

**PROFESSIONAL SERVICES AGREEMENT
FOR CONSULTING SERVICES
FILE 7109-004**

STATE OF TEXAS §

COUNTY OF DENTON §

03/12/2020 THIS AGREEMENT (the "Agreement") is made and entered into on _____, by and between the City of Denton, Texas, a Texas municipal corporation, with its principal office at 215 East McKinney Street, Denton, Denton County, Texas 76201, hereinafter called "OWNER" and WEAVER CONSULTANTS GROUP, LLC, with its corporate office at 35 EAST WEAVER DRIVE, CHICAGO, IL 60601, hereinafter called "CONSULTANT," acting herein, by and through their duly authorized representatives.

WITNESSETH, that in consideration of the covenants and agreements herein contained, the parties hereto do mutually agree as follows:

**ARTICLE I
CONSULTANT AS INDEPENDENT CONTRACTOR**

The OWNER has selected CONSULTANT on the basis of demonstrated competence and qualifications to perform the services herein described for a fair and reasonable price pursuant to Chapter 2254 of the Texas Government Code. The OWNER hereby contracts with the CONSULTANT as an independent contractor and not as an employee, and as such, the OWNER will not assert control over the day-to-day operations of the CONSULTANT. The CONSULTANT is customarily engaged to provide services as described herein independently and on a nonexclusive basis in the course of its business. This Agreement does not in any way constitute a joint venture between OWNER and CONSULTANT. The CONSULTANT hereby agrees to perform the services described herein based on the skills required for the scope of work in connection with the Project as stated in the sections to follow, with diligence and in accordance with the highest professional standards customarily obtained for such services in the State of Texas. The professional services set out herein are in connection with the following described project:

The Project shall include, without limitation, North Lake Public Drop-Off Facility, as described in **Exhibit A**, which is attached hereto and incorporated herein (the "Project").

**ARTICLE II
SCOPE OF BASIC SERVICES**

The CONSULTANT shall perform the following services in a professional manner:

- A. To perform all those services set forth in CONSULTANT's proposal, which proposal is attached hereto and made a part hereof as **Exhibit A** as if written word for word herein.

- B. CONSULTANT shall perform all those services set forth in individual task orders, as described in **Exhibit A**, which shall be attached to this Agreement and made a part hereof.
- C. If there is any conflict between the terms of this Agreement and the exhibits attached to this Agreement, the terms and conditions of this Agreement will control over the terms and conditions of the attached exhibits or task orders.

ARTICLE III **ADDITIONAL SERVICES**

Additional services to be performed by the CONSULTANT, if authorized by the OWNER, which are not included in the above-described Basic Services, may be negotiated as needed, per rates included in **Exhibit A**.

- A. Preparing applications and supporting documents for government grants, loans, or planning advances and providing data for detailed applications.
- B. Preparing data and reports for assistance to OWNER in preparation for hearings before regulatory agencies, courts, arbitration panels or mediator, giving testimony, personally or by deposition, and preparations therefore before any regulatory agency, court, arbitration panel or mediator.
- C. Assisting OWNER in preparing for, or appearing at litigation, mediation, arbitration, dispute review boards, or other legal and/or administrative proceedings in the defense or prosecution of claims disputes with Contractor(s).
- D. Assisting OWNER in the defense or prosecution of litigation in connection with or in addition to those services contemplated by this AGREEMENT. Such services, if any, shall be furnished by CONSULTANT on a fee basis negotiated by the respective parties outside of and in addition to this AGREEMENT.
- E. Visits to the site in excess of the number of trips included in **Exhibit A**.
- F. Preparing statements for invoicing or other documentation for billing other than for the standard invoice for services attached to this professional services agreement.

ARTICLE IV
TIME OF COMPLETION

CONSULTANT is authorized to commence work under this contract upon execution of this AGREEMENT. CONSULTANT shall perform and complete its obligations herein in a prompt and continuous manner, so as to not delay the completion of the Project in accordance with the schedules as described in **Exhibit A**. The contract shall remain effective for a period which may reasonably be required for the completion of the Project, acceptance by an authorized representative of the OWNER, exhaustion of authorized funds, or termination as provided in this Agreement, whichever occurs first.

ARTICLE V
COMPENSATION

A. COMPENSATION TERMS:

1. "Subcontract Expense" is defined as expenses incurred by the CONSULTANT in employment of others in outside firms for services related to this agreement.
2. "Direct Non-Labor Expense" is defined as that expense for any assignment incurred by the CONSULTANT for supplies, transportation and equipment, travel, communications, subsistence, and lodging away from home, and similar incidental expenses in connection with that assignment.

B. BILLING AND PAYMENT: For and in consideration of the professional services to be performed by the CONSULTANT herein, the OWNER agrees to pay, based on the cost estimate detail at an hourly rate shown in **Exhibit A** which is attached hereto and made a part of this Agreement as if written word for word herein, a total fee, including reimbursement for direct non-labor expenses not to exceed **\$23,000**.

Partial payments to the CONSULTANT will be made on the basis of detailed monthly statements rendered to and approved by the OWNER through its City Manager or his designee; however, under no circumstances shall any monthly statement for services exceed the value of the work performed at the time a statement is rendered.

Nothing contained in this Article shall require the OWNER to pay for any work which is unsatisfactory, as reasonably determined by the City Manager or his designee, or which is not submitted in compliance with the terms of this Agreement. The OWNER shall not be required to make any payments to the CONSULTANT when the CONSULTANT is in default under this Agreement.

It is specifically understood and agreed that the CONSULTANT shall not be authorized to undertake any work pursuant to this Agreement which would require additional payments by the OWNER for any charge, expense, or reimbursement above the maximum not to exceed fee as stated, without first having obtained written authorization from the OWNER. The CONSULTANT shall not proceed to perform the services listed in Article III "Additional Services," without obtaining prior written authorization from the OWNER.

- C. **ADDITIONAL SERVICES:** For additional services authorized in writing by the OWNER in Article III, the CONSULTANT shall be paid based on the Schedule of Charges at an hourly rate shown in **Exhibit A**. Payments for additional services shall be due and payable upon submission by the CONSULTANT and approval by the City staff, and shall be in accordance with subsection B hereof. Statements shall not be submitted more frequently than monthly.
- D. **PAYMENT:** If the OWNER fails to make payments due the CONSULTANT for services and expenses within thirty (30) days after receipt of the CONSULTANT's undisputed statement thereof, the amounts due the CONSULTANT will be paid interest in accordance with the Texas Government Code 2251.025. Additionally, the CONSULTANT may, after giving seven (7) days' written notice to the OWNER, suspend services under this Agreement until the CONSULTANT has been paid in full all amounts due for services, expenses, and charges. Nothing herein shall require the OWNER to pay the late charge if the OWNER reasonably determines that the work is unsatisfactory, in accordance with this Article V, "Compensation," there is a bona fide dispute concerning the amount due, or the invoice was not mailed to the address or in the form as described in this Agreement. The OWNER will notify CONSULTANT of any disputes within twenty-one (21) days of receipt of the invoice.
- E. **Invoices** shall be sent directly to the City of Denton Accounts Payable Department, 215 E McKinney St, Denton, TX, 76201-4299. A pro-forma invoice shall be sent to the contract administrator. It is the intention of the City of Denton to make payment on completed orders within thirty days after receipt of invoice or items; whichever is later, unless unusual circumstances arise. **Invoices must be fully documented as to labor, materials, and equipment provided, if applicable, and must reference the City of Denton Purchase Order Number in order to be processed. No payments shall be made on invoices not listing a Purchase Order Number.**

ARTICLE VI **OBSERVATION AND REVIEW OF THE WORK**

The CONSULTANT will exercise reasonable care and due diligence in discovering and promptly reporting to the OWNER any defects or deficiencies in the work of the CONSULTANT or any subcontractors or subconsultants.

ARTICLE VII **OWNERSHIP OF DOCUMENTS**

All documents prepared or furnished by the CONSULTANT (and CONSULTANT's subcontractors or subconsultants) pursuant to this Agreement are instruments of service, and shall become the property of the OWNER upon the termination of this Agreement. The CONSULTANT is entitled to retain copies of all such documents. The documents prepared and furnished by the CONSULTANT are intended only to be applicable to this Project, and OWNER's use of these documents in other projects shall be at OWNER's sole risk and expense. In the event the OWNER uses any of the information or materials developed pursuant to this

Agreement in another project or for other purposes than specified herein, CONSULTANT is released from any and all liability relating to their use in that project.

ARTICLE VIII
INDEMNITY AGREEMENT

THE CONSULTANT SHALL INDEMNIFY AND SAVE AND HOLD HARMLESS THE OWNER AND ITS OFFICERS, OFFICIALS, AGENTS, AND EMPLOYEES FROM AND AGAINST ANY AND ALL LIABILITY, CLAIMS, DEMANDS, DAMAGES, LOSSES, AND EXPENSES, INCLUDING, BUT NOT LIMITED TO COURT COSTS AND REASONABLE ATTORNEY FEES ASSERTED AGAINST OR INCURRED BY THE OWNER, AND INCLUDING, WITHOUT LIMITATION, DAMAGES FOR BODILY AND PERSONAL INJURY, DEATH AND PROPERTY DAMAGE, RESULTING FROM THE NEGLIGENT ACTS OR OMISSIONS OF THE CONSULTANT OR ITS OFFICERS, SHAREHOLDERS, AGENTS, OR EMPLOYEES INCIDENTAL TO, RELATED TO, AND IN THE EXECUTION, OPERATION, OR PERFORMANCE OF THIS AGREEMENT.

Nothing in this Agreement shall be construed to create a liability to any person who is not a party to this Agreement, and nothing herein shall waive any of the parties' defenses, both at law or equity, to any claim, cause of action, or litigation filed by anyone not a party to this Agreement, including the defense of governmental immunity, which defenses are hereby expressly reserved.

ARTICLE IX
INSURANCE

During the performance of the services under this Agreement, CONSULTANT shall maintain insurance in compliance with the requirements of **Exhibit B** which is attached hereto and made a part of this Agreement as if written word for word herein.

ARTICLE X
ALTERNATIVE DISPUTE RESOLUTION

The parties may agree to settle any disputes under this Agreement by submitting the dispute to mediation with each party bearing its own costs of mediation. No mediation arising out of or relating to this Agreement, involving one party's disagreement may include the other party to the disagreement without the other's approval. Mediation will not be a condition precedent to suit.

ARTICLE XI
TERMINATION OF AGREEMENT

- A. Notwithstanding any other provision of this Agreement, either party may terminate by giving thirty (30) days' advance written notice to the other party.
- B. This Agreement may be terminated in whole or in part in the event of either party substantially failing to fulfill its obligations under this Agreement. No such termination

will be affected unless the other party is given (1) written notice (delivered by certified mail, return receipt requested) of intent to terminate and setting forth the reasons specifying the non-performance, and not less than fifteen (15) calendar days to cure the failure; and (2) an opportunity for consultation with the terminating party prior to termination.

- C. If the Agreement is terminated prior to completion of the services to be provided hereunder, CONSULTANT shall immediately cease all services and shall render a final bill for services to the OWNER within thirty (30) days after the date of termination. The OWNER shall pay CONSULTANT for all services properly rendered and satisfactorily performed and for reimbursable expenses to termination incurred prior to the date of termination, in accordance with Article V "Compensation." Should the OWNER subsequently contract with a new consultant for the continuation of services on the Project, CONSULTANT shall cooperate in providing information. The CONSULTANT shall turn over all documents prepared or furnished by CONSULTANT pursuant to this Agreement to the OWNER on or before the date of termination, but may maintain copies of such documents for its use.

ARTICLE XII
RESPONSIBILITY FOR CLAIMS AND LIABILITIES

Approval by the OWNER shall not constitute, nor be deemed a release of the responsibility and liability of the CONSULTANT, its employees, associates, agents, subcontractors, and subconsultants for the accuracy and competency of their designs or other work; nor shall such approval be deemed to be an assumption of such responsibility by the OWNER for any defect in the design or other work prepared by the CONSULTANT, its employees, subcontractors, agents, and consultants.

ARTICLE XIII
NOTICES

All notices, communications, and reports required or permitted under this Agreement shall be personally delivered or mailed to the respective parties by depositing same in the United States mail to the address shown below, certified mail, return receipt requested, unless otherwise specified herein. Mailed notices shall be deemed communicated as of three (3) days' mailing:

To CONSULTANT:

Weaver Consultants Group
Troy O. Thomas, P.E.
6420 Southwest Blvd. Suite 206
Fort Worth, Texas 76109

To OWNER:

City of Denton
Purchasing Manager –File 7109-004
901B Texas Street
Denton, Texas 76201

All notices shall be deemed effective upon receipt by the party to whom such notice is given, or within three (3) days' mailing.

ARTICLE XIV
ENTIRE AGREEMENT

This Agreement and related exhibits constitute the complete and final expression of this Agreement of the parties, and is intended as a complete and exclusive statement of the terms of their agreements, and supersedes all prior contemporaneous offers, promises, representations, negotiations, discussions, communications, and agreements which may have been made in connection with the subject matter hereof.

ARTICLE XV
SEVERABILITY

If any provision of this Agreement is found or deemed by a court of competent jurisdiction to be invalid or unenforceable, it shall be considered severable from the remainder of this Agreement and shall not cause the remainder to be invalid or unenforceable. In such event, the parties shall reform this Agreement to replace such stricken provision with a valid and enforceable provision which comes as close as possible to expressing the intention of the stricken provision.

ARTICLE XVI
COMPLIANCE WITH LAWS

The CONSULTANT shall comply with all federal, state, and local laws, rules, regulations, and ordinances applicable to the work covered hereunder as those laws may now read or hereinafter be amended.

ARTICLE XVII
DISCRIMINATION PROHIBITED

In performing the services required hereunder, the CONSULTANT shall not discriminate against any person on the basis of race, color, religion, sex, sexual orientation, national origin or ancestry, age, or physical handicap.

ARTICLE XVIII
PERSONNEL

- A. The CONSULTANT represents that it has or will secure, at its own expense, all personnel required to perform all the services required under this Agreement. Such personnel shall not be employees or officers of, or have any contractual relations with the OWNER. CONSULTANT shall inform the OWNER of any conflict of interest or potential conflict of interest that may arise during the term of this Agreement.
- B. All services required hereunder will be performed by the CONSULTANT or under its supervision. All personnel engaged in work shall be qualified, and shall be authorized and permitted under state and local laws to perform such services.

ARTICLE XIX
ASSIGNABILITY

The CONSULTANT acknowledges that this Agreement is based on the demonstrated competence and specific qualifications of the CONSULTANT and is therefore personal as to the CONSULTANT. Therefore, the CONSULTANT shall not assign any interest in this Agreement, and shall not transfer any interest in this Agreement (whether by assignment, novation, or otherwise) without the prior written consent of the OWNER.

ARTICLE XX
MODIFICATION

No waiver or modification of this Agreement or of any covenant, condition, or limitation herein contained shall be valid unless in writing and duly executed by the party to be charged therewith, and no evidence of any waiver or modification shall be offered or received in evidence in any proceeding arising between the parties hereto out of or affecting this Agreement, or the rights or obligations of the parties hereunder, and unless such waiver or modification is in writing and duly executed; and the parties further agree that the provisions of this section will not be waived unless as set forth herein.

ARTICLE XXI
MISCELLANEOUS

A. The following exhibits are attached to and made a part of this Agreement:

- Exhibit A – Consultant’s Scope of Services Offer and Project Schedule
- Exhibit B – Consultant’s Insurance Requirements
- Exhibit C – Form CIQ – Conflict of Interest Questionnaire

What is called for by one exhibit shall be as binding as if called for by all. In the event of an inconsistency or conflict in this Agreement and any of the provisions of the exhibits, the inconsistency or conflict shall be resolved by giving precedence first to this Agreement then to the exhibits in the order in which they are listed above.

B. This Agreement shall be governed by, construed, and enforced in accordance with, and subject to, the laws of the State of Texas or federal law, where applicable, without regard to the conflict of law principles of any jurisdiction. In the event there shall be any dispute arising out of the terms and conditions of, or in connection with, this Agreement, the party seeking relief shall submit such dispute to the District Courts of Denton County or if federal diversity or subject matter jurisdiction exists, to the United States District Court for the Eastern District of Texas-Sherman Division.

C. For the purpose of this Agreement, the key persons who will perform most of the work hereunder shall be authorized. However, nothing herein shall limit CONSULTANT from using other equally qualified and competent members of its firm to perform the services required herein.

- D. CONSULTANT shall commence, carry on, and complete any and all projects with all applicable dispatch, in a sound, economical, and efficient manner and in accordance with the provisions hereof. In accomplishing the projects, CONSULTANT shall take such steps as are appropriate to ensure that the work involved is properly coordinated with related work being carried on by the OWNER.
- E. The OWNER shall assist the CONSULTANT by placing at the CONSULTANT's disposal all available information pertinent to the Project, including previous reports, any other data relative to the Project, and arranging for the access thereto, and make all provisions for the CONSULTANT to enter in or upon public and private property as required for the CONSULTANT to perform services under this Agreement.
- F. The captions of this Agreement are for informational purposes only, and shall not in any way affect the substantive terms or conditions of this Agreement.
- G. The parties agree to transact business electronically. Any statutory requirements that certain terms be in writing will be satisfied using electronic documents and signing. Electronic signing of this document will be deemed an original for all legal purposes.

ARTICLE XXII
INDEPENDENT CONTRACTOR

CONSULTANT shall provide services to OWNER as an independent contractor, not as an employee of the OWNER. CONSULTANT shall not have or claim any right arising from employee status.

ARTICLE XXIII
RIGHT TO AUDIT

The OWNER shall have the right to audit and make copies of the books, records and computations pertaining to this agreement. The CONTRACTOR shall retain such books, records, documents and other evidence pertaining to this agreement during the contract period and five years thereafter, except if an audit is in progress or audit findings are yet unresolved, in which case records shall be kept until all audit tasks are completed and resolved. These books, records, documents and other evidence shall be available, within 10 business days of written request. Further, the CONTRACTOR shall also require all Subcontractors, material suppliers, and other payees to retain all books, records, documents and other evidence pertaining to this agreement, and to allow the OWNER similar access to those documents. All books and records will be made available within a 50 mile radius of the City of Denton. The cost of the audit will be borne by the OWNER unless the audit reveals an overpayment of 1% or greater. If an overpayment of 1% or greater occurs, the reasonable cost of the audit, including any travel costs, must be borne by the CONTRACTOR which must be payable within five business days of receipt of an invoice.

Failure to comply with the provisions of this section shall be a material breach of this contract and shall constitute, in the OWNER'S sole discretion, grounds for termination thereof. Each of the terms "books", "records", "documents" and "other evidence", as used above, shall be

construed to include drafts and electronic files, even if such drafts or electronic files are subsequently used to generate or prepare a final printed document.

ARTICLE XXIV

Prohibition On Contracts With Companies Boycotting Israel

Supplier acknowledges that in accordance with Chapter 2270 of the Texas Government Code, City is prohibited from entering into a contract with a company for goods or services unless the contract contains a written verification from the company that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the contract. The terms “boycott Israel” and “company” shall have the meanings ascribed to those terms in Section 808.001 of the Texas Government Code. *By signing this agreement, Supplier certifies that Supplier’s signature provides written verification to the City that Supplier: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the agreement.* Failure to meet or maintain the requirements under this provision will be considered a material breach.

ARTICLE XXV

Prohibition On Contracts With Companies Doing Business with Iran, Sudan, or a Foreign Terrorist Organization

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

The parties agree to transact business electronically. Any statutory requirements that certain terms be in writing will be satisfied using electronic documents and signing. Electronic signing of this document will be deemed an original for all legal purposes.

IN WITNESS WHEREOF, the parties of these presents have executed this agreement through its duly authorized undersigned officer on this date 03/12/2020.

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

DocuSigned by:
Brian Boerner
DGD14331B89A4A9...
SIGNATURE

Brian Boerner

PRINTED NAME

Director of Solid Waste

TITLE

Solid Waste and Recycling

DEPARTMENT

CITY OF DENTON, TEXAS
"OWNER"

DocuSigned by:
Cori Power
5F1FE1663F7B4FE...
PURCHASING AGENT

WEAVER CONSULTANTS GROUP, LLC
A LIMITED LIABILITY CORPORATION
"CONSULTANT"

DocuSigned by:
Troy O. Thomas
91B9314AD2E84FD...

BY: TROY O. THOMAS, P.E.
ITS: SENIOR PROJECT DIRECTOR



February 17, 2020

City of Denton
Mr. Arturo (Art) Garcia S.C.
Site Operations/HCC Manager
Solid Waste & Recycling Department
1527 S. Mayhill Road
Denton, TX 76208
940-349-8021

RE: North Lake Public Drop-Off Facility
Denton, Denton County, TX

Dear Mr. Garcia:

This proposal is presented to Mr. Aurturo (Art) Garcia with City of Denton Solid Waste & Recycling Department (the "Client") for certain consulting services for a proposed North Lake Public Drop-Off Facility Improvements on approximately 0.3 acres located north of the intersection of N. Bonnie Brae Street and W. Windsor Drive just north of Denton Soccer Complex in Denton (the "City"), Texas, as depicted in the exhibit attached found at the end of this document. Scope and fee for the services to be performed are specifically described within the tasks below.

The following Scope of Services is based on the off-site roadways, utilities and drainage improvements are existing to the site or proposed under a separate contract. This scope also assumes no Texas Commission of Environmental Quality (TCEQ) permitting will be performed under this contract.

Site design services to be provided include site grading, erosion control, paving, electrical and storm drainage facilities to serve the proposed site.

Prior to commencing with the civil and electrical scope of services described herein, the Client, and/or the Client's sub-consultants shall provide the following information:

- Site Plan – Client provided in form of sketch/exhibit, prior to beginning Design

This information has been made available to Weaver Consultants Group with sufficient lead time to perform this scope of services.

BASIC SERVICES

I. TOPOGRAPHIC / DESIGN SURVEY

TASK 1

Provide topographic mapping with a minimum of one foot contour intervals depicting, but not limited to, the following information:

Positions and elevations of natural ground features, edge of pavement, curb islands, top back of curb with flow lines, valley gutters, cross sections of roadways, median openings and intersections of adjacent streets and roads, top of block wall footings, flow lines, top of bank and toe of slope of creeks, canals, or ditches; exterior edges of water; sign and fences; and any other above ground visible features.

The location, elevation and description of all surface visible utilities (i.e., manholes including inverts, flow line elevations and pipe sizes, inlets, fire hydrants, water valves, street lights, vaults and meter locations).

Perform a field topographic survey that is in compliance with the standards and specifications of a Category 6, Topographical Survey as defined in the current MANUAL OF PRACTICE for Land Surveying in the State of Texas, published by the Texas Society of Professional Surveyors.

Unless otherwise specified, the survey will be established using physical monumentation to identify the horizontal and physical control for the project area. The project will then be adjusted horizontally to client specifications and vertically to the North American Vertical Datum (NAVD) 88 for orthometric heights and GEOID 09 for geoidal separations with references to published benchmark information, if available.

II. GEOTECHNICAL ENGINEERING & BORE LOCATION STAKING

TASK 2

Prepare borehole location exhibit based on information provided by the client and stake geotechnical bore locations as provided to Weaver Consultants Group by the Geotechnical Engineer. Scope includes one trip to the site.

Evaluation of the physical properties of the substrata will be conducted by the performance of certain laboratory tests. For this project the following tests are anticipated.

- Atterberg liquid and plastic limits
- Percentage of fines passing the No. 200 sieve
- Natural moisture content
- One-Dimensional Swell
- Unconfined Compression

These tests are conducted to: (1) classify the soil strata according to a widely-used engineering classification system; (2) identify, and provide quantitative data for active (expansive) soils; (3) define strength characteristics relating to allowable bearing values; (4) predict immediate settlement; and (5) assess construction workability of the soils.

III. DOWNSTREAM ANALYSIS

TASK 3

Weaver Consultants Group will prepare, submit, and process flood study information as necessary for this proposed infrastructure adequate enough for City approval which might include the following work efforts:

- Obtain and validate existing models or other available information from the City, County, and/or FEMA
- Create a model or add cross sections to an existing model to represent the existing and proposed conditions of the site up to the most downstream discharge point adjacent to the North Lake Public Drop-Off Facility. This would include cross sections adequate enough to represent the runoff northeast of the Pecan Creek tributary and SCS Dam #16. FIRM No. 48121C0360G, revised date April 18, 2011.
- Quantify existing flood stages and add fill material if needed to reclaim certain areas of the existing flood plain
- Analyze open space/detention area for potential export material
- Quantify potential flood stage impacts

IV. CONSTRUCTION PLANS – ON-SITE

TASK 4

Prepare plans for the construction of erosion control, grading, storm water management, paving, proposed fencing & apparatus and site lighting. Upon completion of the plans, process the plans through the City for approval.

Should items outside this Scope of Services including special studies or non-standard structures be required, an additional services request will be submitted.

CONSTRUCTION PHASE SERVICES

V. CONSTRUCTION ADMINISTRATION

TASK 5

- 1) Make periodic visits to the site to observe the progress of construction activity and to assess, in general, if the work is proceeding in accordance with the information given and the design concept expressed in the Contract Documents. This review should not be in lieu of work performed by City Inspectors, but will be more general in nature. Weaver Consultants Group has no responsibilities for project's safety, construction means and methods or construction quality, cost or schedule. Periodic site visits will consist of two (2) site visits per month for an hour each for two (2) months.
- 2) Review contractor change orders as requested.
- 3) Prepare record drawings based on data (modifications, adjustments, etc.) from the Contractor. Record drawings will be prepared using contractor issued redlined drawings. This scope assumes minor revisions are required. Furnish a set of prints of these record drawings to the Client.

ADDITIONAL SERVICES

From time to time, the Client may require additional services to those described above. Weaver Consultants Group will provide these services and be compensated. Additional services will be paid for by Client as indicated in Additional Services Authorization or such other document as deemed appropriate by Client and Weaver Consultants Group.

Additional Services shall consist of, but not be limited to, the following items:

- A. Texas Commission of Environmental Quality permitting.
- B. Public Bidding services.
- C. Additional Construction Administration or Construction Management not listed above.
- D. Special services which include additional planning, cost estimating, scheduling, contract review, etc.
- E. Construction staking.
- F. The prices quoted in this contract are based on survey crews working full days. In the event that work is requested that does not require a full day, set-up and travel time will be charged at the hourly rates supplied.
- G. Preparation of separate instrument easements not listed above.
- H. Revisions or scope increases caused by changes in regulatory requirements.
- I. Traffic Impact Analysis or traffic studies.
- J. Structural design or staking of retaining walls or non-standard structures.
- K. Detention analysis and design.
- L. Flood studies and FEMA processing.
- M. Waters of the U.S. and wetland determinations and COE Section 404 permitting.
- N. Irrigation and Franchise Conduit Plan.
- O. Moisture Conditioning Analysis.
- P. SWPPP NOI.

GENERAL CONDITIONS

This proposal is based on the following General Conditions:

- A. All research for the boundary verification, including easements, adjoining deeds, etc., will be provided by the Client's title company or will be performed by an outside deed research company and billed as a reimbursable expense.
- B. All negotiations and coordination with adjoining property owners will be by Client.
- C. Site will be mowed by Client prior to design surveys.
- D. Site will be cleared prior to grading stakes being set.
- E. Contract documents will be prepared by others.
- F. Franchise utility coordination will be by others.

SUMMARY

I.	Topographic / Design Survey	Task 1	\$950
II.	Geotechnical Engineering & Bore Location Staking	Task 2	\$4,000
III.	Downstream Analysis (Not to Exceed)	Task 3	\$9,000
IV.	Construction Plans – On-Site	Task 4	\$6,400
V.	Construction Administration	Task 5	\$2,650

Total: \$23,000

Pricing is good for six (6) months. Portions of the project begun more than six (6) months after the date of this proposal are subject to re-pricing to account for inflation and staffing cost changes.

COMPENSATION

Basis of Compensation

Weaver Consultants Group’s compensation for the above services is a lump sum in the amount of **\$23,000** for the services identified above. This budget figure does not include/includes any Direct Expenses (defined below) nor/and applicable sales tax on services. If this budget figure is exceeded, Weaver Consultants Group may request modification of this Agreement.

Direct Expenses include reproduction, travel, express mail, special deliveries and subcontractor expenses related to these services. Direct Expenses include a 10% markup on cost.

Agreement

Upon Client’s signing of this Proposal, this Proposal and the attached Terms and Conditions become the Agreement between the Client and Weaver Consultants Group.

We appreciate the opportunity to work with you on this project. If this proposal and agreement meet with your approval, please acknowledge such by signing this proposal letter and the attached Professional Services Agreement, and returning them to our office via email, fax or US Mail for our records. Receipt of the executed documents serves as authorization for us to proceed with the work.

Sincerely,
Weaver Consultants Group, Inc.



Troy O. Thomas, P.E.
Senior Project Director

DENTON SOLID WASTE & RECYCLING DEPT.

Signature: _____
Name: _____
Title: _____
Date: _____

Enclosure

**WEAVER CONSULTANTS GROUP
FEE SCHEDULE
(Effective January 1, 2018)**

I. PROFESSIONAL STAFF	Unit	U.S. \$
a) Principal/Corporate Consultant	Hr	210.00
b) Senior Project Director	Hr	197.00
c) Project Director	Hr	184.00
d) Senior Project Manager	Hr	164.00
e) Senior Project Engineer/Scientist/Environmental Specialist	Hr	150.00
f) Project Manager	Hr	140.00
g) Senior Industrial Hygienist	Hr	132.00
h) Project Engineer/Scientist/Environmental Specialist	Hr	120.00
i) Staff Engineer/Scientist/Environmental Specialist	Hr	110.00
j) Geotechnical Engineer	Hr	105.00
k) Staff Environmental Geologist	Hr	94.00
l) Engineer/Scientist/Environmental Specialist/Industrial Hygienist	Hr	90.00
 II. TECHNICAL STAFF		
a) Union Engineering Technician-Journeyman	Hr	125.00
b) Union Engineering Technician	Hr	120.00
c) Construction Superintendent	Hr	110.00
d) Construction Manager	Hr	96.00
e) System Specialist III	Hr	138.00
f) System Specialist II	Hr	105.00
g) System Specialist I	Hr	96.00
h) System Technician	Hr	83.00
i) Field Engineer/Scientist/Environmental Specialist	Hr	100.00
j) Certified Technician	Hr	76.00
k) Senior Engineering Technician	Hr	72.00
l) Engineering Technician II	Hr	65.00
m) Engineering Technician I	Hr	55.00
 III. SUPPORT STAFF		
a) Senior CAD Designer	Hr	115.00
b) CAD Designer III	Hr	108.00
c) CAD Designer II	Hr	95.00
d) CAD Designer I	Hr	72.00
e) Technical Assistant	Hr	68.00
f) Clerical/Word Processing	Hr	68.00
 IV. SURVEYING		
a) Senior Professional Land Surveyor	Hr	154.00
b) Professional Land Surveyor	Hr	136.00
c) Survey Project Coordinator	Hr.	116.00
d) Survey Party Chief	Hr	105.00
e) Survey Technician II	Hr	65.00
f) Survey Technician I	Hr	53.00
g) Survey Party - 1 Person/GPS or Robotic	Hr	155.00
h) Survey Party - 2 Person/GPS or Robotic	Hr	200.00
i) Survey Party – 2 Person Unmanned Aircraft	Day	2,100.00
 V. GENERAL EXPENSES		
a) Automobile Transportation	Mi.	0.75
b) Subcontract Service or Rental		Cost+15%
c) Report Preparation (outside services)		Cost+15%
d) Outside Services (e.g., delivery, prints, document scanning, etc.)		Cost+15%
e) Per Diem (food and lodging)	Day	140.00
f) Per Diem (no lodging)	Day	35.00
g) Transportation by Commercial Carrier or Rental Car		Cost+15%
h) Travel Expense		Cost+15%
i) Staking supplies (lath and hub)	Ea	2.00
j) Survey monumentation (iron pipe, rebar, spikes) excludes concrete monuments	Ea	4.00

Any modification to this fee schedule requires the written approval of Weaver Consultants Group

**WEAVER CONSULTANTS GROUP
FEE SCHEDULE
(Effective January 1, 2018)**

VI. TESTING AND EQUIPMENT RENTAL FEES	Unit	U.S. \$
a) pH, Specific Conductance and Temperature Meter	Day	85.00
b) Peristaltic Filter Pump	Day	40.00
c) Electric Purge Pump	Day	45.00
d) Grundfos Pump Control Box	Day	110.00
e) Water Level Indicator	Day	35.00
f) Filter and Hose (for pump)	Ea	22.00
g) Micropurge Flow Cell and Sonde	Day	130.00
h) Modified Level "D" (Tyveks, Boots, Gloves)/per person/per change of clothing	Ea	53.00
i) Photoionization Detector Meter	Day	116.00
j) Nuclear Density Gauge	Day	70.00
Nuclear Density Gauge	Wk	300.00
k) Air Sampling Equipment, per pump	Day	53.00
l) Hand Operated Field Probe Equipment	Day	30.00
m) Explosimeter	Day	35.00
n) Gas Analyzer	Day	190.00
o) Flame Ionization Detector	Day	265.00
p) Interface Probe	Day	55.00
q) ATV	Day	53.00
r) Company Truck	Day	95.00
Company Truck (does not include fuel or mileage)	Wk	450.00
s) Hand-Held Field GPS/G15	Day	158.00
t) Laser Level	Day	79.00
u) Ground Penetrating Radar	Day	250.00
v) Geonics EM-61	Day	525.00
w) Survey Grade GPS Unit	Day	360.00
x) Electric Generator	Day	69.00
y) Slug Test Equipment	Day	210.00
z) All Weather Key Alike Locks	Ea	20.00
aa) Equipment Trailer	Day	79.00
bb) Fluk Meter/Volt Meter/Loop Calibrator	Day	126.00
cc) Four Gas Meter	Day	20.00

UNIT PRICE NOTES:

1. All professional, technical, and support staff time and expenses spent in furtherance of the client's work will be billed. This includes, but is not limited to, proposal, field, travel, research, technical review and reporting, project management, client meeting, and project-specific administrative support.
2. An overtime rate of 1.3 times the regular rate is billed for technical and support staff services for work in excess of 40 hours per week, work between 7:00 p.m. to 5:00 a.m., and work on Saturdays. This overtime rate is increased to 2.0 times the regular rate for work on Sundays and holidays.
3. Unless otherwise agreed to in writing, a monthly interest charge of 18% per annum, will be charged accruing from the date of invoice, on all invoices not paid within 30 days.
4. The unit rates are subject to periodic modification (typically annually). These rate modifications will be incorporated into long-term projects, unless otherwise addressed in the project contract.
5. Litigation Support and Expert Witness services will be charged at a Senior Principal rate of \$250/hour. Deposition and testimony services are charged at 1.5 times the Senior Principal billing rate.

GENERAL EXPENSE NOTES:

1. Rates quoted are for expenses only, equipment purchased on the client's behalf is marked up 25%.
2. Personnel rates are billed separately from general expenses.
3. Standard non-disposable protective outer-wear or equipment damaged or contaminated by site conditions are billed at replacement cost plus 30%.
4. General expense mark-ups may be negotiated based upon contract size and payment terms.
5. The per diem rates set forth above are the standard rates we typically use for our technical staff on projects. We reserve the right to modify these rates in high cost areas.
6. Mileage rate is based on gasoline price of \$3.50 per gallon. A fuel surcharge may be added if a condition beyond Weaver Consultants Group control warrants it.

TESTING AND EQUIPMENT RENTAL NOTES:

1. Rates for testing and equipment not listed above are available on request.
2. Testing and equipment rental costs are negotiable for specific projects and for on-site laboratory programs.
3. Laboratory unit prices cover equipment and labor costs to perform standard test procedures and laboratory reports with normal turn-around times. Non-standard testing requirements, supervisory and project management costs, data evaluation costs, and environmental sample disposal costs are not included in the testing unit prices and are billed separately.
4. Equipment rental rates are for equipment costs only. Transportation, calibration and personnel costs are billed separately.
5. Daily and weekly rates cover a maximum of 10 and 50 hours respectively.
6. SAMPLES WILL NOT BE RETAINED beyond classification and testing unless other arrangements are agreed to in writing. Environmental samples remain the property of the client.

Any modification to this fee schedule requires the written approval of Weaver Consultants Group

These General Terms and Conditions are incorporated by reference into the foregoing Proposal and shall along with the Proposal constitute the agreement (the "Agreement") under which services are to be performed by Weaver Consultants Group North Central, LLC (WCG) for Client. Unless timely accepted without reservation or change by Client, the Proposal shall remain valid for 90 days after which time it shall expire and be deemed revoked.

SECTION 1: SCOPE OF SERVICES

- a. It is understood that the scope of services and time schedule defined in the Proposal are based on the information provided by Client and certain assumptions based upon WCG's experience and Client's representations. If this information is incomplete or inaccurate, or if unexpected site conditions are discovered, the scope of services and time schedule may change, even as the work is in progress.
- b. The scope of services shall include all services provided by WCG in its discretion, which are reasonably necessary and appropriate for the effective and prompt fulfillment of WCG'S obligations under the Agreement and all services shall be subject to the provisions of the Agreement, including these General Terms and Conditions and any Supplemental Terms or Conditions incorporated herein. All such services provided shall be invoiced and paid for in accordance with Section 3 below.
- c. All additional or subsequent work performed for client, shall be subject to these General Terms and Conditions, unless otherwise expressly superseded or modified by mutual written agreement of WCG and Client.

SECTION 2: CLIENT DISCLOSURES

- a. It shall be the duty of the Client before and during the project to promptly notify WCG of any known or suspected hazardous substances which are or may be related to the services to be provided. Such hazardous substances shall include but not be limited to any substance which posed or may pose a present or potential hazard to human health or the environment, whether contained in product, material, by-product, waste or sample and whether it exists in a solid, liquid, semisolid or gaseous form.
- b. Following any disclosure as set forth in the preceding paragraph, or if any hazardous substances are discovered or reasonably suspected by WCG after its services are undertaken, and which WCG determines in its discretion substantially change the costs and risks of the project, then WCG may, at its discretion, discontinue its services.
- c. Client shall timely notify WCG of potential health hazards or nuisances which might arise out of the work by WCG and its contractors and/or subcontractors (hereinafter referred to as subcontractors), and thereafter WCG shall take necessary and reasonable measures to protect its employees against such possible health hazards or nuisances. The reasonable direct costs of such measures shall be borne by the Client.
- d. The Client shall notify WCG of any other conditions, of which Client is or should reasonably be aware of, which might significantly affect the efficiency or safety of work of WCG.

SECTION 3: BILLING AND PAYMENTS

- a. Unless otherwise specifically provided in the Agreement, billings will be based on the fee schedule referenced in the proposal. WCG shall submit invoices monthly for services performed and expenses incurred and not previously billed on

any previous invoice. Payment is due upon receipt. For all amounts unpaid after thirty (30) days of the invoice date Client agrees to pay to WCG a finance charge of one and one-half percent (1 1/2%) per month, eighteen percent (18%) annually, or the legal maximum rate if it is less. The billing rates described in this Agreement may be modified on a periodic basis (typically annually). These modifications will be incorporated into long term projects, unless otherwise addressed in the Proposal.

- b. The Client shall provide WCG with a clear written statement within fifteen (15) days after receipt of the invoice of any objections to the invoice or any portion or element thereof. Failure to provide such a written statement shall constitute acceptance of the invoice as submitted. Only reasonably disputed sums may be withheld from payment. For purposes of this section, Client may only dispute a charge on the basis that the related services were not performed, or that they were performed in a defective manner falling beneath the requisite standard of care. Further, WCG and Client agree to promptly meet, address and resolve invoice disputes.
- c. The Client's obligation to pay for the services performed under this Agreement is in no way contingent upon other events; including but not limited to Client's ability to obtain financing, zoning, approval of governmental or regulatory agencies, final adjudication of a lawsuit in which WCG is not involved, complete a transaction or successfully complete the project. No deduction shall be made from any invoice on account of penalty, liquidated damages or other sums withheld from payment to WCG.
- d. If timely payments are not received, then WCG may commence collection activities. It is agreed that all expenses incurred by WCG in obtaining liens, obtaining judgments or collecting any amounts due under the Agreement including the time of WCG employees, at full billing rates, all associated costs, and reasonable attorney's fees shall be recoverable from the Client.

SECTION 4: RIGHT OF ACCESS

- a. If services to be provided under this Agreement require the agents, employees, or subcontractors of WCG to enter onto the Project site, Client shall provide timely right of access to the site to WCG, its employees, agents and subcontractors, to conduct the planned field observations and services. WCG shall take reasonable precaution to reduce damage to the site due to its operations, but is not responsible for the cost of restoration for any damage resulting from its operations, unless otherwise provided for in the Proposal.

SECTION 5: SAMPLING OR TEST LOCATION

- a. If the scope of services includes performance of soil borings, or other subsurface excavations by WCG, it is understood that the Client will furnish WCG with a diagram indicating the location and boundaries of the site, and all subsurface structures and utilities. WCG reserves the right to deviate a reasonable distance from the proposed boring location(s). Client recognizes that drilling equipment is large and heavy and understands the risk of site damage. At Client's request and cost, WCG will restore the site to the conditions existing prior to WCG operations if practicable. WCG shall not be liable for damage or injury to or resulting from damage to subterranean structures (pipes, tanks, cables, wires or other utilities and subsurface structures, etc.) which are not called to WCG's

attention in writing and correctly shown on the diagram(s) furnished or correctly marked at the site.

- b. Unless otherwise stated, the fees in this proposal do not include costs associated with surveying of the site for the accurate horizontal and vertical locations of tests. Field tests or boring locations described in our report or shown on sketches are based upon information furnished by others and/or estimates made in the field by our representatives. Such dimensions and elevations should be considered as approximations unless otherwise stated.
- c. This agreement may be terminated by WCG if site conditions prevent soil borings or other subsurface excavations by WCG at or near the designated locations, because of either obstructions or safety considerations, and these conditions were not revealed to WCG prior to acceptance of this Agreement. If, in order to complete borings, or other subsurface excavation, to their designated depths, additional work is necessitated by encountering impenetrable subsurface objects, this and all additional work will be charged for at the appropriate rates in the fee schedule.
- d. Any equipment lost or damaged due to site surface or subsurface conditions, and not due primarily to the negligence of WCG or its subcontractors, will be invoiced at cost plus 15 percent.

SECTION 6: SAMPLES

- a. All materials and samples will be discarded immediately after testing unless the Client advises WCG in writing to the contrary. In such case, the samples will be delivered, shipping charges collected, or stored at owner's expense.
- b. Client shall have the sole responsibility to dispose of any hazardous substance or regulated contaminant whether the result of or a by-product of sampling or not, in accordance with applicable law. Client shall bear all costs and liabilities associated therewith.
- c. Client agrees to indemnify, defend and hold harmless WCG from any claims made or asserted against WCG arising out of or related to collection, storage or disposition of samples or materials alleging a failure to comply with any Federal, State or local environmental law, regulation or ordinance.

SECTION 7: REPORTS AND OWNERSHIP OF DOCUMENTS

- a. With the exception of WCG reports to Client, all documents, including field data, field notes, laboratory test data, calculations and estimates are and remain the property of WCG. Client agrees that all reports and other work furnished to the Client but not paid for in full will be returned to WCG upon demand and will not be used for design, construction, permits, licensing, or any other purpose.
- b. Documents, including but not limited to, technical reports, field data, field notes, laboratory test data, calculations, and estimates furnished to the Client or its agency pursuant to this agreement are not intended or represented to be suitable for use by third parties or reuse by the Client or to the extensions of the Project or on any other project. Any use or reuse without WCG's written consent will be at Client's sole risk and without liability or legal exposure to WCG or to WCG's subcontractor(s). Client shall indemnify and hold harmless WCG and WCG's subcontractor(s) from all claims, damages,

losses and expenses including attorneys' fees arising out of or resulting therefrom.

SECTION 8: INDEMNITY PROVISIONS

- a. WCG agrees to indemnify, hold harmless, and defend Client from and against any loss, damage, injury, claim, and liability arising from and to the extent caused by the negligent acts or omissions of WCG, its agents and subcontractors, but subject to the limitations of liability set forth in Section 11 of this Agreement. Further, Client agrees to indemnify, hold harmless, and defend WCG against any loss, damage, injury, claim or liability not caused by or arising from the acts or omissions of WCG.
- b. Client hereby waives all claims for indemnity and contribution (and related theories) for claims which are otherwise covered (or would be ordinarily covered) when made directly to WCG or its subcontractors under Worker's Compensation insurance provided by WCG or its subcontractors.

SECTION 9: STANDARD OF CARE

- a. WCG represents that the services performed under this Agreement will be performed with the care and skill ordinarily exercised by reputable members of the profession practicing under similar conditions at the same time in the same or similar locality.
- b. Client recognizes that subsurface conditions may vary from those encountered at the locations where the borings, surveys, or explorations are made by WCG and that the data interpretations and recommendations of WCG's personnel are based solely on the information provided to WCG. WCG will be responsible for those data, interpretations, and recommendations, but shall not be responsible for the interpretation by others of the information developed.
- c. NO OTHER WARRANTY, EXPRESSED OR IMPLIED, IS MADE OR INTENDED BY RENDITION OF CONSULTING SERVICES OR BY FURNISHING ORAL OR WRITTEN REPORTS OF THE FINDINGS MADE.

SECTION 10: INSURANCE

- a. WCG represents that it and its agents, consultants, and subcontractors employed by it, have procured Worker's Compensation insurance and that WCG has coverage under liability insurance policies which WCG deems reasonable and adequate. WCG shall furnish certificates of insurance upon request. If the Client requests specific inclusions or limits of coverage that are not present in WCG's insurance, the cost of such inclusions or coverage increases, if available, shall be at the expense of the Client.

SECTION 11: LIMITATIONS OF LIABILITY

- a. IT IS AGREED THAT, TO THE FULLEST EXTENT PERMITTED BY LAW, CLIENT WILL LIMIT WCG'S TOTAL AGGREGATE LIABILITY TO CLIENT TO \$50,000 OR THE AMOUNT OF WCG'S FEE WHICH HAS BEEN ACTUALLY PAID TO AND RECEIVED BY WCG, WHICHEVER IS LESS, FOR ANY AND ALL INJURIES, CLAIMS, LOSSES EXPENSES OR CLAIM EXPENSES (INCLUDING ATTORNEY'S AND EXPERT WITNESS FEES) ARISING OUT OF THIS AGREEMENT OR THE SERVICES TO BE PERFORMED PURSUANT TO THIS AGREEMENT FROM ANY CAUSE OR CAUSES. SUCH CAUSES INCLUDE, BUT ARE NOT LIMITED TO, WCG'S

NEGLIGENCE, ERRORS, OMISSIONS, STRICT LIABILITY, BREACH OF CONTRACT, STATUTORY LIABILITY, BREACH OF WARRANTY, NEGLIGENT MISREPRESENTATIONS, ENVIRONMENTAL LIABILITY OR OTHER ACTS GIVING RISE TO LIABILITY BASED UPON CONTRACT, TORT OR STATUTE. IT IS EXPRESSLY AGREED THAT THE REMEDY STATED HEREIN IS THE CLIENT'S EXCLUSIVE AND SOLE REMEDY FOR ANY DAMAGE(S) ARISING OUT OF THIS AGREEMENT OR SERVICES TO BE PERFORMED PURSUANT TO THIS AGREEMENT.

- b. WCG will increase our limitation of liability up to the limits of our available insurance coverage or otherwise to \$100,000, whichever is greater, upon client's written request, and for the additional consideration of \$500. Said request and payment must be received within 14 days of the date of execution of the Proposal and be before any claim arises.
- c. The Client further agrees to notify any contractors or subcontractors who may perform work in connection with any design, report or study prepared by WCG of such limitation of liability for breach of contract, errors, omissions or negligence and require as a condition precedent to their performing their work a like limitation of liability on their part as against WCG.
- d. The Client and WCG agree that neither will be liable to the other for consequential damages incurred due to the fault of the other. Said damages include, but are not limited to, loss of use and lost profits.
- e. With the exception of actions pertaining to material men or mechanic's liens, and if lawful, causes of action between the parties to this Agreement pertaining to acts or failures to act shall be deemed to have accrued and the applicable statutes of limitations shall commence to run on the date the alleged act or failure to act occurred.
- f. Notwithstanding the above, all claims, whether based upon contract, tort, breach of warranty, professional negligence (including errors, omissions or other professional acts), or otherwise, shall be deemed waived unless made by the Client in writing and received by WCG within one (1) year after Client reasonably knew or should have known of its existence, but in no event, shall such claim be asserted by Client later than two (2) years after WCG's completion of services with respect to which the claim is made.

SECTION 12: ARBITRATION OF DISPUTES

- a. Claims, disputes or other matters in question between the parties to this Agreement arising out of or relating to this Agreement or the breach thereof shall be subject to and decided by arbitration in accordance with the Construction Industry Arbitration rules of the American Arbitration Association currently in effect, such arbitration to be held in Chicago, Illinois, unless the parties mutually agree otherwise.
- b. Demand for arbitration shall be filed in writing with the other party to this Agreement and with the American Arbitration Association. A demand for arbitration shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event shall the demand for arbitration be made after the date when institution of legal or equitable proceeding based on such claim, dispute or other matter in question would be barred by applicable statutes of limitations subject to Section 10(e) above.

- c. No arbitration arising out of our relating to this Agreement shall include, by consolidation, joined or in any other manner, an additional person or entity not a party to this Agreement except by written consent of WCG, Client and any other person or entity sought to be joined.
- d. The award tendered by the arbitrator shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

SECTION 13: TERMINATION

- a. This Agreement may be terminated by either party upon at least seven (7) days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party. Such termination shall not be effective if the substantial failure has been remedied before expiration of the period specified in written notice.
- b. WCG may terminate this Agreement if the Client suspends WCG's services for more than sixty (60) consecutive days through no fault of WCG's.
- c. This Agreement may be terminated without cause by either party upon at least sixty (60) days' written notice.
- d. If this Agreement is terminated, WCG shall be paid for services performed prior to the termination date set forth in the notice plus termination expenses. Termination expenses shall include costs attributable to personnel and equipment rescheduling and re-assignment and all other costs incurred directly attributable to termination.

SECTION 14: MISCELLANEOUS

- a. In the event that any provision (or portion thereof) herein shall be deemed invalid or unenforceable, the other provisions hereto shall remain in full force and effect, and binding upon the parties hereto. In such event, the provisions found to be invalid shall be deemed to be reformed so that the intent of such provision will be enforced to the maximum extent permitted by applicable law.
- b. The heading or title of a section is provided for convenience and information and shall not serve to alter or affect the provisions included herein.
- c. All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating responsibility or liability between the Client and WCG shall survive the completion of services and the termination of the Agreement.
- d. Unless otherwise provided, the substantial law of the State of Indiana will govern the validity of this agreement, its interpretation and performance, and remedies for contract breach or any other claims related to this agreement.
- e. WCG shall apply professional judgment in determining the extent to which WCG shall comply with any given standard identified in WCG's documents. Unless otherwise indicated, such compliance, referred to as "General Compliance" specifically excludes consideration of any standard listed as a reference in the text of those standards cited by WCG.
- f. Unless specifically stated in WCG's Proposal, it is understood the costs for implementation of the work are based on privately owned projects utilizing merit (non-union) wages and employees. Government funded or publicly owned projects that require prevailing wages will have specific fees identified

in the Proposal. Any job action, strike, or other requirement to use union represented employees will require renegotiation of the costs for performing the work.

- g. In the event that WCG borrows or uses equipment or machinery, including but not limited to stationary, mobile and non-road mobile equipment, from the Client, it is agreed that the equipment is being rented for the sum of \$1.00 and other considerations unless a specific rental agreement is executed by the parties.
- h. This Agreement may be assigned by WCG to an affiliate company, in whole or in part. WCG may also retain persons or entities not in WCG's employ without Client's prior specific consent when such retention is appropriate and customary, including, but not necessarily being limited to, surveyors, drilling subcontractors, testing laboratories, remediation contractors, and specialized consultants. Client shall not assign its duties and obligations hereunder without the prior written consent of WCG.

Exhibit B

CITY OF DENTON INSURANCE REQUIREMENTS FOR CONTRACTORS

Bidder's attention is directed to the insurance requirements below. It is highly recommended that bidders confer with their respective insurance carriers or brokers to determine in advance of Bid submission the availability of insurance certificates and endorsements as prescribed and provided herein. If an apparent low bidder fails to comply strictly with the insurance requirements, that bidder may be disqualified from award of the contract. Upon bid award, all insurance requirements shall become contractual obligations, which the successful bidder shall have a duty to maintain throughout the course of this contract.

STANDARD PROVISIONS:

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

As soon as practicable after notification of bid award, Contractor shall file with the Purchasing Department satisfactory certificates of insurance, containing the bid number and title of the project. Contractor may, upon written request to the Purchasing Department, ask for clarification of any insurance requirements at any time; however, Contractors are strongly advised to make such requests prior to bid opening, since the insurance requirements may not be modified or waived after bid opening unless a written exception has been submitted with the bid. Contractor shall not commence any work or deliver any material until he or she receives notification that the contract has been accepted, approved, and signed by the City of Denton.

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

- Each policy shall be issued by a company authorized to do business in the State of Texas with an A.M. Best Company rating of at least **A- VII or better**.
- Any deductibles or self-insured retentions shall be declared in the bid proposal. If requested by the City, the insurer shall reduce or eliminate such deductibles or self-insured retentions with respect to the City, its officials, agents, employees and volunteers; or, the contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.
- Liability policies shall be endorsed to provide the following:

- Name as additional insured the City of Denton, its Officials, Agents, Employees and volunteers.
- That such insurance is primary to any other insurance available to the additional insured with respect to claims covered under the policy and that this insurance applies separately to each insured against whom claim is made or suit is brought. The inclusion of more than one insured shall not operate to increase the insurer's limit of liability.
- Provide a Waiver of Subrogation in favor of the City of Denton, its officials, agents, employees, and volunteers.
- ***Cancellation: City requires 30 day written notice should any of the policies described on the certificate be cancelled before the expiration date.***
- Should any of the required insurance be provided under a claims-made form, Contractor shall maintain such coverage continuously throughout the term of this contract and, without lapse, for a period of three years beyond the contract expiration, such that occurrences arising during the contract term which give rise to claims made after expiration of the contract shall be covered.
- Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit providing for claims investigation or legal defense costs to be included in the general annual aggregate limit, the Contractor shall either double the occurrence limits or obtain Owners and Contractors Protective Liability Insurance.
- Should any required insurance lapse during the contract term, requests for payments originating after such lapse shall not be processed until the City receives satisfactory evidence of reinstated coverage as required by this contract, effective as of the lapse date. If insurance is not reinstated, City may, at its sole option, terminate this agreement effective on the date of the lapse.

SPECIFIC ADDITIONAL INSURANCE REQUIREMENTS:

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

[X] A. General Liability Insurance:

General Liability insurance with combined single limits of not less than **\$1,000,000.00** shall be provided and maintained by the Contractor. The policy shall be written on an occurrence basis either in a single policy or in a combination of underlying and umbrella or excess policies.

If the Commercial General Liability form (ISO Form CG 0001 current edition) is

used:

- Coverage A shall include premises, operations, products, and completed operations, independent contractors, contractual liability covering this contract and broad form property damage coverage.
- Coverage B shall include personal injury.
- Coverage C, medical payments, is not required.

If the Comprehensive General Liability form (ISO Form GL 0002 Current Edition and ISO Form GL 0404) is used, it shall include at least:

- Bodily injury and Property Damage Liability for premises, operations, products and completed operations, independent contractors and property damage resulting from explosion, collapse or underground (XCU) exposures.
- Broad form contractual liability (preferably by endorsement) covering this contract, personal injury liability and broad form property damage liability.

[X] Automobile Liability Insurance:

Contractor shall provide Commercial Automobile Liability insurance with Combined Single Limits (CSL) of not less than **\$500,000.00** either in a single policy or in a combination of basic and umbrella or excess policies. The policy will include bodily injury and property damage liability arising out of the operation, maintenance and use of all automobiles and mobile equipment used in conjunction with this contract.

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

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

[X] Workers' Compensation Insurance

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

Owner's and Contractor's Protective Liability Insurance

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

Professional Liability Insurance

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

Builders' Risk Insurance

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

Commercial Crime

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

Additional Insurance

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

ATTACHMENT 1

[] **Workers' Compensation Coverage for Building or Construction Projects for Governmental Entities**

A. Definitions:

Certificate of coverage ("certificate")-A copy of a certificate of insurance, a certificate of authority to self-insure issued by the commission, or a coverage agreement (TWCC-81, TWCC-82, TWCC-83, or TWCC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on a project, for the duration of the project.

Duration of the project - includes the time from the beginning of the work on the project until the contractor's/person's work on the project has been completed and accepted by the governmental entity.

Persons providing services on the project ("subcontractor" in §406.096) - includes all persons or entities performing all or part of the services the contractor has undertaken to perform on the project, regardless of whether that person contracted directly with the contractor and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. "Services" does not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

- B. The contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all employees of the Contractor providing services on the project, for the duration of the project.
- C. The Contractor must provide a certificate of coverage to the governmental entity prior to being awarded the contract.
- D. If the coverage period shown on the contractor's current certificate of coverage ends during the duration of the project, the contractor must, prior to the end of the coverage period, file a new certificate of coverage with the governmental entity showing that coverage has been extended.
- E. The contractor shall obtain from each person providing services on a project, and provide to the governmental entity:
 - 1) a certificate of coverage, prior to that person beginning work on the project, so the governmental entity will have on file certificates of coverage showing coverage for all persons providing services on the project; and

- 2) no later than seven days after receipt by the contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.
- F. The contractor shall retain all required certificates of coverage for the duration of the project and for one year thereafter.
- G. The contractor shall notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project.
- H. The contractor shall post on each project site a notice, in the text, form and manner prescribed by the Texas Workers' Compensation Commission, informing all persons providing services on the project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.
- I. The contractor shall contractually require each person with whom it contracts to provide services on a project, to:
- 1) provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all of its employees providing services on the project, for the duration of the project;
 - 2) provide to the contractor, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project, for the duration of the project;
 - 3) provide the contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
 - 4) obtain from each other person with whom it contracts, and provide to the contractor:
 - a) certificate of coverage, prior to the other person beginning work on the project; and
 - b) a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
 - 5) retain all required certificates of coverage on file for the duration of the project and for one year thereafter;

- 6) notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and
 - 7) Contractually require each person with whom it contracts, to perform as required by paragraphs (1) - (7), with the certificates of coverage to be provided to the person for whom they are providing services.
- J. By signing this contract or providing or causing to be provided a certificate of coverage, the contractor is representing to the governmental entity that all employees of the contractor who will provide services on the project will be covered by workers' compensation coverage for the duration of the project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.
- K. The contractor's failure to comply with any of these provisions is a breach of contract by the contractor which entitles the governmental entity to declare the contract void if the contractor does not remedy the breach within ten days after receipt of notice of breach from the governmental entity.