER AND WASTEWATER IMPACT FEES; ESTABLISHING NEW SERVICE AREAS FOR WATER AND WASTEWATER IMPACT FEES; ESTABLISHING NEW MAXIMUM IMPACT FEES PER SERVICE UNIT AND IMPACT FEES TO BE COLLECTED; CREATING SCHEDULES FOR THE ASSESSMENT AND COLLECTION OF IMPACT FEES; REPEALING CONFLICTING ORDINANCES AND RESOLUTIONS; PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING FOR A PENALTY NOT TO EXCEED \$2,000 FOR EACH VIOLATION THEREOF; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Texas Local Government Code, Chapter 395 authorizes a city to adopt and to amend impact fees for the purpose of financing capital improvements required by new development; and

WHEREAS, the City Council of the City of Denton, Texas in accordance with State law, initially enacted water and wastewater impact fees in accordance with Ordinance No. 98-301, dated on the 15<sup>th</sup> day of September, 1998; and

WHEREAS, the City Council, in accordance with State law, then enacted water and wastewater impact fees in accordance with Ordinance No. 2003-137 which was adopted by the City Council on the 13<sup>th</sup> day of May, 2003, and effective as of May 29, 2003; and then enacted Ordinance No. 2004-183, nunc pro tunc on July 20, 2004, and effective as of August 4, 2004 in order to properly recite several provisions that were inadvertently omitted or misstated from the above-referenced Ordinance No. 2003-137; and then enacted Ordinance No. 2008-156 which was adopted by the City Council on the 15<sup>th</sup> day of July, 2008, and effective as of July 29, 2008 establishing new maximum fees and establishing a new service area for Water impact fees; and

WHEREAS, five (5) years has passed since the Council considered impact fees, and it is now appropriate and lawfully required that the City once again address the issues of Land Use Assumptions and a Capital Improvements Plan, as well as the subject of Amended Water and Wastewater Impact Fees; and

WHEREAS, the City Council in accordance with law desires to update its impact fee program by amending land use assumptions, service areas, capital improvements plans and impact fees for water and wastewater facilities; and

WHEREAS, the City Council of the City of Denton, Texas has duly appointed a Capital Improvements Advisory Committee (the "Committee") by Ordinance No. 2013-066 on the 19<sup>th</sup> day of March, 2013; the Council has received written comments as required by law from such Committee, on the 23<sup>rd</sup> day of October, 2013; and has adopted Land Use Assumptions and a Capital Improvements Plan for amended water and wastewater impact fees all in accordance with the requirements of Texas Local Government Code, Chapter 395; and

WHEREAS, the City Council of the City of Denton, Texas has also received the unanimous recommendation of the Denton Public Utilities Board (the "Board"), an advisory Board, in favor of the impact fees and the zones set forth below in this ordinance, which recommendation was obtained in an open meeting of the Board on the 26<sup>th</sup> day of August, 2013; and

WHEREAS, on the 5<sup>th</sup> day of November, 2013, after due notice being issued in accordance with State law, a public hearing of the City Council was convened during the regularly called City Council meeting regarding the subject of the land use assumptions, capital improvements plans, and amended impact fees; at the said public hearing it was announced into the record by Pete Kamp, Mayor Pro-Tem, that the public hearing would be continued to the City Council's 6:30 p.m. regular meeting on the 19<sup>th</sup> day of November, 2013 in order to conduct further proceedings; and

WHEREAS, the City Council of the City of Denton, Texas, having complied with all applicable substantive and procedural requirements of Texas Local Government Code, Chapter 395; considering the comments of the Capital Improvements Advisory Committee; considering the recommendation of the Public Utilities Board; and after due deliberation and consideration finds it necessary and appropriate and in the public interest to establish new service areas for water and wastewater impact fees, and to establish amended water and amended wastewater impact fees to pay the costs of certain capital improvements for new development; NOW THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The facts, circumstances, and recitations contained in the preambles to this Ordinance are hereby found and declared to be true and correct.

SECTION 2. The Land Use Assumptions for Water and Wastewater Impact Fees hereby are amended as set forth in Exhibit "A," which is attached hereto and incorporated by reference herewith.

SECTION 3. The Capital Improvements Plan for Water and Wastewater Impact Fees is hereby amended, as set forth in Exhibit "B," which is attached hereto and incorporated by reference herewith.

SECTION 4. Chapter 26 of the Code of Ordinances of the City of Denton, Texas, entitled "Utilities," is hereby amended, which shall hereafter read as follows:

## **CHAPTER 26: UTILITIES**

### **ARTICLE VI. IMPACT FEES**

#### **Sec. 26-210. Short Title.**

This Article shall be known and cited as the "Denton Impact Fee Ordinance."

#### **Sec. 26-211. Statement of Purpose.**

This Article is intended to assure the provision of adequate public facilities to serve new development in the City by requiring each development to pay its proportional share of the costs of such improvements necessitated by and attributable to such new development as related to water and wastewater capital improvements.

#### **Sec. 26-212. Authority.**

This Article is adopted pursuant to Chapter 395 of the Texas Local Government Code and pursuant to the Denton Charter. The provisions of this Article shall not be construed to limit the powers of the City to utilize other methods authorized under state law, or pursuant to other City powers to accomplish the purposes set forth herein, either in substitution or in conjunction with this Article. The effective date of this Article is September 15, 1998.

#### **Sec. 26-213. Definitions.**

The following words, terms and phrases, as used in this Article, shall have the meanings respectively ascribed to them in this Section, unless the context clearly indicates otherwise:

- (1) *Area-related facility* means a capital improvement or facility expansion which is designated in the Impact Fee Capital Improvements Plan and which is not a site-related facility. Area-related facility may include a capital improvement, which is located offsite, within, or on the perimeter of the development site.
- (2) *Assessment* means the determination of the amount of the maximum impact fee per service unit that can be imposed on new development pursuant to this Article.
- (3) *Capital improvement* means any water supply; or treatment, transmission, pumping and storage facilities; or wastewater treatment and conveyance facilities that have a life expectancy of three (3) or more years, and are owned and operated by or on behalf of the City.
- (4) *Director* means the Director of Water Utilities or General Manager of Water Utilities for the City of Denton, or his or her designee.
- (5) *Facility expansion* means the expansion of the capacity of any existing facility for the purpose of serving new development. The term does not include the repair, maintenance, modernization or expansion of an existing facility to serve existing development.

(6) *Impact fee capital improvements plan* means the adopted plan for a service area, as may be amended from time to time, which identifies the water facilities or wastewater facilities and their associated costs which are necessitated by and which are attributable to new development, for a period not to exceed ten (10) years, and which are to be financed in whole or in part through the imposition of water or wastewater impact fees pursuant to this Chapter 26, Article VI.

(7) *Land use assumptions* means the projections of population and employment growth and associated changes in land uses, densities and intensities for a service area adopted by the City, as may be amended from time to time, upon which the impact fee capital improvements plan for the service area is based.

(8) *New development* means an activity involving the construction, reconstruction, redevelopment, conversion, structural alteration, relocation, or enlargement of any structure, or any use or extension of land, which has the effect of increasing water or wastewater demand, measured by an increase in the number of the service units utilizing the City's water or wastewater system that are attributable to such activity, and which requires either the approval and filing of a plat, or a re-plat pursuant to the City's subdivision regulations, or the issuance of a building permit, or a utility connection.

(9) *Service area* means a geographic area within the City or within the City's extraterritorial jurisdiction, within which impact fees for water or wastewater facilities may be collected for new development occurring within such area and within which fees so collected will be expended for those types of improvements identified in the type of capital improvements plan applicable to the service area.

(10) *Service unit* means a standardized measure of consumption, use, generation or discharge attributable to an individual unit of development calculated in accordance with generally accepted engineering or planning standards, for a particular category of capital improvements or facility expansions. For water and wastewater facilities, the service unit shall constitute the basis for establishing equivalency within various customer classes based upon the relationship of the continuous duty maximum flow rate in gallons per minute for a water meter of a given size and type compared to the continuous duty maximum flow rate in gallons per minute for a 3/4-inch diameter simple water meter.

(11) *Single-family equivalency ("SFE")* means an equivalency factor, based on the demand associated with the smallest water meter used in the City of Denton, Texas utility system. SFE's are utilized to establish the number of service units to be allocated to various meter sizes used in the City of Denton, Texas Water and Wastewater utilities system.

(12) *Site-related facility* means an improvement or facility which is for the primary use or benefit of a new development and/or which is the for the primary purpose of safe and adequate provision of water and wastewater facilities to serve the new development and which is not included in the impact fee capital improvements plan and for which the developer or property owner is solely responsible under subdivision and other applicable regulations.



(13) *Small residential housing unit* means a single-family residence of less than 1,300 square feet on a lot of less than 6,000 square feet.

(14) *Utility connection* means connection of an individual meter to the City's water or wastewater system, or an increase in the size of an existing meter.

**Sec. 26-214. Impact fee as condition of development approval.**

No new development shall be connected to the City's water or wastewater system within the service area without the assessment of an impact fee pursuant to this Article, and no building permit or request for service shall be issued until the applicant has paid the impact fee imposed herein, except for those entities that are expressly exempt from impact fees as set forth in Texas Local Government Code, Chapter 395.

**Sec. 26-215. Land use assumptions.**

- (a) Said land use assumptions for the City shall be updated at least every five (5) years utilizing the amendment procedure set forth in Texas Local Government Code, Chapter 395.
- (b) Amendment to the land use assumptions shall incorporate projections of changes in land uses, densities, intensities and population for the service area over at least a ten (10) year period.

**Sec. 26-216. Water impact fee service area.**

There are hereby established three (3) water impact fee service areas, to include all land within the City and its extraterritorial jurisdiction, the boundaries of which are depicted in Exhibit C, which Exhibit is attached hereto and incorporated by reference herein.

**Sec. 26-217. Wastewater impact fee service areas.**

There is hereby established one (1) wastewater impact fee service area, to include all land within the City and its extraterritorial jurisdiction, the boundaries of which are depicted in Exhibit D, which Exhibit is attached hereto and incorporated by reference herein.

**Sec. 26-218. Determination of service units.**

The number of service units for both water or wastewater impact fees shall be determined by using the land use and service unit equivalencies table which converts the demands for water or wastewater improvements generated by typical land uses to water meter size, and which table is attached hereto as Exhibit F and is incorporated by reference herein.

**Sec. 26-219. Impact fees per service unit.**

- (a) Maximum impact fees per service unit for each service area shall be established by category of capital improvements. The maximum impact fee per service unit for each service area for each category of capital improvement shall be computed in the following manner:
  - (1) For each category of capital improvements, calculate the total projected costs of capital improvements necessitated by and attributable to new development in the service area identified in the impact fee capital improvements plan;
  - (2) From such amount, subtract a credit in the amount of that portion of utility service revenues, if any, including the payment of debt, to be generated by new service units during the period the capital improvements plan is in effect, including the payment of debt, associated with the capital improvements in the plan;
  - (3) Divide the resultant amount by the total number of service units anticipated within the service area, based upon the land use assumptions for that service area.
- (b) The maximum impact fee per service unit for water or wastewater facilities by service area shall be as set forth in Schedule 1, which is attached hereto and incorporated herein by reference. Schedule 1 shall be used to assess impact fees. Schedule 1 may be amended from time to time utilizing the amendment procedure set forth in Section 26-228.
- (c) The impact fee per service unit which is to be paid by each new development within a service area shall be as set forth in Schedule 2, which is attached hereto and incorporated by reference, and shall be an amount less than or equal to the maximum impact fee per service unit established in Schedule 1. Schedule 2 may be amended from time to time utilizing the amendment procedure set forth in Section 26-228.

**Sec. 26-220. Assessment of impact fees.**

- (a) Assessment of impact fees for any new development in all of the Denton Water and Wastewater Service Areas shall be made as follows:
  - (1) For land which is unplatted at the time of application for a building permit or utility connection, or for a new development which received final plat approval prior to the effective date of this Article, and for which no re-platting is necessary pursuant to the City's subdivision regulations prior to development, assessment of impact fees shall occur at the time application is made for the building permit or utility connection, whichever first occurs, and shall be the amount of the maximum impact fee per service unit in effect, as set forth in Schedule 1.
  - (2) For a new development which is submitted for approval pursuant to the City's subdivision regulations on or after the effective date of this Article, or for which re-platting results in an increase in the number of service units after such date,

assessment of impact fees shall be at the time of final plat recordation, and shall be the amount of the maximum impact fee per service unit in effect as set forth in Schedule 1.

- (b) Following assessment of impact fees pursuant to subsection (a), the amount of impact fee assessment per service unit for that development cannot be increased, unless the owner proposes to change the approved development by the submission of a new application for final plat approval or other development application that results in approval of additional service units, in which case a new assessment shall occur at the Schedule 1 rate then in effect for such additional service units.
- (c) Following the vacating of any plat or approval of any re-plat, a new assessment must be made in accordance with subsection (a)(2).
- (d) An application for an amending plat made pursuant to Texas Local Government Code §212.016 and the City of Denton Subdivision Ordinance, and for which no new development is proposed, is not subject to reassessment for an impact fee.

**Sec. 26-221. Computation of impact fees.**

- (a) Following the filing and acceptance of a written application for building permit or utility connection, the City shall compute the impact fee due in the following manner:
  - (1) The number of service units shall be determined by the size of the water meter purchased using the Land Use and Service Unit/SFE Equivalencies table incorporated as Exhibit F herein. The service units for multi-family apartment projects with eight (8) or more units shall be determined by multiplying the number of bedrooms in said apartment project by 0.26 SFE;
  - (2) Service units shall be summed for all meters, or for all bedrooms within a multi-family apartment project with eight (8) or more units purchased for the development;
  - (3) The total number of service units shall be multiplied by the impact fee per service unit for water and/or wastewater service facilities using Schedule 1 then in effect as established in Section 26-219;
  - (4) The amount of each impact fee shall be reduced by any allowable offsets or credits for that category of capital improvements, in the manner provided in Section 26-223.
- (b) The amount of impact fee due for new development shall not exceed the amount computed by multiplying the assessed fee for water and/or wastewater service by the total number of service units generated by the development. The amount of impact fee due for redevelopment shall not exceed the amount computed by multiplying the assessed fee for water and/or wastewater service by the net increase in service units generated by the

redevelopment.

- (c) The developer may submit or the Director may require the submission of a study, prepared by a professional engineer, licensed in the State of Texas, clearly indicating the number of water and/or wastewater service units which will be consumed or generated by the new development. The Director will review the information for completeness and conformity with generally accepted engineering practices and will, when satisfied with the completeness and conformity of the study, multiply the number of service units determined by the study, times the impact fee per service unit contained in Section 26-219 above to determine the total impact fee to be collected for the development. The Director may also use recent historical water billing records for existing customers to determine water demands and single-family equivalents (“SFE”) in accordance with data from the most recent Capital Improvements Plan.
- (d) Whenever the property owner increases the number of service units for a development, the additional impact fees collected for such new service units shall be determined based on Schedule 1 and applicable offsets, credits, and discounts then in effect, and such additional fee shall be assessed and collected at the time the additional meters are purchased.
- (e) In the event the property owner decreases the number of service units for a development, the property owner shall be entitled to a refund of the impact fee or impact fees actually paid, but only for the amounts represented by the decrease in service units based on the assessed fee and offsets, credits, or discounts applicable at the time the fee was paid.
- (f) If the building permit for the property on which an impact fee is paid has expired and a new application for a building permit is thereafter filed for the identical property and the identical number of service units, the impact fee previously paid satisfies the requirements of this Article, unless the earlier impact fee was refunded to the applicant at the expiration of the previously-issued building permit, or is otherwise refunded.
- (g) The impact fee shall attach to the property for which the impact fee was paid and shall not be transferable to other properties or service units.
- (h) No building permit or utility connection shall be issued if the applicant cannot verify payment to Staff of the appropriate impact fee and other applicable fees, or if existing facilities do not have actual capacity to provide service to the new connection(s), except for those entities that are exempted from impact fees as are specifically set forth in Texas Local Government Code, Chapter 395.
- (i) All matters pertaining to the enforcement, assessment, computation, or collection of impact fees provided for herein shall be determined by the Director, or his or her designate.

**Sec. 26-222. Collection of impact fees.**

- (a) Except as otherwise provided in this Section, the impact fee for the new development shall be collected at the time the City issues a building permit, or if a building permit is not required, at the time an application is filed for a new connection, to the City's water or wastewater system or for an increase in water meter size.
- (b) Except as otherwise provided by contracts with political subdivisions, developer's contracts, or wholesale customers, no building permit shall be issued until all impact fees due and owing have been paid to the City.
- (c) The City may enter into an agreement for capital improvements with a property owner pursuant to Section 26-229 that establishes a different time and manner of payment.
- (d) In the event that a property owner agrees to construct or finance capital improvements in the capital improvements plan pursuant to Section 26-229, the costs of which are to be reimbursed to the owner from impact fees paid from other new developments that will use such facilities, the City may collect impact fees from such other new developments at the time final plats are recorded for such development.
- (e) Schedule 1 sets the assessment rate and establishes maximum impact fees as set forth in subparagraphs (e)(1) through (e)(4) below:
  - (1) For a new development for which final plat recordation occurred on or after September 15, 1998, but before May 29, 2003, the maximum impact fee per service unit shall be \$2,044 for the water service area, and \$483 for the wastewater service area.
  - (2) For a new development for which final plat recordation occurred on or after May 29, 2003, but before July 29, 2008, the maximum impact fee per service unit shall be \$3,155 for the water service area; and \$1,703 for the Zone 1 wastewater service area.
  - (3) For a new development for which final plat recordation occurred on or after July 29, 2008, but before December 3, 2013 the maximum impact fee per service unit shall be as follows: \$3,400 for the Zone 1 water service area and \$4,000 for the Zone 2 water service area; and \$1,700 for the Zone 1 wastewater service area and \$1,760 for the Zone 2 wastewater service area.
  - (4) For a new development for which final plat recordation occurred on or after December 3, 2013, or for any plats filed prior to September 15, 1998, the maximum impact fee per service unit shall be as follows: \$3,167 for the Zone 1A water service area, \$5,250 for the Zone 1B water service area, and \$5,753 for the Zone 2 water service area; and \$2,851 for the wastewater service area.
- (f) Schedule 2 sets the collection rate for impact fees as set forth in subparagraph (f)(1), (f)(2) and (f)(3) below:

(1) Except as provided in paragraph (2) below, impact fees shall be collected and paid as follows:

Water Service Area (Zone 1A):	\$3,100 per service unit
Water Service Area (Zone 1B):	\$3,900 per service unit
Water Service Area (Zone 2):	\$4,500 per service unit
Wastewater Service Area:	\$2,200 per service unit

2) For a new development for which final plat recordation occurred on or after September 15, 1998, but before May 29, 2003, and for which no new service units have been added, impact fees shall be collected as follows:

Water Service Area	\$2,044 per service unit
Wastewater Service Area (Zone 1)	\$483 per service unit

3) For a new development for which final plat recordation occurred on or after May 29, 2003, but before July 29, 2008, and for which no new service units have been added, impact fees shall be collected as follows:

Water Service Area (Zone 1)	\$3,155 per service unit
Wastewater Service Area (Zone 1)	\$1,703 per service unit

4) For a new development for which final plat recordation occurred on or after July 29, 2008, but before December 3, 2013, and for which no new service units have been added, impact fees shall be collected as follows:

Water Service Area (Zone 1)	\$3,400 per service unit
Water Service Area (Zone 2)	\$4,000 per service unit
Wastewater Service Area (Zone 1)	\$1,700 per service unit
Wastewater Service Area (Zone 2)	\$1,760 per service unit

Provided, however, if the service unit is a “small residential housing unit” as defined herein, which consists of a residence of less than 1,300 square feet, which is also located on a lot of less than 6,000 square feet, that service unit shall be assessed and charged a 0.5 SFE charge, no matter in which Zone it is located in, and no matter when the lot is platted.

**Sec. 26-223. Offsets and credits.**

(a) The City shall offset the reasonable value of any area-related facilities, identified in the impact fee capital improvements plan and constructed pursuant to an agreement with the City, except as otherwise provided therein, which are dedicated to and received by the City on or after the effective date of this ordinance, against the amount of the impact fee

due for that category of capital improvement. No offsets or credits shall be provided for required over-sizing of water and wastewater lines or lift stations not identified in the capital improvements plan or for pro-rata payments to repay other developers for such over-sizing pursuant to Subchapter 21 of the Denton Development Code.

- (b) The City shall credit any new development that occurs subsequent to the effective date of this Article, any amount of capital recovery fees which have been collected by the City pursuant to duly adopted ordinances and any impact fees collected by the City pursuant to this Article.
- (c) All offsets and credits against impact fees shall be subject to the following limitations and shall be granted based on this Article and additional standards promulgated by the City, which may be adopted as administrative guidelines.
  - (1) No offset or credit shall be given for the dedication or construction of site-related facilities.
  - (2) No offset or credit shall exceed the impact fee to be collected from new development as established in Section 26-219.
  - (3) The unit costs used to calculate the offsets shall not exceed those assumed for the capital improvements included in the impact fee capital improvements plan for the category of facility within the service area for which the impact fee is imposed.
  - (4) If an offset or credit applicable to a plat has not been exhausted within ten (10) years from the date of the acquisition of the first building permit issued or connection made after the effective date of this Article or within such period as may be otherwise designated by agreement for capital improvements pursuant to Section 26-229, such offset or credit shall lapse.
  - (5) In no event will the City reimburse the property owner or developer for an offset or credit when no impact fees for the new development can be collected pursuant to this Article or for any amount exceeding the total impact fees collected or due for the development for that category of capital improvement, unless otherwise agreed to by the City.
  - (6) No offset shall exceed an amount equal to the eligible costs of the improvement multiplied by a fraction, the numerator of which is the impact fee per service unit due for the new development as computed using Schedule 2 and the denominator of which is the maximum impact fee per service unit for the new development as computed using Schedule 1.
  - (7) Offsets or credits for area-related facilities dedicated to and accepted by the City for a development prior to the effective date of this Article shall be prorated among the total number of service units within such development and reduced by

an amount equivalent to the number of existing service units within such development and shall be further reduced by the amount of any participation funds received from the City and by any payments received from other developments who utilize the system facility.

- (8) The City may participate in the costs of an area-related improvement to be dedicated to the City, including costs that exceed the amount of the impact fees due for the development under Schedule 1 for that category of capital improvements, in accordance with policies and rules established under the City's subdivision regulations and when incorporated into an agreement for capital improvements pursuant to Section 26-229. The amount of any offset shall not include the amount of the City's participation.
- (d) Unless an agreement for capital improvements is executed providing for a different manner of offsetting or crediting impact fees due pursuant to Section 26-229, an offset or credit associated with a plat shall be applied to reduce an impact fee at the time of application for the first building permit or at the time of application for the first utility connection for the property, in the case of land located within the City's extraterritorial jurisdiction, and, thereafter, to reduce impact fees subsequently to be collected, until the offset or credit is exhausted.

**Sec. 26-224. Establishment of accounts.**

- (a) The City's Department of Finance shall establish separate interest-bearing accounts clearly identifying the category of capital improvement (i.e. water facilities and wastewater facilities) within the service area for which the impact fee is collected.
- (b) Interest earned by each account shall be credited to the account on which it is earned and shall be used solely for the purposes specified for impact fees as authorized herein.
- (c) The City's Department of Finance shall establish adequate financial and accounting controls to ensure that impact fees disbursed from the account are utilized solely for the purposes authorized in this Article. Disbursement of funds shall be authorized by the City at such times as are reasonably necessary to carry out the purposes and intent of this Article; provided, however, that any fee paid shall be expended within a reasonable period of time, but not to exceed ten (10) years from the date the fee is deposited into the account.
- (d) The City's Department of Finance shall maintain and keep adequate financial records for each such account, which shall show the source and disbursement of all revenues, which shall account for all monies received, the number of service units for which the monies are received, and which shall ensure that the disbursement of funds from each account shall be used solely and exclusively for the provision of projects specified in the impact fee capital improvements plan as area-related capital projects. The City's Department of Finance shall also maintain such records as are necessary to ensure that refunds are appropriately made in accordance with this Article. The records of the account into



which impact fees are deposited shall be open for public inspection and copying during ordinary business hours. The City may establish a fee for copying services.

**Sec. 26-225. Use of proceeds of impact fee accounts.**

- (a) The impact fee collected pursuant to this Article may be used to finance or to recoup capital construction costs for water and wastewater facilities identified in the impact fee capital improvements plan and for any purpose authorized in Texas Local Government Code, Chapter 395, as amended. Impact fees may also be used to pay the principal sum and interest and other finance costs on bonds, notes or other obligations issued by or on behalf of the City to finance such capital improvements or facilities expansions.
- (b) Impact fees collected pursuant to this Article shall not be used to pay for any of the following expenses:
  - (1) Construction, acquisition, or expansion of capital improvements or assets other than those identified for the water and wastewater utility in the impact fee capital improvements plan;
  - (2) Repair, operation, or maintenance of existing or new capital improvements or facilities expansions;
  - (3) Upgrading, expanding, or replacing existing capital improvements to serve existing development in order to meet stricter safety, efficiency, environmental or regulatory standards;
  - (4) Upgrading, expanding, or replacing existing capital improvements to serve existing development; provided, however, that impact fees may be used to pay the costs of upgrading, expanding or replacing existing capital improvements in order to meet the need for new capital improvements generated by new development; or
  - (5) Administrative and operating costs of the City.

**Sec. 26-226. Appeals.**

- (a) The property owner or applicant for new development may appeal the following Staff decisions and determinations to the Denton Public Utilities Board: (a) the applicability of an impact fee to the new development; (b) the method of calculating the amount of the impact fee due; (c) the availability or the amount of an offset, credit or rebate; (d) the application of an offset or credit against an impact fee due; or (e) the amount of a refund due, if any. The Property Owner or Applicant shall notify the City Secretary of the City of Denton, Texas in writing, of its desire to appeal any such decision and determination to the Public Utilities Board, no later than thirty (30) days following the date of Staff decision or determination. This notice shall be untimely if it is received by the City Secretary more than thirty (30) days following the date of Staff decision and determination.

- (b) The Owner and/or Applicant must file a notice of appeal with the City Secretary within thirty (30) days following the determination of the amount of the impact fees to be paid by the development by city Staff. If the notice of appeal is accompanied by a bond or other sufficient surety satisfactory to the City Attorney in an amount equal to the original determination of the impact fee due, the development application may be processed while the appeal of the impact fee is pending.
  
- (c) The written notice to the City Secretary requesting an appeal shall contain the following information:
  - 1. The name of the Owner and/or Applicant of the Appeal; and
  - 2. The business address and telephone number of the Owner and/or Applicant; and
  - 3. The specific decision or determination of Staff which Owner and/or Applicant are complaining of, and the date of issuance thereof; and
  - 4. State specifically the grounds regarding Owner's and/or Applicant's application for appeal; and
  - 5. State specifically what amount of money that you believe is owing the City, as well as your basis therefor; and
  - 6. The name and address of any legal counsel who will appear before the Public Utilities Board to argue on your behalf; and
  - 7. The signature of the Owner and/or Applicant regarding this Appeal.
  
- (d) The burden of proof shall be on the property owner and/or applicant to demonstrate that the amount of the fee or the amount of the offset, credit or rebate was not calculated according to the provisions of this Article. Upon submission of the case and the hearing held before the Public Utilities Board (the "Board"), a decision shall be made by the Board, upon Public Hearing, which shall constitute a formal recommendation to the Denton City Council. The Board shall submit all of the materials that it receives as evidence from Staff and all of the materials that it receives as evidence from the Owner and/or Applicant to the City Council for its final consideration. All evidence as well as the record shall be closed by the Public Utilities Board. A record shall be made of the Public Utilities Board hearing and shall be forwarded to the City Council. The City Council shall then make its decision on the record produced by the Public Utilities Board and upon the oral arguments that are limited to not more than fifteen (15) minutes each for the Owner and/or Applicant, and the City. The City Council shall then determine the appeal and issue its written decision.

**Sec. 26-227. Refunds.**

- (a) Any impact fee or portion thereof collected pursuant to this Article which has not been expended within ten (10) years from the date of payment, shall be refunded, upon application, to the record owner of the property at the time the refund is paid, or, if the impact fee was paid by another governmental entity, to such governmental entity, together with interest calculated from the date of collection to the date of refund at the statutory rate as set forth in Texas Local Government Code, Section 395.025(d) which states that Texas Finance Code, Section 302.002, or any successor statute applies.

- (b) Upon the written request of an owner of the property on which an impact fee has been paid, the City shall refund such fees if:
  - (1) Existing service is available and service is denied; or
  - (2) Service was not available when the fee was collected and the City has failed to commence construction of facilities to provide service within two (2) years of fee payment; or
  - (3) Service was not available when the fee was collected and has not subsequently been made available within a reasonable period of time considering the type of capital improvement or facility expansion to be constructed, but in any event no later than five (5) years from the date of the payment.
- (c) The City shall refund an appropriate proportion of impact fee payments in the event that a previously purchased but uninstalled water meter for which the impact fee has been paid is replaced with a smaller meter, based on the service unit differential of the two (2) meter sizes and the fee per service unit at the time of the original fee payment.
- (d) A petition for refund under this section shall be submitted to the Director on a form provided by the City for such purpose. Within one (1) month of the date of receipt of a petition for refund, the Director must provide the petitioner, in writing, with a decision on the refund request, including the reasons for the decision. If a refund is due to the petitioner, the Director shall notify the Assistant City Manager - Administration and request that a refund payment be made to the petitioner.

**Sec. 26-228. Update of plan and revision of fees.**

- (a) The City shall update its land use assumptions and capital improvements plans at least every five (5) years, commencing from the date of adoption of such plans, and shall recalculate the impact fees based thereon in accordance with the procedures set forth in Texas Local Government Code, Chapter 395, or in any successor statute.
- (b) The City may review its land use assumptions, impact fees, capital improvements plans and other factors such as market conditions more frequently than provided in subsection (a) to determine whether the land use assumptions and capital improvements plans should be updated and the impact fee recalculated accordingly, or whether Schedules 1 or 2 should be changed. Schedule 2 may be amended without revising land use assumptions and capital improvements plans at any time prior to the update provided for in subsection (a), provided that the impact fees to be collected under Schedule 2 do not exceed the impact fees assessed under Schedule 1.
- (c) If, at the time an update is required pursuant to Subsection (a), the City Council determines that no change to the land use assumptions, capital improvements plan or impact fee is needed, it may dispense with such update by following the procedures in

Texas Local Government Code, Section 395.0575.

- (d) The City may amend by resolution the Land Use and Service Unit/SFE Equivalency table (Exhibit F), at any time prior to the update provided for in Subsection (a), provided that the number of service units associated with a particular land use shall not be increased.

**Sec. 26-229. Agreement for capital improvements.**

An owner of a new development may construct or finance a capital improvement or facility expansion designated in the impact fee capital improvements plan, if required or authorized by the City, by entering into an agreement with the City prior to the issuance of any building permit for the development. The agreement shall be on a form approved by the City and shall identify the estimated cost of the improvement or expansion, the schedule for initiation and completion of the improvement or expansion, a requirement that the improvement be designed and completed to City standards and such other terms and conditions as deemed necessary by the City. The agreement shall provide for the method to be used to determine the amount of the offset to be given against the impact fees due for the development or any reimbursement to the owner for construction of the facility.

**Sec. 26-230. Use of other financing mechanisms.**

- (a) In addition to the use of impact fees, the City may finance water and wastewater capital improvements or facilities expansions designated in the impact fee capital improvements plan through the issuance of bonds, through the formation of public improvements districts or other assessment districts, or through any other authorized mechanism, in such manner and subject to such limitations as may be provided by law.
- (b) Except as otherwise provided herein, the assessment and collection of an impact fee shall be additional and supplemental to, and not in substitution of, any other tax, fee, charge or assessment which is lawfully imposed on and due against the property.
- (c) The City may pay all or part of impact fees due for a new development taking into account available offsets and credits pursuant to duly adopted criteria.

**Sec. 26-231. Conflicting ordinances.**

All ordinances or parts of ordinances that are in force when the provisions of this ordinance become effective, which are inconsistent or in conflict with the terms or provisions contained in this ordinance, are hereby repealed to the extent of the conflict.

**Sec. 26-232. Reserved.**

SECTION 4. Any person violating any provision of this Ordinance shall, upon conviction, be fined a sum not to exceed \$2,000. Each day that a provision of this Ordinance is violated shall constitute a separate and distinct offense.

SECTION 5. If any section, subsection, paragraph, sentence, clause, phrase or word in this Ordinance, or application thereof to any person or circumstances is held invalid by any court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of this Ordinance, and the City Council of the City of Denton, Texas hereby declares it would have enacted such remaining portions, despite any such invalidity.

SECTION 6. This Ordinance shall repeal any conflicting ordinances and resolutions to the contrary; it being the intention of the City Council to fully amend all provisions of Chapter 26 of the City of Denton, Texas Code of Ordinances dealing with Impact Fees.

SECTION 7. This Ordinance shall become effective fourteen (14) days from the date of its passage, and the City Secretary is hereby directed to cause the caption of this Ordinance to be published twice in the *Denton Record Chronicle*, a daily newspaper published in the City of Denton, Denton County, Texas, within ten (10) days of the date of its passage.

PASSED AND APPROVED this the \_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
MARK A. BURROUGHS, MAYOR

ATTEST:  
JENNIFER WALTERS, CITY SECRETARY

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

APPROVED AS TO LEGAL FORM:  
ANITA BURGESS, CITY ATTORNEY



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

## ATTACHMENTS

EXHIBIT A – Capital Improvements Plans for Water and Wastewater Impact Fees  
– Duncan and Associates

EXHIBIT B – Water Impact Fee Utilization Calculations – Freese and Nichols;  
Wastewater Impact Fee CIP – City of Denton Engineering Department

EXHIBIT C – Amended Water Impact Fee Service Areas – Zones 1, 2 & 3

EXHIBIT D – Wastewater Impact Fee Service Area – Zone 1

EXHIBIT E – Land Use and Service Unit/SFE Equivalency Table

EXHIBIT A

**2013-2023**  
**Capital Improvements Plan**  
**for Water and Wastewater**  
**Impact Fees**

**Denton, Texas**

**duncan** | associates

**August 2013**

**PUBLIC REVIEW DRAFT**

Prepared for the City of Denton by Duncan Associates  
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## EXECUTIVE SUMMARY

Duncan Associates has been retained by the City of Denton to update the City's water and wastewater impact fees. Land use assumptions that provide the planning basis for the impact fee analysis were prepared by the City of Denton Planning Department and are provided in a separate document. This report provides all of the analysis for the impact fee Capital Improvements Plan required by Chapter 395, the Texas impact fee enabling act. It is based on cost and demand/capacity analysis prepared by Freese & Nichols engineers and City staff engineers.

The City's current water and wastewater impact fees are summarized in Table 1. In the last update of the City's utility impact fees, which became effective on August 1, 2008, the City moved from a single service area for both water and wastewater to two service areas. The two service areas are somewhat different for water and wastewater.

The maximum fees calculated in the 2008 study were adopted at somewhat different percentages for the two service areas. For water, the fees were adopted at 94.6% of the maximum amount in Zone 1 and 94.4% in Zone 2. For wastewater, the fees were adopted at 91.1% in Zone 1 and 99.9% in Zone 2.

**Table 1. Current Adopted Impact Fees**

Meter Size	2008 Study		Adopted Fees		Adoption %	
	Zone 1	Zone 2	Zone 1	Zone 2	Zone 1	Zone 2
<b>Water Impact Fees</b>						
5/8" x3/4"	\$3,594	\$4,237	\$3,400	\$4,000	94.6%	94.4%
3/4"	\$5,391	\$6,356	\$5,100	\$6,000	94.6%	94.4%
1"	\$8,985	\$10,593	\$8,500	\$10,000	94.6%	94.4%
1 1/2"	\$17,970	\$21,185	\$17,000	\$20,000	94.6%	94.4%
2"	\$28,752	\$33,896	\$27,200	\$32,000	94.6%	94.4%
<b>Wastewater Impact Fees</b>						
5/8" x3/4"	\$1,867	\$1,762	\$1,700	\$1,760	91.1%	99.9%
3/4"	\$2,801	\$2,643	\$2,550	\$2,640	91.1%	99.9%
1"	\$4,668	\$4,405	\$4,250	\$4,400	91.0%	99.9%
1 1/2"	\$9,335	\$8,810	\$8,500	\$8,800	91.1%	99.9%
2"	\$14,936	\$14,096	\$13,600	\$14,080	91.1%	99.9%

*Source:* Fees calculated in 2008 study from Duncan Associates, *2008-2018 Capital Improvements Plan for Water and Wastewater Impact Fees*, April 2008; adopted fees from City of Denton Code of Ordinances, Sec. 26.22.

The City Council has the option of retaining the current two-zone structure or moving to a three-zone structure that includes an "infill" zone by splitting Zone 1 into Zone 1A (infill) and Zone 1B (remainder). Table 2 below compares the current adopted fees to the updated maximum fees calculated in this study for both of these options.

**Table 2. Updated Impact Fees per Service Unit**

Facility Type and Service Area	Current Fees	Updated Max. Fees	Percent Change
Zone 1 Water Service Area	\$3,400	\$4,593	35%
Zone 1A (Infill) Water Service Area	n/a	\$3,167	-7%
Zone 1B (Remainder) Water Service Area	n/a	\$5,250	54%
Zone 2 Water Service Area	\$4,000	\$5,753	44%
Potential Water Fee Revenue (\$ millions), 2013-2023	\$40.1	\$55.0	37%
<hr/>			
Zone 1 Wastewater Service Area	\$1,700	\$3,175	87%
Zone 1A (Infill) Wastewater Service Area	n/a	\$1,285	-24%
Zone 1B (Remainder) Wastewater Service Area	n/a	\$4,010	136%
Zone 2 Wastewater Service Area	\$1,760	\$1,400	-20%
Potential Wastewater Fee Revenue (\$ millions), 2013-2023	\$16.5	\$27.5	67%

*Source:* Current fees per service unit are adopted fees for 5/8" x 3/4" meter from Table 1; updated maximum fees per service unit from Table 20 (water) and Table 35 (wastewater); revenues from Table 22 (water) and Table 37 (wastewater).

In the adoption of updated water and wastewater impact fees, the Council has three main sets of options:

- The Council may retain the current two Zone 1 and Zone 2 service areas, or split Zone 1 into infill (Zone 1A) and remainder (Zone 1B) service areas.
- The Council may, by policy, adopt the updated maximum fees at a percentage less than 100 percent. In addition, the adoption percentage could vary by service area, as in the 2008 update.
- The Council may adopt different Schedule 1 (maximum) and Schedule 2 (collection) fees. Schedule 1 fees are those that are assessed at time of final subdivision plat recording and determine the maximum fees that may ever be collected from lots within the plat. Currently, the Schedule 1 and Schedule 2 rates shown in the impact fee ordinance are identical. In this update, the schedules could be different, with Schedule 1 fees being the maximum fees calculated in this report and Schedule 2 fees being fees adopted at some percentage less than 100 percent. Adoption percentages may vary by service area, as was done in the 2008 update. However, the fees should be adopted at a uniform percentage for all meter sizes within a service area.

The last option was less important in the 2008 update, since the lowest adoption percentage was 91% of the maximum fee. However, if updated fees for any service area are adopted at a significantly lower percentage, it is recommended that the Schedule 1 fees represent the maximum fees. This would give future Councils the option of increasing the collection rate for lots that were platted at a time when the collection rate was significantly lower than the full net cost to serve a new customer.

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## LEGAL FRAMEWORK

Impact fees are a way for local governments to require new developments to pay a proportionate share of the infrastructure costs they impose on the community. In contrast to traditional “negotiated” developer exactions, impact fees are charges that are assessed on new development using a standard formula based on objective characteristics, such as the number and type of dwelling units constructed. The fees are one-time, up-front charges, with the payment usually made at the time of building permit issuance. Impact fees require each new development project to pay its pro-rata share of the cost of new capital facilities required to serve that development.

Impact fees in Texas must be developed in accordance with Chapter 395 of the Texas Local Government Code. The State law lays out very specific requirements for the technical development of these fees as well as the procedures necessary for enactment of such fee programs.

Since the 2001 amendments to Chapter 395, credits against the impact fees for other taxes or fees that would be paid by new development and used for capital improvements of the same facility type as the impact fee are now required. As an alternative to performing a revenue credit calculation, cities can simply reduce the impact fees by fifty percent.

A literal reading of subsection A above could be misleading, because it would make little sense to calculate a credit for the eligible improvements in the capital improvements plan. Since new development will be paying for such costs through impact fees, no rate revenues should be needed to fund such improvements if impact fees are adopted at the full calculated amounts. However, one can read the phrase “capital improvements plan” more broadly to include all existing facilities (Chapter 395 does require that the plan include an inventory of existing facilities). New customers will be paying for the remaining debt service on past improvements, and if no credits were provided they would in effect be paying for their costs through impact fees and some of existing customers’ costs through the portion of their rates that go to debt retirement. To avoid this kind of potential double-payment, credit will be provided for the share of outstanding debt that is attributable to capacity that is serving existing customers. In addition, some of the planned improvements will also remedy some capacity deficiencies, and an impact fee credit is provided for rate revenue that new customers will generate that will be retire debt associated with remedying existing deficiencies.

Revised impact fees based on this study will not apply to lots platted when a previous fee schedule was in place. Chapter 395 states that the impact fee schedule that is in effect at the time a lot is platted is the one that applies to the property, regardless of when development occurs. This occurs through a process called “assessment.” Assessment must occur at the time of plat recording, or, for property already platted or not required to be platted, at the time of development approval or building permit, whichever occurs first. The statute makes clear that no action by the local government is required for assessment to occur. Essentially, impact fee assessment locks in the fee schedule in place at the time assessment occurs. Any subsequent revision to the impact fee schedules does not affect the impact fees owed for the development.

The City’s water and wastewater impact fees ordinance (Chapter 26, Article IV) provides two water and wastewater impact fee schedules. Schedule 1 contains the maximum impact fees per service unit, while Schedule 2 contains the impact fee per service unit that is currently being collected. When a property is subdivided, it is assessed at the maximum Schedule 1 rate, and the impact fees

that are assessed at platting represent the maximum fee per service unit that can be collected from the subdivided property. The ordinance also contains the historical Schedule 1 fees that apply to property that was subdivided when the previous Schedule 1 fees were in place.

Currently, the Schedule 1 and Schedule 2 rates are identical. In this update, the schedules could be different, with Schedule 1 fees being the maximum fees calculated in this report and Schedule 2 fees being fees adopted at some percentage less than 100 percent. Adoption percentages may vary by service area, as was done in the 2008 update. However, the fees should be adopted at a uniform percentage for all meter sizes within a service area.

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## SERVICE AREAS

Chapter 395 lays down a number of requirements regarding service areas. The Land Use Assumptions must be prepared for each service area. The Capital Improvements Plan, in turn, must include a description of the capital improvements and costs for each service area, based on the Land Use Assumptions. Finally, impact fees collected from development within a service area must be spent with the same service area.

The Texas impact fee enabling act, in Sec. 395.001(9), defines “service area” as:

*the area within the corporate boundaries or extraterritorial jurisdiction...of the political subdivision to be served by the capital improvements or facilities expansions specified in the capital improvements plan.... The service area, for the purposes of this chapter, may include all or part of the land within the political subdivision or its extraterritorial jurisdiction.*

The City has considerable discretion in the designation of service areas within its jurisdiction. As a general rule, the fewer the number of service areas, the better. Since funds collected from a service area must be spent within the same service area, the creation of a large number of small service areas will restrict the flexibility of spending impact fee revenues and may make it difficult accumulate sufficient funds in some service areas within the five years allowed by law to spend them. The State statute specifically authorizes “systemwide” Land Use Assumptions for water and wastewater facilities.

A Certificate of Convenience and Necessity (CCN) must be approved by the Texas Commission on Environmental Quality (formerly the Texas Natural Resources Conservation Commission) before services may be provided to properties within the designated area. The City’s water and wastewater CCNs include all of the area within the City of Denton, plus different areas of the City’s Extra-Territorial Jurisdiction (ETJ). The wastewater service area encompasses an area larger than the water service area. The water and wastewater CCNs are illustrated in Figure 1 and Figure 2.

The CCN maps also show the location of the City’s wholesale customers. No costs associated with providing service to wholesale customers have been included in the impact fee calculations.

Figure 1. Water CCN and Wholesale Customers

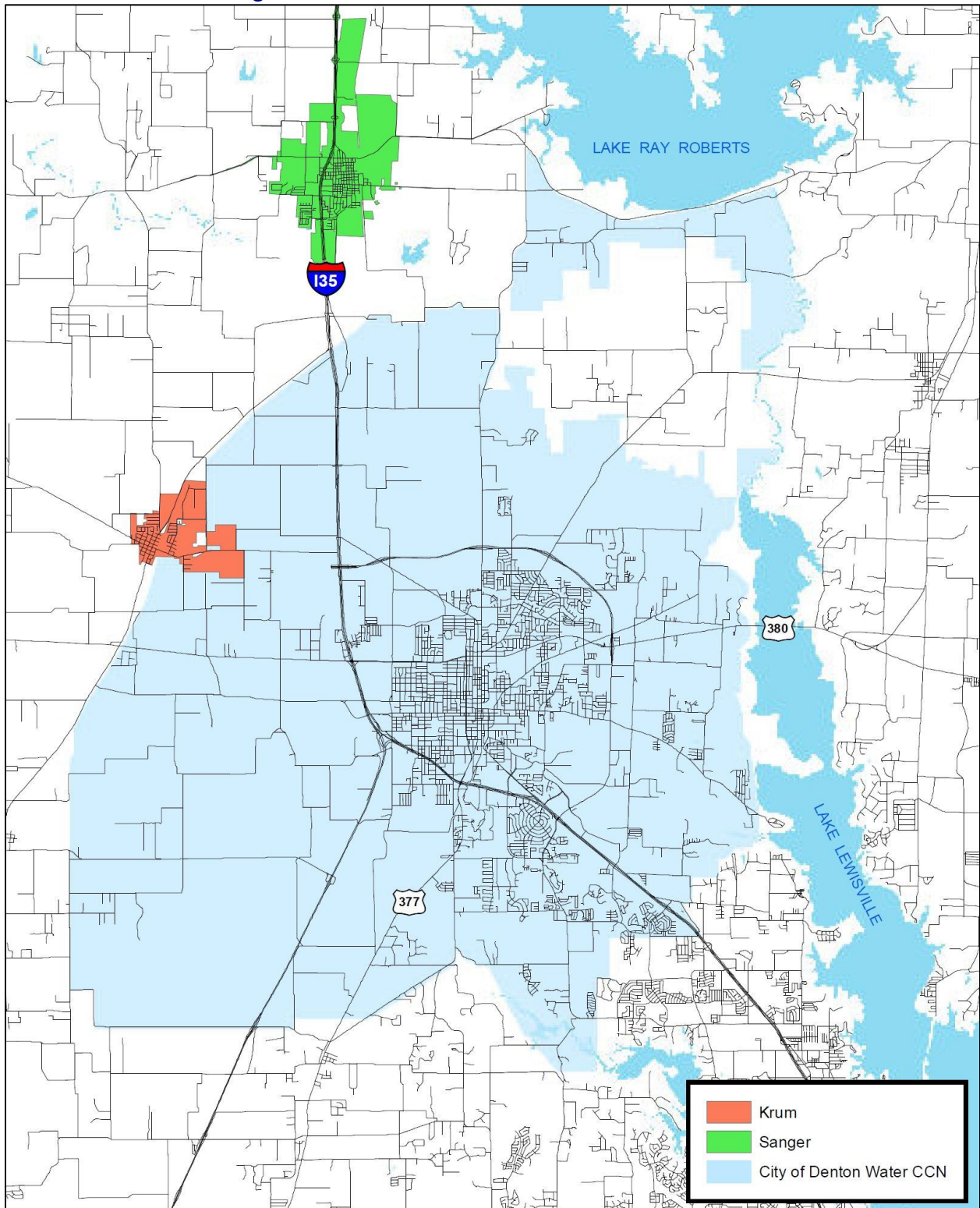
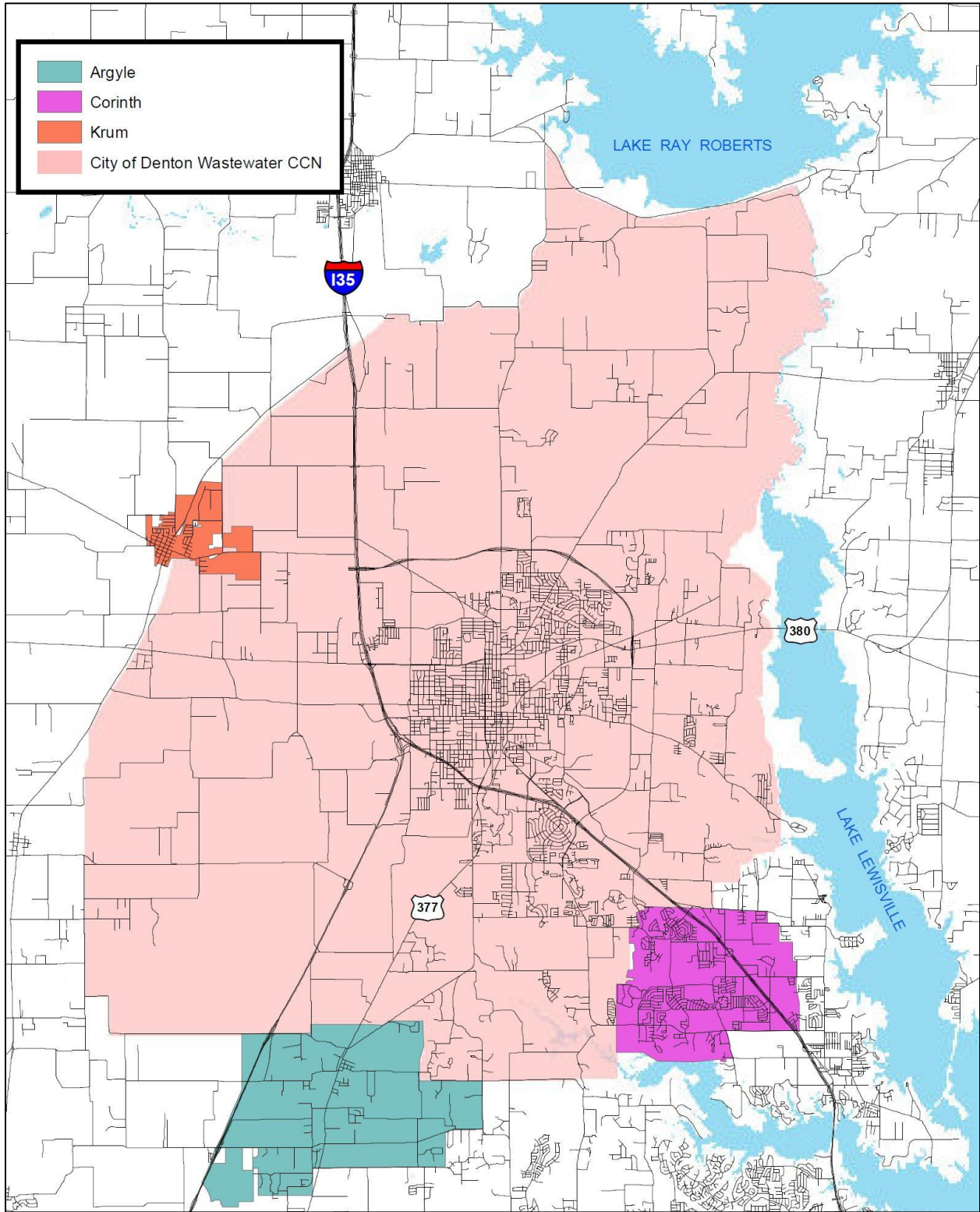


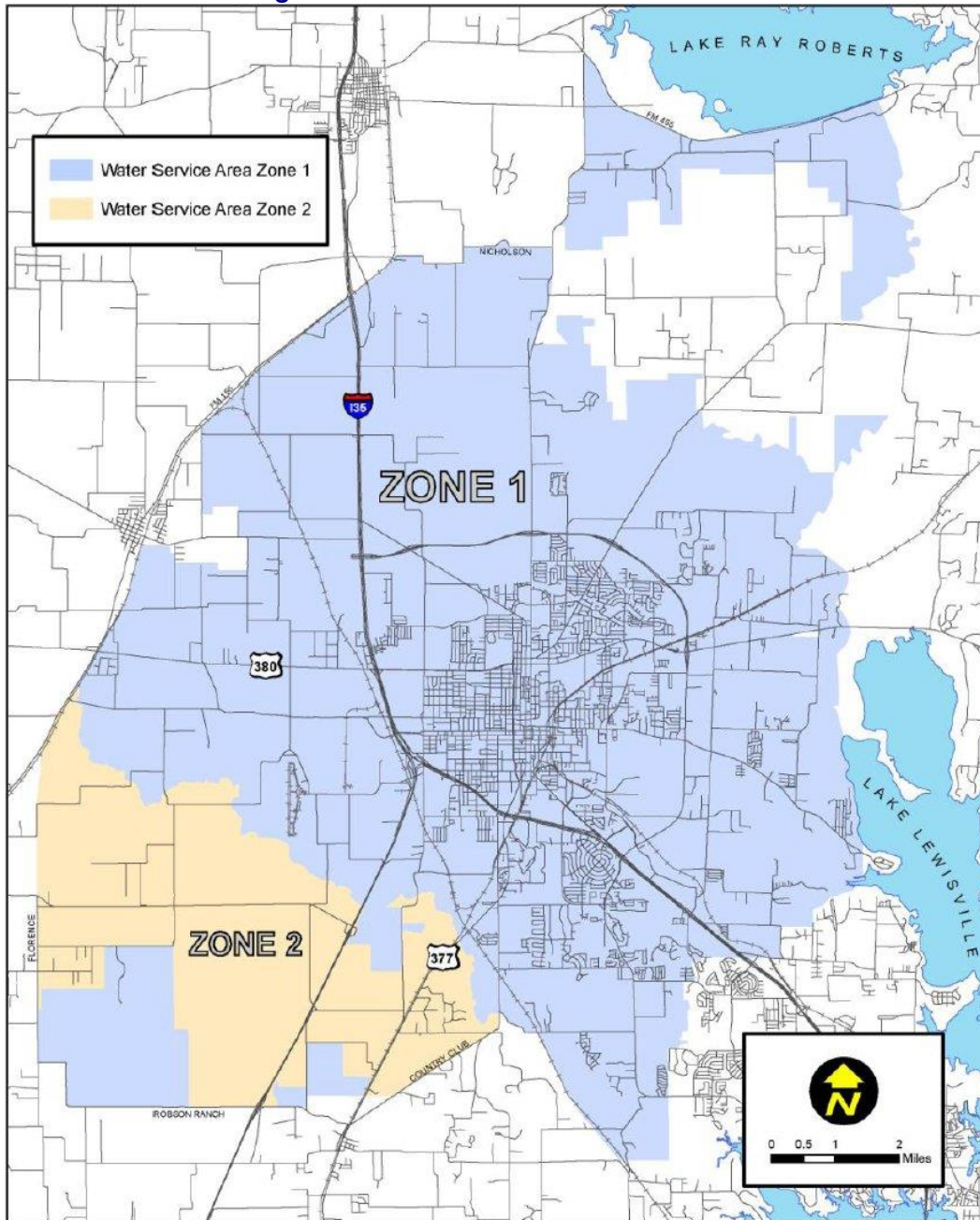


Figure 2. Wastewater CCN and Wholesale Customers



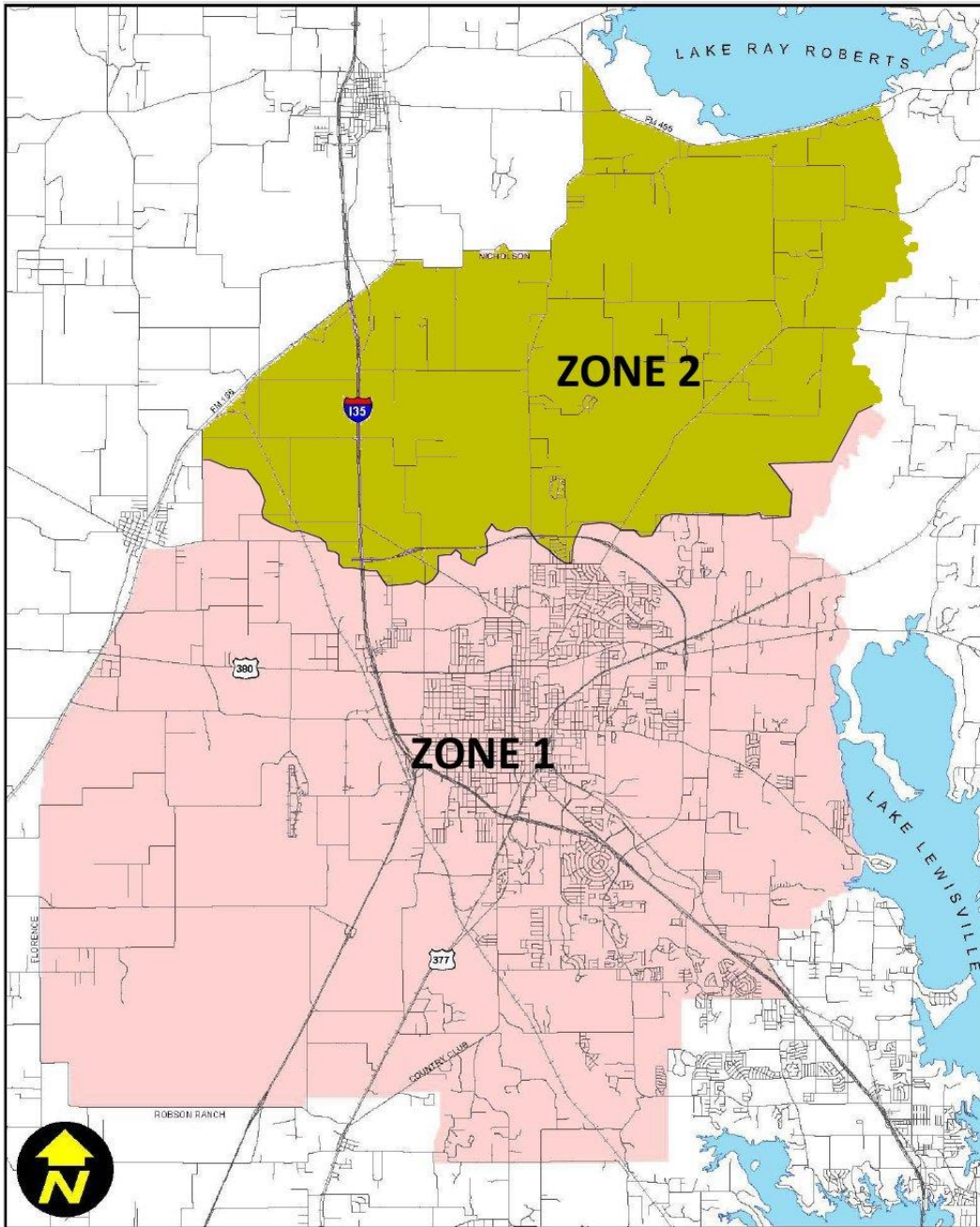
The City’s water and wastewater CCNs are currently each divided into two service areas. The Zone 1 and Zone 2 water service areas are shown in Figure 3.

**Figure 3. Current Water Service Areas**



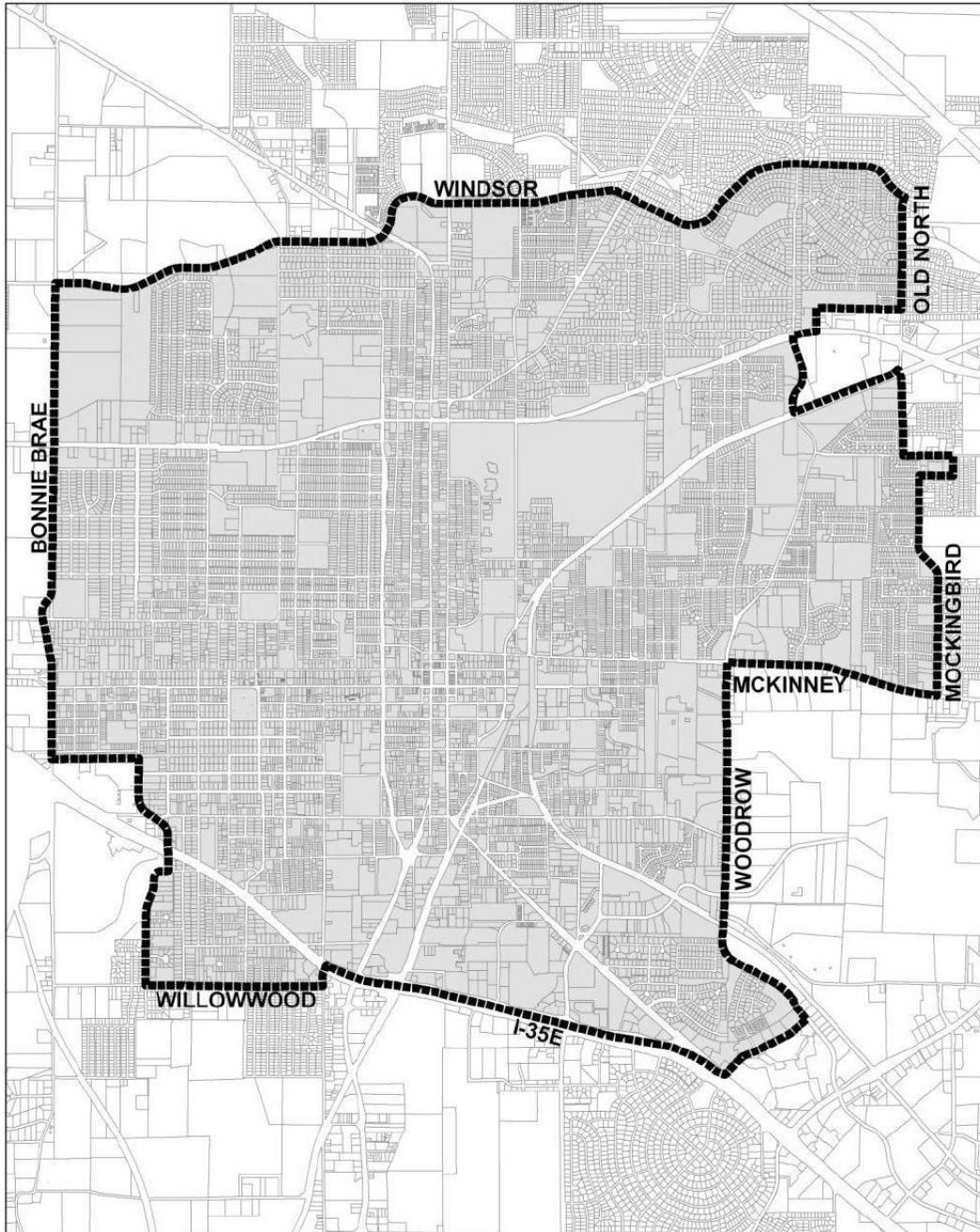
For wastewater, the CCN is currently divided into two service areas, although there are as yet no City wastewater customers in Zone 2. Zone 2 is the Clear Creek drainage basin, while the rest of the City falls into Zone 1 (Pecan Creek, Hickory Creek and Cooper Creek basins). The current wastewater Zone 1 and Zone 2 service areas are shown in Figure 4.

**Figure 4. Current Wastewater Service Areas**



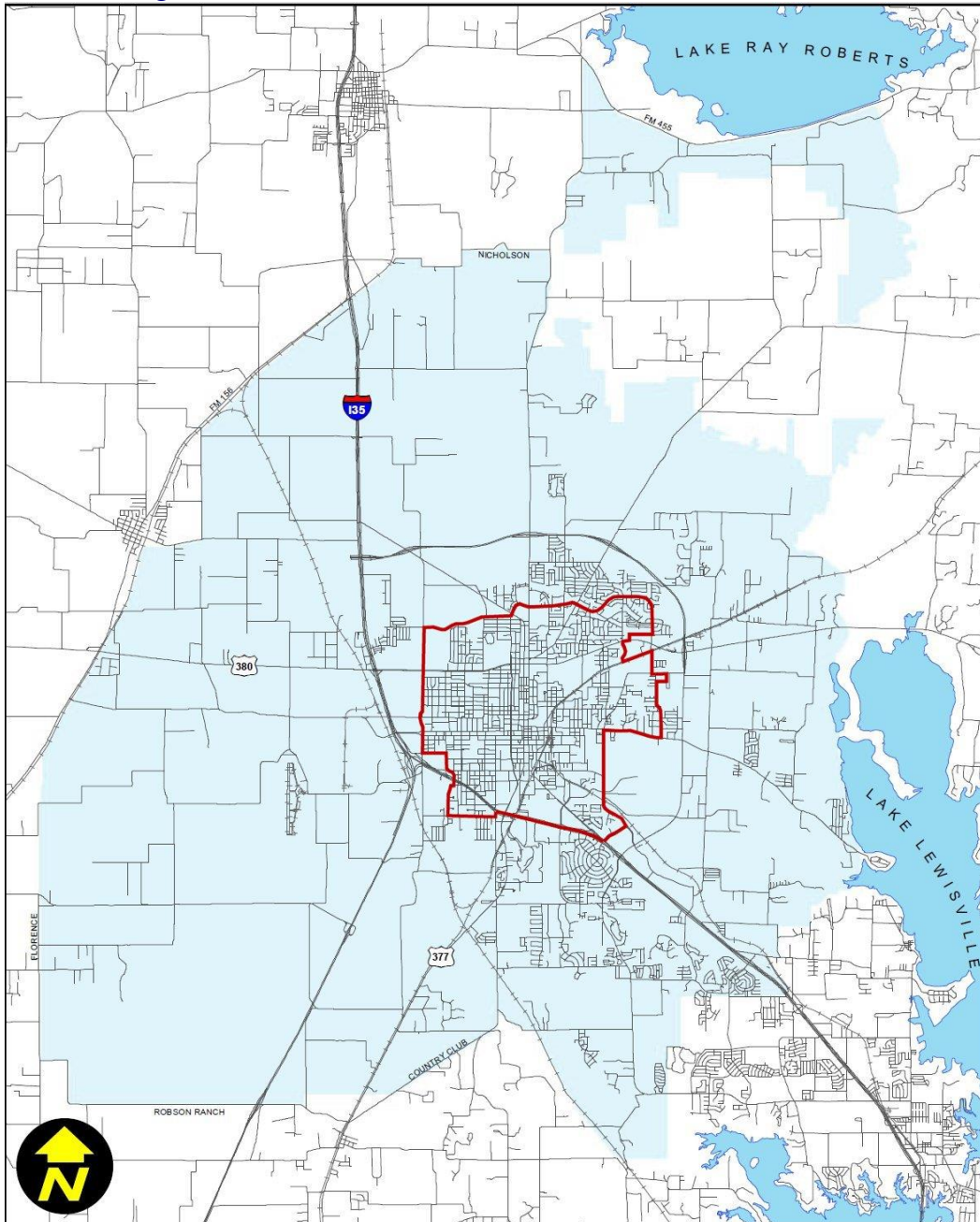
This update provides the City with the option of dividing the current water and wastewater Zone 1 service areas into Zone 1A, which is the City’s adopted Infill District, a special purpose zoning district, and Zone 1B, which is the remainder of the current Zone 1 service areas. The potential Zone 1A service area is shown in Figure 5.

Figure 5. Potential Water and Wastewater Zone 1A Service Area



The location of the potential Zone 1A service area is illustrated in the context of the City's water CCN in Figure 6.

**Figure 6. Potential Zone 1A Service Area and Water CCN**



## LAND USE ASSUMPTIONS

“Land Use Assumptions” is the term used in Chapter 395 to refer to growth projections. It is defined as a “description of the service area and projections of changes in land uses, densities, intensities and population in the service area over at least a 10-year period.” The purpose of the Land Use Assumptions is to project the demand for capital improvements that will be needed to serve anticipated growth.

The Land Use Assumptions must cover at least a 10-year period. The Capital Improvements Plan on which the impact fees are calculated must contain the projected demand for capital facilities required over a period not to exceed ten years. Since the two must be compatible, both the Land Use Assumptions and the Capital Improvements Plan should cover a 10-year period.

A document meeting the Chapter 395 requirements for Land Use Assumptions was prepared by City planning staff in July 2013. The report contains 2013-2023 projections for population, dwelling units, nonresidential square footage, developed and undeveloped acres, residential densities and nonresidential intensities for the City’s current and potential water and wastewater service areas.

For the purpose of the Capital Improvements Plan, the key inputs from the Land Use Assumptions are the projections total population and served population (retail customer population connected to the City’s water or wastewater systems). These are summarized in Table 3 for the water service areas.

**Table 3. Water Total and Served Population by Service Area, 2013-2023**

Fiscal Year	Zone 1A (Infill)		Zone 1B (Rest)		Zone 2		System-Wide		% Served
	Total	Served	Total	Served	Total	Served	Total	Served	
2013	49,624	49,128	68,426	67,742	2,282	2,259	120,332	119,129	99.0%
2014	50,140	49,639	69,715	69,017	2,282	2,259	122,137	120,915	99.0%
2015	50,655	50,148	71,032	70,322	2,282	2,259	123,969	122,729	99.0%
2016	51,171	50,659	71,762	71,044	2,282	2,259	125,215	123,962	99.0%
2017	51,753	51,235	73,058	72,328	2,282	2,259	127,093	125,822	99.0%
2018	52,784	52,256	74,437	73,692	2,414	2,390	129,635	128,338	99.0%
2019	53,684	53,147	75,866	75,108	2,677	2,650	132,227	130,905	99.0%
2020	54,134	53,593	77,667	76,890	3,071	3,040	134,872	133,523	99.0%
2021	54,584	54,038	79,035	78,245	3,950	3,911	137,569	136,194	99.0%
2022	54,944	54,395	79,973	79,173	5,404	5,350	140,321	138,918	99.0%
2023	55,304	54,751	80,744	79,937	7,079	7,008	143,127	141,696	99.0%

Source: City of Denton Planning and Development Department, “Land Use Assumptions for Impact Fee Assessments,” July 2013; system-wide total and served population from Exhibit 1.C, Table 1; percent served is ratio of system-wide served to total population; total Zone 1A population from Exhibit 4, Table 1; total Zone 2 population from Exhibit 3, Table 1; Zone 1A and Zone 2 served populations are the product of total population and % served; Zone 1B total and served populations are the residuals.

Total and served population projections for the wastewater service areas are summarized in Table 4 below.

**Table 4. Wastewater Total and Served Population by Service Area, 2013-2023**

Fiscal Year	Zone 1A (Infill)		Zone 1B (Rest)		Zone 2		System-Wide		% Served
	Total	Served	Total	Served	Total	Served	Total	Served	
2013	49,624	49,128	68,525	67,839	1,596	1,580	119,745	118,547	99.0%
2014	50,140	49,639	69,805	69,107	1,596	1,580	121,541	120,326	99.0%
2015	50,655	50,148	71,113	70,403	1,596	1,580	123,364	122,131	99.0%
2016	51,171	50,659	71,834	71,116	1,596	1,580	124,601	123,355	99.0%
2017	51,753	51,235	73,121	72,390	1,596	1,580	126,470	125,205	99.0%
2018	52,784	52,256	74,619	73,873	1,596	1,580	128,999	127,709	99.0%
2019	53,684	53,147	76,299	75,536	1,596	1,580	131,579	130,263	99.0%
2020	54,134	53,593	77,954	77,174	2,123	2,102	134,211	132,869	99.0%
2021	54,584	54,038	79,399	78,605	2,912	2,883	136,895	135,526	99.0%
2022	54,944	54,395	80,463	79,658	4,226	4,184	139,633	138,237	99.0%
2023	55,304	54,751	81,384	80,569	5,738	5,681	142,426	141,001	99.0%

Source: City of Denton Planning and Development Department, "Land Use Assumptions for Impact Fee Assessments," July 2013; system-wide total and served population from Exhibit 1.C, Table 1; percent served is ratio of system-wide served to total population; total Zone 1A population from Exhibit 4, Table 1; total Zone 2 population from Exhibit 2, Tables 1-3; Zone 1A and Zone 2 served populations are the product of total population and % served; Zone 1B total and served populations are the residuals.

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## SERVICE UNITS

To calculate impact fees in accordance with Chapter 395, the growth in demand for capital facilities over the planning horizon must be expressed in “service units,” which are defined in Sec. 395.001(10) as:

*...a standardized measure of consumption, use, generation, or discharge attributable to an individual unit of development calculated in accordance with generally accepted engineering or planning standards for a particular category of capital improvements or facility expansions.*

Service units for water and wastewater impact fees are typically based upon the capacity attributable to water meters in the utility system. The reason for this is that water meters are physical elements that are under the control of the utility and that limit the maximum demand of various users.

The service unit for Denton’s water and wastewater impact fees is the “single-family equivalent” (SFE), which is based on the size of the water meter. An SFE is the water or wastewater demand associated with the smallest water meter used in the system (5/8” x 3/4”), which is the meter typically used by a single-family residence. The ratio of each larger meter’s capacity to the capacity of the base meter determines the SFE multiplier applied to each larger meter size.

The City’s original water and wastewater impact fees were based on meter capacities from the American Water Works Association. In the opinion of the City’s water division staff, the capacities as rated by the manufacturer that supplies the City’s meters are more accurate for larger meters, and have been used since the 2003 update. The current SFE equivalency factors are shown in Table 5.

**Table 5. Meter Capacity Ratios**

Meter Size	SFEs/ Meter
5/8" x 3/4"	1.0
3/4"	1.5
1"	2.5
1-1/2"	5.0
2"	8.0
3"	22.5
4"	50.0
6"	100.0
8"	200.0
10"	325.0

Source: City of Denton Code of Ordinances, Chapter 26, Article IV, Exhibit F.

When impact fees are collected, the amount due is calculated by multiplying the number of service units associated with each meter size by the impact fee per service unit. However, some additional rules apply. The developer may submit or the water utilities director may require the preparation of a study to determine the appropriate number of service units. Multi-family projects with more than eight apartments are assessed at the rate of 0.26 service units per bedroom. Infill development, defined as single-family residences of less than 1,300 square feet and located on a lot of less than 6,000 square feet in the water Zone 1 or wastewater Zone 1 service areas, is assessed at the rate of 0.50 service units per dwelling unit.



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## WATER

Denton’s water system provides retail water service to all customers located within the CCN area, as well as some wholesale customers. The water impact fees calculated here only cover capital costs associated with providing water service to retail customers.

### Service Units

As discussed in the introduction, the current service unit for Denton’s water impact fees is the “single-family equivalent” (SFE), which is based on the size of the water meter. The number of service units associated with meters of different sizes was calculated earlier. Multiplying the number of existing connections for each meter size by the service units per meter yields total service units for that meter size. Summing for all meter sizes yields the total number of water service units connected to the City’s water system, as shown in Table 6. Wholesale customers have been excluded from the existing service unit calculations.

**Table 6. Water Service Units, 2013**

Meter Size	Existing Connections	SFEs/ Meter	SFEs
5/8" x 3/4"	28,943	1.0	28,943
1"	1,393	2.5	3,483
1-1/2"	816	5.0	4,080
2"	1,309	8.0	10,472
3"	254	22.5	5,715
4"	64	50.0	3,200
6"	13	100.0	1,300
8"	11	200.0	2,200
10"	2	325.0	650
<b>Total SFEs</b>			<b>60,043</b>
<b>÷ Total Served Population, 2013</b>			<b>119,129</b>
<b>SFEs per Served Population</b>			<b>0.5040</b>

*Source:* Number of average active non-wholesale water connections by meter size from City of Denton Municipal Utilities, February 13, 2013; SFEs per meter from Table 5; total 2013 served water population from Land Use Assumptions (see Table 3 above).

The growth in water service units (SFEs) over the 2013-2023 planning period is derived from the Land Use Assumptions. Total population served by the Denton Utilities water system for each service area from the Land Use Assumptions is multiplied by the existing service unit-to-served population ratio calculated in the previous table to determine the projected number of service units for each year through 2023 in Table 7. Service units are estimated by service area (including for the potential “infill” service area) as well as the entire system.

**Table 7. Water Service Units, 2013-2023**

Fiscal Year	Zone 1A (Infill)		Zone 1B (Rest)		Zone 2		System-Wide	
	Served Population	SFEs	Served Population	SFEs	Served Population	SFEs	Served Population	SFEs
2013	49,128	24,761	67,743	34,143	2,259	1,139	119,129	60,043
2014	49,639	25,018	69,017	34,785	2,259	1,139	120,915	60,942
2015	50,148	25,275	70,322	35,442	2,259	1,139	122,729	61,856
2016	50,659	25,532	71,044	35,806	2,259	1,139	123,962	62,477
2017	51,235	25,822	72,328	36,453	2,259	1,139	125,822	63,414
2018	52,256	26,337	73,692	37,141	2,390	1,205	128,338	64,683
2019	53,147	26,786	75,108	37,854	2,650	1,336	130,905	65,976
2020	53,593	27,011	76,890	38,753	3,040	1,532	133,523	67,296
2021	54,038	27,235	78,245	39,435	3,911	1,971	136,194	68,641
2022	54,395	27,415	79,173	39,903	5,350	2,696	138,918	70,014
2023	54,751	27,595	79,937	40,288	7,008	3,532	141,696	71,415

Source: Served population from City of Denton, Land Use Assumptions (see Table 3); service units (Single-Family Equivalents or SFEs) is product of served population and 2013 ratio of SFEs/served population from Table 6.

The projected growth in water service units over the 10-year planning horizon is summarized in Table 8 for each service area.

**Table 8. Summary of Water Service Unit Growth, 2013-2023**

Service Area	2013 SFEs	2023 SFEs	2013-23 Growth	% of Growth
Zone 1A (Infill)	24,761	27,595	2,834	25%
Zone 1B (Rest)	34,143	40,288	6,145	54%
Zone 2	1,139	3,532	2,393	21%
Total	60,043	71,415	11,372	100%

Source: Table 7.

## Demand Projections

Two types of water demand are relevant for water impact fees. Water treatment, transmission and distribution systems are sized to accommodate peak day demand requirements. Water supply facilities are required only to accommodate average daily demand.

Average daily per capita water demand can be determined based on historic system-wide demand in millions of gallons per day (mgd) and historic service area population. These per capita estimates represent both residential and nonresidential demand, and are useful for projecting future system requirements, particularly when no significant shifts of land use ratios are expected.

Average daily per capita demands over the last six years are presented in the following Table 9. These data show that non-wholesale water demand has averaged 158 gallons per capita per day (gpcd). The data also indicate that there is relatively little water lost in the process, with the raw water used exceeding finished water produced by an average of only 3% percent.

**Table 9. Average Daily Water Production, 2007-2012**

Fiscal Year	Average Daily Water Production (mgd)				Total Raw	Ratio of Raw to Finished	Served Population	Retail Demand (gpcd)
	Retail	Whole-sale	Total Finished	Other				
2007	15.679	0.214	15.894	0.002	15.896	1.000	108,674	144
2008	17.720	0.264	17.984	0.308	18.292	1.017	111,362	162
2009	16.704	0.311	17.015	0.714	17.729	1.042	113,464	153
2010	16.758	0.256	17.014	0.565	17.578	1.033	115,055	150
2011	19.638	0.298	19.936	0.961	20.897	1.048	116,206	177
2012	18.167	0.278	18.445	0.770	19.215	1.042	117,368	161
<b>Average</b>	<b>17.444</b>	<b>0.270</b>	<b>17.715</b>	<b>0.553</b>	<b>18.268</b>	<b>1.030</b>	<b>113,688</b>	<b>158</b>

*Source:* Average daily water production and 2007-2010 total water CCN population from City of Denton Municipal Utilities, February 13, 2013; 2007-2010 served population is 99% of total population; 2011-2012 served population from City of Denton Planning and Development Department, "Land Use Assumptions for Impact Fee Assessments," July 2013; retail demand (gpcd) determined by multiplying retail consumption (in gpd) by ratio of raw to finished water, then dividing by served population.

Peak day demand over the last six years is compared to average daily demand in Table 10. These data indicate that peak day demand in Denton's water system averages 1.86 times average day demand.

**Table 10. Peak Day Water Demand, 2007-2012**

Fiscal Year	Peak Day Demand (mgd)	Average Demand (mgd)	Ratio of Peak to Average
2007	30.24	15.89	1.90
2008	33.05	17.98	1.84
2009	31.01	17.01	1.82
2010	31.87	17.01	1.87
2011	37.52	19.94	1.88
2012	34.52	18.44	1.87
<b>Average</b>	<b>33.04</b>	<b>17.71</b>	<b>1.86</b>

*Source:* City of Denton Municipal Utilities; figures represent total finished water production (includes wholesale use).

Based on these historical factors, average and peak day water demand from retail customers is projected for the 2013-2023 planning period in Table 11 on the following page.

**Table 11. Average and Peak Day Retail Water Demand, 2013-2023**

Fiscal Year	Served Population	Average Demand (gpcd)	Retail Demand (mgd)	Ratio of Raw to Finished	Raw Water Demand (mgd)	Ratio of Peak to Average	Peak Day Demand (mgd)
2013	119,129	158	18.82	1.030	19.38	1.86	36.05
2014	120,915	158	19.10	1.030	19.67	1.86	36.59
2015	122,729	158	19.39	1.030	19.97	1.86	37.14
2016	123,962	158	19.59	1.030	20.18	1.86	37.53
2017	125,822	158	19.88	1.030	20.48	1.86	38.09
2018	128,338	158	20.28	1.030	20.89	1.86	38.86
2019	130,905	158	20.68	1.030	21.3	1.86	39.62
2020	133,523	158	21.10	1.030	21.73	1.86	40.42
2021	136,194	158	21.52	1.030	22.17	1.86	41.24
2022	138,918	158	21.95	1.030	22.61	1.86	42.05
2023	141,696	158	22.39	1.030	23.06	1.86	42.89

*Source:* Served population from Table 7; average day per capita demand and ratio of raw to finished water production from Table 9; ratio of peak day to average day finished water production from Table 10; raw water and peak day demand exclude demand due to wholesale customers.

## Water Treatment

Water treatment facilities are sized to accommodate peak day demands. The maximum daily capacity of the Lake Lewisville water treatment plant (WTP) is 28.9 mgd. In June 2003, the City completed construction of a new 20 mgd water treatment plant near Lake Ray Roberts, bringing the total capacity of the two plants to 48.9 mgd.

As summarized in Table 12, current retail demand plus wholesale water sales consumes the equivalent of all of the capacity of the Lake Lewisville plant and 38.3% percent of the existing 20-mgd Lake Ray Roberts plant. New water customers over the next ten years will increase the utilization of the Lake Ray Roberts plant capacity to 72.5%.

**Table 12. Water Treatment Plant Utilization, 2013-2023**

Retail Peak Day Demand (mgd), 2013	36.05
Wholesale Peak Day Demand (mgd), 2013	0.50
Total Current Demand (mgd), 2013	36.55
– Lake Lewisville Plant Capacity (mgd)	-28.90
Needed Capacity from Lake Ray Roberts Plant (mgd)	7.65
÷ Existing Lake Ray Roberts Plant Capacity (mgd)	20.00
Percent of Existing Lake Ray Roberts Plant Needed, 2013	38.3%
Retail Peak Day Demand, 2023 (mgd)	42.89
Wholesale Peak Day Demand (mgd), 2023	0.50
Total Peak Day Demand (mgd), 2023	43.39
– Lake Lewisville Plant Capacity (mgd)	-28.90
Needed Capacity from Lake Ray Roberts Plant (mgd), 2023	14.49
÷ Existing Lake Ray Roberts Plant Capacity (mgd)	20.00
Percent of Lake Ray Robert Plant Capacity Needed, 2023	72.5%
Percent of Lake Ray Robert Plant Capacity Needed, 2023	72.5%
– Percent of Lake Ray Roberts Capacity Needed, 2013	-38.3%
Percent of Lake Ray Roberts Capacity Needed, 2013-2023	34.2%

*Source:* 2013 and 2023 average day water demand from Table 11; plant capacities from City of Denton Municipal Utilities.

## Water Supply

The City’s water supply comes primarily from water rights in Lake Lewisville and Lake Ray Roberts. The Lewisville Reservoir was constructed by the U.S. Corps of Engineers to hold a total of 436,000 acre-feet of conservation storage, of which the City holds the right to 21,000 acre-feet of storage. Based on a safe yield of 90.2 mgd, the City receives 4.34 mgd in water rights from Lake Lewisville.

Most of the City’s remaining water needs are supplied by Lake Ray Roberts. The reservoir was constructed by the U.S. Corps of Engineers, with the cities of Denton and Dallas being the local sponsors and responsible (26% and 74% respectively) for repaying 50 percent of the total cost. The City has water rights of 19.8 mgd from this lake, resulting in total water rights of 24.1 mgd.

Additional water supply capacity comes in the form of credits for a portion of other user’s wastewater that is returned to these water bodies (“effluent credits”), as well as contract rights with the City of Dallas. The City’s contract with Dallas reserves a minimum of 0.50 mgd, regardless of whether the City needs it, and the City also has the right to purchase additional water as needed. However, these additional sources of supply will not be considered in evaluating the City’s water supply. The City’s water supply is summarized in Table 13. Projected growth over the planning period will consume most of the current excess capacity in Lake Ray Roberts.

**Table 13. Water Supply Utilization, 2013-2023**

Total Average Day Raw Water Demand (mgd), 2013	19.65
– Lake Lewisville Capacity (mgd)	-4.34
Needed Capacity from Lake Ray Roberts, 2013	15.31
÷ Lake Ray Roberts Capacity (mgd)	19.76
Percent of Lake Ray Roberts Capacity Needed, 2013	77.5%
Total Average Day Raw Water Demand (mgd), 2023	23.33
– Lake Lewisville Capacity (mgd)	-4.34
Needed Capacity from Lake Ray Roberts, 2023	18.99
÷ Lake Ray Roberts Capacity (mgd)	19.76
Percent of Lake Ray Roberts Capacity Needed, 2023	96.1%
Percent of Lake Ray Roberts Capacity Needed, 2023	96.1%
– Percent of Lake Ray Roberts Capacity Needed, 2013	-77.5%
Percent of Lake Ray Roberts Capacity Needed, 2013-2023	18.6%

*Source:* 2013 and 2023 average day raw water demand is retail raw water demand from Table 11 plus 0.27 mgd average wholesale demand from Table 9; lake capacities from City of Denton Municipal Utilities.

## Cost per Service Unit

Capital improvements identified in the City’s water master plan and by City staff as necessary to accommodate growth over the next ten years are summarized in Table 14. The capital improvements include both existing facilities with excess capacity to serve new customer demand as well as planned improvements.

The portions of the costs of the Lake Ray Roberts treatment plant and the Lake Ray Roberts reservoir that are attributable to growth over the planning period are based on the capacity of the facilities and the new demand generated by the anticipated growth over the period. For pump stations, water storage tanks and transmission lines, the portions of the costs attributable to growth are based on determination of existing and planned facility capacities and modeling of 2013 and 2023 demands performed by consulting engineers for the City of Denton. A portion of the cost of three of the planned improvements will serve existing customers, and these are identified as existing deficiencies.

**Table 14. System-Wide Water Growth Costs, 2013-2023**

Description of Project	Total Cost (2013 \$)	Percent Utilized			2013-2023 Growth Cost	Deficiency Cost
		2013	2023	Growth		
Lake Ray Roberts	\$153,306,163	77.5%	96.1%	18.6%	\$28,514,946	\$0
Lake Ray Roberts Water Treatment Plant	\$56,445,235	38.3%	72.5%	34.2%	\$19,304,270	\$0
54" Transmission Line	\$9,590,299	30.0%	45.0%	15.0%	\$1,438,545	\$0
Loop 288 Water Main, Sherman-UNT	\$4,361,849	25.0%	40.0%	15.0%	\$654,277	\$0
Loop 288 Water Main, Sherman-380	\$3,518,352	25.0%	40.0%	15.0%	\$527,753	\$0
NW Elevated Storage Tank	\$2,339,988	30.0%	60.0%	30.0%	\$701,996	\$0
SW Pump Station	\$5,912,002	20.0%	40.0%	20.0%	\$1,182,400	\$0
SW PS Oversize Discharge Line (30-36")	\$284,477	5.0%	10.0%	5.0%	\$14,224	\$0
Vintage Oversize Line (12-20")	\$254,269	25.0%	60.0%	35.0%	\$88,994	\$0
North-South Water Line, Phase I	\$6,038,601	25.0%	35.0%	10.0%	\$603,860	\$0
Roselawn Elevated Storage Tank	\$6,299,440	75.0%	85.0%	10.0%	\$629,944	\$0
Roselawn Water Line	\$1,797,363	30.0%	55.0%	25.0%	\$449,341	\$0
Masch Branch Rd Water Line Extension	\$645,781	15.0%	30.0%	15.0%	\$96,867	\$0
US 380 Urban Utility Relocation	\$1,519,926	25.0%	30.0%	5.0%	\$75,996	\$0
Rayzor Ranch Oversize Line (16-20")	\$133,226	10.0%	25.0%	15.0%	\$19,984	\$0
<b>Subtotal, Existing Eligible Projects</b>	<b>\$252,446,971</b>	<b>na</b>	<b>na</b>	<b>na</b>	<b>\$54,303,397</b>	<b>\$0</b>
North-South Water Line, Phase II	\$5,380,772	0.0%	35.0%	35.0%	\$1,883,270	\$0
I-35 Parallel Line Crossing	\$1,959,552	15.0%	30.0%	15.0%	\$293,933	\$293,933
High School Booster Pump Station	\$4,704,000	0.0%	30.0%	30.0%	\$1,411,200	\$0
Elm/Loop 288 Water Lines	\$3,832,013	0.0%	30.0%	30.0%	\$1,149,604	\$0
Alfred/John Paine Water Line	\$4,298,515	0.0%	20.0%	20.0%	\$859,703	\$0
Southwest Elevated Storage Tank	\$5,376,000	10.0%	20.0%	10.0%	\$537,600	\$537,600
McKinney Water Line and PRV	\$987,840	10.0%	25.0%	15.0%	\$148,176	\$98,784
University Water Line and PRV	\$1,724,083	0.0%	30.0%	30.0%	\$517,225	\$0
New McKenna Booster Pump Station	\$8,064,000	0.0%	65.0%	65.0%	\$5,241,600	\$0
I-35W Water Line	\$4,466,650	0.0%	20.0%	20.0%	\$893,330	\$0
I-35W/Corbin Water Line	\$1,781,472	0.0%	20.0%	20.0%	\$356,294	\$0
South Central Transmission Lines	\$10,583,731	0.0%	15.0%	15.0%	\$1,587,560	\$0
<b>Subtotal, Proposed Eligible Projects</b>	<b>\$53,158,628</b>	<b>na</b>	<b>na</b>	<b>na</b>	<b>\$14,879,495</b>	<b>\$930,317</b>
<b>Total</b>	<b>\$305,605,599</b>	<b>na</b>	<b>na</b>	<b>na</b>	<b>\$69,182,892</b>	<b>\$930,317</b>

Source: Total costs in 2013 dollars and utilization percentages (for improvements other than Lake Ray Roberts and Lake Ray Roberts water treatment plant) from Freese and Nichols, "Water Impact Fee Utilization Calculations," May 31, 2013; utilization percentages for Lake Ray Roberts WTP from Table 12; utilization percentages for Lake Ray Roberts from Table 13; deficiency cost is total cost times 2013 percent utilized for planned improvements.

The system-wide growth costs shown above are allocated to service areas based on projected service unit growth and/or hydrologic modeling, as shown in Table 15 below.

**Table 15. Water Growth Costs by Service Area, 2013-2023**

Description of Project	2013-2023 Growth Cost	Service Area Utilization			2013-2023 Cost by Service Area		
		Zone 1A	Zone 1B	Zone 2	Zone 1A	Zone 1B	Zone 2
Lake Ray Roberts	\$28,514,946	25.0%	54.0%	21.0%	\$7,128,737	\$15,398,071	\$5,988,139
Lake Ray Roberts WTP	\$19,304,270	25.0%	54.0%	21.0%	\$4,826,068	\$10,424,306	\$4,053,897
54" Transmission Line	\$1,438,545	25.0%	54.0%	21.0%	\$359,636	\$776,814	\$302,094
Loop 288 Water Main, Sherman-UNT	\$654,277	25.0%	54.0%	21.0%	\$163,569	\$353,310	\$137,398
Loop 288 Water Main, Sherman-380	\$527,753	25.0%	54.0%	21.0%	\$131,938	\$284,987	\$110,828
NW Elevated Storage Tank	\$701,996	0.0%	100.0%	0.0%	\$0	\$701,996	\$0
SW Pump Station	\$1,182,400	0.0%	60.0%	40.0%	\$0	\$709,440	\$472,960
SW PS Oversize Discharge Line (30-36")	\$14,224	0.0%	60.0%	40.0%	\$0	\$8,534	\$5,690
Vintage Oversize Line (12-20")	\$88,994	0.0%	45.0%	55.0%	\$0	\$40,047	\$48,947
North-South Water Line, Phase I	\$603,860	25.0%	54.0%	21.0%	\$150,965	\$326,084	\$126,811
Roselawn Elevated Storage Tank	\$629,944	25.0%	54.0%	21.0%	\$157,486	\$340,170	\$132,288
Roselawn Water Line	\$449,341	25.0%	54.0%	21.0%	\$112,335	\$242,644	\$94,362
Masch Branch Rd Water Line Extension	\$96,867	0.0%	100.0%	0.0%	\$0	\$96,867	\$0
US 380 Urban Utility Relocation	\$75,996	0.0%	100.0%	0.0%	\$0	\$75,996	\$0
Rayzor Ranch Oversize Line (16-20")	\$19,984	0.0%	100.0%	0.0%	\$0	\$19,984	\$0
<b>Subtotal, Existing Eligible Projects</b>	<b>\$54,303,397</b>	na	na	na	<b>\$13,030,734</b>	<b>\$29,799,250</b>	<b>\$11,473,414</b>
North-South Water Line, Phase II	\$1,883,270	0.0%	60.0%	40.0%	\$0	\$1,129,962	\$753,308
I-35 Parallel Line Crossing	\$293,933	0.0%	100.0%	0.0%	\$0	\$293,933	\$0
High School Booster Pump Station	\$1,411,200	0.0%	100.0%	0.0%	\$0	\$1,411,200	\$0
Elm/Loop 288 Water Lines	\$1,149,604	0.0%	100.0%	0.0%	\$0	\$1,149,604	\$0
Alfred/John Paine Water Line	\$859,703	0.0%	35.0%	65.0%	\$0	\$300,896	\$558,807
Southwest Elevated Storage Tank	\$537,600	0.0%	60.0%	40.0%	\$0	\$322,560	\$215,040
McKinney Water Line and PRV	\$148,176	0.0%	100.0%	0.0%	\$0	\$148,176	\$0
University Water Line and PRV	\$517,225	0.0%	100.0%	0.0%	\$0	\$517,225	\$0
New McKenna Booster Pump Station	\$5,241,600	0.0%	60.0%	40.0%	\$0	\$3,144,960	\$2,096,640
I-35W Water Line	\$893,330	0.0%	35.0%	65.0%	\$0	\$312,666	\$580,665
I-35W/Corbin Water Line	\$356,294	0.0%	45.0%	55.0%	\$0	\$160,332	\$195,962
South Central Transmission Lines	\$1,587,560	0.0%	60.0%	40.0%	\$0	\$952,536	\$635,024
<b>Subtotal, Proposed Eligible Projects</b>	<b>\$14,879,495</b>	na	na	na	<b>\$0</b>	<b>\$9,844,050</b>	<b>\$5,035,446</b>
<b>Total</b>	<b>\$69,182,892</b>	na	na	na	<b>\$13,030,734</b>	<b>\$39,643,300</b>	<b>\$16,508,860</b>

Source: System-wide growth costs from Table 14; service area utilization percentages from Freese and Nichols, "Water Impact Fee Utilization Calculations," May 31, 2013.

In addition to those costs directly attributable to growth, there are interest costs associated with funding capital improvements with revenue bonds or other forms of debt. The City traditionally funds all of its major water system capital improvements with bonds, and consequently incurs interest costs. According to State law, these interest costs can be recovered through impact fees. Based on the analysis provided in the Appendix, the direct costs should be increased by 12.4% to account for interest costs. The final step in determining the cost per service unit is to divide the total capital cost attributable to growth over the next ten years in each service area by the anticipated growth in service units over the same time period. The results are shown in Table 16 below.



**Table 16. Water Cost per Service Unit by Service Area**

	Zone 1A (Infill)	Zone 1B (Rest)	Zone 1 Total	Zone 2
Direct Growth Costs, 2013-2023	\$13,030,734	\$39,643,300	\$52,674,034	\$16,508,860
Debt Service Interest Cost	\$1,615,811	\$4,915,769	\$6,531,580	\$2,047,099
Total Growth Costs, 2013-2023	\$14,646,545	\$44,559,069	\$59,205,614	\$18,555,959
÷ New SFEs, 2013-2023	2,834	6,145	8,979	2,393
Cost per SFE	\$5,168	\$7,251	\$6,594	\$7,754

Source: Direct growth costs from Table 15; debt service cost is growth cost times real interest cost factor (0.124) from Table 39 in the Appendix; new SFEs from Table 8.

## Net Cost per Service Unit

New water customers will help pay off outstanding debt incurred for existing facilities through their monthly rates. To avoid requiring new customers to pay twice for capital facilities, once through impact fees and again through rate payments, the impact fees should be reduced to account for such debt service payments. A simple and reasonable approach to calculating the credit is to divide outstanding debt by current service units, and use this figure as the credit per service unit. The rationale behind this approach is simple to explain and understand. Existing customers are being allowed to pay for a portion of their capital costs through their rate payments; reducing impact fees by this amount puts new customers on an equal footing with existing customers. All customers will be funding the same share of their capital costs through rate payments.

Credit does not need to be provided for the share of current debt that is attributable to past improvements that still have capacity remaining to serve future growth. In fact, this portion of debt could be retired by future impact fees. The percentages of original bond issues related to improvements with excess capacity to serve future customers are shown in Table 17.

**Table 17. Percent of Water Debt Related to Excess Capacity**

Improvements with Excess Capacity	Original Bond Issue				
	1998	2000	2001	2002	2007
Lake Ray Roberts Water Rights	35.20%				
Lake Ray Roberts Water Treatment Plant		48.99%	10.50%		
900 Pressure Plain Tank/NW Elev Storage Tank		2.14%			
Loop 288 Wtr Main - Sherman to Hwy 380				1.18%	
Southwest Booster Pump Station		4.58%			
54" Transmission Line		4.49%			
Loop 288 Wtr Main Sherman to UNT				1.46%	
US 380 Urban Utility Relocation		0.17%		0.12%	
Roselawn Elevated Storage Tank				1.89%	
North-South Water Line Phase I					5.96%
Denia - Roselawn Water Line			1.53%	0.15%	
SW PS Oversize Discharge Line		0.06%			
Rayzor Ranch Oversize Line					0.18%
Total	35.20%	60.41%	12.04%	4.80%	6.14%

Source: City of Denton Municipal Utilities, July 29, 2013.

The outstanding water debt attributable to excess capacity is derived by multiplying the outstanding debt associated with each bond issue by the percentages calculated above, as shown in Table 18.

**Table 18. Outstanding Water Debt Related to Excess Capacity**

Outstanding Bond Issue	Current Outstanding	Eligible % of Original	Eligible Outstanding
2005 - Refunding of 1998 A	\$15,764,132	35.20%	\$5,548,933
2005 - Refunding of 2000	\$9,280,868	60.41%	\$5,606,537
2007 - Refunding of 1998 A	\$15,284,296	35.20%	\$5,380,032
2007 - Refunding of 2001	\$10,020,704	12.04%	\$1,206,115
2007 - Original Bond Issue	\$7,630,000	6.14%	\$468,524
2010 - Refunding of 1998A/B	\$1,062,990	35.20%	\$374,170
2010 - Refunding of 2000A	\$1,852,530	60.41%	\$1,119,106
2010 - Refunding of 2002A	\$13,699,480	4.80%	\$657,211
2011 - Refunding of 2001	\$1,780,000	12.04%	\$214,245
<b>Total</b>			<b>\$20,574,873</b>

Source: Outstanding debt from City of Denton Municipal Utilities, July 29, 2013, percentages from Table 17.

In addition to outstanding debt on existing facilities, there are also some existing deficiencies that will be remedied by the planned improvements. The sum of outstanding debt and deficiency costs represents the future cost to serve existing customers. The credit is calculated by dividing total existing customer costs by existing service units, as shown in Table 19.

**Table 19. Water Revenue Credit per Service Unit**

Total Outstanding Water Debt	\$126,540,000
– Outstanding Debt Associated with Excess Capacity	-\$20,574,873
Outstanding Debt for Facilities Serving Existing Customers	\$105,965,127
Deficiency Cost	\$930,317
Future Existing Customer Cost	\$106,895,444
x Interest Cost Factor	1.124
Total Existing Customer Cost	\$120,150,479
÷ Existing Service Units (SFEs)	60,043
Credit per SFE	\$2,001

Source: Total outstanding debt from City of Denton Municipal Utilities as of September 30, 2012; debt attributable to excess capacity from Table 18; deficiency cost from Table 14; interest cost factor from Table 39; existing SFEs from Table 6.

The calculated net cost per service unit is the cost per service unit less the revenue credit per service unit. An alternative to calculating the revenue credit, provided by Chapter 395, is simply to divide the cost per service unit in half. The net costs derived from these two alternative methods are compared in Table 20.

**Table 20. Water Net Cost per Service Unit by Service Area**

	Zone 1A (Infill)	Zone 1B (Rest)	Zone 1 Total	Zone 2
Cost per SFE	\$5,168	\$7,251	\$6,594	\$7,754
– Revenue Credit per SFE	-\$2,001	-\$2,001	-\$2,001	-\$2,001
Calculated Net Cost per SFE	\$3,167	\$5,250	\$4,593	\$5,753
Alternative Net Cost per SFE	\$2,584	\$3,626	\$3,297	\$3,877

Source: Cost per SFE from Table 16; calculated revenue credit per SFE from Table 19; alternative net cost per SFE is one-half the calculated cost per SFE, per State law.

## Net Cost Schedule

The City Council could enact updated water impact fees at either of the alternative net costs shown above, or at a reduced level. The following net cost schedule represents the maximum impact fees that may be charged by the City for water system facilities, based on the Land Use Assumptions, the utility system evaluation and capital improvement cost estimates prepared by City of Denton Municipal Utilities staff and engineering consultants, and the additional data and analysis presented in this water impact fee Capital Improvements Plan.

**Table 21. Water Net Cost Schedule**

	Zone 1A (Infill)	Zone 1B (Rest)	Current Zone 1	Current Zone 2
Updated Net Cost/SFE	\$3,167	\$5,250	\$4,593	\$5,753
Current Fee per SFE	\$3,400	\$3,400	\$3,400	\$4,000
Percent Change	-7%	54%	35%	44%

Source: Updated net cost per SFE from Table 20; current fee from City of Denton Code of Ordinances, Sec. 26-222.

Based on the growth projections in the Land Use Assumptions, potential system-wide revenues over the next ten years would be 37% higher under the potential fees calculated in this report than under the current fees, as shown in Table 22. These revenue projections should be viewed cautiously, since they depend entirely on the growth projections. It should also be noted that the updated fees will not apply to properties platted under the previous impact fee schedule, a fact that is not accounted for in these revenue projections.

**Table 22. Comparative Water Impact Fee Revenues, 2013-2023**

	Zone 1A (Infill)	Zone 1B (Rest)	Zone 1 Total	Zone 2	System-Wide Total
Updated Net Cost per SFE	\$3,167	\$5,250	\$4,593	\$5,753	na
x New SFEs, 2013-2023	2,834	6,145	8,979	2,393	11,372
Potential Revenue with Updated Fees	\$8,975,278	\$32,261,250	\$41,240,547	\$13,766,929	\$55,007,476
Current Fee per SFE	\$3,400	\$3,400	\$3,400	\$4,000	na
x New SFEs, 2013-2023	2,834	6,145	8,979	2,393	11,372
Potential Revenue with Current Fees	\$9,635,600	\$20,893,000	\$30,528,600	\$9,572,000	\$40,100,600
Percent Change from Current Fees	-7%	54%	35%	44%	37%

Source: Updated net cost per SFE from Table 20; new SFEs from Table 8.

If the impact fees are adopted at 100% of the full net cost, new customers, system-wide, would pay 71% of their attributable cost of capital improvements through impact fees, and the rest through future rate payments that will be used to (a) retire existing debt associated with existing improvements that are serving existing customers and (b) retire future debt issued to fund planned improvements that will remedy capacity deficiencies for existing customers. The percentage of costs covered through impact fees varies by service area, because the utility debt is paid by all customers, regardless of service area, and the debt credit is a larger part of the gross fee per service unit in service areas with smaller fees. The percentages of growth-related costs paid that would be through impact fees are shown in Table 23.

**Table 23. Water Growth Costs and Revenues, 2013-2023**

	Zone 1A (Infill)	Zone 1B (Rest)	Zone 1 Total	Zone 2	System- Wide
Impact Fee Revenues, 2013-2023	\$8,975,278	\$32,261,250	\$41,240,547	\$13,766,929	\$55,007,476
÷ Total Growth Costs, 2013-2023	\$14,646,545	\$44,559,069	\$59,205,614	\$18,555,959	\$77,761,573
Percent Paid by Impact fees	61%	72%	70%	74%	71%

Source: Impact fee revenues from Table 22; growth costs from Table 16.

## WASTEWATER

The City’s wastewater system provides retail wastewater collection and treatment to customers within the CCN area, as well as wastewater treatment to three wholesale customers – Corinth, Krum and Argyle. The impact fees calculated in this report exclude costs to serve the City’s wholesale customers.

### Service Units

The current service unit for Denton’s wastewater impact fees is the “single-family equivalent” (SFE), which is based on the size of the water meter. This is reasonable, since wastewater generation is not metered directly and tends to be proportional to water usage. An SFE is the wastewater demand associated with the smallest water meter used in the system (5/8” x 3/4”), which is the meter typically used by a single-family residence. The ratio of each larger meter’s capacity to the capacity of the base meter determines the SFE multiplier applied to each larger meter size.

Multiplying the number of existing retail wastewater connections (i.e., excluding wholesale customers) with each meter size by the service units per meter yields total service units for that meter size. Summing for all meter sizes yields the total number of wastewater service units connected to the City’s system, as shown in Table 24.

**Table 24. Wastewater Service Units, 2013**

Meter Size	Existing Connections	SFEs/ Meter	SFEs
5/8" x 3/4"	28,367	1.0	28,367
1"	1,035	2.5	2,588
1-1/2"	659	5.0	3,295
2"	946	8.0	7,568
3"	113	22.5	2,543
4"	54	50.0	2,700
6"	13	100.0	1,300
8"	10	200.0	2,000
10"	2	325.0	650
<b>Total</b>	<b>31,199</b>		<b>51,011</b>
÷ Total Served Population, 2013			<b>118,547</b>
<b>SFEs per Served Population</b>			<b>0.4303</b>

*Source:* Active non-wholesale wastewater connections by meter size from the City of Denton, February 26, 2013; SFEs per meter from Table 5; 2013 served population from Table 4.

The growth in wastewater service units (SFEs) over the 2013-2023 planning period is derived from the Land Use Assumptions. Total population served by the Denton Utilities wastewater system for each service area from the Land Use Assumptions is multiplied by the existing service unit-to-served population ratio calculated in the previous table to determine the projected number of service units for each year through 2023 and for each service area in Table 25.

**Table 25. Wastewater Service Units, 2013-2023**

Fiscal Year	Zone 1A (Infill)		Zone 1B (Rest)		Zone 2		System-Wide	
	Served Population	SFEs	Served Population	SFEs	Served Population	SFEs	Served Population	SFEs
2013	49,128	21,140	67,839	29,191	1,580	680	118,547	51,011
2014	49,639	21,360	69,107	29,737	1,580	680	120,326	51,776
2015	50,148	21,579	70,403	30,294	1,580	680	122,131	52,553
2016	50,659	21,799	71,116	30,601	1,580	680	123,355	53,080
2017	51,235	22,046	72,390	31,149	1,580	680	125,205	53,876
2018	52,256	22,486	73,873	31,788	1,580	680	127,709	54,953
2019	53,147	22,869	75,536	32,503	1,580	680	130,263	56,052
2020	53,593	23,061	77,174	33,208	2,102	904	132,869	57,174
2021	54,038	23,253	78,605	33,824	2,883	1,241	135,526	58,317
2022	54,395	23,406	79,658	34,277	4,184	1,800	138,237	59,483
2023	54,751	23,559	80,569	34,669	5,681	2,445	141,001	60,673
<b>New SFEs, 2013-2023</b>		<b>2,419</b>		<b>5,478</b>		<b>1,765</b>		<b>9,662</b>

Source: Served population for wastewater service areas from City of Denton, Land Use Assumptions (see Table 4); SFEs is product of served population and SFEs/served population from Table 24.

## Demand Projections

Average per capita wastewater demands can be determined based on historic system-wide demand in millions of gallons per day (mgd) and historic served population. These per capita estimates represent both residential and nonresidential demand, and are useful for projecting future system requirements, particularly when no significant shifts of land use ratios are expected. Wastewater treatment facilities are primarily designed to accommodate average daily flows. As summarized in Table 26, per capita wastewater flows to the treatment plant over the last eight years have averaged 124 gallons per capita per day (gpcd). These calculations exclude wholesale wastewater flows. In addition, they represent flows per served or connected population, which has been determined based on recent studies by the City of Denton to be about 99 percent of total population. These factors will be used to project future average daily demand in the service areas.

**Table 26. Per Capita Wastewater Demand**

Fiscal Year	Avg. Influent Flow (mgd)	Served Population	Per Capita Flow (mgd)
2005	13.67	102,525	133
2006	11.71	105,754	111
2007	15.02	108,674	138
2008	15.05	110,818	136
2009	13.31	112,910	118
2010	12.52	114,494	109
2011	13.80	115,639	119
2012	15.02	116,795	129
<b>Average</b>			<b>124</b>

Source: Average influent flows (excluding wholesale) and 2005-2010 wastewater CCN total population from City of Denton Municipal Utilities, February 13, 2013; 2005-2010 served population is 99% of total population; 2011-2012 served population from City of Denton Planning and Development Department, "Land Use Assumptions for Impact Fee Assessments," July 2013.

Projected wastewater demand over the next ten years is summarized in Table 27 for the two current service areas. A projection of demand from the proposed infill service area is not necessary, since these customers will be served by the existing Pecan Creek treatment plant that will also continue to serve the remainder of the current Zone 1 area.

**Table 27. Projected Wastewater Demand, 2013-2023**

Fiscal Year	Served Population	Per Capita Flow (mgd)	Average Daily Flows (mgd)		
			Retail	Wholesale	Total
2013	116,967	124	14.50	0.56	15.06
2014	118,746	124	14.72	0.56	15.28
2015	120,551	124	14.95	0.56	15.51
2016	121,775	124	15.10	0.57	15.67
2017	123,625	124	15.33	0.57	15.90
2018	126,129	124	15.64	0.57	16.21
2019	128,683	124	15.96	0.57	16.53
2020	130,767	124	16.22	0.58	16.80
2021	132,643	124	16.45	0.58	17.03
2022	134,053	124	16.62	0.58	17.20
2023	135,320	124	16.78	0.58	17.36
Zone 1 Growth, 2013-2023			2.28	0.02	2.30
2013	1,580	124	0.20	0.00	0.20
2014	1,580	124	0.20	0.00	0.20
2015	1,580	124	0.20	0.00	0.20
2016	1,580	124	0.20	0.00	0.20
2017	1,580	124	0.20	0.00	0.20
2018	1,580	124	0.20	0.00	0.20
2019	1,580	124	0.20	0.00	0.20
2020	2,102	124	0.26	0.00	0.26
2021	2,883	124	0.36	0.00	0.36
2022	4,184	124	0.52	0.00	0.52
2023	5,681	124	0.70	0.00	0.70
Zone 2 Growth, 2013-2023			0.50	0.00	0.50
Systemwide Growth, 2013-2023			2.78	0.02	2.80

Source: Served population from Table 25; per capita retail demand from Table 26; wholesale flows from City of Denton Municipal Utilities.

## Wastewater Treatment

To accommodate future growth in the Pecan, Hickory and Cooper Creek basins, the City built a 6-mgd expansion to the Pecan Creek Water Reclamation Plant in December 2003. The plant is now designed to treat up to 21 mgd, and is in compliance with all State and Federal discharge permits. This plant provides adequate treatment capacity to serve projected growth in the Pecan, Hickory and Cooper Creek basins for the next ten years. Treatment capacity to serve the Clear Creek basin will be provided with a new 3-mgd Clear Creek wastewater treatment plant.

The new wastewater demand from Zone 1 (including the proposed Zone 1A infill service area) will be served by excess capacity in the existing Pecan Creek plant. The original capacity of the Pecan Creek plant (15 mgd) prior to the 2003 6-mgd expansion has already been consumed by existing customers. New development in Zone 1 over the next ten years will consume 38.0% of the capacity of the 6 mgd expansion. New wastewater demand from Zone 2 will be served by the new 3 mgd

Clear Creek plant. New development in Zone 2 over the next ten years will consume 16.7% of the new Clear Creek plant, as shown in Table 28.

**Table 28. Wastewater Treatment Plant Utilization, 2013-2023**

New Retail Average Day Demand (mgd), Zone 1, 2013-2023	2.28
÷ Capacity of 2003 Pecan Creek Plant Expansion (mgd)	6.00
<b>% of 2003 Pecan Creek Plant Capacity Expansion Needed to Serve Zone 1 Retail Growth</b>	<b>38.0%</b>
New Retail Average Day Demand (mgd), Zone 2, 2013-2023	0.50
÷ Capacity of New Clear Creek Plant (mgd)	3.00
<b>% of Clear Creek Plant Capacity Needed to Serve Zone 2 Retail Growth</b>	<b>16.7%</b>

*Source:* New retail demand in Zone 1 and Zone 2 from Table 27; capacities from City of Denton Municipal Utilities.

## Wastewater Conveyance

While the capacity and demand on treatment plants are appropriately measured in terms of average daily flows, other wastewater facilities must be sized to accommodate peak day flow. Peak flows for 2013 and 2023 were projected by City engineers utilizing the wastewater model.

Wholesale flows have been excluded from the calculation of the shares of treatment plant improvements attributable to customer growth over the next ten years. However, it is not possible to separate out increased demand from wholesale wastewater customers in the model. As can be derived from the data in Table 27 above, growth in demand from retail customers accounts for 99.30% of total projected growth in average day flows. Projected 2023 peak flows for non-treatment-plant improvements have been adjusted by this factor to remove the cost attributable to accommodating an increase in wholesale demand from the impact fee calculations.

Some of the interceptor improvements are replacing existing lines that do not have enough capacity to accommodate current peak flows. In such cases, some of the cost of the new line is attributable to replacing the capacity provided by the current line, to adding capacity to remedy the existing deficiencies, to providing new capacity for growth over the next ten years and to providing additional capacity to serve long-term future needs. The shares of all eligible improvements included in the Capital Improvements Plan that are attributable to remedying existing deficiencies and accommodating growth over the next ten years are shown in Table 29.



**Table 29. Wastewater Conveyance Capacities and Flows, 2013-2023**

Project Name	2013	2023	2013	2023	2013-2023 Utilization	
	Capacity	Capacity	Flow	Flow	Growth	Deficiency
<b>Existing Zone 1 Improvements</b>						
S Wet Weather Lift Station/Detention Pond	6.72	6.72	1.93	2.60	10.0%	0.0%
Cooper Creek Outfall (Loop 288)	18.50	18.50	13.38	13.61	1.2%	0.0%
Krum Sewer Line	10.02	10.02	1.04	3.82	27.7%	0.0%
Graveyard Branch Interceptor	21.15	21.15	1.05	1.47	2.0%	0.0%
Pecan Creek Interceptor (Ph 1 & 2)	35.55	35.55	33.34	35.55	6.2%	0.0%
Pecan Creek Interceptor I	37.49	37.49	34.61	37.49	7.7%	0.0%
Roark Branch Interceptor	7.24	7.24	0.00	3.81	52.6%	0.0%
State School Interceptor I	34.68	34.68	24.07	25.03	2.8%	0.0%
<b>Proposed Zone 1 Improvements</b>						
Carroll Ave Interceptor	3.61	5.87	3.84	4.33	21.7%	10.2%
Cooper Creek Interceptor I	10.16	18.42	15.64	17.16	18.4%	66.3%
Cooper Creek Interceptor II	5.62	14.56	11.89	13.00	12.4%	70.1%
Cooper Creek Interceptor III	4.53	14.49	9.72	10.37	6.5%	52.1%
Cooper Creek Interceptor IV	0.00	3.39	0.00	1.89	55.8%	0.0%
Cooper Creek Lift Station/Detention Pond	0.00	0.75	0.00	0.29	38.7%	0.0%
Dry Fork Hickory Crk Trib. 1 Interceptor	2.90	6.56	5.93	6.48	15.0%	82.8%
Elm Street Sewer Replacements	1.44	4.23	1.67	1.86	6.8%	8.2%
Hickory Creek Interceptor I	9.32	43.22	19.74	30.60	32.0%	30.7%
Hickory Creek Interceptor II	7.17	33.48	15.99	26.93	41.6%	33.5%
Hickory Creek Interceptor III	4.56	20.41	11.61	19.46	49.5%	44.5%
Hickory Creek Interceptor IV	1.09	4.30	2.25	3.29	32.4%	36.1%
Hickory Creek Lift Station/Detention Pond	0.00	4.04	0.00	2.81	69.6%	0.0%
Hickory Creek Outfall	11.30	34.56	11.93	12.21	1.2%	2.7%
Pecan Creek Interceptor II	8.09	37.47	23.43	26.74	11.3%	52.2%
Pecan Creek Interceptor III	5.81	24.71	23.24	24.82	7.8%	92.2%
Pecan Creek Interceptor IV	4.03	25.50	14.24	17.01	12.9%	47.6%
Pecan Creek Interceptor V	8.51	21.61	21.13	22.39	3.7%	96.3%
State School Interceptor II	13.70	61.88	23.42	24.34	1.9%	20.2%
US 380 Utility Relocations	1.08	4.41	3.66	4.47	22.5%	77.5%
West Peak Flow Lift Station/ Det. Pond	0.00	6.24	0.00	3.63	58.2%	0.0%
Westgate Heights Interceptor	1.15	3.60	2.89	3.60	29.0%	71.0%
Woodhaven Interceptor	0.76	1.46	0.80	0.88	11.4%	0.0%
<b>Proposed Zone 2 Improvements</b>						
Clear Creek Interceptor	0.00	3.00	0	0.34	11.3%	0.0%

Source: Capacities and flows (in mgd except for detention facilities, which are in mg) from City of Denton Municipal Utilities; deficiency percentage is the ratio of the difference between 2013 demand and 2013 capacity to 2013-2023 growth in capacity; growth percentage is ratio of new 2013-2023 flows to 2013-2023 growth in capacity, unless 2023 capacities are insufficient for 2023 flows, in which case it is the ratio of 2018 capacity less 2008 flow to 2018 capacity.

Cost per Service Unit

Wastewater capital improvements and costs identified by City of Denton Municipal Utilities’ staff as necessary to accommodate growth over the next ten years, along with the shares of project costs attributable to existing deficiencies, are summarized in Table 30.

**Table 30. Wastewater Growth Costs by Service Area, 2013-2023**

Project Name	Total Cost (2013 \$)	Zone 1-2 Growth Share		Infill Share of Zone 1		Deficiency Cost
		Percent	Attrib. Cost	Percent	Attrib. Cost	
Pecan Creek WRP (15 mgd)	\$39,528,174	0.0%	\$0	30.6%	\$0	\$0
Pecan Creek WRP 6 mgd expansion	\$30,005,125	38.0%	\$11,401,948	30.6%	\$3,488,996	\$0
S Wet Weather Lift Station/Detention Pond	\$1,552,898	10.0%	\$155,290	0%	\$0	\$0
Cooper Creek Outfall (Loop 288)	\$3,898,807	1.2%	\$46,786	0%	\$0	\$0
Krum Sewer Line	\$398,450	27.7%	\$110,371	0%	\$0	\$0
Graveyard Branch Interceptor	\$5,004,952	2.0%	\$100,099	0%	\$0	\$0
Pecan Creek Interceptor (Ph 1 & 2)	\$3,363,189	6.2%	\$208,518	55%	\$114,685	\$0
Pecan Creek Interceptor I	\$1,975,672	7.7%	\$152,127	91%	\$138,436	\$0
Roark Branch Interceptor	\$854,774	52.6%	\$449,611	0%	\$0	\$0
State School Interceptor I	\$1,660,869	2.8%	\$46,504	0%	\$0	\$0
Existing Improvements Subtotal, Zone 1	\$88,242,910		\$12,671,254		\$3,742,117	\$0
Carroll Ave Interceptor	\$472,799	21.7%	\$102,597	100.0%	\$102,597	\$48,225
Cooper Creek Interceptor I	\$608,498	18.4%	\$111,964	0.0%	\$0	\$403,434
Cooper Creek Interceptor II	\$1,293,395	12.4%	\$160,381	0.0%	\$0	\$906,670
Cooper Creek Interceptor III	\$1,239,878	6.5%	\$80,592	0.0%	\$0	\$645,976
Cooper Creek Interceptor IV	\$249,528	55.8%	\$139,237	0.0%	\$0	\$0
Cooper Creek Lift Station/Detention Pond	\$1,543,050	38.7%	\$597,160	0.0%	\$0	\$0
Dry Fork Hickory Crk Trib. 1 Interceptor	\$2,294,968	15.0%	\$344,245	0.0%	\$0	\$1,900,234
Elm Street Sewer Replacements	\$204,515	6.8%	\$13,907	100.0%	\$13,907	\$16,770
Hickory Creek Interceptor I	\$4,494,098	32.0%	\$1,438,111	0.0%	\$0	\$1,379,688
Hickory Creek Interceptor II	\$6,497,359	41.6%	\$2,702,901	0.0%	\$0	\$2,176,615
Hickory Creek Interceptor III	\$7,247,205	49.5%	\$3,587,366	0.0%	\$0	\$3,225,006
Hickory Creek Interceptor IV	\$2,361,574	32.4%	\$765,150	0.0%	\$0	\$852,528
Hickory Creek Lift Station/Detention Pond	\$8,293,840	69.6%	\$5,772,513	0.0%	\$0	\$0
Hickory Creek Outfall	\$466,857	1.2%	\$5,602	0.0%	\$0	\$12,605
Pecan Creek Interceptor II	\$3,114,198	11.3%	\$351,904	80.0%	\$281,523	\$1,625,611
Pecan Creek Interceptor III	\$1,899,937	7.8%	\$148,195	77.0%	\$114,110	\$1,751,742
Pecan Creek Interceptor IV	\$1,436,302	12.9%	\$185,283	53.0%	\$98,200	\$683,680
Pecan Creek Interceptor V	\$3,124,089	3.7%	\$115,591	55.0%	\$63,575	\$3,008,498
State School Interceptor II	\$4,551,156	1.9%	\$86,472	0.0%	\$0	\$919,334
US 380 Utility Relocations	\$1,378,425	22.5%	\$310,146	26.0%	\$80,638	\$1,068,279
West Peak Flow Lift Station/ Det. Pond	\$3,846,360	58.2%	\$2,238,582	55.0%	\$1,231,220	\$0
Westgate Heights Interceptor	\$405,713	29.0%	\$117,657	0.0%	\$0	\$288,056
Woodhaven Interceptor	\$256,016	11.4%	\$29,186	100.0%	\$29,186	\$0
Proposed Improvements Subtotal, Zone 1	\$57,279,760		\$19,404,742	10.4%	\$2,014,956	\$20,912,951
Zone 1 Total	\$145,522,670		\$32,075,996	17.9%	\$5,757,073	\$20,912,951
Clear Creek Interceptor	\$8,496,199	11.3%	\$960,070	0.0%	\$0	\$0
Clear Creek WRP	\$20,482,310	16.7%	\$3,420,546	0.0%	\$0	\$0
Zone 2 Proposed Improvements Total	\$28,978,509		\$4,380,616		\$0	\$0

Source: Total cost in 2013 dollars from City of Denton Municipal Utilities, June 24, 2013; treatment plant growth shares from Table 28; conveyance facility growth shares from Table 29; share of Zone 1 costs in proposed Zone 1A infill area from City of Denton Municipal Utilities, June 19, 2013; deficiency cost is cost times deficiency share from Table 29.

In addition to those costs directly attributable to growth, there are interest costs associated with funding capital improvements with revenue bonds or other forms of debt. The City traditionally funds all of its major wastewater system capital improvements with bonds, and consequently incurs interest costs. According to State law, these interest costs can be recovered through impact fees. Based on the analysis provided in the Appendix, the costs should be increased by 12.4% to account for interest costs. The final step in determining the cost per service unit is to divide the total capital cost attributable to growth over the next ten years in each service area by the anticipated growth in service units over the same time period. The results are shown in Table 31 below.

**Table 31. Wastewater Cost per Service Unit by Service Area**

	<b>Zone 1A (Infill)</b>	<b>Zone 1B (Rest)</b>	<b>Zone 1 Total</b>	<b>Zone 2</b>
Direct Growth Costs, 2013-2023	\$5,757,073	\$26,318,923	\$32,075,996	\$4,380,616
Debt Service Interest Cost	\$713,877	\$3,263,546	\$3,977,423	\$543,196
<b>Total Growth Costs, 2013-2023</b>	<b>\$6,470,950</b>	<b>\$29,582,469</b>	<b>\$36,053,419</b>	<b>\$4,923,812</b>
÷ New SFEs, 2013-2023	2,419	5,478	7,897	1,765
<b>Cost per SFE</b>	<b>\$2,675</b>	<b>\$5,400</b>	<b>\$4,565</b>	<b>\$2,790</b>

*Source:* Direct growth costs from Table 30 (Zone 1B is difference between Zone 1 total and Zone 1A); debt service cost is growth cost times real interest cost factor (0.124) from Table 39 in the Appendix; new SFEs from Table 25.

### **Net Cost per Service Unit**

New wastewater customers will help pay off outstanding debt incurred for existing facilities through their monthly rates. To avoid requiring new customers to pay twice for capital facilities, once through impact fees and again through rate payments, the impact fees should be reduced to account for such debt service payments. A simple and reasonable approach to calculating the credit is to divide outstanding debt by current service units, and use this figure as the credit per service unit. The rationale behind this approach is simple to explain and understand. Existing customers are being allowed to pay for a portion of their capital costs through their rate payments; reducing impact fees by this amount puts new customers on an equal footing with existing customers. All customers will be funding the same share of their capital costs through rate payments.

Credit does not need to be provided for the share of current debt that is attributable to past improvements that still have capacity remaining to serve future growth. In fact, this portion of debt could be retired by future impact fees. Credit does not need to be provided for the share of current debt that is attributable to past improvements that still have capacity remaining to serve future growth. In fact, this portion of debt could be retired by future impact fees. The percentages of original bond issues related to improvements with excess capacity to serve future customers are shown in Table 17.

**Table 32. Percent of Wastewater Debt Related to Excess Capacity**

Improvements with Excess Capacity	Original Bond Issue				
	1998	2000	2001	2002	2003
Pecan Creek WRP (6 mgd)	18.33%	37.93%	31.52%	3.09%	
South Wet Weather Lift Station		1.57%			
Pecan Creek Interceptor (Ph.1&2)					0.99%
Cooper Creek Outfall (Loop 288)					0.18%
Krum Sewer Line				0.49%	
Graveyard Branch Interceptor		0.43%			
Roark Branch Interceptor			6.45%	0.27%	
State School Interceptor I		0.53%			
Pecan Creek Interceptor I		0.62%	0.46%		0.67%
<b>Total</b>	<b>18.33%</b>	<b>41.09%</b>	<b>38.44%</b>	<b>3.85%</b>	<b>1.84%</b>

Source: City of Denton Municipal Utilities, July 29, 2013.

The outstanding water debt attributable to excess capacity is derived by multiplying the outstanding debt associated with each bond issue by the percentages calculated above, as shown in Table 18.

**Table 33. Outstanding Wastewater Debt Related to Excess Capacity**

Outstanding Bond Issue	Current Outstanding	Eligible % of Original	Eligible Outstanding
2003 - Original Bond Issue	\$784,652	1.84%	\$12,605
2005 - Refunding from 1998	\$1,266,200	18.33%	\$192,420
2005 - Refunding from 2000	\$8,473,800	41.09%	\$2,886,593
2007 - Refunding from 2001	\$4,450,000	38.44%	\$1,322,321
2010 - Refunding from 1998	\$132,947	18.33%	\$23,915
2010 - Refunding from 1998B	\$472,313	18.33%	\$84,960
2010 - Refunding from 2000A	\$1,388,951	41.09%	\$560,051
2010 - Refunding from 2002A	\$6,860,788	3.85%	\$259,356
2011 - Refunding from 2001	\$495,000	38.44%	\$147,090
<b>Total</b>			<b>\$5,489,310</b>

Source: Outstanding debt from City of Denton Municipal Utilities, July 29, 2013, percentages from Table 32.

In addition to outstanding debt on existing facilities, there are also some existing deficiencies that will be remedied by the planned improvements. The sum of outstanding debt and deficiency costs represent the future cost to serve existing customers. The credit is calculated by dividing total existing customers costs by existing service units, as shown in Table 34.

**Table 34. Wastewater Revenue Credit per Service Unit**

Total Outstanding Wastewater Debt	\$47,639,019
– Outstanding Debt Associated with Excess Capacity	-\$5,489,310
Outstanding Debt for Facilities Serving Existing Customers	\$42,149,709
Deficiency Cost	\$20,912,951
Future Existing Customer Cost	\$63,062,660
x Interest Cost Factor	1.124
Total Existing Customer Cost	\$70,882,430
÷ Existing Service Units (SFEs)	51,011
Credit per SFE	\$1,390

Source: Total outstanding debt from City of Denton Municipal Utilities as of September 30, 2012; debt associated with excess capacity from Table 33; deficiency cost from Table 30; interest cost factor from Table 39; existing SFEs from Table 24.

The calculated net cost per service unit is the cost per service unit less the debt credit per service unit. An alternative to calculating the revenue credit, provided by Chapter 395, is simply to divide the cost per service unit in half. The net costs derived from these two alternative methods are compared in Table 35.

**Table 35. Wastewater Net Cost per Service Unit by Service Area**

	<b>Zone 1A (Infill)</b>	<b>Zone 1B (Rest)</b>	<b>Zone 1 Total</b>	<b>Zone 2</b>
Cost per SFE	\$2,675	\$5,400	\$4,565	\$2,790
- Revenue Credit per SFE	-\$1,390	-\$1,390	-\$1,390	-\$1,390
<b>Calculated Net Cost per SFE</b>	<b>\$1,285</b>	<b>\$4,010</b>	<b>\$3,175</b>	<b>\$1,400</b>
<b>Alternative Net Cost per SFE</b>	<b>\$1,338</b>	<b>\$2,700</b>	<b>\$2,283</b>	<b>\$1,395</b>

*Source:* Cost per SFE from Table 31; calculated revenue credit per SFE from Table 34; alternative net cost per SFE is one-half the cost per SFE, per State law.

**Net Cost Schedule**

The City Council could enact updated wastewater impact fees at either of the alternative net costs shown above, or at a reduced level. The following net cost schedule represents the maximum impact fees that may be charged by the City for wastewater system facilities, based on the Land Use Assumptions, the utility system evaluation and capital improvement cost estimates prepared by City of Denton Municipal Utilities staff and engineering consultants, and the additional data and analysis presented in this water impact fee Capital Improvements Plan.

**Table 36. Wastewater Net Cost Schedule**

	<b>Zone 1A (Infill)</b>	<b>Zone 1B (Rest)</b>	<b>Zone 1 Total</b>	<b>Zone 2</b>
Updated Net Cost/SFE	\$1,285	\$4,010	\$3,175	\$1,400
Current Fee per SFE	\$1,700	\$1,700	\$1,700	\$1,760
<b>Percent Change</b>	<b>-24%</b>	<b>136%</b>	<b>87%</b>	<b>-20%</b>

*Source:* Updated net cost per SFE from Table 35; current fee from City of Denton Code of Ordinances, Sec. 26-222.

Based on the growth projections in the Land Use Assumptions, potential system-wide revenues over the next ten years would be higher under the potential fees calculated in this report than under the current fees, as shown in Table 37. These revenue projections should be viewed cautiously, since they depend entirely on the growth projections. It should also be noted that the updated fees will not apply to properties platted under the previous impact fee schedule, a fact that is not accounted for in these revenue projections.

**Table 37. Comparative Wastewater Impact Fee Revenues, 2013-2023**

	Zone 1A (Infill)	Zone 1B (Rest)	Zone 1 Total	Zone 2	System-Wide Total
Updated Net Cost per SFE	\$1,285	\$4,010	\$3,175	\$1,400	na
x New SFEs, 2013-2023	2,419	5,478	7,897	1,765	9,662
Potential Revenue with Updated Fees	\$3,108,415	\$21,966,780	\$25,072,975	\$2,471,000	\$27,543,975
Current Fee per SFE	\$1,700	\$1,700	\$1,700	\$1,760	na
x New SFEs, 2013-2023	2,419	5,478	7,897	1,765	9,662
Potential Revenue with Current Fees	\$4,112,300	\$9,312,600	\$13,424,900	\$3,106,400	\$16,531,300
Percent Change from Current Fees	-24%	136%	87%	-20%	67%

Source: Updated net cost per SFE from Table 35; new SFEs from Table 25.

If the impact fees are adopted at 100% of the full net cost, new customers, system-wide, would pay 67% of their attributable cost of capital improvements through impact fees, and the rest through future rate payments that will be used to (a) retire existing debt associated with existing improvements that are serving existing customers and (b) retire future debt issued to fund planned improvements that will remedy capacity deficiencies for existing customers. The percentage of costs covered through impact fees varies by service area, because the utility debt is paid by all customers, regardless of service area, and the debt credit is a larger part of the gross fee per service unit in service areas with smaller fees. The percentages of growth-related costs paid through impact fees for each service area are shown in Table 38.

**Table 38. Wastewater Growth Costs and Revenues, 2013-2023**

	Zone 1A (Infill)	Zone 1B (Rest)	Zone 2	System- Wide
Impact Fee Revenues, 2013-2023	\$3,108,415	\$21,966,780	\$2,471,000	\$27,546,195
÷ Total Growth Costs, 2013-2023	\$6,470,950	\$29,582,469	\$4,923,812	\$40,977,231
Percent Paid by Impact fees	48%	74%	50%	67%

Source: Impact fee revenues from Table 37; growth costs from Table 31.

## APPENDIX: INTEREST COSTS

Interest cost on debt consists of three components: an anticipated inflation rate, a return on investment and a risk premium. No borrower is going to loan money at less than the rate of inflation, since the dollars paid back will have less buying power than the dollars loaned. The residual interest rate after subtracting the inflation rate is referred to as the real interest rate, which consists of the rate of return plus risk premium. Over the past ten years, the rate of inflation has been about 2.48%. The City's outstanding utility debt service payments, including both general obligation and revenue bonds, are summarized in Table 39. The net present value of the City's outstanding debt service payments, discounted at the long-term inflation rate, is about \$196 million. The real cost of interest is the difference between the net present value of the debt service payments, discounted at the inflation rate, and the principal. As shown in Table 39, the real cost of interest that will be paid on the City's outstanding utility debt is about \$22 million. This indicates that real interest costs are equivalent to an additional 12.4% of the amount borrowed.

**Table 39. Outstanding Utility Debt Service**

Fiscal Year	Water/Wastewater Revenue/GO Bonds		
	Principal	Interest	Total
2013	\$11,639,368	\$7,857,167	\$19,496,535
2014	\$12,269,652	\$7,201,525	\$19,471,177
2015	\$12,345,000	\$6,649,681	\$18,994,681
2016	\$12,705,000	\$6,073,406	\$18,778,406
2017	\$13,215,000	\$5,453,825	\$18,668,825
2018	\$13,575,000	\$4,814,425	\$18,389,425
2019	\$14,065,000	\$4,163,450	\$18,228,450
2020	\$14,735,000	\$3,494,188	\$18,229,188
2021	\$12,065,000	\$2,869,978	\$14,934,978
2022	\$10,450,000	\$2,327,950	\$12,777,950
2023	\$7,430,000	\$1,896,672	\$9,326,672
2024	\$6,745,000	\$1,566,528	\$8,311,528
2025	\$7,070,000	\$1,254,084	\$8,324,084
2026	\$4,945,000	\$995,950	\$5,940,950
2027	\$5,160,000	\$789,609	\$5,949,609
2028	\$4,635,000	\$583,319	\$5,218,319
2029	\$4,535,000	\$383,513	\$4,918,513
2030	\$4,750,000	\$181,497	\$4,931,497
2031	\$905,000	\$55,525	\$960,525
2032	\$940,000	\$16,450	\$956,450
<b>Total</b>	<b>\$174,179,019</b>	<b>\$58,628,742</b>	<b>\$232,807,762</b>
Net Present Value, Total Debt Service			\$195,793,420
- Total Outstanding Principal			-\$174,179,019
Real Interest Cost			\$21,614,401
Ratio of Real Interest Cost to Principal Amount			0.124

Source: Utility revenue bond debt service payments from City of Denton Municipal Utilities, February 13, 2013; net present value based on 2.48% discount rate, which is the average annual inflation rate over the last ten years (2002-2012) from the Bureau of Labor Statistics, Consumer Price Index, All Urban Customers, U.S., All Items, 1982-1984=100.



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**TO:** Tim Fisher, P.E., City of Denton  
Joel Nickerson, City of Denton  
**FROM:** Scott Cole, P.E., Freese and Nichols, Inc.  
Stephanie Neises, P.E., Freese and Nichols, Inc.  
**SUBJECT:** Water Impact Fee Utilization Calculations  
**DATE:** August 19, 2013  
**PROJECT:** Water Impact Fee Assistance



FREESE AND NICHOLS, INC.  
TEXAS REGISTERED  
ENGINEERING FIRM  
F-2144

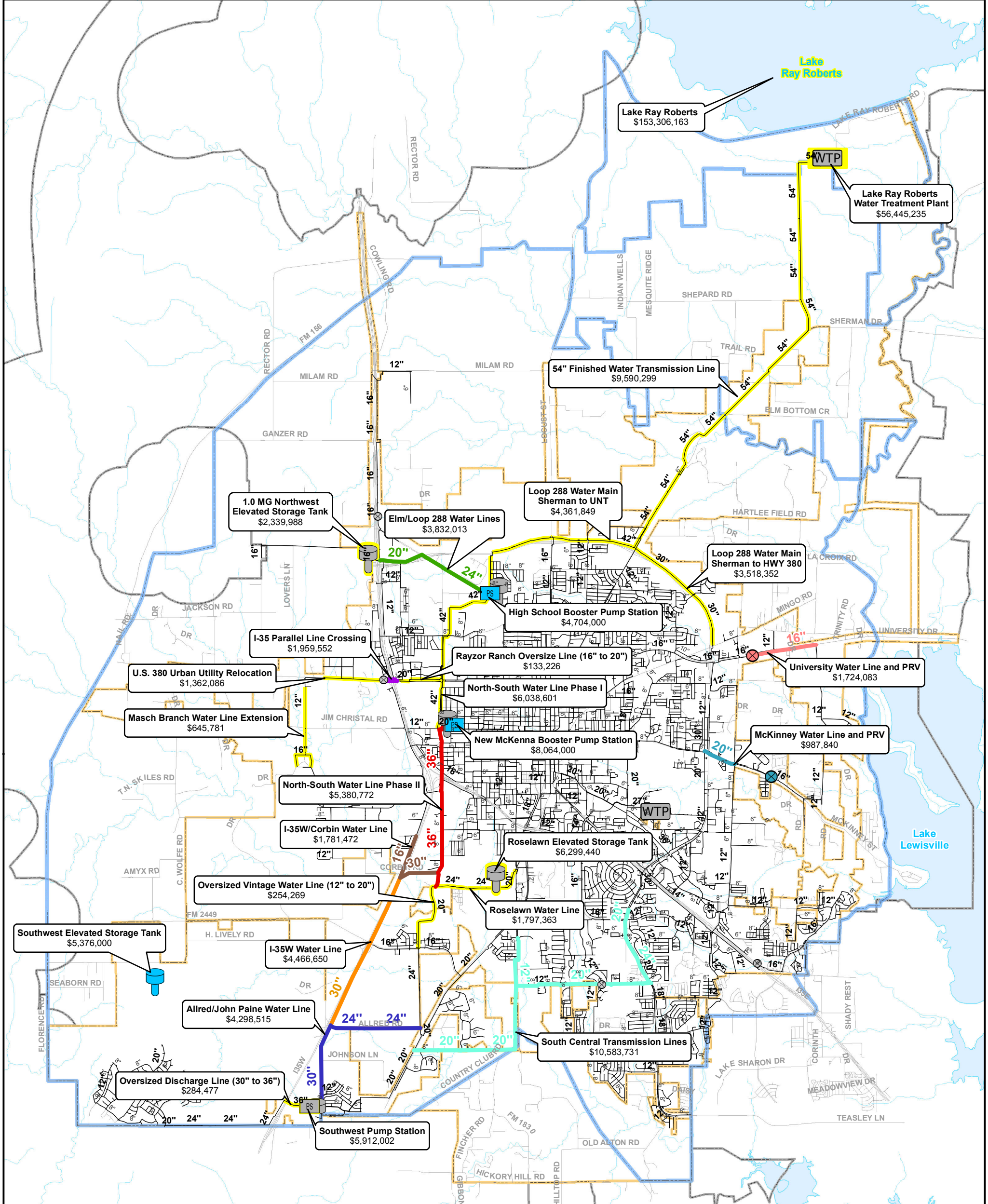
**INTRODUCTION**

The City of Denton contracted with Freese and Nichols, Inc. to update the Water Impact Fee Capital Improvements Plan (CIP). The City provided updated land use assumptions and the current hydraulic model to be used for the impact fee analysis. Projects included in the Impact Fee CIP consist of improvements identified in the 10-year CIP as well as existing infrastructure with excess capacity. The Impact Fee Capital Improvements Plan is shown on **Figure 1**. The portion of each project associated with growth that will be utilized within the 10-year timeframe is impact fee eligible. Utilization percentages were calculated by evaluating the existing capacity and future capacity of each project.

**DEVELOPMENT OF UTILIZATION PERCENTAGES**

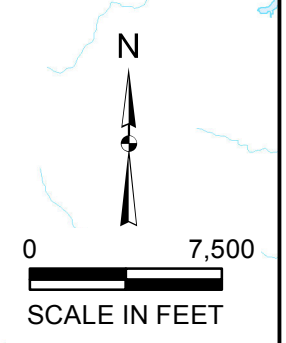
The hydraulic model was used as a tool to determine the utilization of the pipeline improvements. For the recently constructed projects, the 2013 percent utilized was calculated by dividing the flow observed in the existing system model runs by the ultimate capacity of the pipe. The ultimate capacity of a pipe was assumed to be the capacity calculated in the 2032 system analysis as part of the 2008 Water Distribution System Master Plan. The 2013 utilization for proposed projects indicates the portion of the project that will be used to address deficiencies in the existing system or improvements that serve existing customers. The 2023 utilization percentages were calculated by taking the flow observed in the 10-year model runs and dividing it by the ultimate capacity of the pipe.





**FIGURE 1**  
**CITY OF DENTON**  
 2013 WATER IMPACT FEE  
 CAPITAL IMPROVEMENTS PLAN  
 LEGEND

	Proposed Elevated Tank		Proposed Pump Station
	Ground Storage Tank		Existing Pump Station
	Elevated Storage Tank		Existing Water Line
	Water Treatment Plant		Existing Eligible Project
			Water CCN Boundary
			City Limit
			ETJ



Utilization percentages for water system facilities (i.e. water treatment plants, pump stations, storage tanks) were calculated based on the recommended capacities developed as part of the 2008 Water Distribution System Master Plan for the existing and projected demands. The 2013 percentages account for existing system deficiencies or projects designed to serve existing customers while the 2023 percentages indicate the portion of the capacity that will be utilized within the 10-year timeframe.

The following provides example calculations for each type of project:

- Pipe (42-inch Loop 288 Sherman to UNT)

Existing Flow = 10.7 mgd

10-year Flow = 16.5 mgd

Ultimate Flow = 42.0 mgd

**2013 % Utilization** =  $\frac{10.7 \text{ mgd}}{42.0 \text{ mgd}} = 0.255 \approx 25\%$

**2023 % Utilization** =  $\frac{16.5 \text{ mgd}}{42.0 \text{ mgd}} = 0.393 \approx 40\%$

**Eligible %** = 40% - 25% = 15%
  
- Water Treatment Plant (Ray Roberts Water Treatment Plant)

Existing WTP Capacity (LLWTP) = 30.0 mgd

Recently Constructed WTP Capacity (RRWTP) = 20.0 mgd

Existing Maximum Day Demand = 42.2 mgd

10-year Maximum Day Demand = 51.2 mgd

**2013 % Utilization** =  $\frac{42.2 \text{ mgd} - 30.0 \text{ mgd}}{20.0 \text{ mgd}} = 0.610 \approx 60\%$

**2023 % Utilization** =  $\frac{51.2 \text{ mgd}}{30.0 \text{ mgd} + 20.0 \text{ mgd}} = 1.024 \rightarrow 100\%$

**Eligible %** = 100% - 60% = 40%

- Pump Station (Southwest Booster Pump Station)

Existing Firm Capacity = 6.05 mgd

Existing Peak Hour Demand (criteria with no elevated storage) = 1.33 mgd

125% of 10-year Maximum Day (criteria with elevated storage) = 2.03 mgd \* 1.25 = 2.54 mgd

$$\text{2013 \% Utilization} = \frac{1.33 \text{ mgd}}{6.05 \text{ mgd}} = 0.220 \approx 20\%$$

$$\text{2023 \% Utilization} = \frac{2.54 \text{ mgd}}{6.05 \text{ mgd}} = 0.420 \approx 40\%$$

$$\text{Eligible \%} = 40\% - 20\% = 20\%$$

- Storage Tank (Roselawn EST)

Existing Storage Capacity (Central Pressure Plane) = 3.0 MG

New Storage Capacity = 3.0 MG

Existing Storage Requirement (from Master Plan) = 5.2 MG

10-year Storage Requirement = 5.5 MG

$$\text{2013 \% Utilization} = \frac{5.2 \text{ MG} - 3.0 \text{ MG}}{3.0 \text{ MG}} = 0.733 = 75\%$$

$$\text{2023 \% Utilization} = \frac{5.5 \text{ MG} - 3.0 \text{ MG}}{3.0 \text{ MG}} = 0.833 = 85\%$$

$$\text{Eligible \%} = 85\% - 75\% = 10\%$$

## **ZONE PERCENTAGES**

The City divided the water service area into three zones:

- Zone 1 – the area north of Hickory Creek and the Robson Ranch, Country Lakes, Meadows at Hickory Creek, and The Vintage developments
- Zone 2 – the area south of Hickory Creek, with the exception of the exacted developments that are included in Zone 1
- Infill Zone – the area bounded to the west by Bonnie Brae Street, to the north by Windsor Drive, to the east by Old North Road, Mockingbird Lane, and Woodrow Lane, and to the south by I-35E and Willowwood Street

After the utilization percentages were calculated, each project was evaluated to determine the zone percentages. Percentages for projects that improve the entire system equally (such as water treatment

plants) were calculated based on growth in population over the next 10 years. Approximately 54% of the 10-year growth occurs in Zone 1 while 21% occurs in Zone 2 and 25% in the Infill Zone. **Table 1** shows the population for each zone. The model was utilized as a tool to assign various percentages to the remaining improvements based on the hydraulic relevance to each zone. For example, the new High School Booster Pump Station provides no benefit to the customers in Zone 2 and therefore is 100% attributable to Zone 1. Similarly, projects that offer more hydraulic benefit to Zone 2 customers were given percentages higher than 21% for Zone 2. **Table 2** presents the utilization percentages, as well as the zone percentages for each project.

**Table 1: Water Service Population by Zone**

<b>Zone</b>	<b>2013 Population</b>	<b>2023 Population</b>	<b>% of Total Growth</b>
Zone 1	68,426	80,744	54%
Zone 2	2,282	7,079	21%
Infill Zone	49,624	55,304	25%
Total	120,332	143,127	100%

Note: The populations were provided in the Land Use Assumptions report provided by the City. The Infill Zone population is from the Table 1 of Exhibit 4. The Zone 2 population is from Table 1 of Exhibit 3. The Zone 1 population was calculated based on the water service population presented in Table 1 of Exhibit C and then subtracting the population from Zone 2 and the Infill Zone.

**Table 2: Cost Allocation for Impact Fees**

No.	Description of Project	2013* Utilization	2023 Utilization	2013-2023 Utilization	Capital Cost	10-Year Cost	Zone 1 Utilization	Zone 1 Cost	Zone 2 Utilization	Zone 2 Cost	Infill Utilization	Infill Cost
<b>EXISTING ELIGIBLE</b>												
A	Lake Ray Roberts	77.5%	96.1%	19%	\$153,306,163	\$28,514,946	54%	\$15,398,071	21%	\$5,988,139	25%	\$7,128,736
B	Lake Ray Roberts Water Treatment Plant	60%	100%	40%	\$56,445,235	\$22,578,094	54%	\$12,192,171	21%	\$4,741,400	25%	\$5,644,523
C	54" Finished Water Transmission Line	30%	45%	15%	\$9,590,299	\$1,438,545	54%	\$776,814	21%	\$302,094	25%	\$359,637
D	Loop 288 Water Main - Sherman to UNT	25%	40%	15%	\$4,361,849	\$654,277	54%	\$353,310	21%	\$137,398	25%	\$163,569
E	Loop 288 Water Main - Sherman to Hwy 380	25%	40%	15%	\$3,518,352	\$527,753	54%	\$284,987	21%	\$110,828	25%	\$131,938
F	Northwest Elevated Storage Tank	30%	60%	30%	\$2,339,988	\$701,996	100%	\$701,996	0%	\$0	0%	\$0
G	Southwest Pump Station	20%	40%	20%	\$5,912,002	\$1,182,400	60%	\$709,440	40%	\$472,960	0%	\$0
H	Southwest PS Oversize Discharge Line (30" to 36")	5%	10%	5%	\$284,477	\$14,224	60%	\$8,534	40%	\$5,690	0%	\$0
I	Vintage Oversize Line (12" to 20")	25%	60%	35%	\$254,269	\$88,994	45%	\$40,047	55%	\$48,947	0%	\$0
J	North-South Water Line Phase I	25%	35%	10%	\$6,038,601	\$603,860	54%	\$326,084	21%	\$126,811	25%	\$150,965
K	Roselawn Elevated Storage Tank	75%	85%	10%	\$6,299,440	\$629,944	54%	\$340,170	21%	\$132,288	25%	\$157,486
L	Roselawn Water Line	30%	55%	25%	\$1,797,363	\$449,341	54%	\$242,644	21%	\$94,362	25%	\$112,335
M	Masch Branch Road Water Line Extension	15%	30%	15%	\$645,781	\$96,867	100%	\$96,867	0%	\$0	0%	\$0
N	U.S 380 Urban Utility Relocation	25%	30%	5%	\$1,519,926	\$75,996	100%	\$75,996	0%	\$0	0%	\$0
O	Rayzor Ranch Oversize Line (16" to 20")	10%	25%	15%	\$133,226	\$19,984	100%	\$19,984	0%	\$0	0%	\$0
<b>PROPOSED ELIGIBLE</b>												
1	North-South Water Line Phase II	0%	35%	35%	\$5,380,772	\$1,883,270	60%	\$1,129,962	40%	\$753,308	0%	\$0
2	I-35 Parallel Line Crossing	15%	30%	15%	\$1,959,552	\$293,933	100%	\$293,933	0%	\$0	0%	\$0
3	High School Booster Pump Station	0%	30%	30%	\$4,704,000	\$1,411,200	100%	\$1,411,200	0%	\$0	0%	\$0
4	Elm/Loop 288 Water Lines	0%	30%	30%	\$3,832,013	\$1,149,604	100%	\$1,149,604	0%	\$0	0%	\$0
5	Allred/John Paine Water Line	0%	20%	20%	\$4,298,515	\$859,703	35%	\$300,896	65%	\$558,807	0%	\$0
6	Southwest Elevated Storage Tank	10%	20%	10%	\$5,376,000	\$537,600	60%	\$322,560	40%	\$215,040	0%	\$0
7	McKinney Water Line and PRV	10%	25%	15%	\$987,840	\$148,176	100%	\$148,176	0%	\$0	0%	\$0
8	University Water Line and PRV	0%	30%	30%	\$1,724,083	\$517,225	100%	\$517,225	0%	\$0	0%	\$0
9	New McKenna Booster Pump Station	0%	65%	65%	\$8,064,000	\$5,241,600	60%	\$3,144,960	40%	\$2,096,640	0%	\$0
10	I-35W Water Line	0%	20%	20%	\$4,466,650	\$893,330	35%	\$312,666	65%	\$580,664	0%	\$0
11	I-35W/Corbin Water Line	0%	20%	20%	\$1,781,472	\$356,294	45%	\$160,332	55%	\$195,962	0%	\$0
12	South Central Transmission Lines	0%	15%	15%	\$10,583,731	\$1,587,560	60%	\$952,536	40%	\$635,024	0%	\$0
<b>Total Capital Improvements Cost</b>					<b>\$305,605,599</b>	<b>\$72,456,716</b>		<b>\$41,411,165</b>		<b>\$17,196,362</b>		<b>\$13,849,189</b>

\* Utilization in 2013 on Proposed Projects indicates a portion of the project that will be used to address deficiencies within the existing system, and therefore are not eligible for impact fee cost recovery for future growth.



**Memorandum**

**To: P.S. Arora, P.E., Assistant Director of Wastewater Utilities**

**From: James Wilder, P.E., Engineering Services**

**Re: Wastewater Impact Fee CIP**

The City of Denton wastewater impact fee rates were generated from an update to the Impact Fee 10-Year Capital Improvement Plan, which in turn was generated by an update of the Wastewater Collection System hydraulic model. The update of the model included utilizing revised population projections and land use assumptions furnished by NCTCOG and the City's planning department. The model was also updated to take into account more recent wet weather flow metering data. The results of the model simulations indicated the improvements required to handle the future flows. These improvements are the basis of the Impact Fee 10-Year Capital Improvement Plan.

Exhibit 3A shows the locations for the Impact Fee projects for Zone 1. The majority of the projects are located on or adjacent to the three main interceptors located in the Cooper Creek, Pecan Creek, and Hickory Creek basins. This is an expected result as the collection system funnels the bulk of the wastewater flow for the entire system into these interceptors. Therefore, existing capacity deficiencies and future capacity enhancement are concentrated along these interceptor routes.

*James Wilder*  
6/11/13

**Wastewater Zone 1  
Impact Fee Projects**  
Exhibit 3A

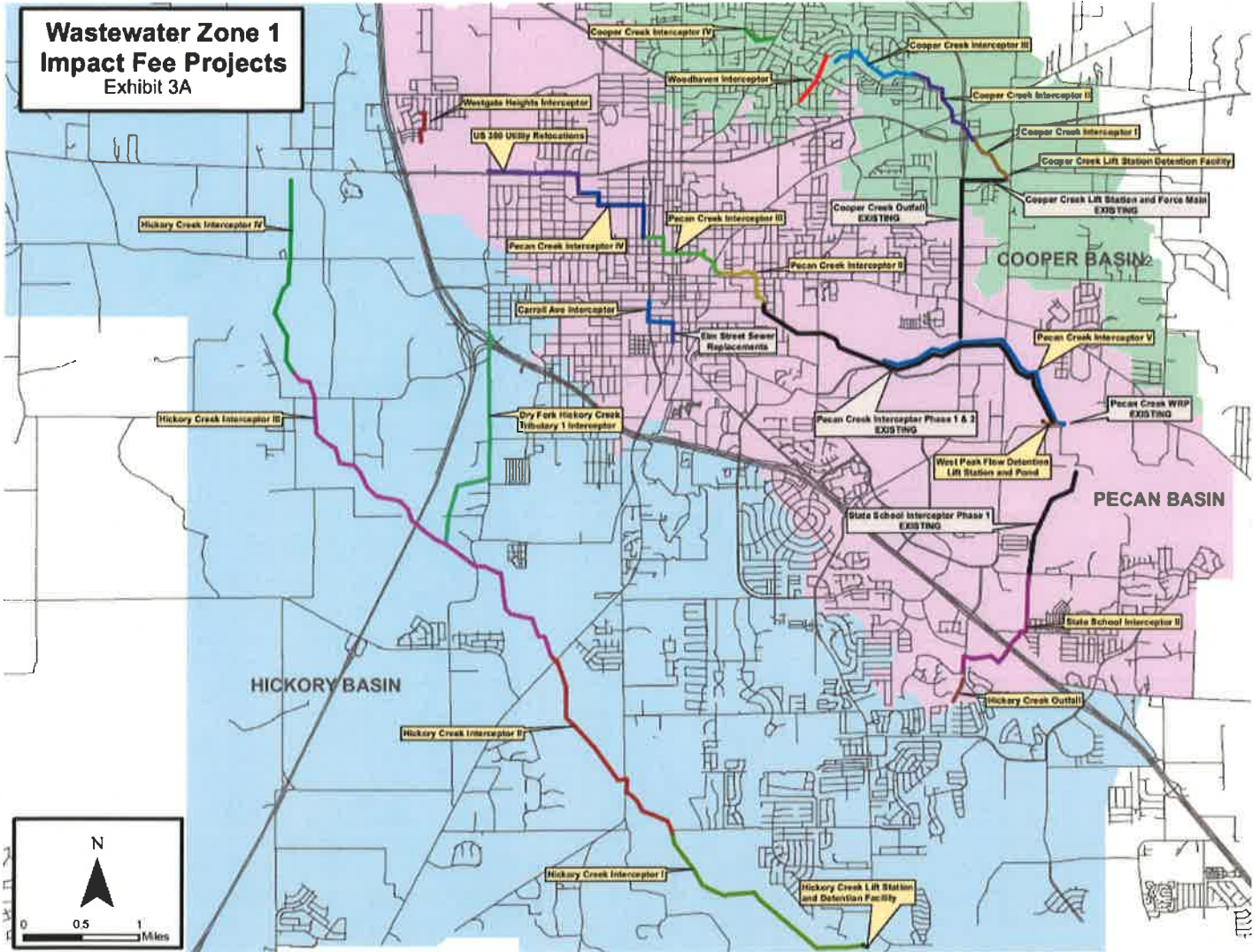


Exhibit 3B shows the locations for the Impact Fee projects for Zone 2. These projects address future planned growth in the Clear Creek Basin.

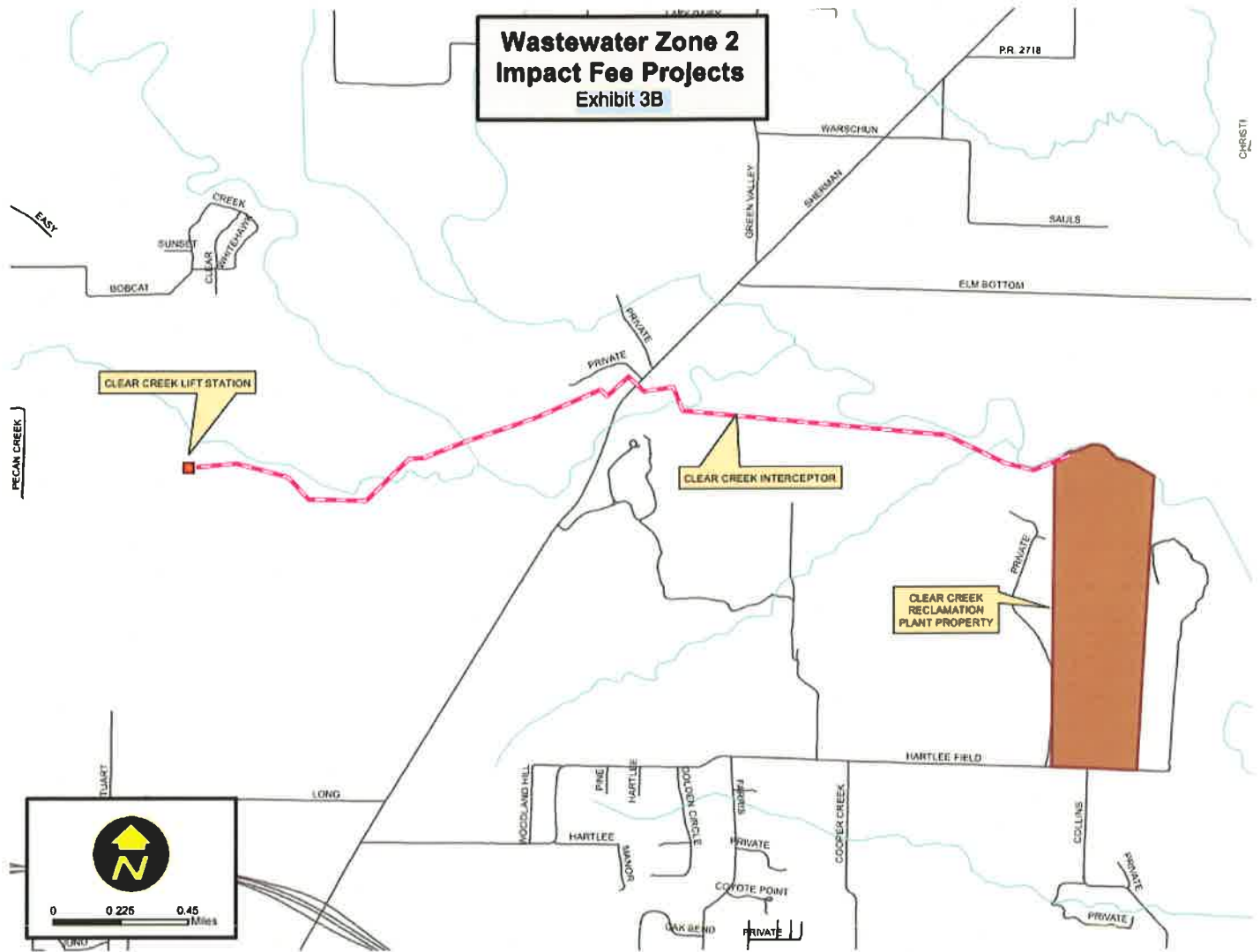


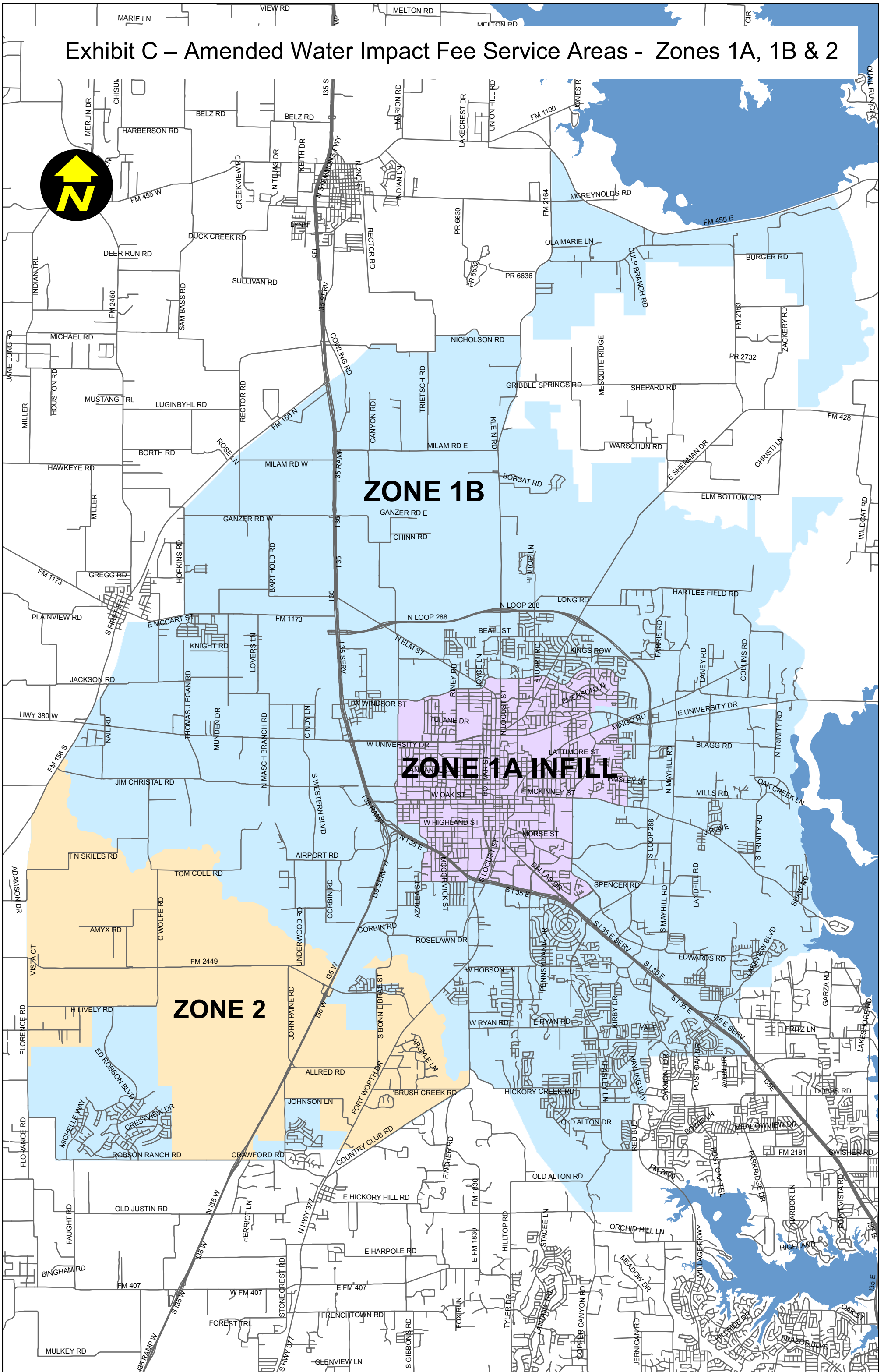


Table 1 is a summary of the Impact Fee projects by cost and zone. Costs are presented for the project total as well as the portion attributable to growth during the 2013-2023 time frame. The cost impact of Infill Zone growth has also been taken into account for those projects impacted by growth in that zone. The deficiency cost is the portion of the project cost attributable to bringing capacity up to meet existing conditions; it is an indirect way to determine how “deficient” the existing facility is to handle existing peak flows. Zone delineation for each project was straightforward as the project location determined whether they were in Zone 1 or Zone 2. The Infill Zone percentage was determined for each project by comparing the base flow from the Infill Zone to the total base flow for the project location.

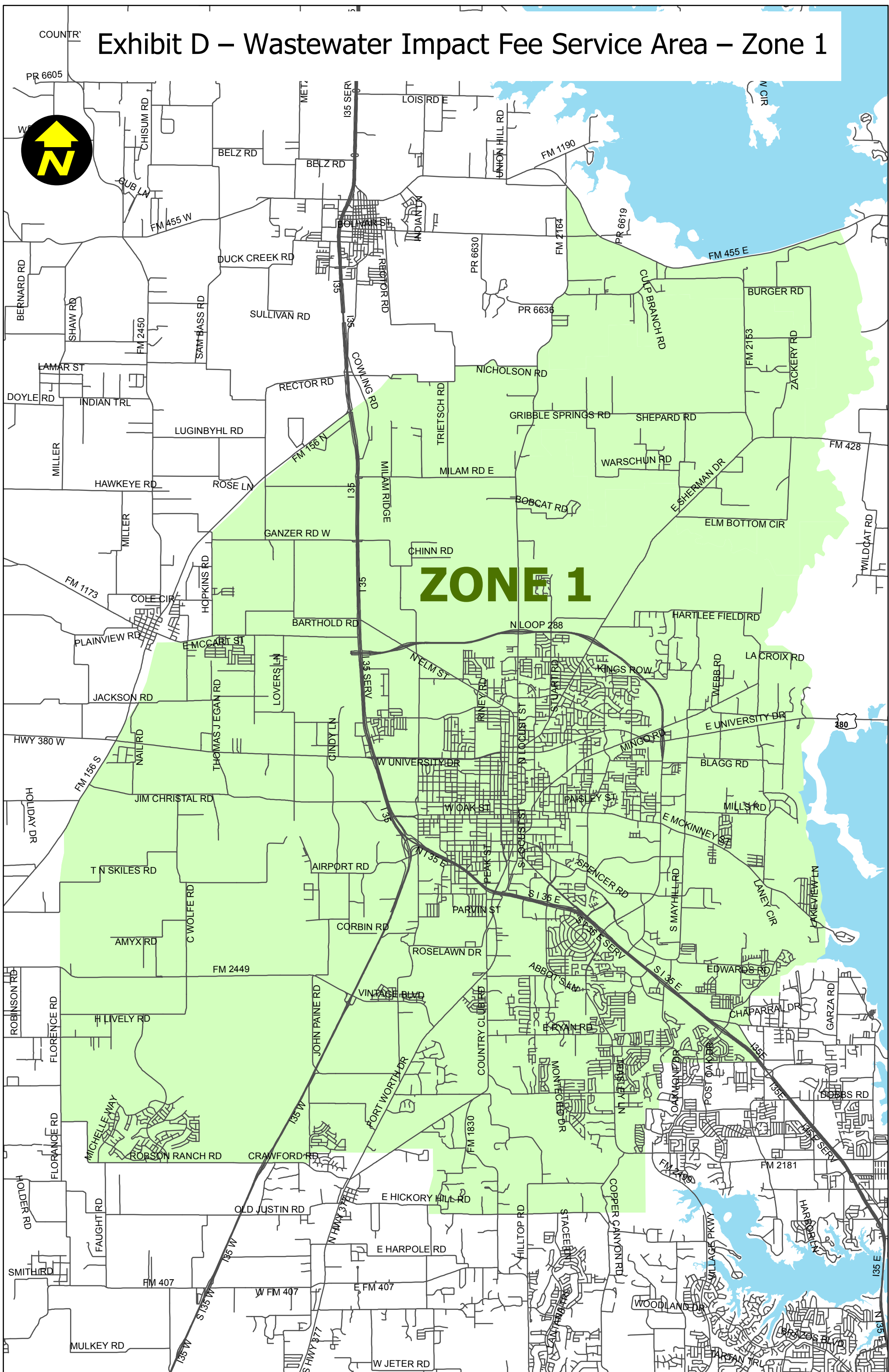
**Table 1 Wastewater Growth Costs by Service Area, 2013-2023**

Project Name	Total Cost (2013 \$)	Zone 1-2 Percent	Zone 1-2 Attributable Cost	Infill Zone Percent	Infill Zone Attributable Cost	Deficiency Cost
Pecan Creek WRP (15 mgd)	\$39,528,174	0.0%	\$0	30.6%	\$0	\$0
Pecan Creek WRP 6 mgd expansion	\$30,005,125	38.0%	\$11,401,948	30.6%	\$3,488,996	\$0
S Wet Weather Lift Station/Detention Pond	\$1,552,898	10.0%	\$155,290	0%	\$0	\$0
Cooper Creek Outfall (Loop 288)	\$3,898,807	1.2%	\$46,786	0%	\$0	\$0
Krum Sewer Line	\$398,450	27.7%	\$110,371	0%	\$0	\$0
Graveyard Branch Interceptor	\$5,004,952	2.0%	\$100,099	0%	\$0	\$0
Pecan Creek Interceptor (Ph 1 & 2)	\$3,363,189	6.2%	\$208,518	55%	\$114,685	\$0
Pecan Creek Interceptor I	\$1,975,672	7.7%	\$152,127	91%	\$138,436	\$0
Roark Branch Interceptor	\$854,774	52.6%	\$449,611	0%	\$0	\$0
State School Interceptor I	\$1,660,869	2.8%	\$46,504	0%	\$0	\$0
Existing Improvements Subtotal, Zone 1	\$88,242,910		\$12,671,254		\$3,742,117	\$0
Carroll Ave Interceptor	\$472,799	21.7%	\$102,597	100.0%	\$102,597	\$48,225
Cooper Creek Interceptor I	\$608,498	18.4%	\$111,964	0.0%	\$0	\$403,434
Cooper Creek Interceptor II	\$1,293,395	12.4%	\$160,381	0.0%	\$0	\$906,670
Cooper Creek Interceptor III	\$1,239,878	6.5%	\$80,592	0.0%	\$0	\$645,976
Cooper Creek Interceptor IV	\$249,528	55.8%	\$139,237	0.0%	\$0	\$0
Cooper Creek Lift Station/Detention Pond	\$1,543,050	38.7%	\$597,160	0.0%	\$0	\$0
Dry Fork Hickory Crk Trib. 1 Interceptor	\$2,294,968	15.0%	\$344,245	0.0%	\$0	\$1,900,234
Elm Street Sewer Replacements	\$204,515	6.8%	\$13,907	100.0%	\$13,907	\$16,770
Hickory Creek Interceptor I	\$4,494,098	32.0%	\$1,438,111	0.0%	\$0	\$1,379,688
Hickory Creek Interceptor II	\$6,497,359	41.6%	\$2,702,901	0.0%	\$0	\$2,176,615
Hickory Creek Interceptor III	\$7,247,205	49.5%	\$3,587,366	0.0%	\$0	\$3,225,006
Hickory Creek Interceptor IV	\$2,361,574	32.4%	\$765,150	0.0%	\$0	\$852,528
Hickory Creek Lift Station/Detention Pond	\$8,293,840	69.6%	\$5,772,513	0.0%	\$0	\$0
Hickory Creek Outfall	\$466,857	1.2%	\$5,602	0.0%	\$0	\$12,605
Pecan Creek Interceptor II	\$3,114,198	11.3%	\$351,904	80.0%	\$281,523	\$1,625,611
Pecan Creek Interceptor III	\$1,899,937	7.8%	\$148,195	77.0%	\$114,110	\$1,751,742
Pecan Creek Interceptor IV	\$1,436,302	12.9%	\$185,283	53.0%	\$98,200	\$683,680
Pecan Creek Interceptor V	\$3,124,089	3.7%	\$115,591	55.0%	\$63,575	\$3,008,498
State School Interceptor II	\$4,551,156	1.9%	\$86,472	0.0%	\$0	\$919,334
US 380 Utility Relocations	\$1,378,425	22.5%	\$310,146	26.0%	\$80,638	\$1,068,279
West Peak Flow Lift Station/ Det. Pond	\$3,846,360	58.2%	\$2,238,582	55.0%	\$1,231,220	\$0
Westgate Heights Interceptor	\$405,713	29.0%	\$117,657	0.0%	\$0	\$288,056
Woodhaven Interceptor	\$256,016	11.4%	\$29,186	100.0%	\$29,186	\$0
Proposed Improvements Subtotal, Zone 1	\$57,279,760		\$19,404,742	10.4%	\$2,014,956	\$20,912,951
<b>Zone 1 Total</b>	<b>\$145,522,670</b>		<b>\$32,075,996</b>	<b>17.9%</b>	<b>\$5,757,073</b>	<b>\$20,912,951</b>
Clear Creek Interceptor	\$8,496,199	11.3%	\$960,070	0.0%	\$0	\$0
Clear Creek WRP	\$20,482,310	16.7%	\$3,420,546	0.0%	\$0	\$0
<b>Zone 2 Proposed Improvements Total</b>	<b>\$28,978,509</b>		<b>\$4,380,616</b>		<b>\$0</b>	<b>\$0</b>

# Exhibit C – Amended Water Impact Fee Service Areas - Zones 1A, 1B & 2



# Exhibit D – Wastewater Impact Fee Service Area – Zone 1



## EXHIBIT E

### LAND USE AND SERVICE UNIT/SFE EQUIVALENCIES WATER AND WASTEWATER FACILITIES

METER TYPE	METER SIZE	TYPICAL LAND USE	Single Family Equivalents (SFE)
Positive Displacement	3/4"	Residential - Single Family (less than 1,300 sq. ft./lot size less than 6,000 sq. ft.)	0.5
Positive Displacement	3/4"	Residential - Single Family	1.0
Positive Displacement	1"	Residential / Commercial	2.5
Positive Displacement	1-1 1/2"	Commercial	5.0
Positive Displacement	2"	Commercial	8.0
Single Jet	Spectrum 175/3"	Commercial / Industrial	17.5
Compound	3"	Commercial / Industrial	22.5
Single Jet	Spectrum 260/3"/4"	Commercial / Industrial	26.0
Single Jet	Spectrum 440/4"/6"	Commercial / Industrial	44.0
Compound	4"	Commercial / Industrial	50.0

Source: City of Denton Approved Meter Manufacturer's Specifications

**NOTE:**

The total service units for multi-family apartment projects with eight or more units shall be determined by multiplying the total number of bedrooms in the multi-family apartment project by 0.26 Single Family Equivalents (SFEs).

**AGENDA INFORMATION SHEET**

**AGENDA DATE:** November 19, 2013  
**DEPARTMENT:** Planning and Development  
**ACM:** John Cabrales, Jr.



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**SUBJECT**

Consider a motion to reconsider adoption of an ordinance regarding a rezoning of approximately 75.3 acres from Neighborhood Residential 2 (NR-2) to a Neighborhood Residential 3 (NR-3) zoning district and give City staff direction regarding same. The subject property is generally located on the south of Ryan Road, north of the Kansas City Southern Railroad, approximately 950 feet east of FM1830 and approximately 800 feet west of Forrest Ridge Road. (Z13-0006) The Planning and Zoning Commission recommends approval (6-1). The City Council denied (3-3).

**BACKGROUND**

The Mayor and some council members have requested the reconsideration of the adoption of an ordinance regarding a rezoning of approximately 75.3 acres from Neighborhood Residential 2 (NR-2) to a Neighborhood Residential 3 (NR-3) zoning district (Z13-0006) and to give staff direction regarding same. This item will allow council to determine if they wish to reconsider this rezoning request, which was denied by council on November 5 with a 3-3 vote. Also, attached are two letters from the developer which may be helpful in council's discussion on this item.

**PRIOR ACTION**

1. September 25, 2013 - Planning and Zoning Commission Public Hearing
2. November 5, 2013 – City Council Public Hearing

**OPTIONS**

1. Approve reconsideration of this rezoning request.
2. Deny reconsideration of this rezoning request.

**RECOMMENDATION**

The Planning and Zoning Commission recommended **APPROVAL** of Z13-0006 (6-1).  
The Development Review Committee (DRC) recommends **APPROVAL** of Z13-0006.

**EXHIBITS**

1. Applicant Letter to Mayor Pro Tem Kamp
2. Applicant Letter to Mayor Burroughs

Respectfully prepared and submitted by:

A handwritten signature in cursive script, appearing to read "Brian Lockley".

Brian Lockley, AICP, CPM  
Planning and Development Director



November 7, 2013

Pete Kamp  
Mayor Pro Tem  
City of Denton  
215 E. McKinney  
Denton, Texas 76201

Re: Zoning Case Z13-0006

Dear Pete:

First, thank you for your time and consideration at the November 5 City of Denton Council Meeting for the above-referenced item.

I believe some important points may have gotten lost in the discussion regarding gas well drilling, existing gas well rights, development in proximity to gas wells, and the merits of the request as a development in general. The following seeks to address some of the concerns of the dissenting Council Members.

***Gas Well Sites:***

There are three approved drilling sites located within the 75.3 acres that the zoning request covers (see attached). Of course, there is a producing well on one of them adjacent to the proposed subdivision. The other two approved drill sites are within the area encompassed by the subdivision – one being within 400 feet of the Wayne Stuart Ryan Elementary School.

Please note that at the meeting our engineer inadvertently misstated the status of these approved drill sites by suggesting that the lease rights to drill on such sites had expired. In fact, the operator of the existing well presently owns the right to drill on the subject property (including on the approved drill sites) pursuant to existing lease rights. I request that record of the proceedings be noted to correct the misstatement.

To proceed with the development as contemplated, I will have to obtain surface waivers from the operators as well as the underlying mineral interest owners. If the waivers are obtained, any further drilling on the subject property would be confined to the existing drill site.

***Infrastructure:***

The staff presentation stated that infrastructure was present, but it did not mention the infrastructure proposed with this project.

**A summary of these improvements are outlined below:**

*Ryan Road* – Ryan Road would be constructed to its ultimate designation along the frontage. This represents approximately 655 feet of paving improvements.



*Creekdale Road* – Creekdale Road would be extended as part of this development to meet the requirements of the Mobility Plan. This represents approximately 675 feet of pavement widening adjacent to Wayne Stuart Ryan Elementary School and 2,450 feet of new construction to the south boundary line of this tract.

*Sanitary Sewer* – As part of this development, a new gravity sanitary sewer main would be constructed through off-site properties with a connection to the existing trunk main along Hickory Creek. This sanitary sewer main will serve the sewer basin currently serviced by the lift station on the Wayne Stuart Ryan Elementary School site. The lift station will be removed from service with the proposed project.

*Water* – In order to serve this site with water for domestic and fire protection needs, an off-site water main will be constructed to interconnect existing infrastructure in Ryan Road to infrastructure constructed with the Thistle Hill development to the east. This will “loop” the current dead-end line now serving the school and other uses along Ryan Road.

I would also like to mention that we have been working with Denton ISD in regards to obtaining a ROW dedication from them to construct a public road from Ryan Road to our project along the east side of the elementary school. In exchange for the school’s willingness to grant the ROW dedication, we have agreed to do the following:

- Construct a 6' tall masonry fence on the south side of their property line
- Install a 4' chain link fence running parallel to the new road
- Plant live oak trees every 50' and provide irrigation to them
- Provide a sidewalk connection in the southwest corner to their existing sidewalk
- Install two (2) bicycle racks in an area designated by the school
- Make a \$30,000 cash donation to the school to be used at their discretion

As you can see in the attached email to me from Paul Andress of Denton ISD, they are agreeable to do the ROW dedication based on us doing the above-referenced items.

I have also included a “NOTICE TO HOMEBUYER OF GAS WELL PAD SITE”. It is my intention that buyers of homes adjacent to the well site receive this type of notice, and that it be made a part of the buyers’ contracts.

Hopefully, the above and accompanying materials will be useful in the Council’s reconsideration of this matter.

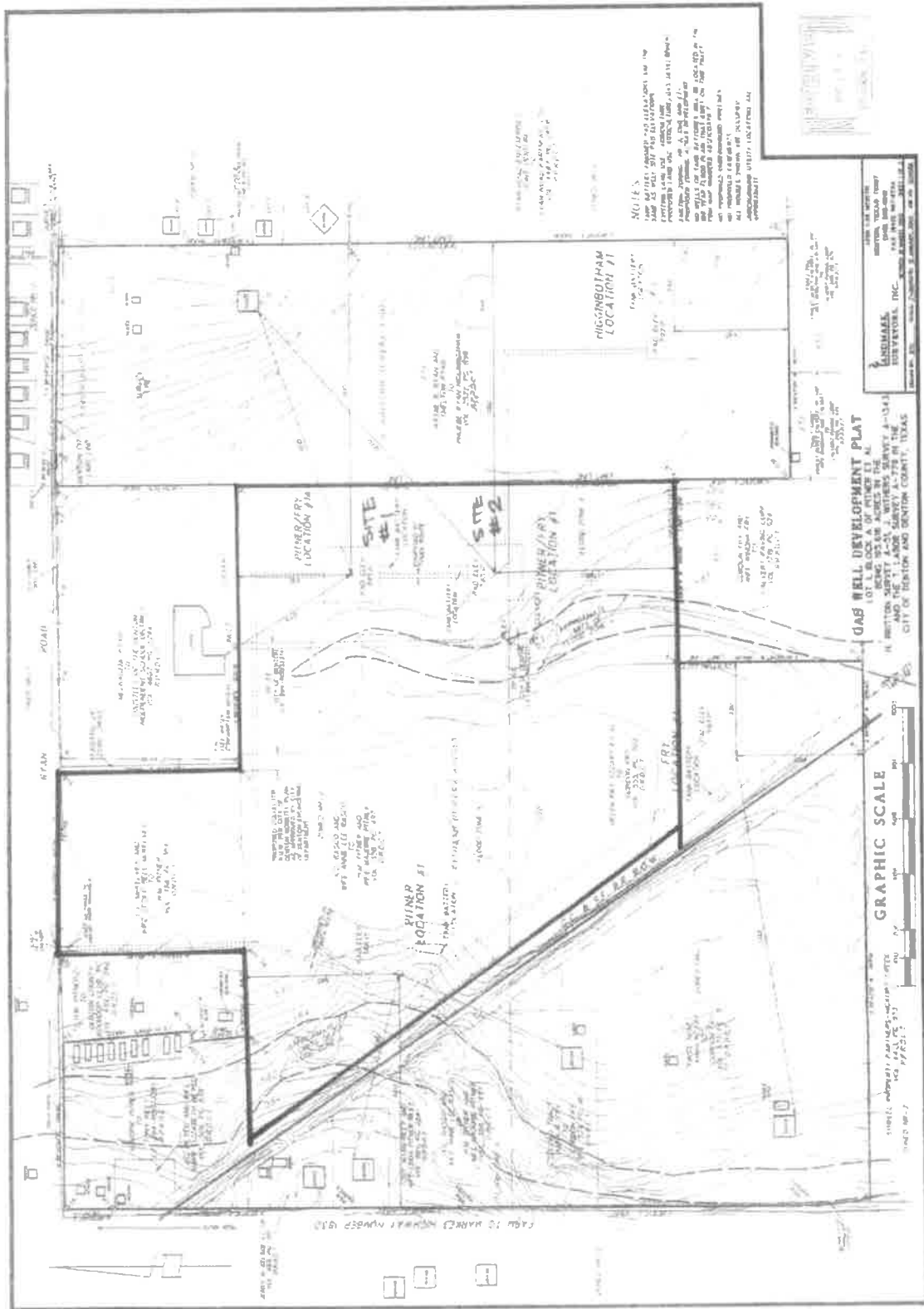
Thank you for your assistance and consideration.

Sincerely,



Bob Shelton

Enclosures



**GAS WELL DEVELOPMENT PLAT**  
 LOT 1, BLOCK A OF SUBDIVISION  
 IN SECTION 36, T. 10N, R. 10E, S. 10N  
 AND THE T. 10N, R. 10E, S. 10N  
 CITY OF TARRANT AND DENTON COUNTY, TEXAS

**GRAPHIC SCALE**  
 0 10 20 30 40 50 60 70 80 90 100  
 FEET

**NOTICE**  
 THIS PLAT IS A DEVELOPMENT PLAT FOR A GAS WELL DEVELOPMENT AND IS NOT A SURVEY PLAT. THE PLAT IS BASED ON THE SURVEY DATA AND RECORDS FILED IN THE PUBLIC RECORDS OFFICE OF TARRANT COUNTY, TEXAS. THE PLAT IS NOT TO BE USED FOR ANY OTHER PURPOSES WITHOUT THE WRITTEN CONSENT OF THE ENGINEER. THE ENGINEER ASSUMES NO LIABILITY FOR ANY DAMAGE OR INJURY TO PERSONS OR PROPERTY ARISING FROM THE USE OF THIS PLAT. THE ENGINEER'S LIABILITY IS LIMITED TO THE PROFESSIONAL SERVICES RENDERED BY HIM OR HER.

**LANDMANS ENGINEERING, INC.**  
 1100 W. 11TH STREET  
 FORT WORTH, TEXAS 76104  
 (817) 335-1100

FIGURE NUMBER 101

**Subject:** RE: Ryan Elementary Road Project  
**From:** Address, Paul (paddress@dentonisd.org)  
**To:** sheltonent@yahoo.com;  
**Cc:** rstout@csplaw.net;  
**Date:** Thursday, October 31, 2013 6:06 AM

Bob,

I believe we can agree to this. I am not sure if you have heard back from Randy but he checked with the Superintendent to make sure everyone agrees with this. Thanks!

---

**From:** Bob Shelton [mailto:sheltonent@yahoo.com]  
**Sent:** Thursday, October 24, 2013 3:38 PM  
**To:** Address, Paul  
**Cc:** Randy Stout  
**Subject:** Ryan Elementary Road Project

Dear Mr. Address –

In an attempt to try to move our agreement forward, I would like to offer the following in exchange for the school dedicating the necessary ROW from Ryan Road south to our proposed subdivision:

- We will build a 6' tall masonry fence on the south side of your property line between the school and our project.
- We will install a 4' chain link fence running parallel to the new road.
- We will plant live oak trees with spacing every 50' and provide irrigation to keep the trees alive.
- We will provide a sidewalk connection in the southwest corner to your existing sidewalk.
- We will install two (2) bicycle racks in an area to be designated by the school.
- In lieu of playground equipment covers, we would make a cash donation to the school in the amount of \$30,000 to be used at the school's discretion.

Hopefully in doing these items and donating the funds, the school will be comfortable with going forward with an agreement to dedicate the ROW. We will be spending approximately \$100,000 for the masonry fencing; approximately \$15,000 for the chain link fence; approximately \$30,000 for tree planting and irrigation; and another \$5,000 for bicycle racks plus a \$30,000 donation to the school. This total amount equates to paying \$4.60 per square foot for the area we are asking the school to donate which is presently being used as a drainage ditch.

We would like to think this is more than fair. Please let me know how we need to proceed because if the school

does not think this is fair then I need to start visiting with the property owner to the east of the school for a possible ROW dedication.

Thank you very much.

*Bob Shelton*  
*Bob Shelton Enterprises, Ltd.*  
*2308 Ranch House Drive*  
*Denton, TX 76210*  
*(940) 536-1151*  
*(940) 536-1150*  
[sheltonent@yahoo.com](mailto:sheltonent@yahoo.com)

**NOTICE TO HOMEBUYER OF GAS WELL PAD SITE**

Notice is hereby given by SELLER to BUYER that the property described below (the "Property") is within approximately \_\_\_\_\_ feet of a gas well pad site on which the drilling and production of natural gas may occur from time to time. Details regarding the exact location of the gas well pad site and of the activities that may occur on the gas well pad site are available by contacting the office of the Gas Well Administrator, City of Denton, Texas. THIS NOTICE IS GIVEN PRIOR TO OR CONCURRENTLY WITH THE EXECUTION BY SELLER AND BUYER OF A CONTRACT FOR THE SALE AND PURCHASE OF THE PROPERTY.

**PROPERTY DESCRIPTION**

Block \_\_\_\_, Lot \_\_\_\_, \_\_\_\_\_ Addition to the City of Denton, Denton County, Texas

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

**SELLER:** \_\_\_\_\_

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

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

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

**BUYER:** \_\_\_\_\_

(Husband)

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

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

**BUYER:** \_\_\_\_\_

(Wife)

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

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



November 14, 2013

The Honorable Mark Burroughs  
Mayor of the City of Denton  
215 E. McKinney  
Denton, TX 76201

Re: Zoning Case Z13-0006

Dear Mayor Burroughs:

Supplementing my November 7 letter to Mayor Pro Tem Pete Kamp, please note the following:

We have revised our proposed lot layout to increase the buffer between the lots and the existing well site in accordance with the City's requirements that a 200' x 200' well site be at least 250 feet from a lot line (see attached). This revision resulted in a reduction in the total number of lots by six (6).

We have indicated that we intend to notify potential homebuyers within the vicinity of the well of the proximity of the well site by incorporating a prominent disclosure provision in each sale contract. We understand that the City may require that notice be in the form of a recorded instrument affecting title to any land within 1,200 feet of the well site, and we are prepared to comply with such requirement.

If you have any questions, please don't hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to be "B. Shelton", written over a horizontal line.

Bob Shelton  
President

cc: Mayor Pro Tem Pete Kamp

**AGENDA INFORMATION SHEET****AGENDA DATE:** November 19, 2013**DEPARTMENT:** Transportation**ACM:** Jon Fortune 

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**SUBJECT**

An ordinance of the City of Denton, Texas prohibiting parking on both sides of Ponder Avenue from its intersection with Scripture Street to its intersection with Oak Street; providing a repealer clause; providing a savings clause; providing for a penalty not to exceed \$500 for violations of this ordinance; providing that violations of this ordinance shall be governed by Chapter 18 of the Code of Ordinances of the City of Denton; and providing for an effective date.

**BACKGROUND**

Ponder Avenue is a two-way road from Linden Drive on the north terminating at Oak Street on the south. The road segment from Scripture Street to Oak Street is classified as a Residential Street that is 24-feet wide and was previously marked as a No Parking Zone. As part of a City of Denton routine maintenance procedure, deteriorating signage was removed and replaced with new signage. After the original signage was removed, it was determined there was no ordinance for the subject No Parking Zone, thus the No Parking signage was not replaced as the No Parking Zone was not legally enforceable.

Due to the proximity of the University of North Texas, Ponder Avenue has experienced a significant increase in on-street parking since the No Parking signage was removed. Residents along this segment of Ponder Avenue have reported to city officials that parked vehicles frequently encroach on driveways resulting in difficulties maneuvering to and from their residence and the roadway. Staff has also received comments from area residents that on-street parking on both sides of the roadway creates a narrow, one-lane roadway that results in vehicles meeting head on requiring one or both vehicles to yield way by sheltering in driveways or reverse direction for safe passage.

Staff recommends the subject road segment be posted as a 24-hour No Parking Zone on both sides of the roadway to improve the safe passage of motorists using this public roadway. The Fire Code requires a roadway to be a minimum of 26-feet wide to allow parking on one side of the road to allow public safety equipment to pass and/or deploy the stabilizers on aerial equipment. As stated above, Ponder Avenue is 24-feet wide in the subject road segment which will not permit parking along either side.

The standard process to effectuate a No Parking Zone requires a petition to be circulated to property owners and residents on each side of the roadway in the affected area indicating whether they agree or disagree with the proposed action. The petition is then submitted as part of a formal request that is considered by the Traffic Safety Commission and if recommended, forwarded to Council for final consideration. Due to the critical nature of this situation and that the area recently been posted as a No Parking Zone, the City Manager requested this item be fast tracked for Council consideration. Staff visited with Wally Campbell, Traffic Safety Commission Chair and he is supportive of advancing this directly to the City Council. The Traffic Safety Commission has been advised on the status of this issue.

### **OPTIONS**

1. Approve the ordinance
2. Approve the ordinance with conditions
3. Deny approval of the ordinance

### **RECOMMENDATION**

Staff recommends approval of no parking on both the sides of Ponder Avenue from Scripture Street to Oak Street.

### **PRIOR ACTION/REVIEW**

The Mobility Committee was provided a summary of the status of this roadway on November 12, 2013. The City Manager requested this item be fast tracked for Council consideration.

### **FISCAL INFORMATION**

Depending on visibility of the signs, a minimum of eight signs and a post for each will be required.

### **EXHIBITS**

1. Location Map
2. Photographs at various locations on Ponder Avenue
3. Ordinance

Respectfully submitted:



Mark Nelson  
Transportation Director



# Ponder Avenue – Site Map



Proposed parking restriction

# Northbound Ponder Avenue



# Northbound Ponder Avenue



# Southbound Ponder Avenue



ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF DENTON, TEXAS PROHIBITING PARKING ON BOTH SIDES OF PONDER AVENUE FROM ITS INTERSECTION WITH SCRIPTURE STREET TO ITS INTERSECTION WITH OAK STREET; PROVIDING A REPEALER CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR A PENALTY NOT TO EXCEED \$500 FOR VIOLATIONS OF THIS ORDINANCE; PROVIDING THAT VIOLATIONS OF THIS ORDINANCE SHALL BE GOVERNED BY CHAPTER 18 OF THE CODE OF ORDINANCES OF THE CITY OF DENTON; AND PROVIDING FOR AN EFFECTIVE DATE.

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. When signs and/or markings are in place giving notice thereof, no person shall park a vehicle on either side of Ponder Avenue from its intersection with Scripture Street to its intersection with Oak Street.

SECTION 2. The provisions of Section 1 prohibiting the parking of vehicles shall apply on the designated portion of the above named street or streets except when it is necessary to stop a vehicle to avoid conflict with other traffic or in compliance with the direction of a police officer or official traffic control device.

SECTION 3. If any section, subsection, paragraph, sentence, clause, phrase, or word in this ordinance, or application thereof to any person or circumstances is held invalid by any court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of this ordinance, and the City Council of the City of Denton, Texas hereby declares it would have enacted such remaining portions despite any invalidity.

SECTION 4. Save and except as amended hereby, all the provisions, sections, subsections, paragraphs, sentences, clauses, and phrases of the Code of Ordinances shall remain in full force and effect.

SECTION 5. Any person found liable of violating this Ordinance by a court of competent jurisdiction shall be fined a sum not to exceed five hundred dollars (\$500). Each day that a provision of this ordinance is violated shall constitute a separate offense. The disposition of parking citations issued pursuant to this Ordinance shall be governed by Division 3 titled "Parking Violations Division" of Chapter 18 of the Code of Ordinances.

SECTION 6. This Ordinance providing for a penalty shall become effective fourteen (14) days from the date of its passage, and the City Secretary is hereby directed to cause the caption of this ordinance to be published twice in the *Denton Record-Chronicle*, the official newspaper of the City of Denton, Texas, within ten (10) days of the date of its passage.

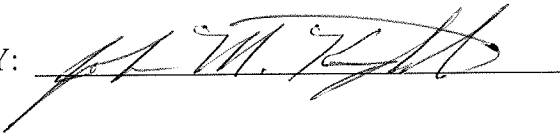
PASSED AND APPROVED this the \_\_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
MARK A. BURROUGHS, MAYOR

ATTEST:  
JENNIFER WALTERS, CITY SECRETARY

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

APPROVED AS TO LEGAL FORM:  
ANITA BURGESS, CITY ATTORNEY

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

**AGENDA INFORMATION SHEET**

**AGENDA DATE:** November 19, 2013

**DEPARTMENT:** Planning and Development

**ACM:** John C. Cabrales, Jr.



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**SUBJECT**

Hold a public hearing and consider adoption of an ordinance of the City of Denton, Texas, approving a Specific Use Permit to allow a Basic Utility; a DME electric substation, on approximately 6.21 acres of land within a Neighborhood Residential Mixed Use (NRMU) and Neighborhood Residential Mixed Use 12 (NRMU-12) zoning district classification and use designation, located on the south side of East McKinney Street, approximately 1,300 feet east of Mack Drive and 450 west of Springtree Street, within the City of Denton, Denton County, Texas; providing for a penalty in the maximum amount of \$2,000.00 for violations thereof; providing for a severability clause and an effective date (S13-0005). The Planning and Zoning Commission recommends approval (6-0).

**BACKGROUND**

The applicant, Denton Municipal Electric, is proposing to develop an electric substation on approximately 6.21 acres on East McKinney Street. Pursuant to Subchapter 35.5.2.2 (Permitted Uses) of the Denton Development Code (DDC), an SUP is required for a “Basic Utility” within the NRMU and NRMU-12 zoning districts when located within 200 feet of a residential zone. The applicant is currently in the process of acquiring an additional 1.13 acre tract needed to construct the substation to its final design as shown in Exhibit 7. A separate SUP will be required once this tract is acquired.

The proposed substation will be part of the overall electrical transmission and distribution system, as outlined by DME’s 2013-2017 Capital Improvement Plan (CIP). It is one of 43 DME CIP projects which include new substations, expansions to existing substations and other improvements such as transmission lines and improvements inside of stations and control buildings. See Exhibit 9 for the aforementioned DME CIP projects.

The proposed substation is necessary to provide major electrical infrastructure improvements for the transmission system and to reconfigure the station to best meet the needs of the eastern portion of the City. It will be an interconnection point for two transmission lines. Specifically, this substation is part of the Spencer to Kings Row 69 kV Transmission Line Project.

The project includes construction of two 138kV/69kV to 13.2kV/7.62kV transformers, eight 138 kV circuit breakers, one control enclosure, and two distribution switchgear enclosures. The site will have space and provision for two additional transformers and two additional switchgear enclosures in the future.

The applicant proposes to construct a 10-foot decorative precast concrete security wall around the entire site (See Exhibit 8 for photos taken of similar security walls) and the planting of eight new large trees will be used to screen the substation from these uses to the fullest extent possible. The site requires a minimum of 20% landscaped area and 40% tree canopy cover. The applicant proposes over 30% landscaped area and 40% tree canopy cover.

As part of the Governmental Entity Development Review Process, DME has submitted an application for a Specific Use Permit (S13-0005) to allow development of an electric substation on the properties as well as a preliminary plat (PP13-0016), which is currently being reviewed by the Development Review Committee (DRC). The Governmental Entity Development Review Process shortens the development review process while ensuring that public safety, adequate facilities, regulatory compliance and appropriate environmental stewardship is achieved. The preliminary plat, and subsequent final plat, will include only the 6.21 acres. A final replat will be required once the additional 1.13 acre property needed to fully construct the substation is acquired.

Prior to the city-wide rezoning in 2002, approximately 3.65 acres of the 6.21 acre site was zoned Agricultural District (A). The remainder was zoned a combination of Commercial District (approximately 0.4 acres) and One-Family Dwelling District SF-7 (approximately 2.16 acres). Electric Substations were permitted by-right in the Commercial and Agricultural zoning districts and required approval of an SUP within the SF-7 zoning districts.

Staff sent twelve (12) certified notices of the public hearing to property owners within two hundred (200) feet of the subject property and fourteen (14) notices to residents and property owners within five hundred (500) feet of the property. As of this writing, staff has not received any response regarding the request.

### **PRIOR ACTION**

Planning and Zoning Commission

October 23, 2013

### **OPTIONS**

1. Approve as submitted.
2. Approve with conditions.
3. Deny.
4. Postpone consideration.
5. Table item.



### **RECOMMENDATION**

The Planning and Zoning Commission recommends **APPROVAL** of S13-0005 (6-0), subject to the conditions below recommended by the Development Review Committee.

The Development Review Committee recommends **APPROVAL** of S13-0005, subject to the following conditions:

1. A perimeter masonry security wall shall be constructed with a minimum height of ten (10) feet. See Exhibit 7 for the location of the proposed security wall (highlighted in green) and Exhibit 8 for examples of perimeter walls.

### **EXHIBITS**

1. Staff Report
2. Aerial Map
3. Zoning Map
4. Future Land Use Map
5. Notification Map & Responses
6. Applicant Letter of Intent
7. Landscape Plan
8. Security Wall Examples
9. DME CIP Project Map
10. Site Photos
11. October 23, 2013, Planning and Zoning Commission Meeting Minutes
12. Ordinance

Respectfully submitted:



Brian Lockley, AICP, CPM  
Planning and Development, Director

Prepared by:



Michael J. Bell  
Associate Planner

**Exhibit 1**  
**CITY OF DENTON**  
**DEVELOPMENT REVIEW COMMITTEE**  
**STAFF REPORT**

<b>P&amp;Z Date:</b>	<b>October 23, 2013</b>	<b>TYPE:</b>	<b>Specific Use Permit</b>
<b>CC Date:</b>	<b>November 19, 2013</b>	<b>PROJECT #:</b>	<b>S13-0005</b>

**Project Number:** S13-0005, DME McKinney Substation

**Request:** A Specific Use Permit (SUP) to allow for development of an electric substation.

**Applicant:** Teague Nall and Perkins, Inc.  
1517 Centre Place Drive, Suite 320  
Denton, TX 76205

**Property Owner:** Denton Municipal Electric  
215 E. McKinney Street  
Denton, TX 76201

**Location:** The property is located on the south side of E McKinney Street, approximately 1,300 feet east of Mack Drive and 450 feet west of Springtree Street.

**Size:** 6.21 acres +/-

**Existing Zoning Designation:** Neighborhood Residential Mixed Use (NRMU) and Neighborhood Residential Mixed Use 12 (NRMU-12)

**Future Land Use:** Neighborhood Centers

**Case Planner:** Michael J. Bell

**DRC Recommendation:** The Development Review Committee (DRC) recommends *Approval* of S13-0005, subject to conditions.

**Summary of Analysis**

Subchapter 35.5.5 of the Denton Development Code, requires approval of a Specific Use Permit (SUP) for a basic utility within a NRMU and NRMU-12 zoning district when located within 200 feet of a residential zone.

The criteria for approval of a SUP is provided in Subchapter 35.6.4 of the Denton Development Code, which states that SUPs shall be issued only if all of the following conditions have been met:

1. That the specific use will be compatible with and not injurious to the use and enjoyment of other property nor significantly diminish or impair property values within the immediate vicinity;

*The specific use will be compatible with and not injurious to the use and enjoyment of other property and will not significantly diminish or impair property values within the immediate vicinity. The surrounding properties to the east, south, and west are undeveloped. Properties to the immediate north are developed with multifamily and single-family uses. A 10-foot masonry wall in addition to the planting of eight new large trees will be used to screen the substation from these uses to the fullest extent possible. The substation will be unmanned and will be visited infrequently and as such will not generate traffic. The substation will not generate noise, odors or fumes.*

2. That the establishment of the specific use will not impede the normal and orderly development and improvement of surrounding vacant property;

*The substation will not impede the normal and orderly development and improvement of surrounding vacant property. The smallest tract surrounding the property is approximately 11 acres. These large tracts allow design flexibility to minimize any potential impacts from the electric substation. A 10-foot masonry wall is proposed around the perimeter of the substation to mitigate any potential impacts from future development. Eight large trees will also be planted along the frontage of McKinney to screen the substation.*

3. That adequate utilities, access roads, drainage and other necessary supporting facilities have been or will be provided;

*A preliminary plat (PP13-0016) is currently under review for the proposed substation. The proposed substation imposes virtually no negative impact on public infrastructure, as it does not use domestic water or wastewater. The substation itself will contribute to the enhanced electrical service to this portion of the city. There will be minimal traffic to the site. No future facilities are needed for the site other than the needs of DME, which include an electric transmission line.*

4. The design, location and arrangement of all driveways and parking spaces provides for the safe and convenient movement of vehicular and pedestrian traffic without adversely affecting the general public or adjacent developments;

*Access into the substation site will be intentionally restricted to authorized personnel only for maintenance or monitoring. There will be no public vehicular or pedestrian traffic and no parking spaces within the facility. The access drives from McKinney Street will be designed to accommodate the large trucks that may be required for future equipment replacement.*

5. That adequate nuisance prevention measures have been or will be taken to prevent or control offensive odor, fumes, dust, noise and vibration;

*The electrical substation will not generate offensive odor, fumes, dust, noise or vibration.*

6. That directional lighting will be provided so as not to disturb or adversely affect neighboring properties; and

*The substation site will be protected and surrounded on all sides by a ten (10) foot decorative precast concrete security wall. Except for extreme circumstances, the substation site will only be visited by service personnel. Lighting on site will be minimal and will not be visible from outside of the secured area. Any additional lighting will be directional lighting aimed at the interior of the site.*

7. That there is sufficient landscaping and screening to ensure harmony and compatibility with adjacent property.

*As the majority of the site is zoned NRMU, the proposed landscaping and tree canopy coverage must with the requirements of the NRMU zoning district. The minimum landscaped area required is 20% and the applicant proposes over 30%. The NRMU zoning district requires 40% tree canopy and the applicant proposes 40% tree canopy cover. Meeting the 40% tree canopy coverage will require the planting of eight large trees.*

## Findings of Fact

1. *As part of the overall electrical transmission and distribution system, as outlined by DME's 2013-2017 Capital Improvement Plan (CIP), the proposed McKinney Substation will provide enhanced electrical service to Denton.*
2. *The site is located within both a Neighborhood Residential Mixed Use (NRMU) and Neighborhood Residential Mixed Use 12 (NRMU-12) zoning district and requires approval of a Specific Use Permit (SUP) for a "Basic Utility" when located within 200 feet of a residential zone.*
3. *Prior to the city-wide rezoning in 2002, approximately 3.65 acres of the 6.21 acre site was zoned Agricultural District (A). The remainder was zoned a combination of Commercial District (approximately 0.4 acres) and One-Family Dwelling District (SF-7) (approximately 2.16 acres).*
4. *The Future Land Use designation for the site is Neighborhood Centers.*
5. *The site is not platted. Preliminary and final platting is required prior to the development and the issuance of building permits. A preliminary plat (PP13-0016) is under review by the Development Review Committee and a final plat will be required.*
6. *The site is surrounded by NRMU, NRMU-12, Neighborhood Residential 3 (NR-3), and Neighborhood Residential 4 (NR-4) zoning districts. Surrounding uses include commercial, undeveloped land, single-family, and agricultural.*
7. *Based on surrounding uses, no buffer is required. However, the applicant proposes a 10-foot perimeter/security wall.*
8. *There are no Environmentally Sensitive Areas (ESA) on site.*
9. *The substation will take direct access from McKinney Street (FM 426), which is classified as an unimproved perimeter street and is owned and maintained by TXDOT. The traffic generated is one vehicle trip per week, the current condition of FM 426 can accommodate this development.*
10. *The applicant proposes two drive approaches along McKinney Street.*
11. *An existing 10-inch sanitary sewer line along the frontage of McKinney Street has adequate capacity to serve the proposed development.*
12. *A new 8-inch water line will be required to extend along the southern frontage of McKinney Street. This will connect to an existing 8-inch water line along the northern frontage of McKinney Street via an encased bore. The existing water line has adequate capacity to serve the proposed development.*

## **Development Review Committee**

The Development Review Committee finds that the request **IS CONSISTENT** with the criteria for approval in Subchapter 35.6.4 of the Denton Development Code, **IS CONSISTENT** with the general character of the area and **IS CONSISTENT** with the Denton Plan.

The Development Review Committee (DRC) recommends ***APPROVAL*** of ***SI3-0005***, subject to the following condition:

1. A perimeter masonry security wall shall be constructed with a minimum height of ten (10) feet. See Exhibit 7 for the location of the proposed security wall (highlighted in green) and Exhibit 8 for examples of perimeter walls.

## **GENERAL NOTES**

*NOTE: Approval of this request shall not constitute a waiver or variance from any applicable development requirement unless specifically noted in the conditions of approval and consistent with the Denton Development Code.*

*NOTE: All written comments made in the application and subsequent submissions of information made during the application review process, which are on file with the City of Denton, shall be considered to be binding upon the applicant, provided such comments are not at variance with the Denton Plan, Denton Development Code or other development regulations in effect at the time of development.*

**Surrounding Zoning Designations and Current Land Use Activity:**

<b>Northwest:</b>	<b>North:</b>	<b>Northeast:</b>
Neighborhood Residential Mixed Use 12 (NRMU-12) (Multi-family)	Neighborhood Residential 3 (NR-3) (Single Family)	Neighborhood Residential 3 (NR-3) & Neighborhood Residential Mixed Use (NRMU) (Single-Family/Undeveloped)
<b>West:</b>	<b>Subject Property</b>	<b>East:</b>
Neighborhood Residential Mixed Use (NRMU) (Undeveloped)	Neighborhood Residential Mixed Use (NRMU) & Neighborhood Residential Mixed Use 12 (NRMU-12) (Single-Family/Undeveloped)	Neighborhood Residential Mixed Use (NRMU) & Neighborhood Residential Mixed Use 12 (NRMU-12) (Undeveloped)
<b>Southwest:</b>	<b>South:</b>	<b>Southeast:</b>
Neighborhood Residential 4 (NR-4) (Undeveloped)	Neighborhood Residential 4 (NR-4) (Undeveloped)	Neighborhood Residential 4 (NR-4) (Undeveloped)

*Source: City of Denton Geographical Information System and site visit by City staff*

**Summary of Surrounding Zoning Designations and Current Land Use Activity:**

The area within ¼ mile radius of the site is comprised of approximately 227 acres. Uses within a ¼ mile radius of the site include agricultural uses, single family uses, commercial uses, and undeveloped land. Specifically, within a ¼ mile radius, there are approximately 100.01 acres of land considered agricultural in nature; 22.21 acres of commercial uses; 40.28 acres are developed with residential uses; and 22.75 acres remain undeveloped.

**Comprehensive Plan:**

The underlying future land use designation for the site is Neighborhood Centers. The focus area of a Neighborhood Center contains facilities vital to the day-to-day activity of the neighborhood. A Neighborhood Center might contain a convenience store, small restaurant, personal service shops, church or synagogue, daycare, individual office space, a small park and perhaps an elementary school. These diverse facilities are ideally located within close proximity to one another in the center, so that all the essential neighborhood facilities are in one convenient location, accessible in a single shop or by walking or biking. It includes vertically integrated uses where different uses may occur on each floor of the building.

**Nearest Fire and EMS Station**

	Name of Station	Approximate Distance From Subject Property
<b>Fire/EMS</b>	Fire Station # 2 (3309 E McKinney St)	0.41 miles ±

*Source: City of Denton GIS, Fire Department, and EMS*

**Water and Wastewater Demand and Capacity:**

A. Estimated Demand:

Subject Property	Estimated Impact Analysis	
	Proposed Demand	Adequate to Serve (Yes or No)
6.21 acres		
Permitted Density	N/A	N/A
Potable Water Consumption at peak hour (GPD)	0 (domestic)	Yes
Wastewater Generation at peak hour (GPD)	0 (domestic)	Yes

B. Available Capacity:

An existing 10-inch sanitary sewer line along the frontage of McKinney Street has adequate capacity to serve the proposed development.

A new 8-inch water line will be required to extend along the southern frontage of McKinney Street. This will connect to an existing 8-inch water line along the northern frontage of McKinney Street via an encased bore. The existing water line has adequate capacity to serve the proposed development.

C. CIP Planned Improvements:

N/A

**Roadways/Transportation Network:**

A. Estimated Demand:

Subject Property	Estimated Impact Analysis	
	Proposed Demand	Adequate to Serve (Yes or No)
6.21 acres ±		
Permitted Density	N/A	Yes
Average Annual Daily Trips (AADT)	1	Yes
PM Peak Hour Trips	1	Yes

B. Available Capacity:

McKinney Street (FM 426) is classified as a primary arterial on the Mobility Plan and is a TXDOT owned and maintained perimeter street.

C. Roadway Conditions:

McKinney Street (FM 426) is classified as an unimproved perimeter street, but is owned and maintained by TXDOT. The traffic generated is one vehicle trip per week, the current condition of FM 426 can accommodate this development.



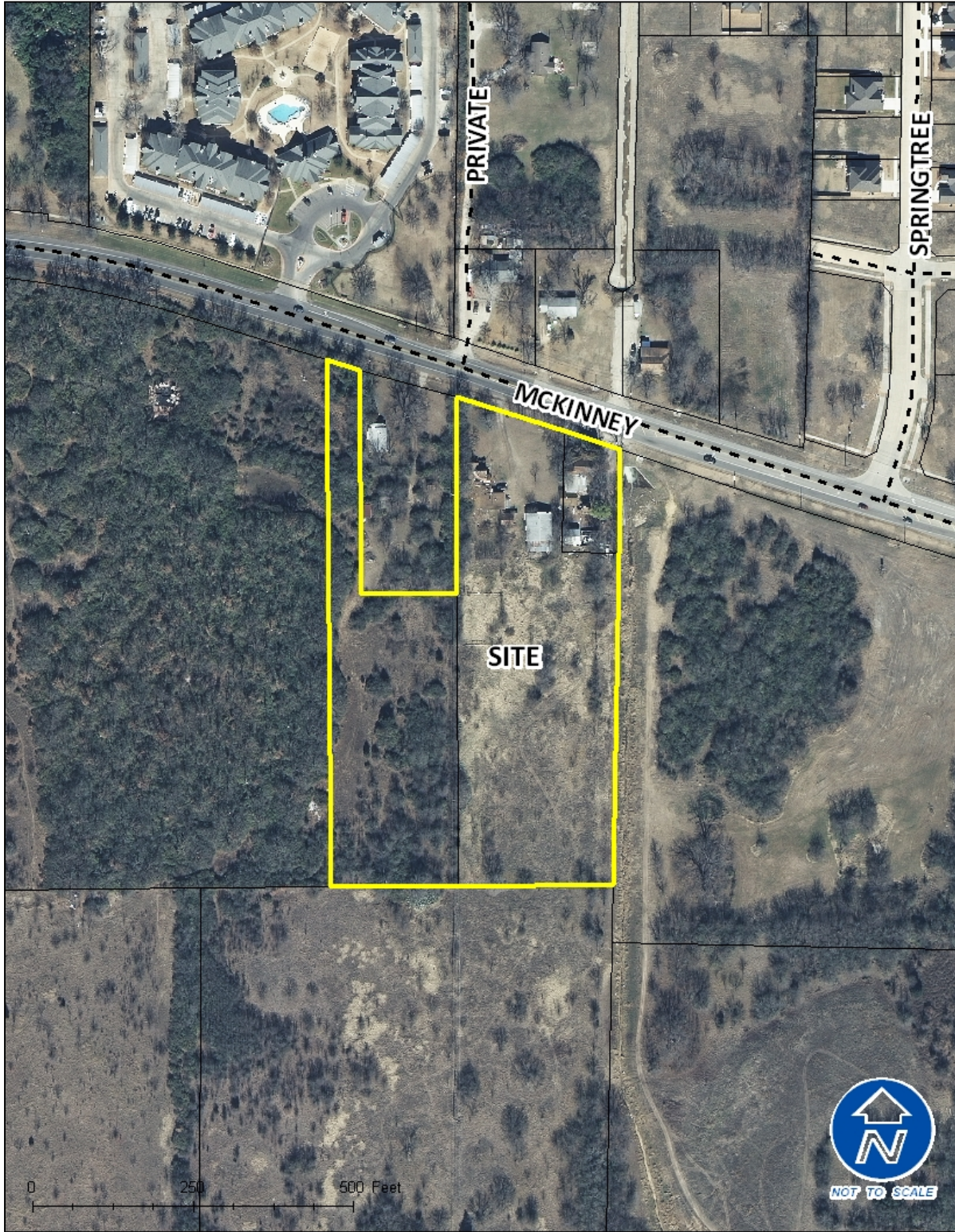
D. CIP Planned Improvements:

None

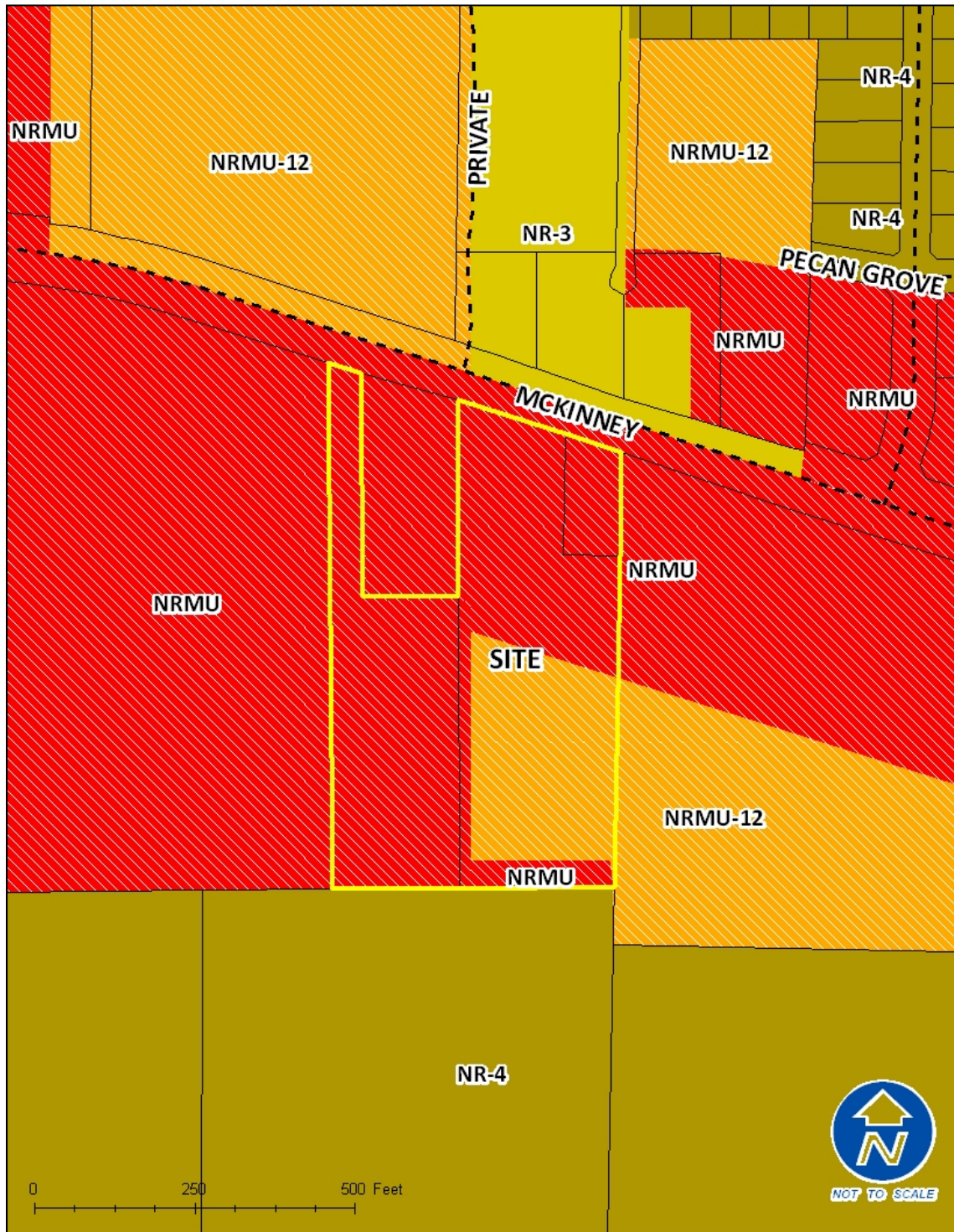
**Environmental Conditions:**

There are no environmentally sensitive areas (ESA) on site.

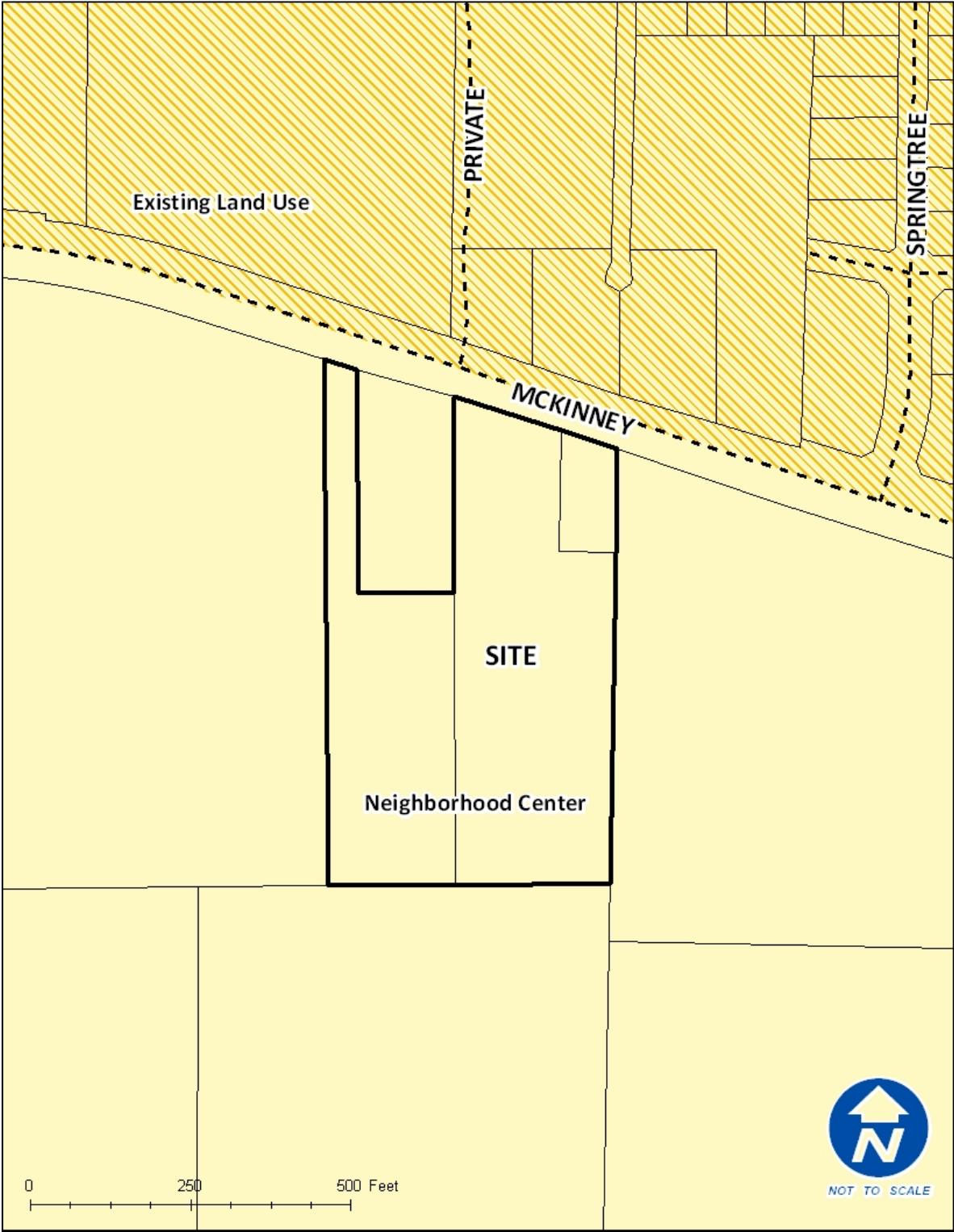
**Exhibit 2  
Aerial Map**



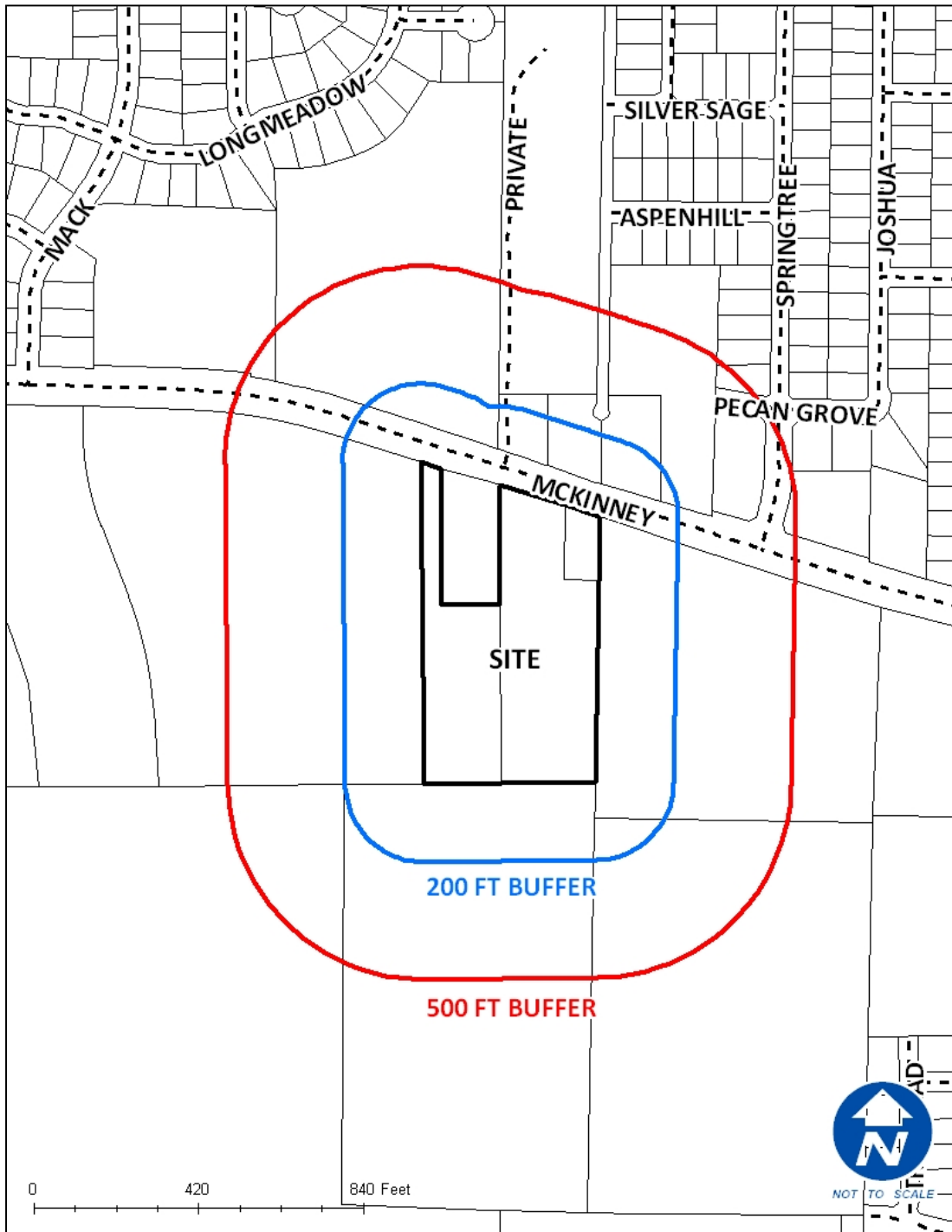
**Exhibit 3  
Zoning Map**



**Exhibit 4  
Future Land Use Map**



**Exhibit 5**  
**Notification Map & Responses**



## **Exhibit 6**

### **Applicant Letter of Intent**

Denton Municipal Electric

### **McKinney Substation Site**

#### Specific Use Permit Narrative Statement

August 9, 2013

#### **General Comments**

Denton Municipal Electric, in its 2013-2017 Capital Improvement Plan, has identified substation and transmission line projects that are required to support growth and to maintain continued reliability. Substations are nodes on transmission systems where transmission lines are interconnected, where voltage is stepped down to the level required for distribution to customers, and where distribution feeder circuit breakers are located. Substations are essential components of power system infrastructure. Without the transformers, switches, circuit breakers, busses, and the protection and control systems that are installed in substations, power could not be provided to customers.

From a technical standpoint, there are three major factors that must be considered in selection of a substation site. They are access, availability of transmission resources, and proximity to distribution lines that could be served. Access is required that can support the weight of trucks that deliver the transformers and other equipment to the site. The roadway and entrance to the station must be all-weather so that the station can be accessed regardless of conditions by any type of vehicle at any time. Without a transmission source, there can be no substation. Transmission is the mass delivery system that gets power to the site. If transmission is not available on the site, it must be constructed to the site. Similarly for distribution, the point of having a substation is to provide power to distribution lines that can deliver electricity to customers. If such lines are not available near a site, construction is required to interconnect to wherever they are. Construction of access features, transmission lines, and distribution lines clearly affect cost and can have a significant impact on surrounding land use.

#### **Project Description/Summary**

The McKinney Substation project, as planned, will include two 138kV x 69kV to 13.2kV/7.62kV transformers, eight 138kV circuit breakers, one control enclosure (approximately 60' long x 16' wide x 14' height), and two distribution switchgear enclosures (49' long x 14' wide x 14' height) with the capability for serving 8 feeder circuits for distributing power to customers. The station will be an interconnection point for two transmission lines. The site has space and provision for two additional transformers and two additional switchgear enclosures for future installation. Visually, the new substation will be similar to other substations around Denton, the most recent example being the new Bonnie Brae Substation that is located on the west side of Bonnie Brae south of University.

#### **Property Ownership**

The majority of this site is currently owned by the City of Denton. Entire tracts were acquired from Bobby Mitchell and Gary Dillard, and a portion of a tract was acquired from Gerald Vela. One remaining tract, owned by Brian and Brenda Carter, is in the process of acquisition, almost certainly by eminent domain. Eminent domain proceedings will proceed soon, and the Specific Use Permit is on the project critical path. Accordingly, we respectfully request that this SUP process be permitted to proceed while the eminent domain proceedings progress. If it is not possible to proceed with the SUP in that manner, we would like to proceed with the SUP for only that portion of the site currently owned by the City, requesting a conditional approval that is effective for the entire site upon the completion of the eminent domain process.

#### **Site Location / Site History**

The proposed site for the McKinney Substation is a 7.6-acre assemblage tract acquired as described above by the City of Denton on the south side of McKinney Street (also known as FM 426) just east of Mack

Drive. The property has not been platted, though the Vela tract was platted prior to conveyance to the City. The site is a combination of NRMU and NRMU-12 zoning, though at least 75% of the site is the NRMU zoning, so those zoning requirements will be in effect. The NRMU zoning contemplates a neighborhood mixed use development. Basic utility facilities such as a substation are allowed uses in this zoning category with a Specific Use Permit. The site was selected because of its strategic location as part of the overall electrical transmission and distribution system as outlined in the Capital Improvement Plan. An existing transmission line traverses the site, there is direct access to McKinney Street, and an existing distribution system is available.

This substation is part of the Spencer to Kings Row 69 kV Transmission Line project, also known as the "Purple Line", presented to the public in several public meetings in early 2012. A neighborhood meeting was held at the Singing Oaks Church of Christ on November 15, 2012 to allow residents the opportunity to see the planned substation and discuss it with DME staff. Both the Public Utility Board and the Denton City Council have approved the site for construction of the substation.

The entire City of Denton property is approximately 7.3 acres in size. The fenced substation area will be approximately 4.58 acres. The substation will be enclosed and secured from public access by a 10-foot decorative precast concrete security wall colored to simulate rock construction. A site plan that shows the planned arrangement of the site is part of this application.

#### **Surrounding Property Uses**

The property is bounded on all adjacent sides by undeveloped property. The property to the south of the site is zoned as NR-4, a residential designation. This is consistent with the designated Future Land Use of that property. The property on both the east and west sides are zoned NRMU and NRMU-12. The properties to the north, across McKinney Street are zoned a combination of NRMU-12 and NR-3, and both are currently developed. The NRMU-12 tract is an apartment complex, and the NR-3 is existing single-family residential.

#### **Existing Site Conditions**

The existing topography of the site slopes gently from west to east, toward an existing drainage channel that conveys storm water from north of McKinney Street south toward Pecan Creek. This channel was man-made as part of the Maple Leaf Homes Addition. According to the City of Denton official maps this channel is not designated as floodplain or as an Environmentally Sensitive Area. There are existing trees on the site, mostly along the westerly half of the site.

Storm water on and across the site is currently primarily overland flow, with the exception of the drainage channel described above. Runoff from the west is conveyed overland across the site toward the channel.

The site currently contains several houses, all now unoccupied, along with a barn and some outbuildings.

Adjacent circulation consists of traffic on McKinney Street, which is currently a two-lane rural roadway section. There are no sidewalks on either side of the street adjacent to the site. The Denton Mobility Plan designates McKinney Street as a Secondary Arterial, which is a divided arterial street with a 110' right-of-way width.

There are currently no designated recreational or preservation areas on the site.

There is an existing 10" sanitary sewer line along the south side of McKinney Street adjacent to the site, and an 8" water line on the north side of McKinney Street. This substation site, however, will not be a manned station and will not have domestic water or sewer needs.

#### **Proposed Site Conditions**

The proposed land use will be an electrical substation which is allowed in the NRMU zoning category with a Specific Use Permit.

Proposed topography will generally match the natural lay of the land. The substation will be graded gently from west to east. A relatively gentle swale will be constructed around the west, north and south sides of the substation to direct storm water to the drainage channel described earlier. Drainage onto the site from the west will be captured in two separate underground storm drain systems as required by the DDC. Based on a preliminary evaluation, a 42" RCP pipe system will be necessary along the south side of the site, and a 36" system will be needed along the north side.

McKinney Street is actually a roadway under the jurisdiction of TxDOT rather than the City of Denton. TxDOT has plans in design that would widen the roadway to a four-lane divided urban roadway. It is expected that some right-of-way dedication will be necessary as part of the platting process, to meet the Secondary Arterial requirements.

A permeable rock surface will be installed over the entire substation inside the concrete security fence, with the exception of the concrete access road around the inside perimeter of the substation. Runoff will filter through the rock and follow the subgrade to the swales and eventually to the existing channel along the east side of the site. Consequently, there will be no measureable increase in runoff due to construction of the facility. Storm water detention is not anticipated.

Areas outside the secured area will be vegetated with native grasses and trees.

Access to the facility will be on the north side of the substation as shown on the site plan. Direct access to the site will be by means of driveways from McKinney Street. The substation will be unmanned except during the infrequent visits which are required for operation of equipment, for inspections, for testing, and when maintenance is required. Routine traffic in and out of the site will generally consist of one service vehicle per week.

Substations are not public facilities but are restricted areas where significant measures are taken to exclude unauthorized personnel. Access to the secured area (inside the substation security fence) will be restricted to authorized or escorted personnel only. Pedestrian traffic onto and within the property outside the perimeter wall will be intentionally discouraged because of safety and security concerns. When McKinney Street is widened, it is anticipated that sidewalks will be constructed to provide a pedestrian connection along the street. No sidewalks will be constructed to the substation site itself. No parking spaces are designated on the site, as service vehicles can park anywhere within the secure area of the site.

Neither domestic water service nor sanitary sewer service is necessary to the site.

#### **Proposed Mitigation Measures**

The proposed substation, by its very nature, will be compatible with adjacent property uses in a number of ways. Because the site is unmanned and infrequently visited, there will be no traffic or dust related nuisances. The substation does not make noise, and does not generate odors or fumes. Lighting on the site will be minimal, and will meet or exceed the requirements of the NRMU zoning category. The site will be landscaped outside the limits of the substation and transmission lines to provide visual screening on all sides. In addition, the concrete security wall will be a visual buffer as well, and will be constructed to simulate a rock wall. Existing trees along the west property line will be preserved as much as possible, as will trees near the McKinney Street frontage, and supplemented with additional trees if necessary to provide the required 20% landscape area and 40% tree canopy coverage required for the NRMU zoning.

#### **Consistency with the Denton Development Code**

All electric utilities must design and construct power systems that provide the performance that is specified in federal and state standards (FERC, NERC, ERCOT, TRE). State law requires that municipally owned utilities construct facilities that at least observe the minimum clearances and practices stated in the National Electrical Safety Code. Standards for substation security fencing do not allow any climbing aids either in the type of fence construction or in any object near the fence. Clearly trees could be a climbing aid should they be in immediate proximity to the fence or by being allowed to have limbs that are close to or overhanging a fence. To avoid future problems, DME's position is to require a



minimum clear area of 20' outside a substation fence to the edge of any mature tree canopy, existing or planted. To protect the transmission lines, a 75' wide easement is the common standard, and this easement is to be kept clear of trees and tree canopy. Where the transmission lines traverse the substation site, the area within the transmission easements, within the substation itself, and within the 20' clear buffer around the substation must be kept clear of trees. The landscape plan submitted as part of this SUP package is intended to honor those limitations and still provide the landscape buffer and tree canopy required by the DDC. The landscape plan submitted with this application is based on treating the entire secured area of the site as a transmission easement, along with those areas outside the secured site that fall within the transmission easements.

Tree preservation standards will not apply to substation sites since station sites are part of the DME CIP which serves as a utility master plan (see DDC Section 35.13.7.A.2.c.v.). Mitigation for tree removal is not required. However, compliance with the Landscape Ordinance (Chapter 13 of the DDC) is required. As a result, tree canopy, buffers, and landscape area minimum requirements will be met.

#### **Specific Use Permit Conditions**

The Denton Development Code outlines specific approval criteria for a Specific Use Permit. Taken from the Specific Use Permit Checklist, these criteria are addressed below:

- A. That the use would be in conformance with all standards within the zoning district in which the use is proposed to be located, and in conformance with the Denton Plan and federal, state or local law.*

This proposed substation site is zoned NRMU. This site will greatly exceed the minimum general regulations for NRMU such as lot size. Since the minimum landscaped area in Chapter 5 of the Denton Development Code is based on pervious area, which includes the permeable rock surface inside the station, both the maximum lot coverage and minimum landscaped area requirements are greatly exceeded.

In addition, the landscape plan will meet the requirements of Chapter 13 of the DDC. Minimum landscaped area (generally interpreted in Chapter 5 as live planted areas) will meet or exceed the 20% required, and the tree canopy (a combination of existing and planted trees) will meet or exceed the 40% required. This is based on excluding the transmission easements and the secured area inside the screening wall from the calculations. Because the adjacent property is vacant, no landscape buffers are required for this site.

- B. A specific use permit shall be issued only if all of the following conditions have been met:*
- 1. That the specific use will be compatible with and not injurious to the use and enjoyment of other property nor significantly diminish or impair property values within the immediate vicinity;*

Because the proposed substation site will not generate noise, odors, light, or traffic, and will be screened from view to the extent possible, the substation will not in any way diminish or limit the use and enjoyment of adjacent properties. In many ways, this substation is a desirable neighbor because of the minimal impact it will have on surrounding properties.

- 2. That the establishment of the specific use will not impede the normal and orderly development and improvement of surrounding vacant property;*

This site is adjacent to an existing drainage channel and is traversed by an existing transmission easement. These existing constraints would actually limit development of the site in many ways, but make the site ideal for placement of an electric substation. The adjacent tracts are all large tracts that would not be adversely impacted by the development of the substation.

- 3. That adequate utilities, access roads, drainage and other necessary supporting facilities have been or will be provided;*

The proposed substation imposes virtually no impact on public infrastructure, as it does not use domestic water or wastewater, there is virtually no traffic to the site and it generates virtually no additional runoff. No supporting facilities are needed for this site other than the future electric transmission line.

4. *The design, location and arrangement of all driveways and parking spaces provides for the safe and convenient movement of vehicular and pedestrian traffic without adversely affecting the general public or adjacent developments;*

Access to the substation is intentionally restricted to authorized personnel. There will be no public vehicular or pedestrian traffic on the site, and no public parking spaces within the facility, since the site is only visited for maintenance or monitoring. The access drives from the public street will be designed to accommodate the large trucks that could be necessary for future equipment replacement.

5. *That adequate nuisance prevention measures have been or will be taken to prevent or control offensive odor, fumes, dust, noise and vibration;*

As indicated above, the substation site will not generate odors, fumes, dust, noise or vibration, so no prevention measures have been taken.

6. *That directional lighting will be provided so as not to disturb or adversely affect neighboring properties, and;*

The substation site will be protected by a 10' security fence, and except for emergencies will not be visited by service personnel at night. Accordingly, only minimal lighting is provided on the site. These lights will not be visible from outside the secure area. Any other lighting that may be needed will be directional lighting aimed at the interior of the site.

7. *That there is sufficient landscaping and screening to ensure harmony and compatibility with adjacent property.*

The landscaping to be provided will meet or exceed the requirements of the DDC, and coupled with the security fence, will provide a pleasing view from adjacent properties.

- C. *That adequate capacity of infrastructure can and will be provided to and through the subject property.*

As indicated above, no additional infrastructure is needed to support the proposed substation. The existing water and sewer lines adjacent to the site will not be affected. Necessary right-of-way for McKinney Street will be dedicated by plat.

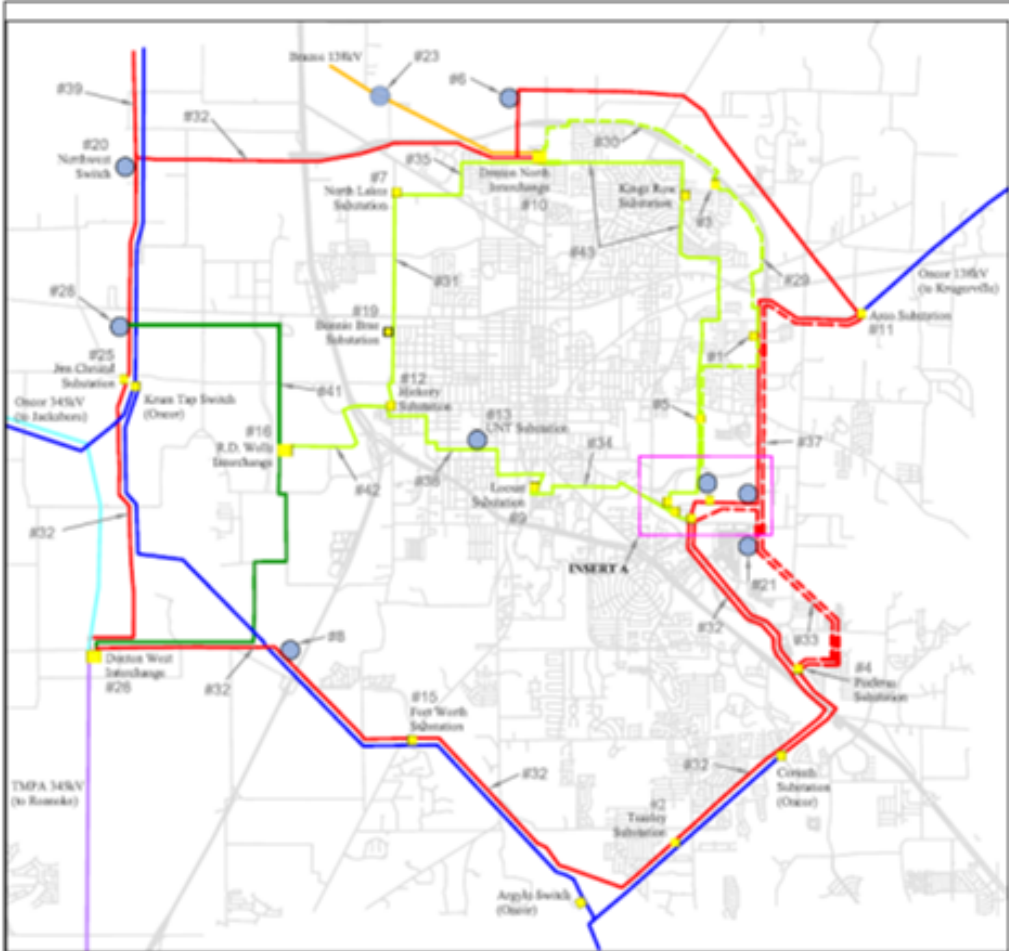
- D. *That the Special Use is compatible with and will not have an adverse impact on the surrounding area.*

The proposed substation will not generate objectionable noise, odors, light, or traffic, and will be screened to the extent possible with trees and other plantings, and will be enclosed within a 10' security/screening fence. It will not increase runoff significantly. There will simply be no adverse impact on the surrounding area.



**Exhibit 8**  
**Security Wall Examples**





INSERT A

● SUBSTATION LOCATION T.B.D.

**Denton Municipal Electric**  
**SUBSTATIONS & TRANSMISSION**  
**Project Locations for FY 2014 - 2018 CIP**

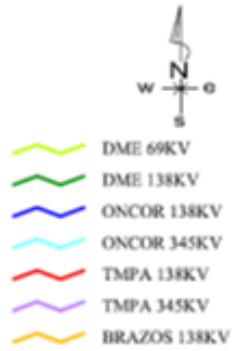


Exhibit 9  
DME CIP Project Map

**Exhibit 10  
Site Photos**



**Looking south across E McKinney Street towards subject property.**



**Looking north across E McKinney Street from subject property.**



**Existing transmission line on property across E McKinney Street from site to the north.**



**Exhibit 11**  
**October 23, 2013, Planning and Zoning Commission Meeting Minutes**

1           4. PUBLIC HEARINGS:

2           A. Hold a public hearing and consider making a recommendation to City Council regarding a Specific Use Permit (SUP) to allow a "Basic Utility;" a Denton Municipal Electric (DME) electrical substation, on an approximately 6.21 acre property generally located on the south side of E McKinney Street, approximately 1,300 feet east of Mack Drive and 450 feet west of Springtree Street. The site is located within a Neighborhood Residential Mixed Use (NRMU) and Neighborhood Residential Mixed Use 12 (NRMU-12) zoning district. (S13-0005, DME McKinney Substation, Mike Bell)

3           Lockley stated this item was also heard as a Work Session Item prior to this Public Hearing. Bell  
4           stated this is a request for a Specific Use Permit (SUP) to allow DME to develop a substation at  
5           the subject site. Bell stated the current zoning is Neighborhood Residential Mixed Use and  
6           Neighborhood Residential Mixed Use-12. Bell stated the SUP area takes up approximately 6.21  
7           acres, which is currently owned by the City of Denton. Bell indicated the remaining area is not  
8           included in the Carter Tract which is 1.12 acres; a separate SUP would be required. Bell added  
9           City Council has approved the purchase of this land. Bell provided site photos of the land and the  
10          proposed perimeter wall photos. Bell provided the criteria for approval which is listed in the staff  
11          backup. Staff sent out 12 Public Notices to property owners within 200 feet of the subject site  
12          and 14 courtesy notices to property owners within 500 feet of the subject site. At this time staff  
13          has received 1 returned response neutral to this request. Bell stated staff recommends approval of  
14          this request based on the following condition: a perimeter masonry security wall shall be  
15          constructed with a minimum height of ten (10) feet.

16  
17          There were no questioned from the Commissioners, Chuck Sears with DME did not wish to add  
18          anything to Bell's presentation. Schaake opened the Public Hearing.

19  
20          Roland Vela, 729 Ridgecrest Circle, Denton, Texas  
21          Vela stated he owns the property adjacent to the subject site. Vela questioned where exactly the  
22          masonry fence would be placed; Bell indicated on the site plan the location of the masonry fence.  
23          Vela questioned another section on the property; Bell indicated that area is existing trees that  
24          would be preserved. Vela complimented staff and this Commission on their work with this item.

25  
26          There was no one else to speak on this item. Schaake closed the Public Hearing.

27  
28          Commissioner Frank Conner motioned, Commissioner Brian Bentley seconded to approve this  
29          request. Motion approved (6-0).

## Exhibit 12 Ordinance

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ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF DENTON, TEXAS, APPROVING A SPECIFIC USE PERMIT TO ALLOW A BASIC UTILITY; A DME ELECTRIC SUBSTATION, ON APPROXIMATELY 6.21 ACRES OF LAND WITHIN A NEIGHBORHOOD RESIDENTIAL MIXED USE (NRMU) AND NEIGHBORHOOD RESIDENTIAL MIXED USE 12 (NRMU-12) ZONING DISTRICT CLASSIFICATION AND USE DESIGNATION, LOCATED ON THE SOUTH SIDE OF EAST MCKINNEY STREET, APPROXIMATELY 1,300 FEET EAST OF MACK DRIVE AND 450 FEET WEST OF SPRINGTREE STREET, WITHIN THE CITY OF DENTON, DENTON COUNTY, TEXAS; PROVIDING FOR A PENALTY IN THE MAXIMUM AMOUNT OF \$2,000.00 FOR VIOLATIONS THEREOF; PROVIDING A SEVERABILITY CLAUSE AND AN EFFECTIVE DATE. (S13-0005)

WHEREAS, Teague, Nall and Perkins has applied for a Specific Use Permit to allow a basic utility; an electric substation on approximately 6.21 acres of land within a Neighborhood Residential Mixed Use (NRMU) and Neighborhood Residential Mixed Use 12 (NRMU-12) zoning classification and use designation legally described in Exhibit "A", attached hereto and incorporated herein by reference (hereinafter, the "Property"); and

WHEREAS, on October 23, 2013, the Planning and Zoning Commission concluded a public hearing as required by law, and recommended approval of the requested Specific Use Permit, subject to conditions; and

WHEREAS, the City Council finds that the request is consistent with the Denton Plan and the Denton Development Code; NOW, THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The findings and recitations contained in the preamble of this ordinance are incorporated herein by reference and found to be true.

SECTION 2. The Specific Use Permit (SUP) to allow a basic utility on the Property is hereby approved, subject to the following conditions:

1. A perimeter masonry security wall shall be constructed with a minimum height of ten (10) feet. See Exhibit 7 for the location of the proposed security wall and Exhibit 8 for examples of perimeter walls.

SECTION 3. If any provision of this ordinance or the application thereof to any person or circumstance is held invalid by any court, such invalidity shall not affect the validity of the provisions or applications, and to this end the provisions of this ordinance are severable.

SECTION 4. Any person violating any provision of this ordinance shall, upon conviction, be fined a sum not exceeding \$2,000.00. Each day that a provision of this ordinance is violated shall constitute a separate and distinct offense.

SECTION 5. This ordinance shall become effective fourteen (14) days from the date of its passage, and the City Secretary is hereby directed to cause the caption of this ordinance to be published twice in the Denton Record-Chronicle, a daily newspaper published in the City of Denton, Texas, within ten (10) days of the date of its passage.

PASSED AND APPROVED this the \_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
MARK A. BURROUGHS, MAYOR

ATTEST:  
JENNIFER WALTERS, CITY SECRETARY

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

APPROVED AS TO LEGAL FORM:  
ANITA BURGESS, CITY ATTORNEY

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

## Exhibit A Legal Description

### OWNERS CERTIFICATE

STATE OF TEXAS     §  
COUNTY OF DENTON   §

WHEREAS, THE CITY OF DENTON, TEXAS is the owner of that certain 6.225 acre tract of land situated in the M.E.P. & P. R.R. Co. Survey, Abstract No. 1475, City of Denton, Denton County, Texas, and being known as all of a called 0.286 acre tract of land described in a Deed to the City of Denton, Texas, as recorded in Document Number 2012-83353 of the Real Property Records of Denton County, Texas, all of a called 3.480 acre tract of land described in a Deed to the City of Denton, Texas, as recorded in Document Number 2013-226 of the Real Property Records of Denton County, Texas, and all of Lot 2, Block A of Vela-Codina Addition, according to the Plat thereof recorded in Document Number 2013-112 of the Plat Records of Denton County, Texas, and being more particularly described as follows:

BEGINNING at a 3-1/2 inch TxDOT Aluminum Disc for corner in the Southerly right-of-way line of F.M. Highway No. 426 (also known as McKinney Street), from which a 1/2 inch iron rod with cap stamped "Arthur Surveying Company" found for the Northeast corner of said 0.286 acre tract bears North 01°03'57" West a distance of 4.58 feet, said point also being in the West line of a called 11.4111 acre tract of land described in a Deed to the BL Denton Land 1, LLC, as recorded in Document Number 2013-26267 of the Real Property Records of Denton County, Texas;

THENCE South 01°15'33" West departing the Southerly line of said F.M. Highway No. 426, and along the East line of said 0.286 acre tract and the West line of said 11.4111 acre tract, passing a 1/2 inch iron rod with cap stamped "Arthur Surveying Company" found for the Southeast corner of said 0.286 acre tract and the most Easterly Northeast corner of the above cited 3.480 acre tract at a distance of 148.38 feet, and continuing along the East line of said 3.480 acre tract and the West line of said 11.4111 acre tract, for a total distance of 677.07 feet to a 1/2 inch iron rod found for the Southeast corner of said 3.480 acre tract, said point also being the Northeast corner of a called 318.937 acre tract of land described in a Deed to Staff Realty, Inc., as recorded in Document Number 94-6845 of the Real Property Records of Denton County, Texas, from which the Southwest corner of said 11.4111 acre tract of land bears South 01°26'32" West a distance of 61.54 feet;

THENCE South 89°27'33" West departing the West line of said 11.4111 acre tract, and along the South line of said 3.480 acre tract and the North line of said 318.937 acre tract, for a distance of 218.48 feet to a 5/8 inch rod with plastic cap stamped "TNP" set for corner at the Southwest corner of said 3.480 acre tract and the Southeast corner of Lot 2, Block A, of said Vela-Codina Addition;

THENCE South 89°26'01" West along the South line of said Lot 2 and the North line of said 318.937 acre tract, for a distance of 196.92 feet to a 5/8 inch rod with plastic cap stamped "TNP" set for corner at the Southwest corner of said Lot 2 and the Southeast corner of Lot 1, Block A, of said Vela-Codina Addition, from which the Southwest corner of said Lot 1 bears South 89°26'01" West a distance of 675.67 feet;

THENCE North 00°35'55" West departing the North line of said 318.937 acre tract, and along the common line between said Lots 1 and 2, for a distance of 818.72 feet to a 5/8 inch iron rod with plastic cap stamped "TNP" set for corner in the South line of said F.M. Highway No. 426, from which a 3/4 inch iron rod found for reference bears North 72°17'59" West a distance of 238.87 feet;

THENCE South 72°17'59" East along the South line of said F.M. Highway No. 426, for a distance of 52.78 feet to a point for corner, from which a 3-1/2 inch TxDOT Aluminum Disc found bears North 17°45'02" West a distance of 0.95 feet and a 5/8 inch iron rod found for the Northwest corner of a called 1.121 acre tract of land described in a Deed to Brian Carter and Brenda Carter, as recorded in Document Number 2010-121541 of the Real Property Records of Denton County, Texas, bears North 01°45'11" West a distance of 5.62 feet;

THENCE South 00°32'45" East departing the South line of said F.M. Highway No. 426, and along the East line of said Lot 2 and the West line of said 1.121 acre tract, for a distance of 346.27 feet to a 1 inch rod found for the Southwest corner of said 1.121 acre tract;

THENCE North 89°03'02" East along the South line of said 1.121 acre tract and the most Easterly North line of said Lot 2, for a distance of 149.59 feet to a 5/8 inch rod found for the Southeast corner of said 1.121 acre tract, said point also being the most Easterly Northeast corner of said Lot 2;

THENCE North 00°20'23" West along the East line of said 1.121 acre tract, for a distance of 296.92 feet to point for corner in the South line of said F.M. Highway No. 426, from which a 3-1/2 inch TxDOT Aluminum Disc found bears North 36°32'36" West a distance of 0.47 feet and a 3/8 inch iron rod found for the Northeast corner of said 1.121 acre tract bears North 01°14'54" West a distance of 4.73 feet;


THENCE South 72°27'56" East along the South line of said F.M. Highway No. 426, for a distance of 248.49 feet to the POINT OF BEGINNING, and containing 6.225 acres of land, more or less.



**AGENDA INFORMATION SHEET**

**AGENDA DATE:** November 19, 2013

**DEPARTMENT:** Planning and Development

**ACM:** John C. Cabrales, Jr. 

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**SUBJECT**

Hold a public hearing and consider adoption of an ordinance of the City of Denton, Texas, providing for an initial district and land use classification of Neighborhood Residential 1 (NR-1) on approximately 2.39 acres of land located on the east side of Bonnie Brae Street, approximately 3,500 feet south of Vintage Boulevard and 3,500 feet north of Fort Worth Drive (U.S. 377), in the City of Denton, Denton County, Texas; and providing for a penalty in the maximum amount of \$2,000.00 for violations thereof, severability clause and an effective date (Z13-0007). The Planning and Zoning Commission recommends approval (6-0).

**BACKGROUND**

The applicant, Thomas C. Atkins, is requesting approval of an initial zoning of NR-1 on approximately 2.39 acres to facilitate platting of the property and development of a single-family house. The subject property was annexed into the City of Denton in 2010 as part of DH-4 and is not currently zoned or platted. All properties annexed into the City are assigned a default, placeholder zoning classification of Rural District 5X (RD-5X). Rural District 5X is not an official zoning district of the Denton Development Code (DDC); however, all development within these districts are subject to the general regulations of the Rural District 5 (RD-5) zoning district. The RD-5 zoning district requires a minimum lot area of five acres, thereby prohibiting development of a single-family house on the property with its current 2.39 acre lot area. An NR-1 zoning would permit the property to be platted in its current configuration, as NR-1 requires a minimum lot area of 32,000 square feet (approximately 0.73 acres) for subdivisions of two acres or less, or a maximum density of two dwelling units per acre for a subdivision of two acres or more in lieu of minimum lot size and dimension requirements.

The general character of the surrounding area is rural and large-lot, single-family residential. Most of the surrounding properties are located within the City of Denton extraterritorial jurisdiction and are subject to five year non-annexation agreements. However, the adjacent property to the on the west side of Bonnie Brae is currently zoned NR-1. The Hills of Argyle subdivision, approximately 1,500 feet to the east, is also currently zoned NR-1. Staff recommends approval of the NR-1 zoning classification, as it is consistent with the general character of other properties in the area and permits single-family houses on lots less than five acres.

A neighborhood meeting for this project was not held. Staff sent six certified notices of the public hearing to property owners within 200 feet of the subject property and eight courtesy notices to residents/property owners within 500 feet of the property. As of this writing, staff has received no responses to these notices.

**PRIOR ACTION**

Planning and Zoning Commission

October 23, 2013

**OPTIONS**

1. Approve
2. Approve subject to conditions.
3. Deny.
4. Postpone consideration.
5. Table item.

**RECOMMENDATION**

The Planning and Zoning Commission recommends **APPROVAL** of Z13-0007 (6-0).

The Development Review Committee (DRC) recommends **APPROVAL** of Z13-0007.

**EXHIBITS**

1. Staff Report
2. Site Location/Aerial Map
3. Existing Zoning Map
4. Proposed Zoning Map
5. Future Land Use Map
6. Notification Map
7. Applicant's Letter of Intent
8. Survey Plat
9. Site Photos
10. October 23, 2013, Planning and Zoning Commission Meeting Minutes
11. Ordinance

Respectfully submitted:



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Brian Lockley, AICP, CPM  
Planning and Development, Director

Prepared by:



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Michael J. Bell  
Associate Planner



**Exhibit 1**  
**CITY OF DENTON**  
**DEVELOPMENT REVIEW COMMITTEE**  
**STAFF REPORT**

<b>P&amp;Z Date:</b>	<b>October 23, 2013</b>	<b>TYPE:</b>	<b>Rezoning</b>
<b>CC Date:</b>	<b>November 19, 2013</b>	<b>PROJECT #:</b>	<b>Z13-0007</b>

**Project Number:** Z13-0007, Shane Murphy – Bonnie Brae

**Request:** To approve an initial zoning classification of Neighborhood Residential 1 (NR-1) on approximately 2.39 acres.

**Applicant:** Thomas C. Atkins  
1633 Parkside Trail  
Lewisville, TX 75077

**Owner:** Shane and Denise Murphy  
P.O. Box 17  
Flint, TX 75762

**Location:** The property is located on the east side of Bonnie Brae Street, approximately 3,500 feet south of Vintage Boulevard and 3,500 feet north of Fort Worth Drive (US 377).

**Size:** 2.39 acres +/-

**Existing Zoning Designation:** Rural District 5X (RD-5X)

**Proposed Zoning Designation:** Neighborhood Residential 1 (NR-1)

**Existing Future Land Use:** Existing Land Use

**Proposed Future Land Use:** Existing Land Use

**Case Planner:** Michael J. Bell

**DRC Recommendation:** The Planning and Zoning Commission recommends **APPROVAL** of Z13-0007 (6-0).  
  
The Development Review Committee (DRC) recommends **APPROVAL** of Z13-0007.

## Summary of Analysis

The applicant is requesting approval of an initial zoning of NR-1 on approximately 2.39 acres to facilitate platting of the property and development of a single-family house. The subject property was annexed into the City of Denton in 2010 as part of DH-4 and is not currently zoned or platted. All properties annexed into the City are assigned a default, place-holder zoning classification of Rural District 5X (RD-5X). Rural District 5X is not an official zoning district of the Denton Development Code (DDC); however, all development within these districts are subject to the general regulations of the Rural District 5 (RD-5) zoning district. The RD-5 zoning district requires a minimum lot area of five acres, thereby prohibiting development of a single-family house on the property in its current 2.39 acre configuration. An NR-1 zoning would permit the property to be platted in its current configuration, as NR-1 requires a minimum lot area of 32,000 square feet (approximately 0.73 acres) for subdivisions of two acres or less, or a maximum density of two dwelling units per acre for a subdivision of two acres or more in lieu of minimum lot size and dimension requirements.

The Future Land Use Plan designates the property as “Existing Land Use,” which according to the Denton Plan is to be vigorously protected. Development in these areas should be compatible with existing land uses, patterns, and design standards. The general character of the surrounding area is rural and single-family residential with an average lot size of approximately 4 acres. An NR-1 zoning classification would protect the existing neighborhood by limiting incompatible, commercial uses currently allowed by RD-5 and permitting the average lot size for the area. Most of the surrounding properties are located within the City of Denton extraterritorial jurisdiction, but are part of the City of Denton annexation plan and are subject to five year non-annexation agreements. In staff’s opinion, these properties would also benefit from an NR-1 zoning in the future once annexed into the City. The adjacent property to the on the west side of Bonnie Brae is currently zoned NR-1. The Hills of Argyle subdivision, approximately 1,500 feet to the east, is also currently zoned NR-1.

## **Findings of Fact**

1. *The request is for approval of an initial zoning classification of Neighborhood Residential 1 (NR-1) on an approximately 2.39 acre property.*
2. *The future land use category on the property is Existing Land Use.*
3. *The property was annexed into the City of Denton on May 4, 2010.*
4. *The site is currently classified as Rural District 5X (RD-5X), which is not an official zoning district in the Denton Development Code (DDC). Properties classified as RD-5X are subject to the general regulations of the Rural District 5 (RD-5) zoning district until an official zoning district is approved.*
5. *Per the general regulations for RD-5 in Subchapter 35.5.1.3 of the DDC, subdivisions of less than ten acres, and all lots that are adjacent to the perimeter of a subdivision, shall have a minimum lot area of five acres.*
6. *Per the general regulations for NR-1 in Subchapter 35.5.2.3 of the DDC, subdivisions of more than 2 acres shall have a maximum density of one dwelling unit per acre in lieu of minimum lot size and dimension requirements.*
7. *According to the Denton Plan, “Within established residential areas, new development should respond to existing development with compatible land uses, patterns, and design standards. The plan recommends existing neighborhoods within the city be vigorously protected and preserved. Housing that is compatible with the existing density, neighborhood service, and commercial land uses is allowed.”*
8. *A Residential Land Use Location Strategy in the Denton Plan is to “encourage all new development to be contiguous to existing development.”*
9. *The site is not platted. Preliminary and final platting will be required prior to any additions/improvements to the property and prior to the issuance of building permits.*
10. *The property is currently developed with farm and ranch structures, including a perimeter pipe fence, three-sided pole barn, and a structure built by the T&P railroad in 1895 and moved to the property in 1999.*
11. *Land uses within ¼ mile radius of the site include approximately 178.38 acres; of which 82.35 acres are considered agricultural land; 30.10 acres are farm and ranch improvements; 54.20 acres are developed with single-family homes and 11.80 acres of land remain undeveloped.*
12. *Adjacent zoning districts include NR-1 to the west and Extraterritorial Jurisdiction (ETJ) to the north, east and south.*
13. *The site has no Environmentally Sensitive Area (ESA) designations.*

14. *Although there is an existing 24-inch water main along Bonnie Brae Street, it is not available for a tap for a single-family home. The City has agreed to the applicant's request to receive water service from a neighbor's well via a shared well agreement.*
15. *The nearest City wastewater main is an eight-inch gravity main along Bonnie Brae Street. However, this main ends approximately 800 feet north of the subject property's northern property line. The City has agreed to the applicant's request to install an aerobic septic system within their property, in lieu of tying to the City's wastewater main.*
16. *There are no planned water, wastewater, stormwater, or transportation Capital Improvement Program (CIP) projects near this area.*
17. *Bonnie Brae Street has the capacity to accommodate the proposed development in its current condition.*
18. *The subject property is served by Bent Creek Park (approximately 4,575 feet northeast) and will be served in the future by Southwest Park, a 196.5 acre directly across from Bonnie Brae Street to be developed utilizing future Park Development, CIP, and Gas Well Funding.*

## Development Code/ Zoning Analysis

The applicant is requesting approval of an initial zoning classification of NR-1 on approximately 2.39 acres and indicated a desire to develop a single-family house on the property.

The tables below summarize the permitted uses applicable to the property under the RD-5 zoning district and the proposed zoning district of NR-1. The highlighted portions show differences between the two zoning districts:

P= Permitted, N=not permitted, SUP= Specific Use Permit Required, L(X) = Limited as defined in Section 35.5.8 and the limitations are listed below:

Residential Land Use Categories	RD-5X (Existing)	NR-1 (Proposed)
Agriculture	P	P
Livestock	L(7)	L(7)
Single Family Dwellings	P	P
Accessory Dwelling Units	P	SUP L(1)
Attached Single Family Dwellings	N	N
Dwellings Above Businesses	N	N
Live/Work Units	P	N
Duplexes	N	N
Community Homes For the Disabled	P	P
Group Homes	SUP	N
Multi-Family Dwellings	N	N
Fraternity or Sorority House	N	N
Dormitory	N	N
Manufactured Housing Developments	P	N

Commercial Land Use Categories	RD-5X (Existing)	NR-1 (Proposed)
Home Occupation	P	P
Sale of Products Grown on Site	P	N
Hotels	N	N
Motels	N	N
Bed and Breakfast	L(10)	N
Retail Sales and Service	N	N
Movie Theaters	N	N
Restaurant or Private Club	N	N
Drive-through Facility	N	N
Professional Services and Offices	N	N
Quick Vehicle Servicing	N	N
Vehicle Repair	N	N
Auto and RV Sales	N	N
Laundry Facilities	N	N
Equestrian Facilities	P	SUP
Outdoor Recreation	P	P
Indoor Recreation	N	N
Conference/Convention Centers	N	N
Major Event Entertainment	N	N
Commercial Parking Lots	N	N
Administrative or Research Facilities	SUP	N
Broadcasting of Production Studio	SUP	N
Sexually Oriented Business	N	N

<b>Industrial Land Use Categories</b>	<b>RD-5X (Existing)</b>	<b>NR-1 (Proposed)</b>
Printing / Publishing	N	N
Bakeries	N	N
Manufacture of Non-odoriferous Foods	N	N
<b>Feed Lots</b>	<b>SUP</b>	<b>N</b>
Food Processing	N	N
Light Manufacturing	N	N
Heavy Manufacturing	N	N
Wholesale Sales	N	N
<b>Wholesale Nurseries</b>	<b>P</b>	<b>N</b>
Distribution Center/Warehouse, General	N	N
Warehouse, Retail	N	N
Self-service Storage	N	N
Construction Materials Sales	N	N
Junk Yards and Auto Wrecking	N	N
Wrecker Services and Impound Lots	N	N
<b>Kennels</b>	<b>L(14)</b>	<b>L(37)</b>
<b>Veterinary Clinics</b>	<b>P</b>	<b>L(14)</b>
Sanitary Landfills, Commercial Incinerators, Transfer Stations	N	N
Gas Wells	L(27)	L(27)

Institutional Land Use Categories	RD-5X (Existing)	NR-1 (Proposed)
Basic Utilities	P	L(25)
Community Service	N	N
Parks and Open Space	P	P
Churches	P	P
Semi-public, Halls, Clubs, and Lodges	N	SUP
Business / Trade School	N	N
Adult or Child Day Care	P	SUP
Kindergarten, Elementary School	P	SUP
Middle School	N	N
High School	N	N
Colleges	N	N
Hospital	N	N
Elderly Housing	N	N
Medical Centers	N	N
Cemeteries	N	N
Mortuaries	N	N
WECS (Free-standing Monopole Support Structure)	L(41)	L(41)
WECS (Building-mounted)	L(42)	L(42)

**Limitations**

**L(1)** = Accessory dwelling units are permitted, subject to the following additional criteria:

1. The proposal must conform with the overall maximum lot coverage and setback requirements of the underlying zone.
2. The maximum number of accessory dwelling units shall not exceed 1 per lot.
3. The maximum gross habitable floor area (GHFA) of the accessory residential structure shall not exceed 50% of the GHFA of the primary residence on the lot, and shall not exceed 1000 sq. ft. GHFA unless the lot meets the requirements of L(1).5.
4. One additional parking space shall be provided that conforms to the off-street parking provisions of this Chapter.
5. The maximum gross habitable floor area (GHFA) of the accessory residential structure shall not exceed 50% of the GHFA of the primary residence on the lot, where the lot size is equal to or greater than ten acres in size. An SUP is not required for such an accessory residential structure where the lot size is equal to or greater than ten acres.



**L(7)** = Limited to two (2) animals on parcels one (1) to three (3) acres in size. Additional animals may be added at a rate of one per each acre over three.

**L(8)** = Travelers' accommodations, are permitted, provided that:

1. The business-owner or manager shall be required to reside on the property occupied by the accommodation, or adjacent property.
2. That each accommodation unit shall have 1 off-street parking space, and the owners shall have 2 parking spaces. All spaces shall be in conformance with the requirements of the Off-Street Parking section of this Chapter.
3. That only one ground or wall sign, constructed of a non-plastic material, non-interior illuminated of 4 sq. ft. maximum size be allowed. Any exterior illumination of signage shall be installed such that it does not directly illuminate any residential structures adjacent or nearby the travelers' accommodation.
4. That the number of accommodation units allowed shall be proportional to the permitted density of the zone. Each traveler's accommodation unit shall be counted as 0.6 units for the purpose of calculating the permitted number of traveler's accommodations.
5. All traveler's accommodations shall be within 200 feet of a collector or arterial. Street designations shall be as determined by the City Comprehensive Plan. Distances shall be measured via public street or alley access to the site from the arterial.
6. Excluding the business-owner's unit and the area of the structure it will occupy, there must be at least 400 sq. ft. of gross interior floor space remaining per unit.
7. Traveler's accommodations are limited to no more than 8 guest units.

**L(10)** = All restrictions of L(8), but limited to no more than 5 guest units.

**L(14)** = Uses are limited to no more than 10,000 square feet of gross floor area.

**L(25)** = If proposed use is within 200 feet of a residential zone, approval is subject to a Specific Use Permit.

**L(27)** = Must comply with the provisions of Subchapter 19, Gas Well Drilling and Production.

**L(37)** = 5-acre minimum land area required and no more than 25 kennels per acre allowed, including indoor and outdoor runs. A natural buffer strip is required adjacent to any residential use.

**L(38)** = Must meet the requirements of Section 35.12.9.

**L(41)** = Lots where the proposed WECS will be located shall have a minimum lot area of two (2) acres. A maximum of one (1) WECS is permitted by right. Multiple WECS are permitted only with approval of a SUP.

**L(42)** = Building-mounted WECS may not extend higher than ten (10) feet above where the WECS is mounted on the building. The height shall be measured from the base of the WECS where it is mounted on the building to the highest point of the arc of the blades' elevation. If the WECS does not use blades, then height is measured from the base of the WECS where is mounted on the building to the highest point of the WECS.

The NR-1 zoning district is a Neighborhood Residential zoning district, which permits single-family residential uses in addition to some limited rural-oriented commercial, industrial, and institutional uses; whereas the RD-5 zoning district provides more rural-oriented commercial, industrial, and institutional uses by-right, without the limitations or Specific Use Permit requirements. These rural-oriented uses include manufactured housing developments, kennels, bed and breakfasts, equestrian facilities, etc. Limiting these uses may be beneficial to protecting the large-lot, single-family neighborhood, while preserving the rural character of the area. In the NR-1 zoning district, the general regulations are generally less restrictive compared to the existing RD-5X zoning district's general regulations. This is mainly due to the lot size requirements expected uses in the RD-5X, which are more likely to be agriculturally oriented.

The tables below summarize the general regulations applicable to the property under the RD-5X zoning district and the proposed zoning district of NR-1.

General Regulations	RD-5X (Existing)	NR-1 (Proposed)
Minimum lot area (square feet)	5 acres	32,000
Minimum lot width	200 feet	80 feet
Minimum lot depth	250 feet	100 feet
Minimum front yard setback	50 feet	20 feet
Minimum side yard	10 feet	6 feet
Minimum side yard adjacent to a street	50 feet	10 feet
Minimum rear yard	10 feet, plus 1 foot for each foot of building height over 20 feet	10 feet
Maximum lot coverage	15%, except for agricultural uses	30%
Minimum landscaped area	75%	70%
Maximum building height	65 feet	40 feet
Maximum WECS height	75 feet	55 feet
Maximum FAR except for single-family uses	None	N/A
Minimum yard when a use other than single family abuts a residential zone	None	N/A
Minimum yard when abutting a single-family use or district	N/A	10 feet plus 1 foot for each foot of building height above 20 feet

The following limits apply to subdivision of more than ten acres in RD-5X zoning districts and two acres in NR-1 zoning districts in lieu of minimum lot size and dimension requirements:

General Regulations	RD-5X (Existing)	NR-1 (Proposed)
Maximum density, dwelling units per acre	0.2	1
Minimum building separation	30 feet	N/A
Minimum side yard for non-attached buildings	N/A	20 feet

The Denton Development Code lists the criteria for approval of a zoning amendment in Subchapter 35.3.4.B. The applicable criteria and analysis are provided below. Staff reviews applications and makes a recommendation based on these criteria.

**1. The following rezoning conforms to the Future Land Use element of The Denton Plan.**

According to the Denton Plan, the purpose of the “Existing Land Use” future land use designation is to vigorously protect and preserve existing neighborhoods within the city. Within established residential areas, new development should respond to existing development with compatible land uses, patterns, and design standards. Rezoning the approximately 2.39 acre property to NR-1 may help achieve the goal of protecting this established residential area by limiting commercial uses currently permitted in RD-5X. One single-family house on this property would be compatible with the land uses and patterns with the surrounding area. Although NR-1 would potentially permit two single-family dwelling units on this property, the applicant has expressed an interest to develop one single-family dwelling and has subsequently submitted an application for a final plat of the property. This plat (MP13-0014) will create one lot and is currently under review by the City’s DRC. Staff believes the surrounding areas also zoned RD-5X and part of the City’s extraterritorial jurisdiction would also benefit from an NR-1 zoning classification in the future.

**2. The proposed rezoning facilitates the adequate provisions of transportation, water, sewers, schools, parks, other public requirements and public convenience.**

The proposed rezoning facilitates the adequate provisions of these services. At one unit/acre, Bonnie Brae Street has adequate capacity to serve the permitted density on this property. The subject property’s water will be served by an adjacent property’s well through a shared-well agreement and wastewater will be served through approval of an on site aerobic septic system. The areas schools and parks also have adequate capacity to serve the potential density.

**Surrounding Zoning Designations and Current Land Use Activity:**

<b>Northwest:</b> Neighborhood Residential 1 (NR-1) (Acreage with or without Agricultural Use)	<b>North:</b> Extraterritorial Jurisdiction (ETJ) (Single-family Home/Farm & Ranch Improvements)	<b>Northeast:</b> Extraterritorial Jurisdiction (ETJ) (Single-family Home/Farm & Ranch Improvements)
<b>West:</b> Neighborhood Residential 1 (NR-1) (Acreage with or without Agricultural Use)	<b>Subject Property</b>  Rural District 5X (RD-5X) (Farm & Ranch Improvements)	<b>East:</b> Extra Territorial Jurisdiction (ETJ) (Single-family Home/Farm & Ranch Improvements)
<b>Southwest:</b> Neighborhood Residential 1 (NR-1) (Acreage with or without Agricultural Use)	<b>South:</b> Extraterritorial Jurisdiction (ETJ) and Rural District 5X (RD-5X) (Single-family Home/Farm & Ranch Improvements)	<b>Southeast:</b> Extra Territorial Jurisdiction (ETJ) (Single-family Home/Farm & Ranch Improvements)

*Source: City of Denton Geographical Information System and site visit by City staff*

**Existing Conditions:**

- A. There are three existing structures on the property; one structure built by the T&P railroad in 1895 and moved to the property in 1999, a three-sided pole barn, and a pipe fence.
- B. Adjacent zoning districts include NR-1 to the west and Extraterritorial Jurisdiction (ETJ) to the north, east, and south.
- C. Land uses within ¼ mile radius of the site include approximately 178.38 acres; of which 82.35 acres are considered agricultural land; 30.10 acres are farm and ranch improvements; 54.20 acres are developed with single-family homes and 11.80 acres of land remain undeveloped.

**Comprehensive Plan:**

The site is currently located within an Existing Land Use future land use designation.

**Existing Land Use:**

According to the Denton Plan, the purpose of the “Existing Land Use” future land use designation is to vigorously protect and preserve existing neighborhoods within the city. Within established residential areas, new development should respond to existing development with compatible land uses, patterns, and design standards. Rezoning the approximately 2.39 acre property to NR-1 may help achieve the goal of protecting this established residential area by limiting commercial uses currently permitted in RD-5X. One single-family house on this property would be compatible with the land uses and patterns with the surrounding area. Although NR-1 would potentially permit two single-family dwelling units on this property, the applicant has expressed an interest in

developing one single-family dwelling and has subsequently submitted an application for a final plat of the property. This plat (MP13-0014) will create one lot and is currently under review by the City’s DRC. Staff believes the surrounding areas also zoned RD-5X and part of the City’s extraterritorial jurisdiction would also benefit from an NR-1 zoning classification in the future.

**Zoning Allocation:**

This rezoning request affects the zoning allocation of the RD-5X and NR-1 zoning districts throughout the City. Currently, there is approximately 11,472.59 acres of land within the city that is zoned RD-5X and approximately 671.16 acres are currently zoned NR-1. If the applicant’s request for rezoning is approved, the RD-5X allocation will decrease to approximately 11,467.81 acres and the NR-1 zoning district allocation would increase to approximately 671.16 acres.

<b>Zoning Allocation</b>		
<b>Zoning District</b>	<b>Current Allocation (acres)</b>	<b>Proposed Allocation (acres)</b>
RD-5X (Existing)	11,472.59	11,467.81
NR-1 (Proposed)	671.16	668.77

**Nearest Fire and EMS Station**

	<b>Name of Station</b>	<b>Approximate Distance From Subject Property</b>
<b>Fire/EMS</b>	Fire Station #7 (4201 Vintage Blvd.)	± 1.4 miles

*Source: City of Denton GIS, Fire Department, and EMS*

**Anticipated Water, Wastewater, and Stormwater Demand:**

A. Estimated Demand:

<b>Subject Property</b>	<b>Estimated Impact Analysis</b>	
	<b>Proposed Demand</b>	<b>Adequate to Serve (Yes or No)</b>
2.39 ± acres		
Permitted Density	1 unit/acre	Yes
Potable Water Consumption (GPM)	4 (peak)	Yes
Wastewater Generation (GPM)	3 (peak)	Yes
Stormwater Demand (CFS)	9.1 (peak)	Yes

B. Available Capacity:

Although there is an existing 24-inch water main along Bonnie Brae Street, it is not available for a tap for a single-family home. The City has agreed to the applicant’s request to receive water service from a neighbor’s well via a shared well agreement.

The nearest City wastewater main is an eight inch gravity main along Bonnie Brae Street. However, this main ends approximately 800 feet north of the subject property’s northern

property line. The City has agreed to the applicant's request to install an aerobic septic system within their property, in lieu of tying to the City's wastewater main.

C. CIP Planned Improvements:

There are no planned public potable or wastewater water improvements in this area.

There are no planned public storm water improvements in this area.

**Roadways/Transportation Network:**

A. Estimated Demand:

Subject Property	Estimated Impact Analysis	
	Proposed Demand	Adequate to Serve (Yes or No)
2.39 ± acres		
Permitted Density	1 unit/acre	Yes
Average Annual Daily Trips (AADT)	20	Yes
PM Peak Hour Trips	2	Yes

B. Available Capacity:

Bonnie Brae Street has the capacity to accommodate the proposed development in its current condition.

C. Roadway Conditions:

Bonnie Brae Street is classified as an unimproved perimeter street; however this development is exempt from improving Bonnie Brae Street per Section 35.20.2.L.4.a of the DDC.

D. CIP Planned Improvements:

There are no planned improvements for this portion of Bonnie Brae Street.

**Environmental Conditions:**

There are no Environmentally Sensitive Areas on this site.

**Electric:**

Electric service will be provided by CoServ Electric.

**Parks:**

Name of park facilities currently serving the site:

Bent Creek Park – approximately 4,575 feet northeast.

## **Development Review Committee**

The Development Review Committee finds that the request **IS CONSISTENT** with the general character of the area and **IS CONSISTENT** with the Denton Plan.

Based on the findings-of-fact and a recent site visit, the Development Review Committee (DRC) recommends ***APPROVAL*** of Z13-0007.

### **GENERAL NOTES**

*NOTE: Approval of this request shall not constitute a waiver or variance from any applicable development requirement unless specifically noted in the conditions of approval and consistent with the Denton Development Code.*

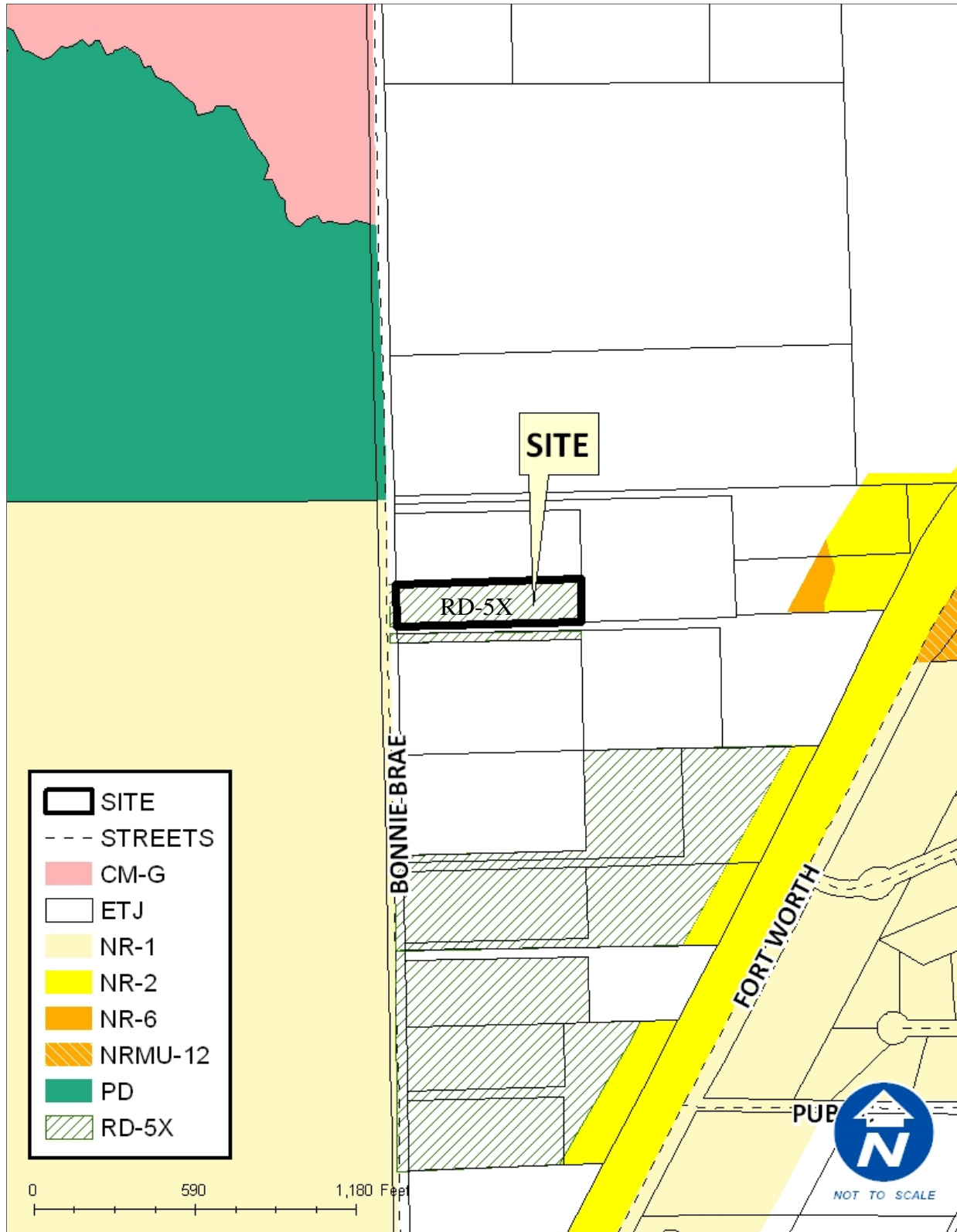
*NOTE: All written comments made in the application and subsequent submissions of information made during the application review process, which are on file with the City of Denton, shall be considered to be binding upon the applicant, provided such comments are not at variance with the Denton Plan, Denton Development Code or other development regulations in effect at the time of development.*

**Exhibit 2**  
**Site Location/Aerial Map**

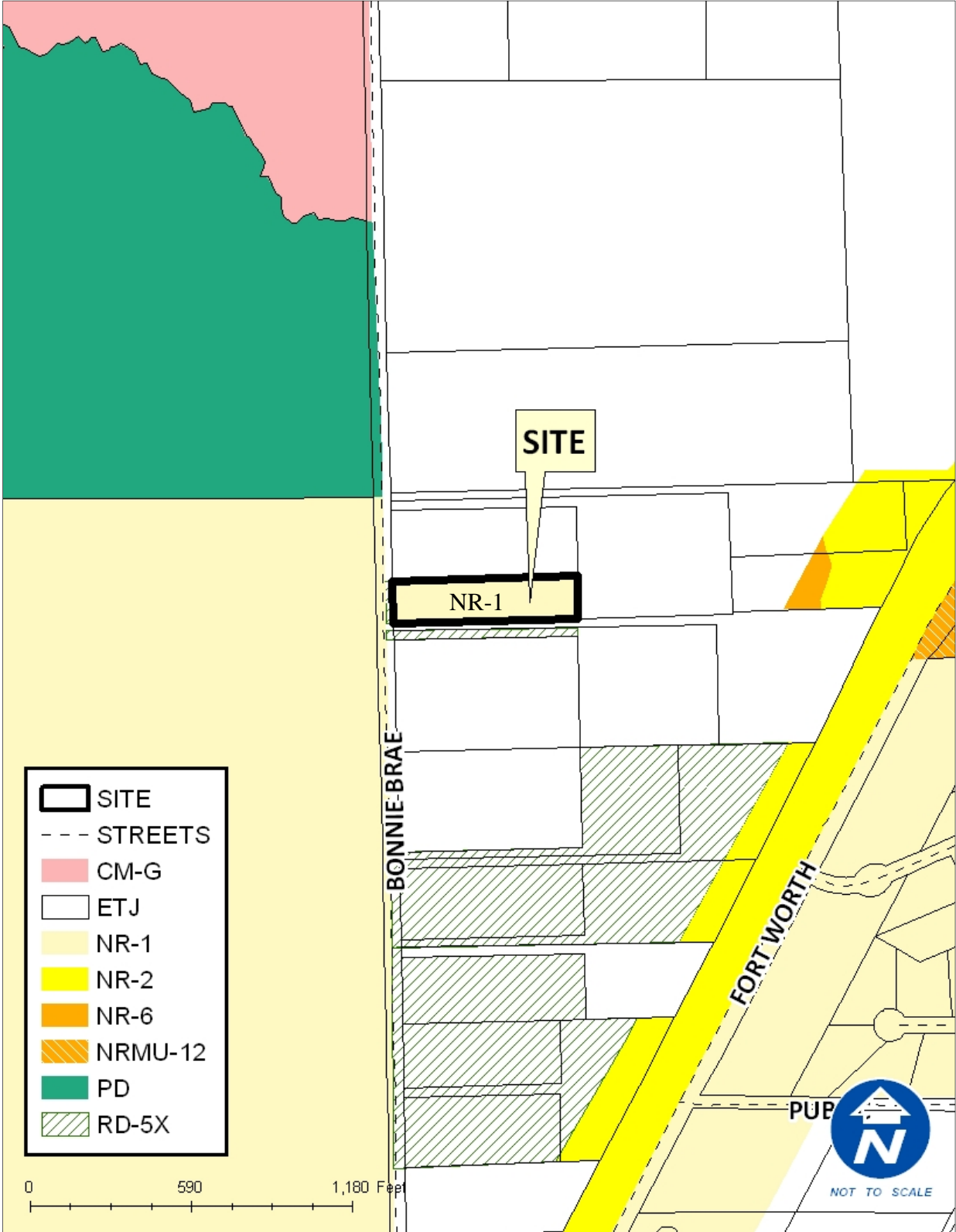




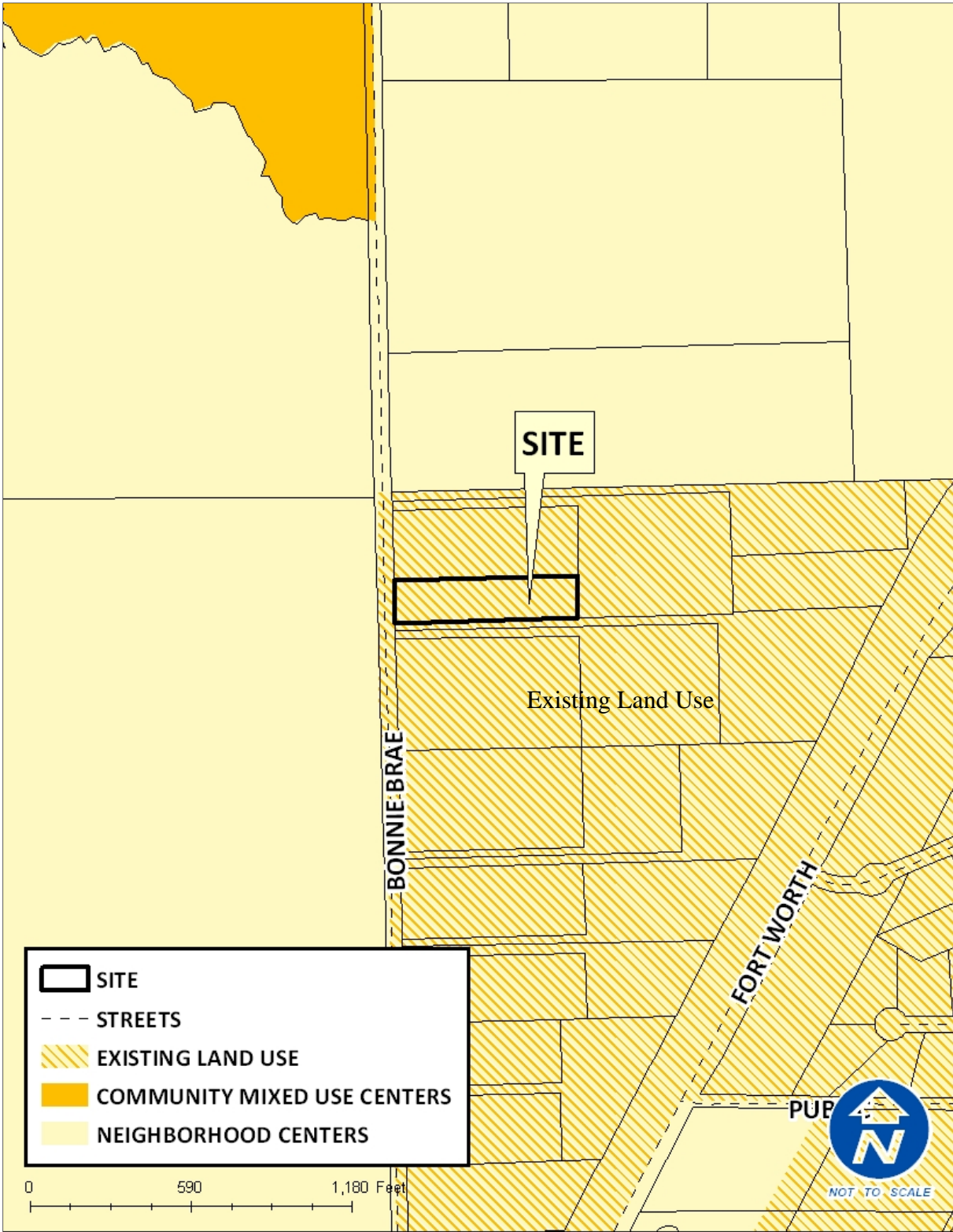
**Exhibit 3  
Existing Zoning Map**



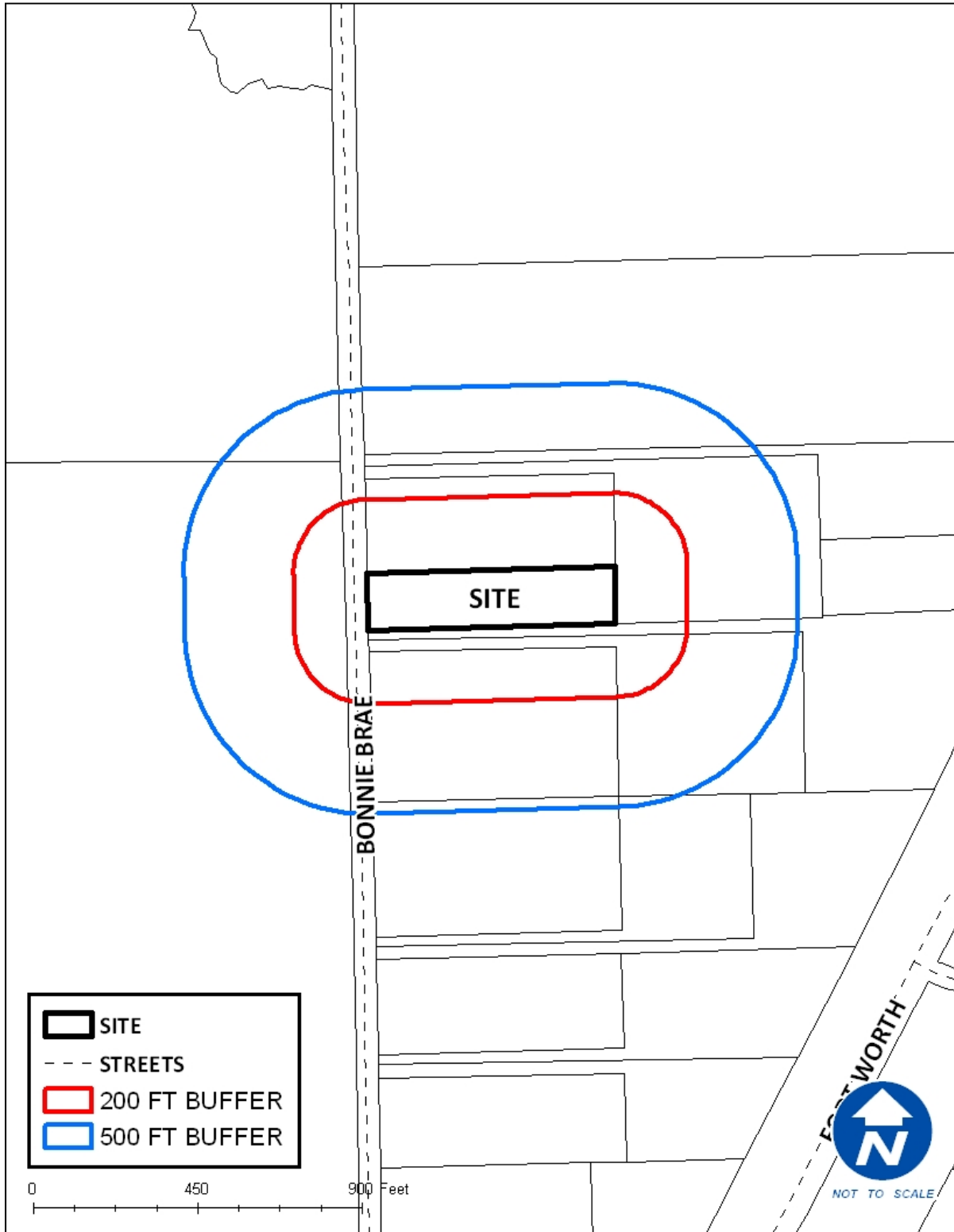
**Exhibit 4  
Proposed Zoning Map**



**Exhibit 5  
Future Land Use Map**



**Exhibit 6  
Notification Map**



## **Exhibit 7**

### **Applicant's Letter of Intent**

#### **4335 S Bonnie Brae Zoning Change Project Narrative**

The scope of this project is to re-zone the property at 4335 S Bonnie Brae Street from RD-5X to NR-1. This is in the James Severe Subdivision Lot 4(B). It was platted with the county on May 27, 1998

The property is being purchased by Thomas and Janet Atkins August 14, 2013 from Shane and Denise Murphy with the intent of building a single family home.

The Murphy's have owned the property since 1999 and it was annexed by the city of Denton within the last three years.

The neighbors on the east side of Bonnie Brae were also annexed, but received a 5-year delay before taking effect. The property on the west side of Bonnie Brae is undeveloped and zoned NR-1.

The property is currently fenced pasture with two out buildings. One building is a structure built by the T&P Railroad in 1895 and moved to the property in 1999. The other structure is a three-sided pole barn. The lot is nearly flat with a slight north-to-south rise in the middle. The lot is grassy with trees at the west side along Bonnie Brae, and at the east end. The middle of the property is wide open.

There is a gate and culvert at the west end accessing Bonnie Brae. The lot has a gravel drive that traverses the center of the property accessing the out buildings on the east side.

There is a shared well agreement with the neighbor to the south, and the well is on their property. The railroad building is connected to the well and has CoServe electricity service. There is a septic system at the far-east end of the lot near the railroad building.

We propose to build a single-family house near the middle of the property. We will use the existing well and add an aerobic septic system near the west end of the property. The storm water will drain the same as it does currently. I have a meeting with CoServe on the property 8/16/2013 to discuss electricity options.

We met with the City of Denton Development Review Committee on 8/8/2013 and discussed the requirements to Zone and Plat the lot with the city.



**Exhibit 9  
Site Photos**



Looking east onto property from Bonnie Brae Street



Looking east onto property from Bonnie Brae Street



Looking east onto property at existing structures from Bonnie Brae Street



Looking west from Bonnie Brae Street



**Exhibit 10**  
**October 23, 2013, Planning and Zoning Commission Minutes**

- B. [Hold a public hearing and consider making a recommendation to City Council regarding an initial zoning of Neighborhood Residential 1 \(NR-1\) on approximately 2.39 acres. The subject property is generally located on the east side of Bonnie Brae Street, approximately 3,500 feet south of Vintage Boulevard, and approximately 3,500 feet north of Fort Worth Drive \(US 377\). \(Z13-0007, Shane Murphy - Bonnie Brae, Mike Bell\)](#)

Lockley introduced Bell. Bell stated this is a request for zoning to a Neighborhood Residential-1. The property was annexed into the City in 2010 and currently has a default zoning of Rural Residential (RD-5X). Bell stated that isn't a zoning it is a place holder until the property has been annexed and rezoned. Bell stated the minimum lot size allowed for RD-5X is five (5) acres. The proposed zoning district NR-1 would allow for the development of a single-family house on 2.126 acre lot. Bell added the subject site is not within a Federal Emergency Management Agency or an Environmentally Sensitive Area. Bell listed the criteria for approval, which is listed in the staff backup. Staff sent out six (6) Public Hearing Notices to property owners within 200 feet of the subject site and eight (8) courtesy notices to property owners within 500 feet of the subject site. At this time staff has not received any responses to this request. Bell stated staff recommends approval of this request.

Conner questioned the neighboring zoning districts to this subject site; Bell stated many of the neighboring properties are still designated within the county and have not been annexed in the City. Taylor questioned if the area to the west of the subject site is zoned NR-1; Bell stated that is correct. Taylor questioned why the proposed zoning is not Neighborhood Residential-2; Bell indicated the NR-1 would be consistent with what is currently in the area.

Schaake questioned the applicant if she would like to speak, the applicant did not wish to speak. Schaake opened the Public Hearing, there was no one to speak on this item; Schaake closed the Public Hearing.

Commissioner Brian Bentley motioned, Commissioner Frank Conner seconded to approve this request. Motion approved (6-0).

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF DENTON, TEXAS, PROVIDING FOR AN INITIAL ZONING DISTRICT AND LAND USE CLASSIFICATION OF NEIGHBORHOOD RESIDENTIAL 1 (NR-1) ON APPROXIMATELY 2.39 ACRES OF LAND LOCATED ON THE EAST SIDE OF BONNIE BRAE STREET, APPROXIMATELY 3,500 FEET SOUTH OF VINTAGE BOULEVARD AND 3,500 FEET NORTH OF FORT WORTH DRIVE (U.S. 377) , IN THE CITY OF DENTON, DENTON COUNTY, TEXAS; AND PROVIDING FOR A PENALTY IN THE MAXIMUM AMOUNT OF \$2,000.00 FOR VIOLATIONS THEREOF, SEVERABILITY AND AN EFFECTIVE DATE (Z13-0007).

WHEREAS, Thomas C. Atkins has applied for an initial zoning request of Neighborhood Residential 1 (NR-1) on approximately 2.39 acres of land legally described in Exhibit "A" and depicted in Exhibit "B", attached hereto and incorporated herein by reference (hereinafter, the "Property"); and

WHEREAS, after providing notice and after conducting a public hearing on October 23, 2013 as required by law, the Planning and Zoning Commission recommended approval (6-0) of the requested initial zoning; and

WHEREAS, after providing notice and after conducting a public hearing on November 19, 2013 as required by law, the City Council finds that the initial zoning is consistent with the Denton Plan and is in the public interest; NOW, THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The findings and recitations contained in the preamble of this ordinance are incorporated herein by reference as true.

SECTION 2. The Property is hereby assigned a Neighborhood Residential 1 (NR-1) zoning district classification and use designation. Notwithstanding the attached real property description, the property being zoned includes all property to the centerline of all adjacent street rights-of-way.

SECTION 3. The City's official land use map is amended to show the change in the land use designation.

SECTION 4. If any provision of this ordinance or the application thereof to any person or circumstance is held invalid by any court, such invalidity shall not affect the validity of other provisions or applications, and to this end the provisions of this ordinance are severable.

SECTION 5. Any person violating any provision of this ordinance shall, upon conviction, be fined a sum not exceeding \$2,000.00. Each day that a provision of this ordinance is violated shall constitute a separate and distinct offense.

SECTION 6. This ordinance shall become effective fourteen (14) days from the date of its passage, and the City Secretary is hereby directed to cause the caption of this ordinance to be published twice in the Denton Record-Chronicle, a daily newspaper published in the City of Denton, Texas, within ten (10) days of the date of its passage.

PASSED AND APPROVED this the \_\_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
MARK A. BURROUGHS, MAYOR

ATTEST:  
JENNIFER WALTERS, CITY SECRETARY

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

APPROVED AS TO LEGAL FORM:  
ANITA BURGESS, CITY ATTORNEY

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

## **EXHIBIT A LEGAL DESCRIPTION**

Shane Murphy – Bonnie Brae Tract

BEING all that certain lot, tract, or parcel of land situated in the James Severe Survey, Abstract No. 1164, Denton County, Texas, being a part of that certain tract of land conveyed by deed from Brighton Trading Company, L.C. to Berth H. Gibbs recorded in Volume 3382, Page 967, Real Property Records, Denton County, Texas, and being more particularly described as follows:

BEGINNING at an iron rod found for corner in Bonnie Brae Street, a public roadway, said point being the northwest corner of that certain tract of land conveyed by deed from Ginger Rodgers to Kenneth A. Wright and wife, Susan L. Wright recorded under Clerk's File Number 93-R0035612, Real Property Records, Denton County, Texas;

THENCE N 00° 41' 38" W, 153.24 feet with said Street to an iron rod found for corner, said point being the southwest corner of that certain tract of land conveyed by deed from Brighton Trading Company, L.C. to Lance T. Crawford and wife, Kimberly M. Crawford recorded in Volume 3382, Page 952, Real Property Records, Denton County, Texas;

THENCE N 89° 49' 31" E, 691.55 feet with the south line of said Crawford tract to an iron rod set for corner;

THENCE S 00° 20' 49" E, 148.67 feet an iron rod set for corner in the north line of said Wright tract;

THENCE S 89° 26' 44" W, 688.82 feet with said north line of said Wright tract to the PLACE OF BEGINNING and containing 2.392 acres of land.

## EXHIBIT B LOCATION MAP

