



**AGENDA
CITY OF ALLEN
CITY COUNCIL REGULAR MEETING
JUNE 13, 2017 - 7:00 PM
COUNCIL CHAMBERS
ALLEN CITY HALL
305 CENTURY PARKWAY
ALLEN, TX 75013**

Call to Order and Announce a Quorum is Present.

Pledge of Allegiance.

Public Recognition.

1. Citizen's Comments.

[The City Council invites citizens to speak to the Council on any topic not on the agenda or not already scheduled for Public Hearing. Prior to the meeting, please complete a "Public Meeting Appearance Card" and present it to the City Secretary. The time limit is three minutes per speaker, not to exceed a total of fifteen minutes for all speakers.]

2. Present a Certificate of Appreciation to Former Library Board Member Srivatsa Ramanathan.
3. Presentation of the Public Art Committee's 2016 Annual Report by Chairperson Steve Benson.

Consent Agenda.

[Routine Council business. Consent Agenda is approved by a single majority vote. Items may be removed for open discussion by a request from a Councilmember or member of staff.]

4. Approve Minutes of the May 23, 2017, Regular City Council Meeting.
5. Adopt an Ordinance Amending the Code of Ordinances by Amending Chapter 6, Article VIII, "Environmental Health", Relating to Food Establishment Rules and Regulations.
6. Adopt a Resolution Setting a Date for a Public Hearing to Discuss and Review Updates to the City's Land Use Assumptions, Capital Improvements Plan, and Impact Fees.
7. Adopt a Resolution Supporting the Collin County Strategic Roadway Action

Plan.

8. Award Bid and Authorize the City Manager to Execute an Annual Contract for the Purchase of Operations, Conversions and Ice Technician Services with EBS Solutions in the Amount of \$578,064 with Two Optional One-Year Renewals.
9. Authorize the City Manager to Execute a Contract with Game Time by Total Recreation Products, for the Replacement of Green Park Playground Equipment in the Amount of \$302,542.
10. Authorize the City Manager to Execute an Economic Development Incentive Agreement with NetScout Systems Texas, LLC.
11. Accept the Resignation of Srivatsa Ramanathan and Declare a Vacancy in Place No. 4 on the Library Board.

Regular Agenda.

12. Adopt an Ordinance Amending the Code of Ordinances by Amending Chapter 14, "Utilities," Article II, "Sewers Generally," Amending Section 14-2, "Definitions," and Adding a New Section 14-56, "Management of Fat, Oil, and Grease."
13. Adopt a Resolution Establishing Permit, Inspection, and Administrative Fees Related to the Environmental Health Ordinance.

Other Business.

14. Calendar.
 - June 19 - Summer Sounds Concert Series Finale, Joe Farmer Recreation Center Amphitheater, 7 p.m.
 - June 20 - Canvass of the Runoff Election, 2 p.m.
 - June 24 - Market Street Allen USA Celebration, Celebration Park, 4 p.m.
 - June 27 - City Council Reception, City Hall, 5:30 p.m.
15. Items of Interest. [*Council announcements regarding local civic and charitable events, meetings, fundraisers, and awards.*]

Executive Session. (As needed)

Legal, Section 551.071.

As authorized by Section 551.071(2) of the Texas Government Code, the Workshop Meeting and/or the Regular Agenda may be Convened into Closed Executive Session for the Purpose of Seeking Confidential Legal Advice from the City Attorney on any Agenda Item Listed Herein.

(Closed to Public as Provided in the Texas Government Code.)

16. Personnel Pursuant to Section 551.074 of the Texas Government Code — Discuss Appointment to Fill a Vacancy on the Planning and Zoning Commission.
17. Reconvene and Consider Action on Items Discussed During Executive Session.

Adjournment.

This notice was posted at Allen City Hall, 305 Century Parkway, Allen, Texas, at a place convenient and readily accessible to the public at all times. Said notice was posted on Friday, June 9, 2017, at 5:00 p.m.

Shelley B. George, City Secretary

Allen City Hall is wheelchair accessible. Access to the building and special parking are available at the entrance facing Century Parkway. Requests for sign interpreters or special services must be received forty-eight (48) hours prior to the meeting time by calling the City Secretary at 214.509.4105.

CITY COUNCIL AGENDA COMMUNICATION
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AGENDA DATE:	June 13, 2017
SUBJECT:	Present a Certificate of Appreciation to Former Library Board Member Srivatsa Ramanathan.
STAFF RESOURCE:	Shelley B. George, City Secretary
ACTION PROPOSED:	Present a Certificate of Appreciation to Former Library Board Member Srivatsa Ramanathan.

BACKGROUND

Mayor Terrell will formally recognize Srivatsa Ramanathan for his service on the Library Board from 2016-2017.

CITY COUNCIL AGENDA COMMUNICATION
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AGENDA DATE:

June 13, 2017

SUBJECT:

Approve Minutes of the May 23, 2017, Regular City Council Meeting.

STAFF RESOURCE:

Shelley B. George, City Secretary

ATTACHMENTS:

Minutes

ALLEN CITY COUNCIL

REGULAR MEETING

MAY 23, 2017

Present:

Stephen Terrell, Mayor

Councilmembers:

Gary L. Caplinger, Mayor Pro Tem

Kurt Kizer

Ross Obermeyer

Joey Herald

Robin L. Sedlacek

Baine Brooks

City Staff:

Peter H. Vargas, City Manager

Shelli Siemer, Assistant City Manager

Eric Ellwanger, Assistant City Manager

Shelley B. George, City Secretary

Teresa Warren, Director, Public and Media Relations Office (absent)

Rebecca Vice, Assistant to the City Manager

Kathleen Vaught, Interactive Media Manager

Pete Smith, City Attorney

Workshop Session

With a quorum of the Councilmembers present, the Workshop Session of the Allen City Council was called to order by Mayor Terrell at 6:25 p.m. on Tuesday, May 23, 2017, in the City Council Conference Room of the Allen City Hall, 305 Century Parkway, Allen, Texas.

- 1. Update Regarding Water and Sewer Fund.**
- 2. Committee Updates from City Council Liaisons.**
- 3. Questions on Current Agenda.**

With no further discussion, the Workshop Session of the Allen City Council was adjourned at 7:01 p.m. on Tuesday, May 23, 2017.

Call to Order and Announce a Quorum is Present

With a quorum of the Councilmembers present, the Regular Meeting of the Allen City Council was called to order by Mayor Terrell at 7:05 p.m. on Tuesday, May 23, 2017, in the Council Chambers of the Allen City Hall, 305 Century Parkway, Allen, Texas.

Pledge of Allegiance

Public Recognition

2. Administration of the Oath-of-Office and Presentation of the Certificate-of-Election.

City Secretary George administered the Oath-of-Office to reelected Mayor Stephen Terrell and Mayor Pro Tem Caplinger presented the Certificate-of-Election to Mayor Terrell and offered his congratulations to him.

3. Public Recognition of the Keep Allen Beautiful Reuse-A-Shoe Contest Winners.

- 1st Place Winner: Bolin Elementary, 887 pairs of shoes.
- 2nd Place Winner: Evans Elementary, 664 pairs of shoes.
- 3rd Place Winner: Anderson Elementary, 504 pairs of shoes.

1. Citizen's Comments.

Anthony Trulson, 703 Seminole Trail, Allen, Texas, spoke regarding his property located adjacent to the drainage canal.

Paul Konrad, 1202 Waterdown, Allen, Texas, spoke to the need for expanded transportation options, communication with the community, and term limits for council.

Consent Agenda

MOTION: Upon a motion made by Councilmember Obermeyer and a second by Councilmember Brooks, the Council voted seven (7) for and none (0) opposed to adopt all items on the Consent Agenda as follows:

- 4. Approve Minutes of the May 9, 2017, Regular City Council Meeting.**
- 5. Approve Minutes of the May 16, 2017, Special Meeting for the Canvass of the General Election.**
- 6. Motion to Reappoint Mr. James Kerr to the North Texas Municipal Water District Board as a Representative for the City of Allen for a Two-Year Term Effective June 1, 2017, through May 31, 2019.**
- 7. Adopt an Ordinance Approving a Negotiated Settlement Between the Atmos Cities Steering Committee and Atmos Energy Corporation, Mid-Tex Division Regarding the Company's 2017 Rate Review Mechanism (RRM) Filing.**

ORDINANCE NO. 3472-5-17: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, APPROVING A NEGOTIATED SETTLEMENT BETWEEN THE ATMOS CITIES STEERING COMMITTEE AND ATMOS ENERGY CORPORATION, MID-TEX DIVISION REGARDING THE COMPANY'S 2017 RATE REVIEW MECHANISM FILING; DECLARING EXISTING RATES TO BE UNREASONABLE; ADOPTING TARIFFS THAT REFLECT RATE ADJUSTMENTS CONSISTENT WITH THE NEGOTIATED SETTLEMENT; FINDING THE RATES TO BE SET BY THE SETTLEMENT TARIFFS TO BE JUST AND REASONABLE AND IN THE PUBLIC INTEREST; REQUIRING THE COMPANY TO

REIMBURSE REASONABLE RATEMAKING EXPENSES; DETERMINING THAT THIS ORDINANCE WAS PASSED IN ACCORDANCE WITH THE REQUIREMENTS OF THE TEXAS OPEN MEETINGS ACT; ADOPTING A SAVINGS CLAUSE; DECLARING AN EFFECTIVE DATE; AND REQUIRING DELIVERY OF THIS ORDINANCE TO THE COMPANY AND THE ACSC'S LEGAL COUNSEL.

8. **Adopt a Resolution Approving the City of Allen's Participation in the Texas Enterprise Zone Program and Nominating Enforcement Video, LLC d/b/a WatchGuard Video to the Office of the Governor, Economic Development and Tourism as an Enterprise Zone Project.**

RESOLUTION NO. 3473-5-17(R): A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, AUTHORIZING THE NOMINATION OF ENFORCEMENT VIDEO, LLC, AS AN ENTERPRISE PROJECT PURSUANT TO CHAPTER 2303, SUBCHAPTER F OF THE TEXAS ENTERPRISE ZONE ACT, TEXAS GOVERNMENT CODE ("ACT"); FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS RESOLUTION IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

9. **Adopt a Resolution Establishing the Name "Spirit Park" for the Westside Community Park of the City of Allen.**

RESOLUTION NO. 3474-5-17(R): A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, BESTOWING THE NAME OF "SPIRIT PARK" UPON THE CITY OF ALLEN WESTSIDE COMMUNITY PARK; AND, PROVIDING AN EFFECTIVE DATE.

10. **Authorize the City Manager to Execute the Purchase of Maintenance, Repair and Operations Supplies and Equipment with Grainger for an Estimated Annual Amount of \$70,000 with the Option for Two One-Year Renewals.**
11. **Authorize the City Manager to Negotiate and Execute Construction Agreements with Trinity Boring Solutions, Inc. d/b/a Texas Directional Boring, Golden State Hockey Rush, LLC d/b/a GS Ice Sports, and Polk Mechanical Company for Repair of the Community Ice Rink Warm Floor System in a Total Construction Amount of \$458,763.**
12. **Authorize the City Manager to Execute a Contract with Scientel Solutions to Supply, Install and Configure a Microwave Network in the Amount of \$413,996.26.**
13. **Authorize the City Manager to Execute a Software License and Maintenance Agreement with Azteca Systems for the Cityworks Asset Management and Work Order Software Platform for an Amount of \$40,000 with the Option for Three One-Year Renewals.**
14. **Authorize the City Manager to Execute a Professional Services Agreement with New Edge Services for Software Implementation Services of the Cityworks Asset Management and Work Order Platform in the Amount of \$59,000.**
15. **Award Bid and Authorize the City Manager to Execute a Contract with Ratliff Hardscape, Ltd for the Allen Public Library Parking Lot Expansion Project in the Amount of \$719,170.58.**
16. **Authorize the City Manager to Execute a Professional Services Contract with Huitt-Zollars, Inc. for the Schematic Design of the Allen Drive/US75 Interchange Improvements in the Amount of \$225,953.**

17. **Authorize the City Manager to Execute a Professional Services Agreement with Pierce Goodwin Alexander & Linville, Inc. d/b/a PGAL, LLC, for Architectural/Engineering Services for Phase I of the Central Fire Station Remodel & Expansion Project in the Amount of \$200,085.**
18. **Authorize the City Manager to Execute a Professional Services Contract with Kimley-Horn for the Design of the Bethany Intersections Improvement Project in the Amount of \$157,980.**
19. **Authorize the City Manager to Execute a Facilities Agreement with Watters Creek Owner, LLC Related to Bethany Intersections Improvements.**
20. **Receive the Summary of Property Tax Collections as of April 2017.**

Councilmember Obermeyer noted that the Council had thoroughly vetted the \$2.4M of items on the consent agenda prior to considering them for adoption at this meeting.

The motion carried.

Council thanked Mr. Kerr for his service on the North Texas Municipal Water District on behalf of the city.

Regular Agenda

21. **Adopt a Resolution Establishing Rates and Fees for Commercial and Residential Solid Waste, Recycling, and Household Hazardous Waste Services.**

RESOLUTION NO. 3475-5-17(R): A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, ESTABLISHING FEES AND RATES FOR RESIDENTIAL AND COMMERCIAL SOLID WASTE COLLECTION SERVICES; PROVIDING A REPEALING CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

MOTION: Upon a motion made by Councilmember Herald and a second by Councilmember Brooks, the Council voted seven (7) for and none (0) opposed, to adopt Resolution No. 3475-5-17(R), as previously captioned, that sets new rates and fees for commercial and residential solid waste, recycling, and household hazardous waste services. The motion carried.

22. **Consider all Matters Incident and Related to the Issuance and Sale of City of Allen, Texas, General Obligation Bonds, Series 2017, Including the Adoption of an Ordinance Authorizing the Issuance of Such Bonds, Establishing Parameters for the Sale and Issuance of Such Bonds and Delegating Certain Matters to Authorized Officials of the City.**

ORDINANCE NO. 3476-5-17: AN ORDINANCE AUTHORIZING THE ISSUANCE OF "CITY OF ALLEN, TEXAS, GENERAL OBLIGATION BONDS, SERIES 2017", LEVYING A CONTINUING DIRECT ANNUAL AD VALORUM TAX FOR THE PAYMENT OF SAID BONDS; AND RESOLVING OTHER MATTERS INCIDENT AND RELATED TO THE ISSUANCE, SALE, PAYMENT, AND DELIVERY OF SAID BONDS, INCLUDING ESTABLISHING PARAMETERS THEREFOR AND DELEGATING MATTERS RELATING TO THE SALE AND ISSUANCE OF THE BONDS TO AUTHORIZED CITY OFFICIALS.

MOTION: Upon a motion made by Councilmember Sedlacek and a second by Councilmember Brooks, the Council voted seven (7) for and none (0) opposed, to adopt Ordinance No. 3476-5-17, as previously captioned, authorizing the issuance of “City of Allen, Texas, General Obligation Bonds, Series 2017” establishing parameters for the sale and issuance of such bonds and delegating certain matters to authorized City officials. The motion carried.

Other Business

23. Calendar.

- May 29 – Memorial Day Holiday
- May 30 – June 6 – City of Allen Runoff Election – Early Voting Period
- June 10 – Run Off Election Day, 7a.m. – 7 p.m.

24. Items of Interest.

- Council congratulated Allen High School graduates graduating on June 2.
- Council expressed its appreciation to the First Methodist Church and the volunteers at the Change the World weekend event, hosted by the Allen Ministerial Alliance in Allen, Lucas, and Fairview.
- Council expressed its appreciation to Community Services staff for their work with the Open House and equipment display for Public Works Week. They also encouraged the public to participate in the Summer Reading Program and Keep Allen Beautiful projects this summer.
- Councilmember Obermeyer congratulated his grandchildren, Andrew and Isabella, and all the students participating in the finals in Destination Imagination in Knoxville, Tennessee.
- Councilmember Herald announced the wedding of his daughter Katie on June 9.

The Regular meeting recessed at 7:45 p.m.

Executive Session

In accordance with the Texas Government Code, the Allen City Council convened into Executive Session at 7:58 p.m. on Tuesday, May 23, 2017, in the Council Conference Room, 305 Century Parkway, Allen, Texas in order to discuss matters pertaining to:

25. Personnel Pursuant to Section 551.074 of the Texas Government Code — Discuss Appointment to Fill a Vacancy on the Planning and Zoning Commission.

The Executive Session adjourned at 8:25 p.m. on Tuesday, May 23, 2017.

26. Reconvene and Consider Action on Items Discussed During Executive Session.

The Allen City Council reconvened into the Regular Meeting at 8:26 p.m. No action was taken on items discussed during Executive Session.

Adjournment

MOTION: Upon a motion made by Councilmember Herald and a second by Councilmember Brooks, the Council voted seven (7) for and none (0) opposed to adjourn the Regular Meeting of the Allen City Council at 8:26 p.m. on Tuesday, May 9, 2017. The motion carried.

These minutes approved on the 13th day of June 2017.

APPROVED:

Stephen Terrell, MAYOR

ATTEST:

Shelley B. George, TRMC, CITY SECRETARY

CITY COUNCIL AGENDA COMMUNICATION
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AGENDA DATE:

June 13, 2017

SUBJECT:

Adopt an Ordinance Amending the Code of Ordinances by Amending Chapter 6, Article VIII, "Environmental Health", Relating to Food Establishment Rules and Regulations.

STAFF RESOURCE:

Lee Battle, Assistant Director of Community Development

ACTION PROPOSED:

Adopt an Ordinance Amending the Code of Ordinances by Amending Chapter 6, Article VIII, "Environmental Health", Relating to Food Establishment Rules and Regulations.

BACKGROUND

The "Environmental Health Ordinance" is a set of standards used by the City to regulate food establishments, day cares, and swimming pools. The basis for the food establishment regulations is established in State law through the Texas Food Establishment Regulations (TFER). Recent changes to State law have created the need for the City to update the local Environmental Health Ordinance.

This amendment adopts TFER as the minimum standards for the City. In addition, the amendment includes local amendments specific to Allen, including permitting and enforcement procedures. The local amendments included in this ordinance do not create any additional regulations that the City is not already enforcing.

LEGAL NOTICES:

None required

STAFF RECOMMENDATION

Staff recommends adopting an Ordinance amending sections of the Code of Ordinances relating to food establishment rules and regulations.

MOTION

I make a motion to adopt an Ordinance amending sections of the Code of Ordinances relating to food establishment rules and regulations.

ATTACHMENTS:

Ordinance

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, AMENDING THE CODE OF ORDINANCES BY AMENDING CHAPTER 6, ARTICLE VIII, “ENVIRONMENTAL HEALTH” IN ITS ENTIRETY RELATING TO FOOD ESTABLISHMENT RULES AND REGULATIONS BY ADOPTING THE TEXAS FOOD ESTABLISHMENT RULES, TEXAS ADMINISTRATIVE CODE TITLE 25, CHAPTER 228, ADOPTED BY THE TEXAS DEPARTMENT OF STATE HEALTH SERVICES, EFFECTIVE OCTOBER 11, 2015, WITH AMENDMENTS; ESTABLISHING FOOD ESTABLISHMENT RULES FOR CHILD CARE FACILITIES; ESTABLISHING REGULATIONS FOR SWIMMING POOLS, SPAS AND PUBLIC INTERACTIVE WATER FEATURES; PROVIDING A REPEALING CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR A PENALTY OF FINE NOT TO EXCEED THE SUM OF TWO THOUSAND DOLLARS (\$2,000) FOR EACH OFFENSE; AND PROVIDING FOR AN EFFECTIVE DATE.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, THAT:

SECTION 1. Chapter 6, Article VIII the Code of Ordinances of the City of Allen, Texas, is amended in its entirety to read as follows:

“ARTICLE VIII. – ENVIRONMENTAL HEALTH

DIVISION 1. - IN GENERAL

Sec. 6-233. - Purpose.

The purpose of this article is to establish specific regulations for food service establishments, bed and breakfast establishments, child care facilities and public and semi-public swimming pools located within the City of Allen in addition to the requirements contained state and federal law for the purpose of further protecting the public from health hazards and nuisances. The regulatory authority shall enforce all state, federal, and or local law and regulation applicable to the above-referenced establishments operating within the City of Allen, as permitted by law.

DIVISION 2. – FOOD ESTABLISHMENTS

Sec. 6-234. Adoption of the Texas Food Establishment Rules.

The Texas Food Establishment Rules codified at Texas Administrative Code Title 25 Chapter 228 adopted by the Texas Department of Health Services, effective October 11, 2015, as amended from time to time, with the exceptions of such sections thereof as are herein after deleted, modified or amended pursuant to this article are hereby adopted as the minimum standards for food service operations within the corporate limits of the city, and shall constitute the regulations governing the preparation, service and sale of food within the city. For purposes of this Division, the phrase “Food Establishment Rules” means collectively (i) the Texas Food Establishment Rules as adopted by this Section and the local amendments adopted pursuant to Section 6-

235. The City Manager, or authorized representative, is hereby authorized and directed to enforce all provisions of the Food Establishment Rules.”

Sec. 6-235. Amendments to the Texas Food Establishment Rules.

The following sections, paragraphs, definitions and sections of the Texas Food Establishment Rules are hereby amended to read as follows:

(a) The following definitions are amended or added to read as follows:

Catering Truck. A vehicle that is used to transport food from a licensed facility to an offsite area where it will be consumed or sold.

Child care facility. Any facility licensed by the Texas Department of Family and Protective Services (DFPS) to provide care for less than twenty-four (24) hours a day for thirteen (13) or more children and which prepares or receives food for on-site or off-site consumption. These facilities may be titled nursery school, kindergarten, child development center, day care center, private school, Montessori, etc.

Commissary. A catering establishment, restaurant, or any other licensed place in which food, containers, or supplies are kept, handled, prepared, packaged or stored.

Easily movable. Portable, mounted on casters, gliders, or rollers, or provided with a mechanical means to safely tilt a unit of equipment for cleaning. Also, having no utility connection, a utility connection that disconnects quickly, or a flexible utility connection line of sufficient length to allow the equipment to be moved for cleaning of the equipment and adjacent area. Also, it is small and light enough to be moved easily by one (1) person.

Lavatory. A sink. This includes but is not limited to: hand-wash sinks, 3-compartment sinks, and preparation sinks.

Mobile Food Establishment. A self-propelled vehicle-mounted food establishment designed to be readily moveable that is equipped with food preparation equipment. This includes vehicles in which food is prepared on site. Said vehicles must meet regulations applicable to fixed food establishments.

Outdoor grilling. Outdoor grilling by all permitted food establishments on a permanent basis must comply with food establishment standards as required in the Texas Food Establishment Rules, October 11, 2015 and in this Article. Outdoor grilling at temporary food events must be approved and permitted by the regulatory authority in accordance with temporary food establishment guidelines. Outdoor grilling for personal and residential use is permitted and outside the scope of this regulation.

Potable water. Water that is fit for drinking.

Seasonal food establishment. A food establishment that operates at a fixed location for a period greater than fourteen (14) consecutive days, but less than thirty (30) consecutive days in conjunction with a single event or celebration.

TAC. Texas Administrative Code.

Temporary event. Temporary events are defined as, but not limited to, traveling fairs, carnivals, multicultural celebrations, special interest fundraisers, restaurant food shows, grand openings, customer appreciation days, athletic competition and other transitory gatherings.

Wholesome. In good, sound condition; free from contamination or adulteration, healthy.

- (b) Subchapter B. Section 228.33 Certified Food Protection Manager and Food Handler Requirements of the Texas Food Establishment Rules is amended to replace (a) and to read as follows:
 - (a) There shall be a certified food manager on duty at all times at each permitted food establishment. Certification must be obtained by passing an examination approved by the state department of state health services and the regulatory authority.
- (c) Subchapter B. Section 228.42 Food Contamination Prevention of the Texas Food Establishment Rules is amended to replace (a) (1) and (2) and add (3) and (4) to read as follows:
 - (a) Eating, Drinking, or Using Tobacco.
 - (1) Employees shall consume food and drink only in designated dining areas. An employee dining area shall not be so designated if consuming food and drink there may result in contamination of other food, equipment, utensils, or other items needing protection.
 - (2) Employees shall not use tobacco in any form while engaged in food preparation or service, nor while in equipment washing or utensil washing or food preparation areas nor areas that may result in contamination of other food, equipment, utensils, or other items needing protection.
 - (3) Employees shall handle soiled tableware in a way that minimizes contamination from their hands.
 - (4) Food employees experiencing persistent sneezing, coughing, or a runny nose that causes discharges from the eyes, nose, or mouth may not work with exposed food; clean equipment, utensils, and linens; or unwrapped single-service or single-use articles.
- (d) Subchapter C. Food. Section 228.61 Condition Safe, Unadulterated, and Honestly Presented of the TFER is amended to read as follows:
 - (a) Condition Safe, Unadulterated, and Honestly Presented. Food shall be safe, unadulterated, and wholesome. Food shall be obtained from sources that comply with all laws relating to food labeling. The use of food in hermetically sealed containers that was not prepared in a food processing establishment is prohibited.
 - (b) General. Food shall be protected from potential contamination at all times, including while being stored, prepared, displayed, served or transported. Potential contamination to food includes but is not limited to: dust, insects, rodents, unclean equipment and utensils, unnecessary handling by the use of sanitary disposable gloves, coughs and sneezes, flooding, drainage, and overhead dripping from condensation.
 - (c) Emergency occurrences. In the event of an emergency situation, such as a fire, flood, extended power outage of thirty (30) minutes or longer, or similar event which might result in the contamination of food, or which might prevent potentially hazardous foods/time and temperature control for safety (PHF/TCS) from being held at required temperatures, the person in charge shall immediately contact the regulatory authority. Upon receiving notice of an emergency situation, the regulatory authority shall take whatever action that it deems necessary to protect the public health.
- (e) Subchapter C. Section 228.66 Preventing Food and Ingredient Contamination of the TFER is amended to add (f) and read as follows:

- (f) Proper separation and identification of employee's personal food and items must be stored in a manner that will prevent contamination of items intended for public consumption.
- (f) Subchapter C. Section 228.69 Preventing Contamination from the Premises of the TFER is amended to add (e) and read as follows:
 - (e) Food, whether raw or prepared, if removed from the container or package in which it was obtained shall be stored in a clean covered container intended for food storage except during necessary periods of preparation or service. Container covers shall be impervious and nonabsorbent except that linens or napkins may be used for lining or covering bread or roll containers. Solid cuts of meat shall be protected by being covered in storage, except that quarters or sides of meat may be hung uncovered on clean sanitized hooks if no food product is stored beneath the meat.
- (g) Subchapter C. Section 228.70 Preventing Contamination by Consumers (a) Food display is amended to read as follows:
 - (a) Food display. Except for nuts in the shell and whole, raw fruits and vegetables that are intended for hulling, peeling, or washing by the consumer before consumption, food on display shall be protected from contamination by the use of packaging; counter, service line, or salad bar food guards; display cases; or other effective means. The minimum height requirement for sneeze guards is eighteen (18) inches unless otherwise specified by the regulatory authority. Enough hot or cold food facilities shall be available to maintain the required temperatures of PHF/TCS on display.
- (h) Subchapter C. Section 228.70 Preventing Contamination by Consumers (c) Consumer self-service operations is amended to add (2) (A) and (B) and read as follows:
 - (2) Consumer self-service operations for ready-to-eat foods shall be provided with suitable utensils or effective dispensing methods that protect food from contamination.
 - (A) A person may sell unpackaged food that is not potentially hazardous that is displayed, and sold in bulk from a self-service container if:
 - (i) The self-service container has tight-fitting lid that is securely attached to the container; and
 - (ii) The container, lid and any utensil are constructed of nontoxic materials that provide for easy cleaning and proper repair.
 - (iii) The lid of a gravity feed type container shall be kept closed except when the container is being serviced or refilled.
 - (iv) The lid of a scoop utensil type container shall be kept closed except during customer service. The container must have a utensil, equipped with a handle, to be used in dispersing the food.
 - (B) The seller shall:
 - (i) Keep the container, lid, and any utensil sanitary to prevent spoilage and insect infestation; and
 - (ii) Post in the immediate display area a conspicuous sign that instructs the customer on the proper procedure for dispensing the food.
- (i) Subchapter C. Section 228.73 (a) Reheating for Hot Holding is amended and added to and to read as follows:
 - (a) Except as specified under paragraphs (2), (3) and in (5) of this subsection, time/temperature controlled for safety food that is cooked, cooled, and reheated for hot holding shall be reheated so that all parts of the food reach a temperature of at least 74 degrees Celsius (165 degrees Fahrenheit)

for 15 seconds. Steam tables, bain-maries, warmers, and similar hot food holding facilities are prohibited for the rapid reheating of PHF/TCS.

- (j) Subchapter D. Section 228.105 Accuracy of Temperature Measuring Device (a) Temperature Measuring Device, Food (1) of the Texas Food Establishment Rules is amended to add and to read as follows:
Food temperature measuring devices that are scaled only in Celsius or dually scaled in Celsius and Fahrenheit shall be accurate to +/- 1 degrees Celsius in the intended range of use. A metal stem type numerically scaled indicating thermometer shall be provided and used to assure the attainment and maintenance of proper internal cooking, holding, or refrigeration temperatures of all PHF/TCS.
- (k) Subchapter D. Section 228.106 Functionality of Equipment (1) (3) Temperature Measuring Devices is amended to read as follows:
 - (3) Paragraph (2) of this subsection does not apply to equipment for which the placement of a temperature measuring device is not a practical means for measuring the ambient air surrounding the food because of the design, type, and use of the equipment, such as calrod units, heat lamps, cold plates, bain-maries, steam tables, insulated food transport containers, and salad bars. Where it is impractical to install thermometers on such equipment, a product thermometer must be available and used to check internal food temperatures.
- (l) Subchapter D. Section 228.106 Functionality of Equipment (x) Acceptability, Food Equipment certification, classification of the Texas Food Establishment Rules is amended to add and to read as follows:
 - (x) Food equipment that is certified or classified for sanitation by an American National Standards Institute (ANSI)-accredited certification program is deemed to comply with SS228.101-228.106 of this title. Any other equipment is subject to approval by the regulatory authority. The regulatory authority may direct the replacement of equipment and utensils if they constitute a public health hazard or nuisance or no longer comply with the following criteria upon which the facilities and equipment are acceptable.
- (m) Subchapter D. Section 228.107 Equipment, Numbers and Capacities (b) Manual ware-washing, sink compartment requirements of the Texas Food Establishment Rules is amended and replaced to read as follows:
 - (b) A three-compartment sink shall be used for washing, rinsing and sanitizing of utensils and equipment done manually. Existing establishments not having a three-compartment sink that can demonstrate an acceptable procedure for washing, rinsing and sanitizing utensils and equipment may be exempted from this requirement by the regulatory authority. Sinks shall be large enough to permit the complete immersion of the utensils and equipment and each compartment sink shall be supplied with hot and cold potable running water. Suitable equipment shall be made available if washing, rinsing and sanitizing cannot be accomplished by immersion. Two-compartment sinks are not acceptable.
- (n) Subchapter D. Section 228.107 Equipment, Numbers and Capacities (d) Ventilation hood systems, adequacy of the Texas Food Establishment Rules is amended to add (d) (1) and to read as follows:
 - (d) Ventilation hood systems and devices shall be sufficient in number and capacity to prevent grease or condensation from collecting on walls and ceilings.
 - (1) Ventilation hoods are required for any cooking, grilling, baking, and frying areas or as required by the latest edition of the International Mechanical Code adopted and amended pursuant to Article III of the Allen Land Development Code.
- (o) Subchapter D. Section 228.109 Location and Installation, Equipment, Clothes Washers and Dryers, and Storage Cabinets, Contamination Prevention of the Texas Food Establishment Rules is amended to add (d) to read as follows:
 - (d) Aisles and working spaces. Aisles and working spaces between units of equipment and walls, shall be unobstructed and of sufficient width to permit employees to perform their duties readily without

contamination of food or food-contact surfaces by clothing or personal contact. All easily movable storage equipment such as pallets, racks, and dollies shall be positioned to provide accessibility to working areas.

- (p) Subchapter D. Section 228.121 Laundering Methods (c) Use of laundry facilities of the Texas Food Establishment Rules is amended to add (c) (3) to read as follows:
 - (c) Use of Laundry Facilities
 - (3) Separate rooms shall be provided for laundry facilities except that such operations may be conducted in storage rooms containing only packaged foods or packaged single-service articles. If items necessary to the operation are laundered on the premises, an electric, gas or steam dryer shall be provided and used.
- (q) Subchapter E. Section 228.143 Water Quantity and Availability (c) Hot water of the Texas Food Establishment Rules is amended to read as follows:
 - (c) Hot water. Hot water generation and distribution systems shall be sufficient to meet the peak hot water demands throughout the food establishment. Water under pressure at the required minimum temperature of one hundred (100) degrees Fahrenheit must be provided to all hand-wash sinks and lavatories throughout the food establishment.
- (r) Subchapter E. Section 228.147 Plumbing, Numbers and Capacities, (b) Toilets and Urinals, of the Texas Food Establishment Rules is amended to read as follows:
 - (b) Toilets and urinals. At least one toilet and not fewer than the toilets required by the Plumbing Code shall be provided. If authorized by the Plumbing Code and urinals are substituted for toilets, the substitution shall be done as specified in the Plumbing Code. Restrooms must be made available to the public in establishments with on-site consumption.
- (s) Subchapter E. Section 228.150 Sewage Retention, Drainage, and Delivery (d) Grease Trap of the Texas Food Establishment Rules is amended to read as follows:
 - (d) Grease trap. If used, a grease trap shall be located to be easily accessible for cleaning, operation, and maintenance. Grease traps shall be located outside the food preparation area unless otherwise approved by the regulatory authority.
- (t) Subchapter F. Section 228.173 Floors, Walls, and Ceilings of the Texas Food Establishment Rules is amended to replace (c) and (f) (2) and (f) (3) and to add (f)(4) to read as follows:
 - (c) Floor construction. Floors and floor coverings of all food preparation, food service, food storage, and utensil-washing areas, and the floors of all walk-in refrigerating units, dressing rooms, locker rooms, toilet rooms and vestibules shall be constructed of smooth durable material such as terrazzo, ceramic or quarry tile, epoxy, or the equivalent as approved by the regulatory authority and shall be maintained in good repair. A coved base tile must also be used in these areas. Sealed concrete and VCT (vinyl composite tile) are not acceptable as a floor surface for areas mentioned above. The use of cardboard, sawdust, wood shavings, peanut hulls, or similar materials as a floor covering is prohibited. Nothing in this section shall prohibit the use of anti-slip floor covering in areas where necessary for safety reasons.
 - (1) Floor junctures. In all new or extensively remodeled establishments utilizing stainless steel, terrazzo, ceramic or quarry tile or similar materials, and where water flush cleaning methods are used, the junctures between walls and floors must be of the same material and coved.
 - (2) Floor drains. Properly installed, trapped floor drains shall be provided in floors that are water flushed for cleaning or that receive discharges of water or other fluid waste from equipment, or in areas where pressure spray methods for cleaning equipment are used. Properly trapped floor drains are required in all restrooms unless deemed not necessary by the regulatory authority. Such floor drains shall be constructed of stainless steel, terrazzo, ceramic or quarry tile or similar material and shall be graded to drain.

- (3) Sealed concrete in walk-in freezer units. Sealed concrete may be used in walk-in freezer units maintaining a temperature of zero (0) degrees Fahrenheit or below.
- (f) Walls and Ceilings
 - (2) Except in areas used only for dry storage, concrete, porous blocks, or bricks used for indoor wall construction shall be finished and sealed to provide a smooth, nonabsorbent, easily cleanable surface.
 - (A) Walls. The walls, including non-supporting partitions and wall coverings of walk-in refrigerating units, food preparation areas, dry storage areas, food storage areas, equipment washing and utensil washing areas, toilet rooms and vestibules shall be light-colored, smooth, nonabsorbent and easily cleanable, such as FRP (fiberglass reinforced paneling), stainless steel, ceramic, quarry or terrazzo tile, or the equivalent approved by the regulatory authority. Walls located adjacent to cooking equipment that utilizes high heat require stainless steel sheeting or equivalent as approved by the regulatory authority.
 - (B) Ceilings. The ceilings of walk-in refrigerating units, food preparation areas, dry storage areas, food storage areas, equipment washing and utensil washing areas, toilet rooms and vestibules shall be light colored, smooth, nonabsorbent and easily cleanable, such as vinyl coated ceiling tiles. Alternate materials will be subject to regulatory approval.
 - (C) Maintenance. Walls and ceilings, including doors, windows, skylights, and similar closures, shall be clean and maintained in good repair.
 - (3) Walls including non-supporting partitions, wall covering and ceilings of the walk-in refrigeration units, food preparation areas, equipment washing and utensil washing areas, toilet rooms and vestibules shall be light in color.
 - (4) The walls of toilet rooms shall be constructed of a smooth, durable, and easily cleanable surface such as FRP (fiberglass reinforced paneling), or ceramic, quarry, or terrazzo tile, or the equivalent as approved by the regulatory authority, and must be installed to a height of at least four (4) feet above the floor.
- (u) Subchapter F. Section 228.174 Functionality (a) Light bulbs, protective shielding of the Texas Food Establishment Rules is amended and replaces (1) and (2) to read as follows:
 - (a) Protective Shielding.
 - (1) Shielding to protect against broken glass falling onto food shall be provided and maintained in good repair for all artificial light fixtures located over, by, or within food storage, food preparation, food service, and food display facilities and facilities where utensils and equipment are cleaned and stored. Teflon coated safety bulbs are permitted.
 - (2) All light fixtures must be maintained clean, operational, and in good repair.
- (v) Subchapter F. Section 228.174 Functionality (e) Outer openings, protected of the Texas Food Establishment Rules is amended to replace (3) and to add (4)(D) to read as follows:
 - (e) Outer openings, protected.
 - (3) Exterior doors used as exits need not be self-closing if they are:
 - (A) designated for use only when an emergency exists, by the fire protection authority that has jurisdiction over the food establishment; and
 - (B) limited-use so they are not used for entrance or exit from the building for purposes other than the designated emergency exit use.
 - (4) Except as specified in paragraphs (2) and (5) of this subsection, if the windows or doors of a food establishment, or of a larger structure within which a food establishment is located, are kept open for ventilation or other purposes or a temporary food establishment is not provided with windows and doors as specified under paragraph (1) of this subsection, the openings shall be protected against the entry of insects and rodents by:
 - (A) 16 mesh to 54.4mm (16 mesh to 1 inch) screens;
 - (B) properly designed and installed air curtains to control flying insects
 - (C) other effective means

- (D) If the opening to the outside is near an exterior trash receptacle, grease-trap or other insect attractant, the regulatory authority may require an automatic air curtain above the door, or other effective means, to prevent flying insect infestation.
- (w) Subchapter F. Section 228.175 Handwashing Sinks of the Texas Food Establishment Rules is amended to replace (a) and (b) and (c) to read as follows:
- (a) Hand-sinks. A separate sink assigned for handwashing providing hot and cold running water tempered through a mixing valve shall be located to be accessible to each food preparation and utensil washing area. A hand-sink shall be located within twenty-five (25) linear feet of food preparation and utensil washing areas so it is convenient for employees to wash hands. Floor pedals, knee pedals, electronic eye and metered faucets are allowable. Hand-sinks located within 18 inches of food preparation areas are required to have splash guards. Hand-sinks in restrooms are permitted to have electronic eye faucets in addition to the types listed above.
 - (b) Liquid soap dispensers and individual sanitary hand towels are required at all hand-sinks. Blow dryers are not permitted in food preparation areas. Blow dryers are permitted in restrooms. Each handwashing sink shall be provided with individual, disposable towels.
 - (c) Lavatories, soap dispensers, hand-drying devices, and all related fixtures shall be kept clean and in good repair.
- (x) Subchapter F. Section 228.179 Dressing Areas and Lockers (b), of the Texas Food Establishment Rules is amended to read as follows:
- (b) Lockers or other suitable facilities shall be provided for the orderly storage of employees' clothing and other possessions. Personal items shall not be stored in food storage, food preparation, or food service areas.
- (y) Subchapter F. Section 228.186 Premises, Buildings, Systems, Rooms, Fixtures, Equipment, Devices, and Materials (o) (2) (A) Prohibiting animals of the Texas Food Establishment Rules is amended to read as follows:
- (o) Prohibiting animals
 - (2) Live animals may be allowed in the following situations if the contamination of food, clean equipment, utensils, linens, and unwrapped single-service and single-use articles cannot result:
 - (A) Edible fish or decorative fish in aquariums, shellfish or crustacea on ice or under refrigeration, and shellfish and crustacea in display tank systems;
 - (i) Live fish tanks are subject to removal by the regulatory authority if not maintained in clean sanitizing condition.
- (z) Subchapter F. Section 228.204 Presence and Use (b) Conditions of Use (3) of the Texas Food Establishment Rules is amended to read as follows:
- (3) A restricted use pesticide shall be applied only by an applicator certified as defined in 7 USC 136(e), Certified Applicator of the Federal Insecticide, Fungicide and Rodenticide Act, or a person under the direct supervision of a certified applicator. Preventive application for insect and rodent control shall be performed by a certified pest control operator.
- (aa) Subchapter G. Section 228.208 Pesticides of the Texas Food Establishment Rules is amended to add (c) Tracking Powders, Pest Control, and Monitoring (3)
- (3) Any establishment that does not meet the requirements specified in this section is subject to regulatory approval.
- (bb) Subchapter H. Section 228.221 Mobile Food Units of the Texas Food Establishment Rules is amended to add (a) (2) (A) and (a) (4) (F) and to replace (a) (7) and to read as follows:
- (a) Mobile Food Units

- (2) Restricted operation.....
 - (A) Food prepared in a private residence may not be used or offered for human consumption from a mobile food establishment. A catering service shall comply with the requirements of this article as the regulatory authority determines is necessary to protect public health and safety. Catering services must prepare all food items in a commercial facility as approved by the regulatory authority. A person shall not engage in a catering service unless the service is affiliated with a food establishment operating from a fixed facility that is permitted by the regulatory authority.
- (4) Initial Permitting Inspection.....
 - (F) Mobile food units must comply with all state and local laws pertaining to registration of the vehicle. In addition to compliance with this article, the owner or operator of a mobile food establishment must comply with applicable provisions of the Allen Land Development Code regarding the authorized location and times of operation of a mobile food establishment. A regulatory authority may require that mobile food establishments that violate this section go for re-inspection to a location designated by the regulatory authority.
- (7) Mobile water system materials, design, and operation. Mobile Food Unit water systems shall meet the requirements of §228.149(f) of this title (relating to Water, Plumbing, and Waste). A mobile food establishment requiring a water system shall have a potable water system under pressure. The system shall be of sufficient capacity to furnish enough hot and cold water for food preparation, utensil cleaning, sanitizing, and handwashing.
- (cc) Subchapter H. Section 228.222 (a) (1) Temporary Food Establishments of the Texas Food Establishment Rules is amended to read as follows:
 - (a) General.....
 - (1) All food shall be prepared in a permitted food establishment or on the premises. No food or beverage stored or prepared in a private home may be offered for sale, sold, or given away from a temporary food or seasonal establishment.
 - (A) All food and beverages shall be protected at all times from unnecessary handling and shall be stored, displayed, and served so as to be protected from contamination.
 - (B) The regulatory authority may establish additional structural or operational requirements as necessary to ensure that food is of safe and sanitary quality.
 - (C) In addition to compliance with this article, the owner or operator of a temporary food establishment must comply with applicable provisions of the Allen Land Development Code regarding the authorized location and times for operation of temporary food establishments.
 - (D) All refuse shall be disposed of in a manner approved by the regulatory authority.
- (dd) Subchapter H. Section 228.222 (f) Water Temporary Food Establishments of the Texas Food Establishment Rules is amended to read as follows:
 - (f) Water. Water from an approved source shall be made available in a temporary food establishment for food preparation, handwashing, and for cleaning and sanitizing utensils and equipment. Water need not be under pressure but shall come from approved sources which include: commercially bottled drinking water, closed portable water containers, enclosed vehicular water tanks, on premise water storage tanks, or piping, tubing or hoses connected to an approved source. Enough potable water shall be made available in the establishment for food preparation, for cleaning and sanitizing utensils and equipment, and for hand washing. A heating facility located on the premises and capable of producing enough hot water for these purposes shall be provided.
- (ee) Subchapter H. Section 228.222 Temporary Food Establishments of the Texas Food Establishment Rules is amended to add (l) Correction of Violations and to read as follows:

- (l) In the case of temporary food establishments, all violations shall be corrected immediately.
- (ff) Subchapter I. Section 228.255 Examination and Detention of Food of the Texas Food Establishment Rules is amended to add (a) Hold Order to read as follows:
 - (a) The regulatory authority may examine and collect samples of food as often as necessary for the enforcement of these rules. A receipt for samples shall be issued by the regulatory authority. The department shall, upon written notice to the owner or person in charge specifying the reason therefore, place under detention any food which it has probable cause to believe is adulterated or misbranded in accordance with the provisions of the Texas Food, Drug, and Cosmetic Act, Health and Safety Code, Chapter 431.
 - (b) Hold order. The regulatory authority shall, upon written notice to the owner or person-in-charge specifying the reason, condemn, denature or destroy or place under detention any food, which it has probable cause to believe, is unapproved, adulterated or misbranded. Under a hold order, food shall be permitted to be suitably stored. It shall be unlawful for any person to remove or alter a hold order, notice or tag placed on food by the regulatory authority, and neither food nor the containers shall be relabeled, repacked, reprocessed, altered, disposed of or destroyed without the permission of the regulatory authority. On the basis of examination or evidence produced, the regulatory authority may cancel the hold order or may oversee the disposal of the food placed under the hold-order or direct the owner or person-in-charge to bring it into compliance with the provisions of this article. Upon notice of the hold order, the owner or person-in-charge will have five (5) days to submit an appeal and request review of the hold order.

Secs. 6-236—6-240. - Reserved.

Sec. 6-241. – Child Care Facilities

- (a) The purpose of this section is to establish uniform requirements for food preparation and service at commercial child care facilities. The regulatory authority shall only be responsible for monitoring the health and safety of the food preparation, service and overall kitchen sanitation at child care facilities located within the city. The regulatory authority will act as a liaison with applicable state agencies with respect to compliance with state minimum requirements. If State minimum requirements are more stringent than the city's requirements, the facility shall adhere to the state mandated requirements. The director or owner of the child care facility has absolute responsibility for the operation of the child care facility under this article.
- (b) Any commercial child care facility, as defined by this article, shall conform to all applicable food service rules, construction requirements, permitting requirements, inspections and other provisions required by this article. Licensed childcare homes, and other in-home childcare facilities, are not regulated by this article.
- (c) Existing facilities. When remodeling or changing ownership, existing child care facilities shall be required to comply with all current applicable codes.
- (d) Any child care facility receiving food from off-site food establishments must have a permit, and must maintain documentation regarding off-site food sources.

Sec. 6-242 – PERMITS and INSPECTIONS

- (a) Authority.
 - (1) The provisions of this article shall be enforced by the regulatory authority. It shall be unlawful for any person to interfere with the regulatory authority, or its representatives and designees in the performance of their duties as prescribed in this article.

- (2) Variance. A variance from this article may be granted by the regulatory authority in accordance with the provisions set out in TFER § 228.243.
 - (3) Additional requirements. As necessary to protect against public health hazards or nuisances, the regulatory authority may impose additional requirements in addition to the requirements contained in this article that are authorized by law set out in TFER 228 § 242.
- (b) Permit required.
- (1) It shall be unlawful for any person to operate a food establishment, food processing establishment, mobile food establishment, temporary food establishment, seasonal food establishment, bed and breakfast food establishment, child care facility subject to this article, within the city without a valid permit issued by the regulatory authority. Only a person who complies with the requirements of this article shall be entitled to receive and retain such a permit. Permits shall not be transferable from one (1) person or entity to another person, location, or entity. A valid permit shall be posted in every establishment. Permits for temporary food establishments shall be issued for a period of time not to exceed fourteen (14) calendar days. Seasonal food establishment permits may be issued for a period not to exceed thirty (30) calendar days.
 - (2) Any person desiring to operate a food establishment or food processing establishment shall make written application on a form provided by the regulatory authority and pay the appropriate fee.
 - (3) Annual Permits.
All permits issued under this article, excluding temporary food establishment permits and seasonal food establishment permits, shall be valid for a period of one (1) year from its date of issuance, unless otherwise revoked or suspended under this article.
 - (4) Temporary Food Establishment Permits.
 - (1) The operation of a temporary food establishment may not exceed fourteen (14) consecutive days per event and must be in conjunction with a special event or celebration as approved by the regulatory authority. A limit of eight (8) temporary permits per calendar year per vendor, group or organization will be enforced. Vendors with multiple booths at a single event will be recorded as participating in one (1) event towards the eight (8) maximum allowed per calendar year.
 - (2) Application and fees must be submitted not later than two (2) working days prior to the event, or not later than fourteen (10) working days prior to the event if five (5) or more booths are to be permitted for the same vendor.
 - (3) At events where vendors may have more than one booth, each booth will be required to obtain a separate permit.
 - (4) Vendors with a valid Annual Permit issued under subsection (a) of this section must obtain a separate temporary food establishment permit when participating in an event.
 - (5) A permit fee waiver may be obtained if proof of charitable nonprofit status, i.e. school district or nonprofit with 501(c)(3) status, is submitted with application.
 - (5) Seasonal Food Establishment Permits.
 - (1) The operation of a seasonal food establishment is greater than fourteen (14) days but less than thirty (30) consecutive days per event per vendor. Seasonal permits are limited to two (2) per calendar year per vendor per location, or such shorter time as may be established pursuant to the Allen Land Development Code, as amended.
 - (2) Seasonal food establishment permit applications must be submitted at least two (2) working days prior to the start date.
 - (3) Vendors with a valid annual permit issued under subsection (a) of this section must obtain a separate temporary food establishment permit when participating in an event.
 - (6) Suspension of Permits.
 - (1) Permits may be suspended temporarily by the regulatory authority for failure of the holder to comply with the requirements of this article.
 - (2) Whenever a permit holder or operator has failed to comply with any provisions of this article, the permit holder or operator shall be notified in writing that the permit is, upon service of

the notice, immediately suspended, and all food operations are immediately to be discontinued. An opportunity for an appeal will be provided if a written request for an appeal is filed with the regulatory authority by the permit holder within five (5) days of the date of the notice.

- (3) Notwithstanding the other provisions of this article, whenever the regulatory authority finds unsanitary or other conditions in the operation of the establishment which in its judgment constitutes a substantial hazard to the public health, it may without warning, notice or hearing, issue a written notice to the permit holder or operator citing such conditions and, if deemed necessary, shall state that the permit is immediately suspended, and all food operations are immediately to be suspended. Any person to whom such an order is issued shall comply immediately therewith.
- (7) Reinstatement of Suspended Permits.
Any establishment whose permit has been suspended may not continue food operations until the permit is reinstated. At any time, a request may be made for reinspection for the purpose of determining compliance and reinstatement of the permit. Such reinspection shall be completed within five (5) days of the such request. If, following the reinspection, the establishment is determined to be in compliance with the requirements of this article, the permit shall be reinstated.
- (8) Revocation of Permits.
For serious or repeated violations of any of the requirements of this Article, or for interference with the regulatory authority in the performance of its duties, and after an opportunity for an appeal has been provided by the regulatory authority, the permit may be permanently revoked. Prior to revocation of the permit, the regulatory authority shall notify the permit holder in writing, stating the reasons for which the permit shall be permanently revoked at the end of ten (10) days following service of this notice, unless a request for an appeal is filed with the regulatory authority, by the permit holder within such ten-day period. A permit may be suspended for cause pending its revocation or an appeal relative thereto.
- (9) Appeals.
The appeals provided for in this section shall be reviewed by the Community Development Director at a time and place designated by the regulatory authority. Based upon the results of the appeal, the regulatory authority shall sustain, modify or rescind any official notice or order. The results of the appeal decision shall be furnished to the permit holder by the regulatory authority within ten (10) days after the date of the appeal review.

(c) Access.

Representatives of the regulatory authority, after proper identification, shall be permitted to enter any food establishment or entity subject to this article at any reasonable time, for the purpose of making inspections to determine compliance with this article as set out in TFER § 228.250.

(d) Inspections.

Whenever an inspection is made of a food establishment or entity subject to this article, the findings shall be recorded as set out in TFER § 228.251.

Secs. 6-243-245 Reserved.

DIVISION 5. - SWIMMING POOLS, SPAS, AND PUBLIC INTERACTIVE WATER FEATURES (PIWFS)

Sec. 6-246. - Purpose.

The function of this division is to establish uniform requirements and standards for swimming pools, spas, and interactive water features and fountains (PIWFs) to protect public health. The regulatory authority may also enforce state statutes and federal regulations applicable to swimming pools, spas, and PIWFs operating within the city.

Sec. 6-247. - Definitions.

The following words, terms, and phrases, when used in this division, shall have the following meanings, unless the context clearly indicates otherwise:

Disinfectant. Energy or chemicals used to kill undesirable or pathogenic (disease causing) organisms, and having a measurable residual at a level adequate to make the desired kill.

Person. An individual, partnership, company, corporation, association, firm, organization, institution, or similar entity.

pH. A value expressing the relative acidic or basic tendencies of a substance, such as water, as indicated by the hydrogen ion concentration. The pH is expressed as a number on the scale of 0 to 14, 0 being most acidic, 1 to 7 being acidic, 7 being neutral, 7 to 14 being basic and, 14 being most basic.

Public interactive water features and fountains (PIWFs). Any indoor or outdoor installation maintained for public recreation that includes water sprays, dancing water jets, waterfalls, dumping buckets, or shooting water cannons in various arrays for the purpose of wetting the persons playing in the spray streams. These may stand alone, or share a water supply, disinfection system, filtration system, circulation system, or other treatment system that allows water to co-mingle with a pool.

Public pool. A swimming pool or spa to which the general public has access.

Remodel. The replacement of or modification to a swimming pool structure, circulation system and/or its appurtenances such that the design, configuration and/or operating characteristics are different than the original design, configuration and/or operating characteristics.

Residential pool/spa. A pool or spa that is located on private property under the control of the owner or lessee, the use of which is limited to swimming, diving and/or recreational bathing by not more than two (2) resident families and their guests. It includes a pool or spa serving only a single-family home or a duplex.

Semi-public pool. A swimming pool or spa that is privately owned and opened only to an identifiable class of persons, including but not limited to, hotel guests, apartment residents, home owners association and club members.

Spa. A constructed permanent or portable structure that is two (2) feet or more in depth and that has a surface area of two hundred fifty (250) square feet or less or a volume of three thousand two hundred fifty (3,250) gallons or less and that is intended to be used for bathing or other recreational uses and is not drained and refilled after each use. It may include, but is not limited to, hydro jet circulation, hot water, cold water, mineral baths, air induction bubbles, or any combination thereof. A spa, as is defined in these rules, does not refer to a business establishment such as a day spa or a health spa. Industry terminology for a spa includes, but is not limited to, "hydrotherapy pool," "whirlpool," "hot spa," "hot tub," etc.

Swimming Pool or Pool. Any man-made permanently installed or nonportable structure, basin, chamber, or tank containing an artificial body of water that is used for swimming, diving, wading, aquatic sports, or other aquatic activity other than a residential pool and that is operated by an owner, lessee, operator, licensee or concessionaire, regardless of whether a fee is charged for use. The pool may be either publicly or privately owned. The term does not include a spa or a decorative fountain that is not used as a pool.

Unblockable drain. Any drain with an ASME/ANSI A112.19.8. approved covering with dimensions that exceed eighteen (18) inches × twenty-three (23) inches or have a diagonal measurement greater than twenty-nine (29) inches.

Sec. 6-248. – Standards and Requirements.

- (a) All public and semi-public swimming pools and spas shall comply with the Texas Department of State Health Services Standards set forth in Title 25, Part 1, Chapter 265, Subchapter L of the Texas Administrative Code, as amended.
- (b) All PIWFs shall comply with the Texas Department of State Health Services Standards set forth in Title 25, Part 1, Chapter 265, Subchapter M of the Texas Administrative Code, as amended.
- (c) The following requirements shall be applicable in addition to those established by the state department of state health services and are intended to further protect the public health and prevent disease and injury:
 - (1) Pool and spa enclosure.
 - (i) All residential pool and spa enclosures shall comply with Section 4.10 of the City of Allen Land Development Code regarding zoning regulations, as amended.
 - (ii) All pools and spas shall be enclosed by a solid wall, fence, or other structure six (6) feet high without openings greater than four (4) inches other than doors or gates used for ingress and egress to the pool or spa. Such enclosure shall be designed and constructed in a manner without protrusions, ledges or gaps that would assist a person in being able to climb the enclosure.
 - (iii) Entries to pool and spa area shall have a gate or door equipped with a self-closing and self-latching device attached. Such latching device must be located not less than four and one-half (4.5) feet from the ground. All self-latching mechanisms must be approved by the regulatory authority.
 - (iv) The pool and spa enclosure shall be in good condition and maintained in proper working order at all times to protect public health. If the enclosure is damaged, or doors or gates do not self-close and latch, the pool or spa shall be immediately secured with temporary fencing or chains to provide compliance with this article.
 - (2) Certified operator.
 - (i) No person shall operate a public or semi-public swimming pool, spa, or PIWF without obtaining and maintaining certification as a certified aquatic facility operator (A.F.O.), certified pool/spa operator (C.P.O.), pool operator on location (P.O.O.L.) or other certification deemed equivalent by the regulatory authority. All certifications shall be approved by the regulatory authority.
 - (ii) On days the pool and spa will be open, a certified operator shall test swimming water for pH, disinfectant, water clarity, stabilizer, and temperature to assure safety and protect public health. If test results are not within required limits, the pool or spa shall be immediately closed and a closure sign posted in a highly visible area. Prior to opening the pool or spa for use, all test results shall be within approved state limits and findings documented to include initial results, corrective actions and final readings.
 - (3) Public and semi-public swimming pool and spa regulations.
 - (i) No person shall knowingly allow a condition to exist that endangers the life, health or safety of a swimmer.
 - (ii) No person shall knowingly permit swimmers in a pool that have skin abrasions, open sores, cuts, skin disease, eye disease, nasal or ear discharge, diarrhea or other communicable disease.
 - (iii) No person shall allow glass containers in a pool enclosure or area.
 - (iv) No person shall exceed permissible bather loads of pools and spas.
 - (v) No person shall remove or alter safety equipment from a pool except in an emergency situation.
 - (vi) No person shall urinate or defecate in swimming pool water.
 - (vii) No person shall allow children under age thirteen (13) into pool area unless accompanied at all times by an adult, parent, or guardian.
 - (4) Public and semi-public swimming pool and spa signs.
 - (i) All required signs must be maintained in good condition and posted in conspicuous places within pool area or enclosure. Signs shall be posted in English and also any language predominantly spoken by the majority of users.

- (ii) Every public or semi-public pool shall have a sign posted within the enclosure in a highly conspicuous place visible to the public containing the physical address of the pool in at least four-inch letters.
- (5) Safety equipment/personnel at public and semi-public swimming pools and spas.
 - (i) A life pole that is light, strong, non-telescoping, and not less than twelve (12) feet long with an attached shepherd's crook must at all times be available near pool-side and accessible to the public. The pole must be constructed of fiberglass or other electrically non-conducting material and in good working condition.
 - (ii) A United States Coast Guard approved ring buoy with an outside diameter of fifteen (15) to twenty-four (24) inches with attached throwing rope not less than two-thirds (2/3) the maximum width of the pool must at all times be maintained in good working condition crook and available near pool-side and accessible to the public.
 - (iii) A functional telephone capable of dialing directly to 911 or emergency answering service must be permanently mounted within the pool enclosure or accessible to the public from inside the enclosure.
 - (iv) A functional safety vacuum release device (SVRD), gravity drainage system, automatic pump shut-off system, or other suction-limiting vent system shall be installed as required to prevent a suction entrapment hazard.
 - (v) Drains in pools and spas, except unblockable drains, must be fitted with secure drain covers or grates compliant with ASME/ANSI A112.19.8-2007 or newer standards and be in good condition.
 - (vi) Certified lifeguards and trained second responders shall be available at all pools hosting competitive events and pools with an unsecured diving board, slide, or starting block. Additionally, these pools must be equipped with one (1) or more backboards having a minimum of three (3) tie-down straps and head immobilizer for neck and back injuries, and an OSHA approved twenty-four-unit First Aid kit.

Sec. 6-249. – Permit required.

- (a) No person shall operate a public or semi-public swimming pool, spa, or PIWF without a valid and current permit issued by the regulatory authority. Only a person who complies with the requirements of this division shall be entitled to receive or retain such a permit. Permits are not transferable, and must be displayed in an area visible to the public.
- (b) The permit required by subsection (a), above, will be issued in accordance with the following:
 - (1) A written application for a pool permit shall be submitted annually before January 31 on a form provided by the regulatory authority. Such application shall include the full name and mailing address, telephone number, an indication of whether the applicant is an individual, corporation, partnership, or other type of business entity, the names of their officers, directors, and general partners, as appropriate, their addresses, location and type of business establishment, identification of certified operator, signature of each applicant, as well as other information deemed necessary.
 - (2) An application and permit fee in the amount set by the city council for the city is required for each body of water. A permit that is issued will be valid from date of issuance until January 31 of the immediately following calendar year, unless suspended or revoked. Permits must be renewed on an annual basis by filing a renewal application and payment of the permit fee. The fee is not refundable. An administrative late fee in the amount set by the city council for the city may be required if an application for a renewal permit is made more than thirty (30) days after the previous permit has expired. No fees shall be charged to any public or semi-public swimming pool facility owned and operated by a government agency or independent school district; however, such establishments must comply with all other requirements of this division.
 - (3) Prior to final approval of an application for permit and issuance of such permit, the regulatory authority shall inspect the swimming pool facility to determine compliance with the requirements of this division. If a permitted swimming pool facility fails inspection at anytime during the year

and a re-inspection is required, a re-inspection fee in the amount set by the city council for the city may be charged.

- (4) If an application for permit is denied, the applicant will be informed of the reasons for denial and what action is required to qualify for a permit. The regulatory authority shall issue a permit to the applicant if subsequent inspection reveals that the swimming pool facility complies with the requirements of this division and all fees have been paid.

Sec. 6-250. - Revocation or suspension of permits.

The regulatory authority may deny, revoke, or suspend any operating permit for the failure of the applicant to comply with the provisions of these standards, or in cases where the operating permit has been obtained through nondisclosure, misrepresentation or misstatement of a material fact. Notices of closure shall be processed as follows:

- (a) All notices or orders issued shall be either delivered personally or sent by certified mail to the person or corporation to whom the permit was issued or to the person in charge of the subject premises. Except in cases of emergency or urgent public necessity, such notice shall be delivered or mailed at least ten (10) days before any operating permit is revoked or suspended and shall state the reason(s) for such proposed revocation or suspension and notify that person of a right to appeal the decision of the regulatory authority to the Director.
- (b) An operating permit which has been revoked or suspended may be reissued upon proper application and upon presentation of evidence that the deficiencies and/or irregularities which caused the revocation or suspension have been corrected.
- (c) If the regulatory authority determines that the operation or maintenance of any swimming pool is such as to constitute an imminent hazard to the health and safety of the public, the operating permit shall be suspended immediately and the swimming pool shall be closed for use and shall remain closed until the necessary remedial action has been completed.

Sec. 6-251. - Inspections.

Agents of the regulatory authority, after presenting proper identification, shall be permitted to enter any swimming pool establishment at any time, for the purpose of making inspections to determine compliance with these rules. The agents shall be permitted to examine the records of the establishments, including testing logs and proof of operator certification.

- (1) Consent and authorization. Application for and operation of a swimming pool inside the City of Allen constitutes consent for the regulatory authority to inspect the pool to determine compliance with this division. In addition to the criminal punishment authorized by V.T.C.A., Health and Safety Code § 391.091, as amended, should any owner, person in charge, employee, or agent of the public or semi-public swimming pool, spa, or PIWF hinder, physically prevent, interfere with or otherwise obstruct the lawful inspection of a swimming pool establishment by the regulatory authority, such action may also constitute reason for suspension or revocation of permit.
- (2) Inspection reports.
 - (i) Whenever an inspection is conducted at a public or semi-public swimming pool, spa, or PIWF, the findings shall be recorded on the inspection report form provided by the regulatory authority. The original of the inspection report form shall be furnished to the owner or person in charge at the completion of the inspection and constitutes a written notice. The inspection report form shall summarize the requirements of these rules, and shall set forth a pass or fail ranking for the pool. The completed inspection report form is a public document that should be posted at a conspicuous location for consumers.
 - (ii) Violations noted on the inspection report by the regulatory authority shall be corrected within the time frame given. A reasonable time frame for compliance shall be given for violations unless the health, welfare, or safety of persons using the swimming pool is at risk. If the

regulatory notes any condition that endangers public health the swimming pool shall immediately be closed, and the permit temporarily suspended.

Sec. 6-252. – Construction requirements.

- (a) Whenever a swimming pool, spa or PIWFs is constructed or extensively remodeled, or whenever an existing structure or part of a pool enclosure is changed, properly prepared plans and specifications for such construction, remodeling, or conversion shall be submitted to the regulatory authority for review and approval before construction is begun. The plans and specifications shall indicate the proposed layout, arrangement, mechanical plans and construction materials of work areas, and the type and model of proposed fixed equipment and facilities. The regulatory authority shall approve the plans and specifications if they meet the requirements of this division. No swimming pool, pool enclosure, pool structure, or pool equipment shall be constructed, extensively remodeled, or converted except when a permit has been granted by the regulatory authority demonstrating compliance with this division. A pre-operational inspection will be conducted at the swimming pool facility prior to the start of operations to determine compliance with approved plans and with the requirements of this division.
- (b) The regulatory authority may direct the replacement of the facilities and equipment because of a change of ownership and all requirements of this division shall be met prior to resuming normal course of operations.
- (c) The regulatory authority shall require the replacement of equipment and facilities if they are discovered to be in poor condition, fail to function properly, do not meet current requirements, or endanger the health and safety of the public.

Sec. 6-253. - Water quality and disposal standards.

- (a) All swimming pools, spas, and PIWFs in the City of Allen, including those intended for private residential use, shall comply with the water requirements of this section to protect public health.
 - (1) Water quality.
 - (i) All swimming pools and spas shall be maintained and kept free of algae to provide sufficient clarity of the main drain from outside the pool at all times. No person shall allow a pool under their control to violate this standard unless the pool has a cover installed meeting the requirements of the regulatory authority.
 - (ii) All swimming pools, spas, and PIWFs shall use make-up water from an approved source suitable for drinking as deemed acceptable by the regulatory authority.
 - (2) Water disposal.
 - (i) All swimming pools, spas, and PIWFs containing disinfectant shall discharge filter backwash and overflow lines into an approved septic tank system or sanitary sewer. Additionally, no person shall allow water containing disinfectant from pools, spas, or PIWFs to be discharged into the storm sewer.
 - (ii) It shall be unlawful for any person to drain water from a swimming pool, spa, or PIWF onto public or privately-owned property at any time. Pools drained for repairs shall be discharged into the sanitary sewer or approved septic tank system.
 - (iii) Deck drains of all swimming pools and spas, including residential pools, shall be discharged to a lawn, leaching field, or natural drain

Secs. 244-245 Reserved.

DIVISION 3 – ENFORCEMENT AND FEES

Sec. 6-246. – Penalties

- (a) Any person who knowingly violates any provision of this article, or any order issued hereunder, shall, upon conviction be guilty of a misdemeanor, punishable by a fine of not more than two thousand dollars

(\$2,000.00) per violation. Each day a violation continues to exist shall be considered a separate offense.

- (b) In addition to and cumulative of all penalties, notwithstanding any penal provision of this article, the city attorney is authorized to file suit on behalf of the City of Allen, the enforcement officer or both for injunctive relief as may be necessary to enforce the provisions of this article.
- (c) Additionally, the city shall be entitled to pursue any and all other civil and criminal remedies to which it is entitled under law.

Sec. 6-247. - Fees.

Any and all fees proscribed by this article shall be set by resolution by the city council of the city, a copy of which shall be on file in the city secretary's office for public inspection.

Secs. 6-248—6-400. - Reserved.”

SECTION 2. All ordinances of the City in conflict with the provisions of this ordinance shall be, and the same are hereby, repealed; provided, however, that all other provisions of said ordinances not in conflict herewith shall remain in full force and effect.

SECTION 3. Should any word, sentence, paragraph, subdivision, clause, phrase or section of this ordinance or of the Code of Ordinances, as amended hereby, be adjudged or held to be void or unconstitutional, the same shall not affect the validity of the remaining portions of said ordinance or the Code of Ordinances, as amended hereby, which shall remain in full force and effect.

SECTION 4. An offense committed before the effective date of this ordinance is governed by prior law and the provisions of the Code of Ordinances, as amended, in effect when the offense was committed and the former law is continued in effect for this purpose.

SECTION 5. Any person, firm or corporation violating any of the provisions or terms of this ordinance or of the Code of Ordinances as amended hereby, shall be subject to the same penalty as provided for in the Code of Ordinances of the City of Allen, as previously amended, and upon conviction shall be punished by a fine not to exceed the sum of Two Thousand Dollars (\$2,000.00) for each offense.

SECTION 6. This ordinance shall take effect immediately from and after its passage and publication of the caption as the law and charter may require.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, ON THIS THE 13TH DAY OF JUNE 2017.

APPROVED:

Stephen Terrell, MAYOR

APPROVED AS TO FORM:

ATTEST:

Peter G. Smith, CITY ATTORNEY
(PGS:5-18-17:36.83819)

Shelley B. George, TRMC, CITY SECRETARY

CITY COUNCIL AGENDA COMMUNICATION

AGENDA DATE: June 13, 2017

SUBJECT: Adopt a Resolution Setting a Date for a Public Hearing to Discuss and Review Updates to the City's Land Use Assumptions, Capital Improvements Plan, and Impact Fees.

STAFF RESOURCE: Chris Flanigan, Director of Engineering

ACTION PROPOSED: Adopt a Resolution setting a date for a public hearing to discuss and review updates to the City's Land Use Assumptions, Capital Improvements Plan, and Impact Fees.

BACKGROUND

With the adoption of the 2030 Allen Comprehensive Plan in 2014, the land use assumptions for the community have been updated. Impact fees, which are based on projected growth, land-use, and planned construction, have remained unchanged since 2002. The development community pays transportation impact fees when applying for a building permit, to fund the infrastructure necessary to accommodate growth of our community.

Similarly, water and sewer impact fees are paid with each new account established, based on meter size. The logic follows that the larger the meter, the more water a user consumes, and the greater impact on the water and sewer system accordingly; therefore, a greater impact fee ensues. The impact fee concept is a way to distribute the cost of infrastructure proportionally across new users and growth, easing the burden on existing residents and businesses.

State law requires City Council take action every five (5) years on the impact fee structure - to either change the fees or determine no revision is required. In 2007 and 2012, the Allen City Council determined no revision was needed, based on staff recommendation that land use assumptions and proposed construction projects had not changed significantly. Since the land-use projections have changed within the last five years, it is now appropriate to revisit and recalculate the fee structure.

Texas Local Government Code requires a public hearing on the proposed impact fee structure, and staff recommends setting the hearing for July 25, 2017 at 7:00 p.m. The impact fee study will be published on June 22, 2017 and made available to the public for review, on the same day advertisement is made in the Allen American, as required by law.

The Planning & Zoning Commission, which serves as the Advisory Committee for impact fees, will receive a copy of the study on June 23rd and be requested to provide written comment by July 7. The Advisory Committee is required to review the study prior to the public hearing.

STAFF RECOMMENDATION

Staff recommends adopting a Resolution setting a date for a public hearing to discuss and review updates to the City's Land Use Assumptions, Capital Improvements Plan, and Impact Fees.

MOTION

I make a motion to adopt Resolution No. _____ setting a date for a public hearing to discuss and review updates to the City's Land Use Assumptions, Capital Improvements Plan, and Impact Fees.

ATTACHMENTS:

Resolution

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, SETTING A DATE FOR A PUBLIC HEARING TO DISCUSS AND REVIEW UPDATES TO THE CITY'S LAND USE ASSUMPTIONS, CAPITAL IMPROVEMENTS PLAN, AND IMPACT FEES; AND TO APPROVE ANY AMENDMENTS TO THE LAND USE ASSUMPTIONS, CAPITAL IMPROVEMENT PLAN AND IMPACT FEES; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Allen has previously adopted land use assumptions and capital improvements plan and, imposes impact fees based on said assumptions and plan, in accordance Chapter 395 of the Texas Local Government Code, as amended; and,

WHEREAS, Texas Local Government Code §395.052 requires that a city imposing an impact fee update its land use assumptions and capital improvement plan at least every five years; and,

WHEREAS, the City Council has received an update of the land use assumptions and the capital improvement plan and desires to establish and set July 25, 2017, at 7:00 p.m. as the date and time for a public hearing to discuss and review the proposed updates to the land use assumptions and the capital improvement plan for impact fees and the amount of any proposed amended impact fee per service unit, as well as, the approval of any amendments to the land use assumptions, capital improvement plan and impact fees per service unit; and,

WHEREAS, the City Council finds that the date established for the public hearing to discuss and review the proposed updates to the land use assumptions and capital improvement plan for impact fees as well as the amount of any proposed amended impact fee per service unit is within 60 days after the City Council received such updates.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, THAT:

SECTION 1. The City Council finds that the recitals set forth above are true and correct; and are hereby incorporated herein.

SECTION 2. Pursuant to Texas Local Government Code §395.053, as amended the City Council hereby calls, and sets July 25, 2017 at 7:00 p.m. as the date for the public hearing to discuss and review the updates to the land use assumptions and capital improvement plan as well as proposed amendments to the impact fee per service unit; and to approve any amendments to the land use assumptions, capital improvement plan and impact fees per service unit.

SECTION 3. This Resolution shall take effect immediately upon approval, and it is accordingly so resolved.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, ON THIS THE 13TH DAY OF JUNE 2017.

APPROVED:

Stephen Terrell, MAYOR

ATTEST:

Shelley B. George, CITY SECRETARY

CITY COUNCIL AGENDA COMMUNICATION
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AGENDA DATE: June 13, 2017

SUBJECT: Adopt a Resolution Supporting the Collin County Strategic Roadway Action Plan.

STAFF RESOURCE: Eric Ellwanger, Assistant City Manager

ACTION PROPOSED: Adopt a Resolution Supporting the Collin County Strategic Roadway Action Plan.

BACKGROUND

The North Central Texas Council of Governments (NCTCOG) has conducted presentations on the development of a Collin County Strategic Roadway Action Plan to various Collin County Elected Officials on February 16th, March 31st, and June 1st of this year in response to the growing need to improve mobility in North Texas and in Collin County in particular.

While the Strategic Roadway Action Plan primarily focuses on the development and expedited implementation of Limited Access Roadways (LARs) in areas of Collin County outside of the City of Allen, collaboration among local governments is critical and elected officials have been asked to highlight their support for this planning process through adoption of Resolutions where appropriate.

The attached Resolution expresses support for the Collin County Strategic Roadway Action Plan and recognizes the need for coordinated regional mobility planning in North Texas.

STAFF RECOMMENDATION

Staff recommends adopting a Resolution supporting the Collin County Strategic Roadway Action Plan.

MOTION

I make a motion to adopt a Resolution supporting the Collin County Strategic Roadway Action Plan.

ATTACHMENTS:

Resolution

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, SUPPORTING COLLIN COUNTY IN THE DEVELOPMENT OF A STRATEGIC ROADWAY ACTION PLAN; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the Regional Transportation Council (RTC) is the policy body, and the North Central Texas Council of Governments (NCTCOG), through its Transportation Department is the federally designated Metropolitan Planning Organization (MPO) that conducts regional transportation planning in North Texas, and is responsible for developing multimodal transportation plans and programs in support of coordinated regional mobility in North Central Texas; and,

WHEREAS, Mobility 2040 is the approved Metropolitan Transportation Plan for North Central Texas and outlines mobility, quality of life, system sustainability, and implementation as the transportation goals of the region; and,

WHEREAS, the rapid population growth in Collin County presents current and future concerns about traffic congestion and overall mobility in North Central Texas; and,

WHEREAS, the RTC, the Texas Department of Transportation (TxDOT), and Collin County are committed to developing solutions that assure adequate future mobility and, as such, have placed special emphasis on identifying priority projects in Collin County that may not already be identified in the Mobility 2040 Plan; and,

WHEREAS, NCTCOG has presented updates on the development of a Strategic Roadway Action Plan to the Collin County Elected Officials on February 16, March 31, and June 1, 2017, in response to the growing need to improve mobility in North Texas, and for consideration for expedited implementation; and,

WHEREAS, collaboration among local governments is critical and elected officials were asked to come to a consensus in the identification of priority projects that will support the transportation goals, outlined in the Strategic Roadway Action Plan and Mobility 2040 Plan.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, THAT:

SECTION 1. The Allen City Council supports the ongoing efforts of Collin County and the NCTCOG to finalize the Strategic Roadway Action Plan and address the need for additional capacity and new (or extended) limited access roadways within the County.

SECTION 2. The City Council supports operational improvements to the US75 corridor that mitigate congestion during peak periods and times of incident management.

SECTION 3. Given the recent analysis and options presented by NCTCOG, the City Council supports the consideration of a new limited access roadway through the “Lake Lavon Peninsula” identified as the “Lake Corridor” in the draft Strategic Roadway Action Plan.

SECTION 4. The City Council also supports the proposed Collin County Transportation Program and encourages the County to continue its longstanding partnerships with local governments to advance the construction of arterial roadways that support the Collin County Thoroughfare Plan.

SECTION 5. The City Council supports the ongoing efforts of TxDOT in evaluating the best options for the improvements to Highway 380, recognizing concerns that potential economic and social impacts exist in converting sections of Highway 380 to limited access.

SECTION 6. The City Council supports Collin County in its efforts to advance the development of the Collin County Outer Loop.

SECTION 7. This Resolution shall take effect immediately upon approval, and it is accordingly so resolved.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, ON THIS THE 13TH DAY OF JUNE 2017.

APPROVED:

Stephen Terrell, MAYOR

ATTEST:

Shelley B. George, TRMC, CITY SECRETARY

CITY COUNCIL AGENDA COMMUNICATION

AGENDA DATE:

June 13, 2017

SUBJECT:

Award Bid and Authorize the City Manager to Execute an Annual Contract for the Purchase of Operations, Conversions and Ice Technician Services with EBS Solutions in the Amount of \$578,064 with Two Optional One-Year Renewals.

STAFF RESOURCE:

David Angeles, Allen Event Center General Manager
Ross Girouard, Director of Operations
Debra Morris, Purchasing Manager

ACTION PROPOSED:

Award Bid and Authorize the City Manager to Execute an Annual Contract for the Purchase of Operations, Conversions and Ice Technician Services with EBS Solutions in the Amount of \$578,064 with Two Optional One-Year Renewals.

BACKGROUND

On May 12, 2017, the Purchasing Division solicited and received one response for the Allen Event Center Operations/Conversions and Ice Technicians Request for Proposal, 2017-4-74. The proposal has been evaluated based on the following criteria: Firm Experience and Qualifications, Customer Service/Responsiveness, References and Price. City of Allen staff represented the evaluation committee. With only one responsive bidder, the committee's goal was to determine if the vendor could provide the required combination of experience, capability, quality and services. Based on review of specific rating criteria, the evaluation committee recommends award to EBS Solutions for Operations/Conversions and Ice Technician services at the Allen Event Center.

EBS Solutions is the current vendor utilized by the City of Allen to supplement City staff for operations, conversion and ice technician services. Pricing in this contract is remaining consistent with the current pricing for services utilized by the City of Allen as well as services utilized by other regional ice rink facilities. Pricing information is attached to this agenda item listing the hourly rates that will be utilized as part of this contract up to a maximum annual amount of \$578,064. Expenditures related to this contract are only made for the actual hourly utilization of the vendor employees. It is anticipated that actual expenditures will be lower than the maximum annual amount of the contract.

BUDGETARY IMPACT

Funding for this item is available in the Allen Event Center FY 2017 operational budget.

STAFF RECOMMENDATION

Staff recommends City Council authorize the City Manager to execute an annual contract for the purchase of operations, conversions and ice technician services with EBS Solutions in the amount of \$578,064 with two optional one-year renewals.

MOTION

I make a motion to award bid and authorize the City Manager to execute an annual contract for the purchase of operations, conversions and ice technician services with EBS Solutions in the amount of \$578,064 with two optional one-year renewals.

ATTACHMENTS:

Bid Award Recommendation
Contract



BID AWARD RECOMMENDATION

DATE: 5/26/2017

TO: PURCHASING

FROM: David Angeles DEPT: Event Center BID NO.: 2017-4-74

DESCRIPTION: Allen Event Center Building Operations, Conversion & Ice Tech Services

<u>Award Recommendation</u>	<u>Item Numbers</u>	<u>Amount</u>
1. <u>EBS Solutions</u>	<u></u>	<u>\$ 578,064.00</u>
2. <u></u>	<u></u>	<u></u>
3. <u></u>	<u></u>	<u></u>
4. <u></u>	<u></u>	<u></u>
5. <u></u>	<u></u>	<u></u>
6. <u></u>	<u></u>	<u>\$ 578,064.00</u>

TOTAL RECOMMENDED BID AWARD:

- ☐ **STRAIGHT LOW BID** – Recommended vendor's quotation was the low bid, meeting all specifications, terms and conditions with no exceptions.
- ☒ **LOWEST RESPONSIBLE BIDDER** – Bid determined to be the most advantageous to the City \ Cost associated with award to best value vs. low bid

AWARD JUSTIFICATION *(If other than straight low bid, complete detailed explanation required. Attach separate document if more space is needed.)*

APPROVALS:



DEPARTMENT HEAD SIGNATURE

5/26/2017

DATE

Budgeted: ☒ YES ☐ NO **Funds Available:** ☒ YES ☐ NO **Budget Transfer Req'd:** ☐ YES ☐ NO

Debra Mann

PURCHASING MANAGER SIGNATURE

6/5/2017

DATE

☐ Concur ☐ Do Not Concur

STATE OF TEXAS §

§

**AGREEMENT FOR THE PURCHASE OF
OPERATIONS, CONVERSIONS AND ICE
TECHNICIAN SERVICES**

COUNTY OF COLLIN §

This agreement ("Agreement") is made by and between the City of Allen, Texas ("City") and EBS Solutions, Inc. ("Contractor") acting by and through their authorized representatives.

Recitals:

WHEREAS, the City desires to obtain Temporary Personnel for Operations, Conversions Services from Company in accordance with the City's description and scope of services attached hereto as Exhibit "A" ("Scope of Services"); and

WHEREAS, Company desires to provide services to City in accordance with Scope of Services attached hereto as Exhibit "A";

NOW THEREFORE, in exchange for the mutual covenants set forth herein and other valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the parties agree as follows:

Article I

Term

The term of this Agreement shall begin on the last date of execution hereof (the "Effective Date") and continue until May 31, 2020, unless earlier terminated as provided herein (the "Term").

Article II

Contract Documents

Every provision of the documents below is incorporated into this Agreement by reference. The documents referenced below are in descending order of precedence. Any conflict between or among any of the documents shall be resolved in favor of the document with higher precedence.

- A. This Agreement; and
- B. The City's Request for Proposal #2017-4-74 (Exhibit A);
- C. The Vendor's response to Request for Proposal #2017-4-74 (Exhibit A).

Article III Scope of Services

Contractor shall provide the Services specifically set forth in the Scope of Services as contained in Exhibit "A," which is attached hereto and made a part of this Agreement for all purposes.

Article IV Schedule of Work

Contractor agrees to commence Services upon the Effective Date of this Agreement and to complete the required Services in accordance with the schedules and at the times and locations provided by the City as set forth in Exhibit "A," to the extent they do not conflict with this Agreement.

Article V Compensation and Method of Payment

5.1 Charges. City shall compensate Contractor for the Services, including all labor, materials, equipment and supplies as provided in Exhibit "A." The total annual compensation to Contractor shall not exceed \$578,064.00 during the Term. Contractor shall provide the City with written invoices on a monthly basis describing the work and Services performed as provided in Exhibit "A." Upon approval, City shall compensate Contractor as provided herein and in Exhibit "A" with the payment term being net 30 days after the date the City is delivered a written invoice for Services completed.

Article VI Notice to Proceed

Contractor shall not proceed with any work required under this Agreement without a written Notice to Proceed from City. Any work performed or expenses incurred by Contractor prior to Contractor's receipt of a written Notice to Proceed from City shall be entirely at Contractor's own risk. Work performed and expenses incurred after Contractor has received a written Notice to Proceed from City will be eligible for reimbursement under the terms of this Agreement, subject to an approved task order.

Article VII Suspension of Work

City shall have the right to immediately suspend work by Contractor if City determines in its sole discretion that Contractor has, or will fail to perform, in accordance with this Agreement. In such event, any payments due Contractor shall be suspended until Contractor has taken satisfactory corrective action.

Article VIII

Devotion of Time; Personnel; and Equipment

8.1 The Contractor shall devote such time as reasonably necessary for the satisfactory performance of the work under this Agreement. Should the City require additional services not included under this Agreement, the Contractor shall make reasonable effort to provide such additional services at mutually agreed charges or rates, and within the time schedule prescribed by the City; and without decreasing the effectiveness of the performance of services required under this Agreement.

8.2 To the extent reasonably necessary for the Contractor to perform the services under this Agreement, the Contractor shall be authorized to engage the services of any agents, assistants, persons, or corporations that the Contractor may deem proper to aid or assist in the performance of the services under this Agreement. The cost of such personnel and assistance shall be borne exclusively by the Contractor.

8.3 The Contractor shall furnish the facilities, hardware, equipment, telephones, facsimile machines, email facilities, and personnel necessary to perform the services required under this Agreement unless otherwise provided herein.

8.4 Time is and shall be of the essence in the performance of this Agreement as written.

Article IX

Availability of Funds

If monies are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, this Agreement shall be canceled and Contractor may only be reimbursed for the reasonable value of any non-recurring costs incurred but not amortized in the price of services delivered under this Agreement or which are otherwise not recoverable. The cost of cancellation may be paid from any appropriations for such purposes.

Article X

Termination

This Agreement may be terminated by:

- (a) by mutual written agreement of the parties;
- (b) immediately by City, if Contractor defaults or breaches any of the terms or conditions of this Agreement;
- (c) by either party, upon thirty (30) days prior to written notice. Should Contractor terminate this Agreement under this provision, Contractor shall further state the reason(s) for termination in its written notice;

- (d) by City, if Contractor suffers an Event of Bankruptcy or Insolvency; or “Event of Bankruptcy” shall mean the dissolution or termination (other than a dissolution or termination by reason of Contractor merging with an affiliate of Contractor) of Contractor’s existence as a going business, insolvency, appointment of receiver for any part of Contractor’s property and such appointment is not terminated within ninety (90) business days after such appointment is initially made, any general assignment for the benefit of creditors, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Contractor and in the event such proceeding is not voluntarily commenced by the Contractor, such proceeding is not dismissed within ninety (90) business days after the filing thereof;
- (e) by City, if City fails to budget and appropriate funds for payment of the obligations hereunder for the then ensuing fiscal year; or

Article XI

Insurance

11.1 Contractor shall during the term hereof maintain in full force and effect insurance with complies with the Specifications and contains, at a minimum: (1) a policy of insurance for bodily injury, death and property damage insuring against all claims, demands or actions relating to the Contractor’s performance of services pursuant to this Agreement with a minimum combined single limit of not less than \$1,000,000 Dollars per occurrence for injury to persons (including death), and for property damage; (2) policy of automobile liability insurance covering any vehicles owned and/or operated by Contractor, its officers, agents, and employees, and used in the performance of this Agreement; and (3) statutory Worker’s Compensation Insurance covering all of Contractor’s employees involved in the provision of services under this Agreement.

11.2 All insurance and certificate(s) of insurance shall contain the following provisions: (1) name the City, its officers, agents and employees as additional insureds as to all applicable coverage with the exception of Workers Compensation Insurance; (2) provide for at least thirty (30) days prior written notice to the City for cancellation, non-renewal, or material change of the insurance; (3) provide for a waiver of subrogation against the City for injuries, including death, property damage, or any other loss to the extent the same is covered by the proceeds of insurance.

11.3 All insurance companies providing the required insurance shall either be authorized to transact business in Texas and rated at least “A” by AM Best or other equivalent rating service, or approved by the City Risk Manager. (d) A certificate of insurance evidencing the required insurance shall be submitted to the City prior to commencement of services.

Article XII Miscellaneous

12.1 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.

12.2 Assignment. Contractor may not assign this Agreement in whole or in part without the prior written consent of City. In the event of an assignment by Contractor to which City has consented, the assignee shall agree in writing with City to personally assume, perform, and be bound by all the covenants, and obligations contained in this Agreement.

12.3 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 assigns.

12.4 Governing Law. The laws of the State of Texas shall govern this Agreement; and venue for any action concerning this Agreement shall be in Collin County, Texas. The parties agree to submit to the personal and subject matter jurisdiction of said Court.

12.5 Amendments. This Agreement may be amended by the mutual written agreement of the parties.

12.6 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.

12.7 Independent Contractor. It is understood and agreed by and between the parties that Contractor, in satisfying the conditions of this Agreement, is acting independently, and that City assumes no responsibility or liabilities to any third party in connection with these actions. All services to be performed by Contractor pursuant to this Agreement shall be in the capacity of an independent Contractor, and not as an agent or employee of City. Contractor shall supervise the performance of its services and shall be entitled to control the manner and means by which its services are to be performed, subject to the terms of this Agreement.

12.8 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 City:

City of Allen, Texas
Attn: City Manager
305 Century Parkway
Allen, Texas 75013
Facsimile: 214-509-4118

with copy to:

Peter G. Smith
Nichols, Jackson, Dillard, Hager &
Smith, L.L.P.
500 N. Akard, 1800 Lincoln Plaza
Dallas, Texas 75201
Facsimile: 214-965-0010

If intended for Contractor:

EBS Solutions Inc.
Attn: Jay Billingsley
2631 Commerce Street, Suite A
Dallas, TX 75226
Facsimile: 214-295-1073

12.9 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.

12.10 Exhibits and Recitals. The exhibits attached hereto and the Recitals are incorporated herein and made a part hereof for all purposes.

12.11 Indemnification. Contractor shall release, defend, indemnify and hold harmless City and its officers, agents and employees from and against all damages, injuries (including death), claims, property damages, (including loss of use), losses, demands, suits, judgments and costs, including reasonable attorney's fees and expenses, in any way arising out of, related to, or resulting from the performance of the work or caused by the negligent act or omission of Contractor, its officers, agents, employees, subcontractors, licensees, invitees or any other third parties for whom Contractor is legally responsible (hereinafter "Claims"). Contractor is expressly required to defend City against all such Claims.

In its sole discretion, City shall have the right to select or to approve defense counsel to be retained by Contractor in fulfilling its obligation hereunder to defend and indemnify City, unless such right is expressly waived by City in writing. City reserves the right to provide a portion or all of its own defense; however, City is under no obligation to do so. Any such action by City is not to be construed as a waiver of Company's obligation to defend City or as a waiver of Contractor's obligation to indemnify City pursuant to this Contract. Contractor shall retain City approved defense counsel within seven (7) business days of City's written notice that City is invoking its right to indemnification under this Contract. If Contractor fails to retain Counsel within such time period, City shall have the right to retain defense counsel on its own behalf, and Contractor shall be liable for all costs incurred by City.

12.12 Audits and Records. Contractor agrees that during the term hereof, City and its representatives may, during normal business hours and as often as deemed necessary, inspect, audit, examine and reproduce any and all of the Contractor's records relating to the services provided pursuant to this Agreement for a period of one year following the date of completion of services as determined by City or date of termination if sooner.

12.13 Conflicts of Interests. The Contractor represents that no official or employee of City has any direct or indirect pecuniary interest in this Agreement.

12.14 Warranty. The Contractor warrants to the City that all labor furnished to perform the work under this Contract will be competent to perform the tasks undertaken, that the product of such labor will yield only first-class results, that the work will be performed in a good and workmanlike manner and at least in accordance with industry standards, and that the work will be of good quality, free from faults and defects and in strict conformance with this contract. All work not conforming to these requirements may be considered defective.

(Signature page to follow)

EXECUTED this _____ day of _____, 2017.

CITY OF ALLEN

By: _____
PETER H. VARGAS, CITY MANAGER

305 Century Parkway
Allen, Texas 75013

ATTEST

SHELLEY B. GEORGE, CITY SECRETARY

EXECUTED this _____ day of _____, 2017.

EBS SOLUTIONS INC.

By: _____
Signature of Authorized Officer

Name: _____
Print Name

Title: _____

2631 Commerce Street, Suite A
Dallas, TX 75226

EXHIBIT “A”
SCOPE OF SERVICES

1. The City’s Request for Proposal #2017-4-74
2. The Vendor’s response to Request for Proposal #2017-4-74
3. Bid Tabulation



GENERAL INFORMATION

CITY OF ALLEN, TEXAS
BIDS WILL BE ACCEPTED IN THE OFFICE OF THE PURCHASING MANAGER

**REQUEST FOR PROPOSAL
#2017-4-74
ALLEN EVENT CENTER
BUILDING OPERATIONS/CONVERSION SERVICES
AND
ICE TECHNICIAN SERVICES**

**(PARTIAL BIDS WILL BE ACCEPTED;
VENDORS CAN BID ON EITHER OPTION
OR BOTH OPTIONS)**

PROPOSALS ARE DUE TO THE
PURCHASING DIVISION PRIOR TO:

MAY 12, 2017 @ 2:00 P.M.

NO LATE PROPOSALS WILL BE ACCEPTED
FACSIMILE OR E-MAILED PROPOSALS WILL NOT BE ACCEPTED

**SUBMIT ORIGINAL PROPOSAL AND THREE COPIES
ALONG WITH CURRENT INSURANCE CERTIFICATE**

PROPOSAL PACKAGES
MAY BE DELIVERED OR MAILED TO:

**CITY OF ALLEN PURCHASING DIVISION
305 CENTURY PARKWAY
ALLEN, TX 75013**

FOR ADDITIONAL INFORMATION CONCERNING THIS PROPOSAL PLEASE CONTACT:
Mindy Gallegos, Contract Administrator 214-509-4631

COVER SHEET

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**SECTION I
NOTICE TO OFFERORS**

1.1 INTRODUCTION

Section I provides general information to potential proposers on subjects such as where to submit proposals, number of copies, amendments, proprietary information designation, and other similar administrative elements.

1.2 SUBMISSION OF PROPOSAL

All proposals will be sealed and received by the City of Allen Purchasing Office. Proposals shall be in one envelope clearly marked: Bid Number, Title, and Opening Date on the outside of the envelope containing the bid.

**REQUEST FOR PROPOSAL
#2017-4-74
ALLEN EVENT CENTER
BUILDING OPERATIONS, CONVERSION, AND ICE TECHNICIAN SERVICES**

Sealed offers are to be submitted to:

City of Allen
Purchasing Department
305 Century Parkway
Allen, TX 75013

**NO LATE OFFERS WILL BE ACCEPTED
FACSIMILE / EMAIL PROPOSALS WILL NOT BE ACCEPTED**

Proposals are due by: MAY 12, 2017 @ 2:00 P.M. Central Time

There will not be a public opening for this solicitation, as this is a request for proposal. A list of submitting vendors will be available after the due date.

1.3 PRE-PROPOSAL MEETING

A pre-proposal meeting is scheduled for **Friday, May 5, 2017 at 10:00 AM**. The meeting will be held in the Meeting Room at the Allen Event Center, 200 E. Stacy Road, #1350, Allen, Texas 75002 (South side of the AEC). We will meet at the Box Office and then head to the meeting room.

1.4 NUMBER OF COPIES

Proposer shall submit one original set and **three (3)** copies of proposal documents. This will greatly facilitate the evaluation process. The proposal shall remain the property of the City of Allen. The original copy shall be unbound and clearly marked "**Original**".

1.5 PROPOSAL INFORMATION

All questions regarding proposal preparation, the selection process, specifications and interpretations of the terms and conditions of the bid shall be submitted in writing. Any addenda will be issued no later than three (3) calendar days prior to the deadline for submission of offers.

Costs for developing/producing proposal response and possible subsequent interview or presentation are entirely the obligation of the proposer and shall not be chargeable in any manner to the City of Allen.

All proposals will be reviewed and evaluated by City staff. The City reserves the right to evaluate each proposal on a separate and individual basis, to invite selected firms to make personal presentations to staff. The City further reserves the right to reject any and all proposals submitted, or accept a proposal deemed most advantageous to the City.

If an emergency or unanticipated event interrupts normal City processes so as to cause postponement of the scheduled bid opening, the time specified for receipt of bids will be deemed to be extended to the same time of day specified in the solicitation on the first work day on which normal City processes resume or to such other date and time as may be provided by the Procurement Services Office in a written notice to bidders."

1.6 DISCLOSURE OF RESPONSE

All information submitted in an accepted response must be retained by the City of Allen for the period specified in the City of Allen's record retention schedule created under Government Code Section 441.180, et sequitur. The information will not be returned to the respondent. The Public Information Act (PIA), Government Code Chapter 552, allows the public to have access to information in the possession of a governmental body through an open records request. Therefore, the respondent shall clearly identify in the response any confidential or proprietary information. Proprietary information identified by the respondent in the response, will be kept confidential by the City of Allen to the extent permitted by state law. The City of Allen merely raises the exception on behalf of the vendor. The City of Allen takes no legal position on disclosure. The City of Allen will use best efforts to give the respondent or the awarded vendor an opportunity to present to the Office of the Attorney General its arguments for non-disclosure of its identified confidential or proprietary information.

1.7 ADDENDUMS/AMENDMENTS

Any interpretations, corrections and/or changes to a bid solicitation or extensions to the opening date will be made by addenda to the respective document when necessary. An addendum will be published and distributed by email to all that are known to have received a copy of the bid and related specifications. However, it shall be the sole responsibility of the bidder to verify issuance/non-issuance of addenda and to check all avenues of document availability prior to opening date and time to insure bidder's receipt of any addenda issued. No addenda will be issued 3 days prior to bid opening. The last day for questions will be **on Monday, May 8, 2017 at 2:00 PM. The last day for addenda will be on Tuesday, May 9, 2017 at 2:00 PM.** Any addenda issued within 3 working days of the bid opening will automatically delay the bid opening by one week. Bidders will be notified of the new bid opening time and date as determined by the City of Allen Purchasing Department.

The offeror is required to acknowledge receipt of any amendments by submitting a signed copy of each amendment issued. Signed copies must be submitted as part of the signed proposal submittal.

1.8 ACCEPTANCE

Any offer received shall be considered an offer, which may be accepted by the City of Allen based on initial submission without discussions or negotiations. By submitting an offer in response to this solicitation the proposer agrees that any offer it submits may be accepted by the City of Allen at any time within 90 days from the close date.

The City of Allen reserves the right to reject any or all offers and to waive informalities and minor irregularities in offers received, and/or to accept any portion of the offer if deemed in the best interest of the City of Allen. Failure of the proposer to provide in its offer any information requested in the bid may result in rejection for non-responsiveness.

1.9 AWARD

The City of Allen intends to make an award using the evaluation criteria and other factors as indicated in this solicitation.

1.10 CONTRACT ADMINISTRATION

The City of Allen Parks and Recreations Department together with the Purchasing Division shall be responsible for administration of this purchase for compliance with the interpretation of scope, schedule, billings, requirements, and budget.

1.11 SUBSTANTIVE PROPOSALS

The respondent shall certify (a) that his bid submittal is genuine and is not made in the interest of, or on behalf of, any undisclosed person, firm, or corporation; (b) that he has not directly or indirectly induced or solicited any other respondent to put in a false or sham bid; (c) that he has not solicited or induced any other person, firm, or corporation from proposing; and (d) that he has not sought by collusion to obtain for himself any advantage over any other respondents or over the City of Allen.

The City of Allen may make such investigations as it deems necessary to determine the ability of the bidder to provide satisfactory performance in accordance with bid requirements, and the respondent shall furnish to the City all such information and data for this purpose.

1.12 DEFINITIONS

- Bidder refers to submitter.
- Vendor refers to Successful Bidder or Contractor.
- Submittal refers to those documents required to be submitted to the City of Allen, by a bidder.

1.13 INQUIRIES

Questions about this bid shall be in writing and directed to Mindy Gallegos at the following address. Questions resulting in changes to this solicitation will be provided in the form of an amendment to the solicitation.

Mindy Gallegos
Contract Administrator
305 Century Parkway
Allen, Texas 75013
214-509-4631
mgallegos@cityofallen.org

1.14 SCHEDULE OF EVENTS

The upcoming schedule of events is tentative scheduled as follows:

Advertise Requirement	April 27, 2017 May 4, 2017
Issue Request for Proposal	May 4, 2017
Pre-proposal Conference	May 5, 2017 - 10:00 AM
Questions Due	May 8, 2017 - 2:00 PM
Addenda Due	May 9, 2017 - 2:00 PM
Proposal Submittal Due Date	May 12, 2017 - 2:00 PM
Council Approval (Tentative)	June 13, 2017

SECTION II

GENERAL TERMS & CONDITIONS

The City of Allen bid packets contain various sections requiring completion. The bid form section of the bid packet must be completed prior to the date and time set for bid opening and included with the bid packet or the vendor will be found non-responsive.

2.1 These instructions apply to all quotations or bid submittals and become a part of terms and conditions of any bid packet submitted.

2.2 The City shall have the authority to disapprove or reject unsatisfactory work, services or equipment. If required by the City, the vendor shall promptly, as directed, correct all unsatisfactory work and replace all defective equipment, and shall bear all direct, indirect and consequential costs of such correction.

2.3 The City reserves the right to waive any minor defect, irregularity, or informality in any bid, quotation, or proposal. The City may also reject any or all bids, quotations, or proposals without cause prior to award.

2.4 The City reserves the right to enforce the performance of this contract in any manner prescribed by law and deemed to be in the best interest of the City in the event of breach or default of this contract. The City reserves the right to terminate the contract immediately in the event the vendor fails to meet schedules or otherwise perform in accordance with these specifications. Breaches of contract or default authorize the City to purchase the services from the next low bidder or re-bid and charge the difference in cost to the defaulting vendor.

2.5 The contract shall remain in effect until contract expires, except for breach of contract, or is terminated by either party with a thirty (30) day written notice prior to any cancellation. The vendor shall state therein the reasons for such cancellation. Notice of termination must be transmitted via certified mail to the other party's designated representative.

2.6 The vendor shall be held responsible for and shall make good, without expense to the City, any and all damage, injury or loss due to the execution of his work. The vendor shall protect all finished building surfaces from damage and shall repair any damage to the building or property caused by delivery or installation of product.

2.7 The vendor agrees to indemnify and hold harmless the City against all claims or alleged claims or demands for damages, including all expenses incurred, arising from accidents to employees of either party hereto or to the public, or from claims or alleged claims of damages to the property of the City or to adjoining property caused directly or indirectly by said vendor, by any of his subcontractors, or by anyone directly or indirectly employed by either of them in connection with the performance of this contract.

2.8 The vendor agrees to indemnify and hold the City harmless from any claim involving patent right infringement or copyrights on goods supplied.

2.9 In its sole discretion, the City shall have the right to select or to approve defense counsel to be retained by Contractor in fulfilling its obligation hereunder to defend and indemnify City, unless such right is expressly waived by City in writing. City reserves the right to provide a portion of its own entire defense; however, City is under no obligation to do so, any such action by City is not to be construed as a waiver of Contractor's obligation to defend City or as a waiver of contractor's obligation to indemnify City pursuant to this contract. Contractor shall retain City approved defense counsel within seven (7) business days of City's written notice that City is invoking its right to indemnification under this contract. If Contractor fails to retain counsel within such time period, City shall have the right to retain defense counsel on its own behalf, and contractor shall be liable for all costs incurred by City.

2.10 The vendor shall not sell, assign, transfer or convey this contract, in whole or in part, without the prior written consent of the City.

2.11 This bid, when properly accepted by the City, shall constitute a contract equally binding between the vendor and the City. No different or additional terms shall become a part of this contract with the exception of a change order processed through the Purchasing Department.

2.12 This agreement will be governed and construed according to the laws of the State of Texas. This agreement is performable in Collin County, Texas.

2.13 The successful bidder and the City of Allen agree that each party have rights, duties, and remedies available as stated in the Uniform Commercial Code and any other available remedy, whether in law or equity.

2.14 Bidder acknowledges and represents that they are aware of laws, City Charter and City Code of Conduct regarding Conflicts of Interest. The City Charter states that "no officer or employee of the City shall have a financial interest, direct or indirect, in any contract with the City, nor shall be financially interested, directly or indirectly, in the sale to the City of any land or rights or interest in any land, materials, supplies or service..."

2.15 Chapter 176 of the Texas Local Government Code requires that any vendor or person considering doing business with a Local Government entity, disclose in the questionnaire form CIQ, the vendor or person's affiliation or business relationship that might cause a Conflict of Interest. This form must be filed with the Records Administrator no later than 7 business days after the date the person becomes aware of facts that require the statement to be filed. A person commits an offense if the person violates Section 176.006, Local Government Code. An offense under this section is a Class C misdemeanor.

2.16 All equipment, supplies and work furnished under this contract shall comply with applicable laws, ordinances and regulations. The Vendor shall obtain and pay for such permits and inspections as are required for the legal performance of this work.

2.17 The City reserves the right to audit the records and performance of vendor during the term of the contract and for three years thereafter.

2.18 Unless otherwise notified, all invoices must be sent to the Accounts Payable, Finance Department at the address listed on page one (1). Invoices must show the item(s) shipped/work performed and the purchase order number applicable to the transaction in order to insure prompt payment.

2.19 Payment will be made in accordance with Texas statutes. Term of Payment is net 30 days after the date the City receives the goods in accordance with the contract, the date the performance of service in accordance with the contract is completed, or the date the agency receives an invoice for the goods or services, whichever occurs the latest. If your company provides a discount for early payment, please indicate in this solicitation. This will not be considered an evaluation factor in the award of the bid(s).

2.20 Funds for payment have been approved. The State of Texas statutes prohibit the obligation and expenditure of public funds beyond the fiscal year for which a budget has been approved; therefore, anticipated obligations that may arise past the end of the current City fiscal year shall be subject to budget approval. The City of Allen is a Home-Rule Municipal Corporation operated and funded October 1 to September 30.

2.21 The City of Allen is by statute tax-exempt therefore pricing shall not include taxes. Tax exemption certificates will be executed by the City and furnished upon request.

2.22 Vendors shall state a firm completion time. The City reserves the right to cancel orders and/or assess financial penalties if the vendor fails to complete project as promised. Work shall be scheduled between 8:00 a.m. and 5:00 p.m., Monday through Friday, excluding holidays, unless otherwise approved by the City.

2.23 When offering products other than those bid, the City reserves the right to request a sample/demo of the product for evaluation. In such cases, the bidder must provide a sample/demo of the product at no charge to the City within three days of the request, and must pick up the product after the evaluation. Failure to provide an evaluation product within the three day period will disqualify the bidder from further consideration. If the bidder offers a product other than that specified, specifications must be included in the bid package. Bid responses not listing manufacturer or part numbers in the Mfg/Pt No. section of the bid form will be considered as bidding according to specification, and if awarded, will be required to provide exactly what was specified. Samples should not be enclosed with bid unless requested.

2.24 The apparent silence of these specifications as to any detail or to the apparent omission from it of a detailed description concerning any point, shall be regarded as meaning that only the best commercial practices are to prevail. All interpretation of these specifications shall be made on the basis of this statement.

2.25 Testing may be performed at the request of the City or any participating entity, by an agent so designated, without expense to the City.

2.26 When unit price differs from extended price, the unit price prevails.

2.27 In case of a discrepancy between the product number and description, the description takes precedence.

2.28 When manufacturers are named in the specification, they are not meant to limit competition, but to define the minimum standard, quality, and performance of the item specified. All materials supplied will be new, first quality industrial-grade products.

2.29 Response to specification is primary in determining the lowest responsible bid.

2.30 The City of Allen reserves the right to award a vendors bid as an "alternate award". The alternate vendor's bid shall remain in effect for the term of the awarded contract, should the primary vendor become unable or unwilling to complete the contract term. The alternate vendor will be notified in writing of their official contract and start date. All terms and conditions of the original bid will remain in effect.

2.31 The City of Allen reserves the right to award a separate contract to separate vendors for each item/group or to award one contract for the entire bid.

2.32 Bid prices cannot be altered or amended after submission deadline. Any interlineations, alteration, or erasure made before opening time must be initialed by the signer of the bid, guaranteeing authenticity.

2.32.1 A price redetermination may be considered only at the anniversary dates of the contract. All requests for price redetermination shall be in written form and shall include documents supporting price redetermination such as Manufacturer's direct cost, postage rates, Railroad Commission rates, Federal/State minimum wage law, Federal/State unemployment taxes, F.I.C.A. Insurance Coverage Rates, Producers Price Index or employment Cost Index for your industry or product category as published by the U.S. Department of Labor, Bureau of Labor Statistics, etc. The bidders past experience of honoring contracts at the bid price will be an important consideration in the evaluation of the lowest and best value bid. The City of Allen reserves the right to accept or reject any/all of the price redetermination as it deems to be in the best interest of the City. Any adjustment in pricing must be presented to the City of Allen at least 90 days prior to the expiration or renewal of the current agreement. Notice of renewal will be given to the Contractor in writing by the City of Allen, normally within 30 days prior to the expiration date of the current contract.

2.33 A bid price may not be withdrawn or canceled by the bidder for a period of 90 days following the date designated for the receipt of bids without written approval of the Purchasing Manager, and bidder so agrees upon submittal of bid.

- 2.34 No oral statement of any person shall modify or otherwise change or affect the terms, conditions or specifications stated in the resulting contract. All change orders must be made in writing.
- 2.35 Any interpretations, corrections or changes to this bid packet will be made by addenda. Sole issuing authority shall be vested in the City of Allen Purchasing Department. Addenda will be sent to all who are known to have received a copy of this bid packet. If the Addenda contain changes to the specification or bid form, bidders shall acknowledge receipt of all addenda or they will be declared non-responsive.
- 2.36 Bid tabulations can be accessed in the City of Allen electronic bidding system <https://allentx.ionwave.net/Login.aspx>. Please allow at least one week after opening date for bids to be tabulated.
- 2.37 All work, materials, equipment, and supplies, furnished under this contract shall comply with applicable laws, ordinances and regulations.
- 2.38 Unless otherwise indicated, items will be new, unused, and in first rate condition in containers suitable for damage-free shipment and storage.
- 2.39 Quotations must show the number of calendar days required to place the materials in the possession of the City. Do not quote shipping dates. When delivery delay can be foreseen, the bidder shall give prior notice to the Purchasing Division, who shall have the right to extend the delivery date if reasons for delay appear acceptable. Default in promised delivery, without acceptable reasons of failure to meet specifications, authorizes the Purchasing Division to purchase goods elsewhere and charge any increase in cost and handling to the defaulting bidder.
- 2.40 F.O.B. will be Destination/Inside Delivery/Installed at the location stated on the City's purchase order, acceptable only during normal working hours. The price will be firm lump sum all inclusive cost for all materials, work, transportation, and all other costs of whatsoever nature for each item listed. Vendor will be responsible for all claims against the carrier for all freight and/or drayage damage. The City assumes no liability for goods delivered in damaged or unacceptable condition. Vendor shall handle all claims with carriers, and in case of damaged goods, shall ship replacement goods immediately upon notification by District of damage. Shipments will be made to the specific locations described in the bid specifications. If the vendor must deliver to the specified room, the vendor must remove all packing and debris, which results from set-up and installation. Owner dumpsters cannot be used.
- 2.41 At the time of the opening of bids each bidder shall be presumed to have inspected the sites and to have read and shall be thoroughly familiar with the contract requirements. The failure or omission of any bidder to examine any form, instrument, document or site shall in no way relieve any bidder from any obligation in respect to this bid.
- 2.42 The City shall have the right to do other work, or to let other contracts for work to be done, on the same sites as specified for the work to be done under this contract, and the City's arrangements as to precedence of work and the relationship between the Vendor and the City shall be decisive.
- 2.43 It is the policy of the City of Allen that whenever practical, products should be purchased which contain the highest percentage of post-consumer recovered material available in the marketplace and/or the highest percentage of pre-consumer recovered material available in the marketplace.
- 2.44 Texas Government Code, Chapter 2252, non-resident bidders; Texas Law prohibits Cities and Governmental units from awarding contracts to a non-resident unless the amount of such bid is lower than the lowest bid by a Texas resident by the amount a Texas resident would be required to underbid in the non-resident bidders state.
- 2.45 The vendor shall purchase and maintain in force the following kinds of insurance for operations under the contract as specified. Insurance certificates in the amounts shown and under the conditions noted shall be provided to the City before the commencement of any work:

2.46 Workers' Compensation Coverage – **Statutory See Insurance Requirements in Exhibit**

2.47 Attention is called to the fact that the inclusion of a minimum scale of wages to be paid to employees engaged in the work under this Contract does not release the Contractor from compliance with any State Wage Law that may be applicable. The Contractor shall abide by the Wage and Hour Laws of the State and must not pay less than the wages legally prescribed as set forth herein.

2.47.1 Except for work on legal holidays, the "general prevailing rate of per diem wage" for the various crafts or types of workmen or mechanics is the product of (a) the number of hours worked per day, except for overtime hours, times (b) the respective Rate Per Hour.

2.47.2 For legal holidays, the "general prevailing rate of per diem wage" for the various crafts or type of workmen or mechanics is the product of (a) one and one-half times the respective Rate per Hour, times (b) the number of hours worked on a legal holiday.

2.47.3 The "general prevailing rate for overtime work" for the crafts or type of workmen or mechanics is one and one-half times the above respective Rate per Hour.

2.47.4 Under the provisions of Article 5159a Vernon's Annotated Texas Statutes, the Contractor shall forfeit as a penalty to the entity on whose behalf the Contract is made or awarded, Ten Dollars (\$10.00) for each laborer, workman, or mechanic employed, for each calendar day or portion thereof that such laborer, workman or mechanic is paid less than the said stipulated rates for any work under the Contract, by him or by any sub-contractor under him.

2.48 The Davis-Bacon Act, 40 U.S.C. §§ 276-A276A-7, provides that locally prevailing wages and fringe benefits must be paid to laborers and the mechanics employed on Federally Funded contracts exceeding \$2,000 that may involve construction, alteration, maintenance or repair. The new interim rule clarifies that all Programs or Activities funded by ARRA and meeting the Davis-Bacon criteria will be subject to the requirements under Davis-Bacon. The awarding agency must include the following provision in issuing grant announcements or requesting applications.

2.48.1 "Section 1606 of the Recovery Act requires that all laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal Government pursuant to the Recovery Act shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of Chapter 31 of Title 40, United States Code.

2.48.2 Pursuant to reorganization Plan No. 14 and the Copeland Act. 40 U.S.C. 3145, The Department of Labor has issued regulation at 29 CFR Parts 1, 3, and 5 to implement the Davis-Bacon and related Acts. Regulations in 29 CFR 5.5 instruct agencies concerning application of the standard Davis-Bacon contract clauses set forth in that section Federal agencies providing grants, cooperative agreements, and loans under the Recovery Act shall ensure that the standard Davis-bacon contract clauses found in 29 C.F.R. 5.5(A) are incorporated in any resultant covered contracts that are in excess of \$2,000 for construction, alteration or repair (including painting and decorating)"

2.49 Buy American Act See <http://www.whitehouse.gov/> for revisions, amendments, and more information. Sec 1605. Use of American iron, steel, and manufactured goods.

- (A) None of the funds appropriated or otherwise made available by this act may be used for a project for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States.
- (B) Subsection (A) shall not apply in any case or category of cases in which the head of the Federal Department or agency involved finds that-
 - a. Applying Subsection (A) would be inconsistent with the public interest;

- b. Iron, steel, and the relevant manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quantity; or
 - c. Inclusion of iron, steel, and manufactured goods produced in the United States will increase the cost of the overall project by more than 25 percent.
- (C) If the head of a Federal Department or agency determines that it is necessary to waive the application of subsection (A) based on a finding under subsection (B), the head of the department or agency shall publish in the Federal Register a detailed written justification as to why the provision is being waived.
- (D) This section shall be applied in a manner consistent with United States Obligations under International Agreements.

2.50 Provide the names and locations of at least three (3) references at which the offeror has conducted similar services and requirements along with specific individuals whom we may contact for references.

2.51 All protests regarding the bid solicitation process must be submitted in writing to the Purchasing Manager within five (5) working days following the opening of bids. This includes all protests relating to advertising of bid notices, deadlines, bid opening, and all other related procedures under the Local Government Code, as well as any protests relating to alleged improprieties or ambiguities in the specifications. The limitation does not include protests relating to staff recommendations as to award of this bid. Protests relating to staff recommendations may be directed to the City Secretary.

2.52 EVALUATION CRITERIA: PLEASE NOTE THAT THIS BID WILL BE AWARDED ON THE BASIS OF "BEST VALUE". The award to the successful bidder will be determined by best value to the City of Allen as allowed by Chapter 252 of the Local Government Code. The following criteria will be considered when selecting a contractor:

- the purchase price
- the reputation of the bidder and the bidder's services;
- the quality of the bidder's service;
- the extent to which the bidder's services meet the City's needs;
- the bidder's past business relationship with the City;
- the impact on the ability of the City to comply with laws and rules relating to contracting with historically underutilized businesses and non-profit organizations employing persons with disabilities;
- the total long-term cost to the City to acquire the bidder's goods or services; and
- any relevant criteria specifically listed in the request for bids or proposals.

2.53 COOPERATIVE PURCHASING: As permitted under Interlocal Cooperation Act C Texas Government Code, Chapter 791, other governmental entities may wish to also participate under the same terms and conditions contained in this contract. If this bid is not specifically for the Collin County Governmental Purchaser's Forum, each entity wishing to participate must have prior authorization from the City of Allen and the vendor. If such participation is authorized, all purchase orders will be issued directly from and shipped directly to the entity requiring supplies/services. The City of Allen shall not be held responsible for any orders placed, deliveries made or payment for supplies/services ordered by the entities. Bidder is to state their willingness to allow other governmental entities to participate in this contract, if awarded. Vendors bidding products other than those specified should submit technical specification literature with bids.

IS YOUR FIRM WILLING TO ALLOW OTHER GOVERNMENTAL ENTITIES TO PARTICIPATE IN THIS CONTRACT, IF AWARDED, UNDER THE SAME TERMS AND CONDITIONS?

_____ YES _____ NO

**SECTION III
SPECIFICATIONS AND REQUIREMENTS
REQUEST FOR PROPOSAL 2014-2-130
ALLEN EVENT CENTER**

**BUILDING OPERATIONS/CONVERSION SERVICES AND
ICE TECHNICIAN SERVICES
Allen Event Center located at 200 E. Stacy Rd, Allen, TX 75002**

It is the intention of the City of Allen to enter into a one-year contract for Building Operations/Conversion Services and Ice Technician Services as needed by the City of Allen Event Center. (PARTIAL BIDS WILL BE ACCEPTED; VENDORS CAN BID ON EITHER OPTION OR BOTH OPTIONS)

This procurement is expected to result in a one-year contract with two one-year renewal options. The contract period shall commence upon execution/receipt of a valid City of Allen Contract/Purchase Order and continue for a period of one year. The City reserves the right to extend the contract period for two additional one-year periods, with said options to be exercised solely at the City's discretion.

PLEASE NOTE THAT THIS BID WILL BE AWARDED ON THE BASIS OF "BEST VALUE". The award to the successful bidder will be determined by best value to the City of Allen as allowed by Chapter 252 of the Local Government Code. The following criteria will be considered when selecting a contractor:

- the purchase price
- the reputation of the Proposer and the Proposer's services;
- the quality of the Proposer's service;
- the extent to which the Proposer's services meet the City's needs;
- the Proposer's past business relationship with the City.
- the impact on the ability of the City to comply with laws and rules relating to contracting with historically underutilized businesses and non-profit organizations employing persons with disabilities;
- the total long-term cost to the City to acquire the bidder's goods or services; and any relevant criteria specifically

Successful contractor shall pay or cause to be paid, without cost or expense to the City of Allen all Social Security, Unemployment and Federal Income Withholding Taxes of all such employees and all such employees shall be paid wages and benefits as required by Federal and/or State Law.

SCOPE OF WORK

The ultimate responsibility for the successful contractor is to provide Building Operations, Conversion, and Ice Technician Services. The City of Allen - Allen Event Center Arena in its capacity is a 115,000 square foot facility. Such service shall encompass the adequate labor and supervision for the performance of the projected work assigned. The equipment, supplies and material will be furnished by the City of Allen - Allen Event Center. The Allen Event Center Building Operations, Conversion, and Ice Technician Services has an *estimated* annual expenditure of \$515,000.00

Every effort will be made to get all jobs completed within a reasonable time and schedule. The contractor is to provide the facility with services at a high standard which will reflect favorably upon the City of Allen - Allen Event Center and the contractor. Variances in event schedules, booking, building renovation work, weather conditions and other uncontrollable and unpredictable factors will determine the actual frequency of work at the Allen Event Center.

The City of Allen reserves the right to add similar services or delete services as well the number of staff specified as requirements change during the course of the contract. Prices for services to be added to/deleted from the contract will be mutually agreed to by the City of Allen and the contractor. Number of staff will vary from day to day depending on the project.

1. The purpose and intention of this bid is for the City of Allen to receive quotations for an hourly rate for Building Operations/Conversion Services and Ice Technician Services.

2. Contractor shall comply with all State, Federal, and local laws (including the Americans With disabilities Act, Title VII of the Civil Rights Act of 1964, Age Discrimination in Employment Act, and Civil Rights of 991) as to treatment and compensation of its employees. City of Allen shall make no payments to individual workers.
3. Contractor shall be responsible to maintain insurance coverage for all temporary employees to include general liability and auto liability in the amount of not less than \$1,000,000 per occurrence, naming the City of Allen as additional insured and providing a waiver of subrogation. The contractor shall maintain Workers Compensation 1,000,000 per occurrence and a waiver of subrogation shall apply. Contractor shall be responsible for any injury, damage or loss arising out of any acts or omissions of the temporary employee while performing their duties for the City of Allen. All insurance companies and coverage's must be authorized by the Texas Department of Insurance to transact business in the State of Texas and must be acceptable to the City of Allen. A certificate evidencing the coverage's with a 30 day notice of cancellation shall be provided before the contractor can begin any contractual obligation with the City.
4. The City has the right to control the details of the temporary employee's work while assigned to the City.
5. In the event that the temporary will be assigned driving duties, the City reserves the right to conduct a motor vehicle register check and a drug test before placing the temporary in the work environment. The City of Allen will cover all costs associated with this.
6. Attached is a listing of position specifications for the different types of personnel possibly needed by the City. Please use this form for quoting hourly rates for each description.
7. The City of Allen reserves the right to add additional job duties/descriptions if the need arises, during the term of this contract. Therefore, please provide a complete listing and hourly rate of additional services that your firm can provide that are not listed herein.
8. Hourly rates quoted shall be firm for one (1) year from award date and shall be binding if agency is selected for primary or alternate provider.
9. Please list at least three (3) references, preferably governmental agencies that you are currently doing business with.
10. Proposal submission services to include:
 - a. description of agency and services provided;
 - b. applicant/employee testing conducted by agency;
 - c. employee training conducted by agency;
 - d. statement about worker's compensation and liability insurance coverage;
 - e. *employee criminal background screening conducted by agency – Specific screening requirement: SS Trace to determine counties the individual has resided in to know which Criminal County checks to conduct (record of past 7 yrs.); Statewide Criminal record check and Statewide Sex Offender Registry. If applicant has resided in another state in the past 7 years, we ask that those state records are checked in addition to Texas.
11. The Contractor shall use reasonable care to employ and retain employees who are qualified, competent and trustworthy. As a minimum, the Contractor shall, prior to hiring an applicant, determine the following: compatibility of the applicant working in a customer service environment; test each applicant for the presence of illegal drugs and/or the presence of legal drugs in excess of medically-approved standards; and examine the applicant's conviction record to determine instances of prior criminal convictions which would disqualify the applicant for a position of public trust. All Contractor employees shall be a minimum of 18 years of age. No Contractor employee shall have been convicted of felony or theft related misdemeanor. Contractor will conduct employment background checks on all newly hired employees. Contractor shall employ experienced, knowledgeable personnel to perform duties to which they are assigned.

12. Contractor (s) will receive written notice of the bid award, which will include the agreed upon rate for each job description, a copy of the Building Operations, Conversion and Ice Technician Specifications and a copy of the Building Operations, Conversion and Ice Technician Operating Procedures.
13. The City of Allen is an Equal Opportunity Employer. All job vacancies are advertised through the media and posted for public view. The City of Allen will not reject any application for employment by temporary employees assigned in the workplace. It is the policy of the City of Allen not to pay any release fees in the event a temporary is selected from the applicants.

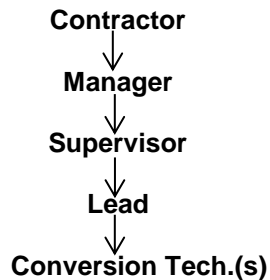
The awarded contractor will perform Building Operations/Conversion Services, and Ice Technician Services for the City of Allen - Allen Event Center, a 24/7 facility, including but not limited to:

- General Building Operations
 - Repair and upkeep of arena's retractable seating system
 - Set and strike of tables, chairs, and various equipment for building needs
 - Maintenance of arena dasher system and glass
 - Use of various warehouse equipment including fork lifts, personnel lifts, pallet jacks, etc.
 - Administrative tasks including filing reports, documenting work, and maintain records
 - Special projects
- Conversions
 - Sporting Events
 - Hockey
 - Indoor Soccer
 - Indoor Football
 - Basketball
 - Rodeo
 - Gymnastics / Cheerleading Competitions
 - Stage Shows
 - Concerts
 - Musicals
 - Pageants
 - Awards Ceremonies
 - Trade Shows
 - Miscellaneous Events
 - Corporate Meetings
 - Luncheons and Banquets
 - Other various events
- Ice Technician Services
 - Daily Maintenance of Ice for 2 rinks
 - Maintaining ice conditions
 - Hockey Nets
 - Rink Netting
 - Ice Pit
 - Rubber Matting
 - Dasher Boards
 - Advertisements
 - Glass
 - Minor repairs
 - Ice Surface
 - Ice Removal
 - Ice Rebuild
 - Rink Ice Painting
 - Zamboni
 - Minor repairs
 - Preventative maintenance
 - Safety checks

- Safe Operation
- Administrative
 - Reports
 - Records

STRUCTURE:

The following represents the desired structure for the Building Operations and Conversion Crew:



All positions, including the Manager and Supervisor, are “working” positions. All staff members are expected to work in all capacities and functions as described in the scope of work. New employees will start at Conversion Technician 1 for the first three months of work. After the first three months of work, employees are eligible for a performance based promotion to Conversion Technician 2. Every step up in position thereafter is strictly performance based and advancements determined by company should be communicated with the Director of Operation and Production.

1. **Building Operations Day Crew** (2 - 5 staff members determined by event requirements) will consist of the following:
 - a. Manager or Supervisor
 - b. Core Crew consisting of Lead 2s, Lead 1s, or Conversion 3s
2. **Building Operations Event Crew** (3 – 6 staff members determined by event requirements) will consist of the following:
 - a. Manager or Supervisor
 - b. Core Crew consisting of Lead 2s, Lead 1s, or Conversion 3s
3. **Building Operations Conversion Crew** (10 – 40 staff members determined by event requirements) will consist of the following:
 - a. Manager
 - b. Supervisor
 - c. Lead 2s, Lead 1
 - d. Changeover Tech. 3s, Changeover Tech. 2s, Changeover Tech. 1

The following represents the desired structure for the Ice Technician Crew:



1. **Ice Technician Day Crew** (1 – 5 staff members, determined by event requirements) will consist of the following:
 - a. Lead Ice Tech or Ice Tech
 - b. Ice Tech or Ice Attendant

2. **Ice Technician Afternoon Crew** (1 – 5 staff members determined by event requirements) will consist of the following
 - a. Lead Ice Tech and/or Ice Tech or Ice Attendant

3. **Ice Technician Event Crew** (4 – 7 staff members determined by event requirements) will consist of the following:
 - a. Lead Ice Tech or Ice Tech
 - b. Ice Techs
 - c. Ice Attendants or Ice Techs

SPECIFICATIONS

CITY OF ALLEN – ALLEN EVENT CENTER BUILDING OPERATIONS, CONVERSION AND ICE TECHNICIAN SERVICES RFP # 2014-2-130

ALL CREW REQUIREMENTS AND PROCEDURES

Contractor is required to provide a verifiable clock in / clock out system to guarantee proper recording of time worked. Biometric and / or proximity card systems are preferred. Contractor's staff must sign in at the beginning of each shift, on meal breaks, and the end of shift. It is the responsibility of every employee to fulfill this requirement. A copy of the sign in report will be given to the Operations Department for record keeping.

UNIFORM REQUIREMENTS

Uniform requirements will differ depending on position held and the frame of work being done. All uniforms and non-uniformed contractors and employees are to dress in a neat and clean manner. Ripped, torn, stained, or exceptionally dirty clothing will not be permitted. All uniforms must be agreed upon by contractor and Director of Operations and Production and/or Allen Community Ice Rink Supervisor.

Building Operations and Conversion:

- Managers and Supervisors
 - For all shifts
 - Collared shirt with contractor's and Allen Event Center's logos
 - Black work pants or slacks and black belt with standard sized belt buckle
 - Black work boots or dress shoes
 - Business casual style coats and jackets are permitted when conditions require
- Lead 2s and Lead 1s
 - Event shift
 - Collared shirt with contractor's and Allen Event Center's logos
 - Black work pants and black belt with standard sized belt buckle
 - Black work boots or work shoes
 - Coats, jackets, and / or protective clothing are permitted when conditions require
 - Day shift and changeover shift
 - Collared shirt or Black t-shirt with contractor's and Allen Event Center's logos
 - Black work pants and black belt with standard sized belt buckle
 - Black work boots or work shoes
 - Coats, jackets, and / or protective clothing are permitted when conditions require
- Conversion Technician 1-3
 - Event shift
 - Black t-shirt with contractor's and Allen Event Center's logos
 - Black work pants and black belt with standard sized belt buckle
 - Black work boots or work shoes
 - Coats, jackets, and / or protective clothing are permitted when conditions require
 - Day shift and changeover shift
 - Black t-shirt with contractor's and Allen Event Center's logos
 - Black work pants and black belt with standard sized belt buckle
 - Black work boots or work shoes
 - Coats, jackets, and / or protective clothing are permitted when conditions require

Ice Technicians:

- Lead Ice Tech
 - For all shifts
 - Collared shirt with contractor's or Allen Event Center's logos
 - Black work pants or on-ice jumpsuits
 - Black work boots or tennis shoes
 - Cold weather jackets
 - Black baseball style hat or cold weather sock caps with contractor's or Allen Event Center's logos
 - Business casual style coats and jackets are permitted when conditions require
- Lead Ice Tech, Ice Tech and Ice Attendant
 - Event shift
 - Collared shirt with contractor's and Allen Event Center's logos
 - Black work pants or uniformed color on ice jumpsuits
 - Black work boots or tennis shoes
 - Cold weather jackets
 - Black baseball style hat or cold weather sock caps with contractor's or Allen Event Center's logos
 - Non-event shifts
 - Collared shirt with contractor's and Allen Event Center's logos
 - Black work pants or uniformed color on-ice jumpsuits
 - Black work boots or tennis shoes
 - Cold weather jackets
 - Black baseball style hat or cold weather sock caps with contractor's or Allen Event Center's logos

DESIGNATED WORK SPACE

The contractor will be provided a designated work space within the Allen Event Center for posting informational signage, performing administrative duties, and record keeping. While a designated work space will be provided, a walled office or cubicle is not guaranteed.

INVOICING AND BILLING

The City of Allen pays invoices on a Net 30 structure. Invoicing is preferred on a weekly basis. On some occasions invoices will be needed on the same day as services rendered for specific events. All invoices should be submitted with sufficient documentation supporting the charges including but not limited to timesheets, employee rates, overtime charges, etc.

UNAUTHORIZED PERSONNEL

At no time shall contractor or employees allow any unauthorized personnel into the Event Center facilities. Contractor and employee personnel shall not allow family members, friends, etc. to be on the grounds or parking lot of the building during working hours, other than pick-up or drop-off employee.

EMERGENCY CONTACTS

The contractor shall provide an emergency telephone number where he or she can be reached during regular and after operating hours.

NO SMOKING POLICY

Smoking or use of tobacco products are NOT allowed in the City of Allen - Allen Event Center at any time.

KEYS AND UNIFORMS

The contractor shall be responsible for any lost keys, card keys, or uniforms issued by the City of Allen – Allen Event Center and any inherent damages (i.e. re-keying of whole facility). This cost shall be withheld from payment(s). The decision to re-key the whole facility is solely that of the City of Allen. Upon completion of contract, final payment shall be withheld until all issued keys and uniforms are returned to the City's authorized representative.

ENERGY CONSERVATION

The contractor shall practice energy conservation and turn off lights in unoccupied areas, except where centrally controlled, and shall keep windows and doors closed.

SAFETY AND HEALTH

All work shall comply with applicable Federal, State, and City safety, health and OSHA requirements.

SECURITY

At no time is the contractor to de-activate or activate any alarm systems upon entering the City of Allen - Allen Event Center. The contractor shall report any alarms that are set-off to the Event Center Director of Operations and Production and/or Allen Community Ice Rink Supervisor or his authorized representative. Upon completion of shift, the contractor shall unlock or re-lock doors per scheduled instruction given by Event Center staff. Failure to comply with Allen Event Center standard security operating procedures will be considered a breach of the contract terms and conditions.

EMPLOYEE IDENTIFICATION AND BUILDING ACCESS

In accordance to the uniform requirements, all employees shall wear uniforms that bear company name/logo when designated in the uniform requirements. Identification badges shall be furnished by the contractor and worn by all contractors' employees while on the City of Allen - Allen Event Center premises. The badge shall clearly display the employee's picture, name and signature.

Access within the building shall be directed by the Event Center Director of Operations and Production and/or Allen Community Ice Rink Supervisor or authorized representative. For any reason a contractor needs to leave the premises during his/her assigned work hours, they shall notify the Event Center Director of Operations and Production or his authorized representative before departure. Contractor and employees are only permitted access to the premises for scheduled business reasons unless attending an event as a ticketed guest.

Contractor will be supplied with a list containing point of contacts and corresponding phone numbers to contact in case of an emergency. Access to designated restricted areas is forbidden to contractor's

employees. Areas to be restricted will be designated by the authorized City of Allen Event Center representative.

EQUIPMENT AND SUPPLIES

Adequate equipment and supplies shall be stored in locked designated closets, cages, and storage areas and shall be returned to the source in clean and in orderly fashion. Designated City staff will have keys to these closets in the event supplies become short during the day or during an Event and need replenishment.

BUILDING OPERATIONS, CONVERSION AND ICE TECHNICIAN SERVICES ACTIVITY SPECIFICATIONS

These specifications are given as a general guideline to establish a minimum quality of service for each Building Operations, Conversion, and Ice Technician Services activity. The activities are defined in the designated Crew Frequency Schedule which outlines the level of service required for each type of area.

GENERAL BUILDING OPERATIONS

General Building Operations entails the day to day work at the Allen Event Center and is often referred to as the "day crew."

- a Repair and upkeep of the arena's retractable seating system is a daily assignment. The Allen Event Center currently owns a retractable seating system manufactured by Irwin Telescopic Seating. Seats must be adjusted between each game to compensate for normal wear and tear. In the event that a seat or seat bracket is beyond repair, the seat or seat bracket must be replaced with an identical seat or seat bracket from the spare part inventory. This process involves removing the bolts anchoring the seat to the floor, removing the seat bracket, replacing it, and re-bolting it to the retractable system. Locking mechanisms on the seating system should be checked daily and any adjustments should be made immediately.
- b The arena dasher system and glass should be inspected after each event. Any damages should be reported to a designated Allen Event Center staff member and addressed immediately. Spare screws, bolts, and sections of soft cap are stored in the Allen Event Center's inventory and should be used when needed. The interior of the glass should be cleaned before each sporting event. Scuffs and marks should be scrubbed away with a graffiti wipe and then immediately squeegeed with hot water to remove any chemical residue. Damaged section of glass should be changed immediately with a spare sheet of the same size.
- c Tables, chairs, pipe and drape, and other various equipment owned by the Allen Event Center are used throughout the week for various functions. All equipment should be inspected as it is set up to ensure it is in safe, working order. Equipment should be broken down in a timely manner after its use to allow the housekeeping crew to complete their work. Unused equipment is to be stored and secured in a designated location inside one of the Allen Event Center's storage areas.
- d Inventory of all building equipment, soft goods, tools, furniture, etc. should be checked weekly. A master inventory list of all equipment should be maintained and updated with all changes. Furniture on the concourse and premium level should be positioned as directed for each event.
- e The Building Operations Day Crew can be assigned a variety of projects that include basic carpentry, welding, simple fabrication, painting, assisting other departments and any other similar tasks as assigned by the Director of Operations and Production

EVENT OPERATIONS

A Building Operations Event Crew must be present for every event held at the Allen Event Center.

- a. Conduct a pre-event walkthrough of the facility to ensure the building is properly set up and safe for patrons. During the pre-event walkthrough, all retractable seats should be physically tested and inspected, all hand rails should be physically tested and inspected, floors and stairways should be checked for trip hazards, stages, decks, and platforms should be checked for stability, and all unused equipment should be properly stored and secured.

- b. Respond to and resolve any Operations issues that may come up during an event including, but not limited to:
 - Last minute requests made by the event's staff
 - Broken or collapsed retractable seats
 - Broken glass on the dasher system
 - Complications with building equipment necessary for the event
- c. Assist the building and event staff with any mid-event changes and setups
- d. Prepare the facility for conversion if a conversion will immediately follow the event by assembling required tools and equipment, staging materials in an accessible location, and obtaining instruction documents for the conversion.
- e. Conduct a post-event walkthrough of the facility to look for any issues or damages that may have occurred during the event. All equipment used during the event should be accounted for, stored and secured, and the facility should be prepared to be turned over to the overnight housekeeping and conversion crews.

CONVERSIONS

Conversions at the Allen Event Center typically occur overnight or on days with no scheduled events taking place. All conversions will be scheduled by the Director of Operations and Production or a representative of the Allen Event Center.

- a. Hockey Conversions include but are not limited to:
 - Complete strike of prior event
 - Uncover the ice surface if covered
 - Install all dasher boards, glass, and safety nets
 - Remove roll-away sections and install penalty boxes and team benches
 - Extend all necessary retractable seating and stairs
 - Install necessary rails for retractable seating
 - Install ADA decks and folding chairs in ADA sections
 - Install glass suites and suite furniture on corners of the ice
 - Allow Ice Technicians access to the ice surface to run Zambonis
 - Install goal lights and game nets
 - Place concourse booths, pub tables, and furniture on concourse and premium level
- b. Indoor Soccer Conversions include but are not limited to:
 - Complete strike of prior event
 - If dasher boards are not in place, install dasher boards and glass. If dasher boards are in place, remove sections to allow placement of soccer goals
 - Cover the ice with polar floor decks
 - Retract necessary seating and stairs to allow placement of soccer goals
 - Install necessary rails for retractable seating
 - Install soccer specific dasher advertisements onto dasher boards
 - Lay out and install soccer turf
 - Install nets on goals
 - Install ADA decks and folding chairs in ADA sections
 - Install glass suites and suite furniture on corners of the ice
 - Place concourse booths, pub tables, and furniture on concourse and premium level
- c. Indoor Football Conversions include but are not limited to:
 - Complete strike of prior event
 - Install dasher boards if not already installed
 - Cover the ice with polar floor decks
 - Retract necessary seating and stairs to allow placement of field level suites
 - Install necessary rails for retractable seating
 - Lay out and install football turf
 - Install football pads and advertisements to dasher boards
 - Install goal posts from hang points
 - Install ADA decks and folding chairs in ADA sections
 - Install glass suites and field level suites

- Place concourse booths, pub tables, and furniture on concourse and premium level
- d Basketball Conversions include but are not limited to:
 - Complete strike of prior event
 - Install dasher boards if not already installed. Remove down aisles and floor entrances where applicable
 - Cover dasher boards with black covers
 - Cover the ice with polar floor decks
 - Extend all retractable seating and stairs
 - Install necessary rails for retractable seating
 - Lay out and install basketball court
 - Install goals and attach shot clocks
 - Place decks on ends of court for courtside seats
 - Place team benches, scorer's tables, and media tables around court
 - Place concourse booths, pub tables, and furniture on concourse and premium level
- e Rodeo Conversions include but are not limited to:
 - Complete strike of prior event
 - Install dasher boards along sides if not already installed. Remove the radius dasher boards on each end
 - Retract seating on both ends and extend all seating on the sides
 - Install necessary rails for retractable seating
 - Cover the ice with polar floor decks
 - Cover the polar floor and dasher boards with plastic sheeting and tape seams
 - Lay plywood over plastic sheeting over the ice
 - Install announcer's platform
 - Assist in the application of rodeo dirt
 - Place concourse booths, pub tables, and furniture on concourse and premium level
- f Gymnastics / Cheerleading / Karate / Wrestling Competition type Conversions include but are not limited to:
 - Complete strike of prior event
 - Install dasher boards if not already installed. Remove down aisles and floor entrances where applicable
 - Cover dasher boards with black covers
 - Cover the ice with polar floor decks
 - Position all retractable seating and stairs as needed
 - Install necessary rails for retractable seating
 - Hang truss and curtain where applicable
 - Install judge's platform and awards platform
- g Concert / Musical / Pageant / Stage Show Conversions include but are not limited to:
 - Complete strike of prior event
 - Install dasher boards if not already installed. Remove down aisles, floor entrances where applicable, and radius behind the stage
 - Cover dasher boards with black covers
 - Cover the ice with polar floor decks
 - Extend all retractable seating in seating sections open for event. Retract sections not used if space is required
 - Install necessary rails for retractable seating
 - Build stage in designated location and add stairs and rails
 - Hang truss and curtain behind upstage edge of the stage
 - Once sound and lights are flown, set and align folding chairs on the floor
 - Place concourse booths, pub tables, and furniture on concourse and premium level

- h Trade Show and Exhibit Conversions include but are not limited to:
 - o Complete strike of prior event
 - o Cover ice with polar floor decks
 - o Remove all dasher boards
 - o Retract all sections of retractable seating and stairs
 - o Install necessary rails for retractable seating
 - o Block access to vomitory stairs with safety barricade
 - o Lay plywood around exterior of ice dam to level floor with ice
 - o Clear concourse of all booths, pub tables, and furniture

ICE TECHNICIAN SERVICES

Services will be required prior, during and post hours of operations. Ice Technicians will require appropriate and sufficient training which can be gained by XX hours of in house training, STAR training, verifiable work history, or a combination of the above. Ice Technician Services include the following duties:

- o Daily Maintenance of Ice for 2 rinks
 - Maintaining ice conditions
 - Hockey Games & Practices
 - Figure Skating Competitions & Practices
 - Hockey Nets
 - Minor Repair
 - Replacement in accordance to NHL specs & recommendations
 - Rink Netting
 - Minor repairs
 - Securing with clips
- o Dasher Boards
 - Application of advertisements
 - Removal of advertisements
 - Removal and replacement of dasher glass
 - Minor repairs to doors and boards
 - Clean the inside of the dasher glass daily
- o Ice Surface
 - Ice Removal
 - Ice Rebuild
 - Rink Ice Painting
- o 545 Zamboni Ice Resurfacers
 - Minor repairs to Zamboni
 - Daily safety checks
 - Safe Operation of during
 - Professional hockey games
 - Amateur hockey games & Tournaments
 - Figure Skating Competitions
 - Special Events
- o Administrative
 - Keep detailed staffing records
 - Chart compressor readings
 - Preventive Maintenance Logs
 - Safety Check Logs
 - Write reports to Upper management of department and building
 - Log propane and gasoline usage logs for reordering updates

EMERGENCY BUILDING OPERATIONS, CONVERSION, AND ICE TECHNICIAN SERVICES

Emergency services may include, but are not limited to calling in staff for emergency situations, responding to power outages or mechanical issues that affect the ice surface, etc. In the event an emergency situation is of such magnitude that regularly scheduled tasks cannot be accomplished, the Allen Event Center Director of Operations and Production and/or Allen Community Ice Rink Supervisor shall be informed. Emergency services shall be judged according to the nature of the procedure (i.e. separate standards apply to each function) and on the responsiveness to the situation.

FREQUENCY OF SERVICES

The City shall be the sole judge of said quality and required frequency of the services provided. The facility shall be staffed to maintain optimum conditions of operation. Schedules are determined by events proposed by the City of Allen - Allen Event Center. This may include various shifts, days and hours including holidays. If the level of operation at any time shall be considered to be unacceptable to the City, the Contractor will be required to increase staff or take whatever measures are required. As needed in all areas, contractual employees shall respond to emergency building operation services, special job assignment and duties described above in compliance with City fire, health and building regulations.

CONTRACTOR PERSONNEL AND PRE-EMPLOYMENT SCREENING

All personnel shall receive close and continuing first-line supervision by the contractor. Contractual employees shall be fully trained and skilled in safe and proper building operations and ice technician techniques. The contractor shall provide sufficient documentation to demonstrate adequate training has been provided. The contractor shall obtain criminal background checks on all contract personnel at the start of this contract or upon employment, and at least once per year thereafter. The contractor shall inform the City of Allen - Allen Event Center Director of Operations and Production and/or Allen Community Ice Rink Supervisor, by certified mail, of any criminal convictions of any type for contract personnel within five (5) days of obtaining the information.

Contractor shall supply the Allen Event Center Director of Operations and Production and/or Allen Community Ice Rink Supervisor or authorized personnel with a current list of all employees that will perform work at the facility. Repeated use of employees not on the current list may be grounds for termination of the contract. Each of these employees shall have had criminal background checks before employee begins work. No contractor will be permitted to work if the criminal history reveals as a conviction of a felony or crime of moral turpitude.

The contractor must provide the City of Allen with the full legal name, maiden name if applicable, social security number and legal address of employees working the City facility. In addition to the required background check, the City of Allen requires all new employees' paperwork be approved through City Of Allen prior to starting employment with the Allen Event Center. Contractor must have his/her application, background check and dated verification from the government Social Security Administration verifying their legal social security number.

**Building Operations Day Crew Standard Operation Procedures
Allen Event Center**

Day Crew (Crew # 1)

Estimated Staffing Requirement: All staffing numbers are *EVENT DRIVEN*

- *Manager or Supervisor (1)*
- *Core Crew (1-4 crew members)*

Day Crew Report Time

Crew arrives at 8:00AM on a standard non-event day.

Day Crew Cleaning Standards

In accordance to the City of Allen - Allen Event Center General Building Operations specifications, the Day Crew will perform Building Operations duties including the following:

- Repair and upkeep of the arena's retractable seating system
- Upkeep, maintenance, and cleaning of the arena's dasher boards and glass
- Set up of tables, chairs, pipe, drape, furniture, etc.
- Maintain an accurate inventory of all Building Operations tools and equipment
- Special projects as assigned
- Event preparations as necessary

Day Crew Reporting and Inspection Requirements

Day Crew Manager or Supervisor is responsible for completing a checklist and staffing reports, inspecting facility to ensure all Building Operations standards have been met and meeting with Director of Operations and Production regularly to discuss any issues.

Job Definition and Responsibility: *Manager / Supervisor*

Day Crew

Crew #1

The role of the Manager or Supervisor is to oversee Operations of the Day Crew. The Manager or Supervisor must have all employees that are working sign in and out and submit sign in sheet at the end of the shift. Upon arrival, he/she should check in with the Director of Operations and Production for direction.

The Manager or Supervisor ensures all tasks in regards to Building Operations have been completed and that all employees are working efficiently and effectively in the facility. The Manager or Supervisor will maintain communication with Allen Event Center Director of Operations and Production as well as other customers and clients, adhere to the Building Operations procedures and comply with Allen Event Center instruction. Performs all necessary duties and all necessary duties not outlined herein.

The Manager or Supervisor is expected to walk the facility at any time to maintain a presence with all staff and to ensure completion of assignments as well as develop a rapport with other individuals and clients. The Manager or Supervisor will also maintain a record of where employees are stationed and what has been completed. All radio calls are to be responded to in an efficient manner and shall develop weekly, monthly, quarterly project work for approval.

The Manager or Supervisor are considered "working managers/supervisors" and should work alongside the Day Crew when not fulfilling the duties listed above.

The Manager and Supervisor are to coordinate with the Director of Operations and Production and Production on scheduling Operations and Conversion staff. Once agreed upon, all schedules will be posted in a designated location within the Allen Event Center. Any and all changes to the schedule must be approved by the Director of Operations and Production and Production and reposted.

Equipment Use:

Keys, proximity cards, ID badge, radio, sign in sheets, project list, production advances, fork lift, personnel lift, pallet jack, flat bed cart, upright dolly, impact wrench, power drill, various power tools, various hand tools, cleaning products, razor blades, squeegees, latex rubber gloves, dust masks, gaff tape, pipe and drape, tables, chairs.

Job Definition and Responsibility: Core Crew
Day Crew
Crew #1

In accordance to the Building Operations specifications, the Core Crew will consist of Lead 2s, Lead 1s, and Conversion Technician 3s and will perform the duties listed for the Building Operations Day Crew. The overall goal for the Core Crew of the Building Operations Day Crew is to prepare the building for its next function and may perform other related duties as assigned.

Core crew will also assist in the event of inclement weather or emergency situations with tasks related to Building Operations including shoveling snow, applying ice-melt, distributing sand bags to weight down objects in high wind, barricading off hazard areas, etc.

Area of Responsibilities:

The entire Allen Event Center premises including the arena, concourse, offices, back of house areas, adjoining Community Ice Rink, premium level loge and suites, parking structures, surface lots, sidewalks, and plazas.

Equipment Use:

Keys, proximity cards, ID badge, radio, sign in sheets, project list, production advances, fork lift, personnel lift, pallet jack, flat bed cart, upright dolly, impact wrench, power drill, various power tools, various hand tools, cleaning products, razor blades, squeegees, latex rubber gloves, dust masks, gaff tape, pipe and drape, tables, chairs

Building Operations Event Crew Standard Operation Procedures
Allen Event Center

Event Crew – (Crew #2)

Estimated Staffing Requirement: All staffing numbers are *EVENT DRIVEN*

- *Manager or Supervisor (1)*
- *Core Crew (2-5 crew members)*

Event Crew Report Time

Report times are event driven. Standard report time is one hour before client/tenant staff arrives.

Event Crew Operation Standards

In accordance to the City of Allen - Allen Event Center Building Operations Event Crew specifications, the Event Crew will perform Building Operations duties including the following:

- Conduct pre-event walkthrough of the facility and premises
- Respond to and resolve any Operations issues that may come up during an event
- Assist the building and event staff with any mid-event changes and setups
- Prepare the facility for conversion when applicable
- Conduct a post-event walkthrough of the facility and premises
- Special projects as assigned

Event Crew Reporting and Inspection Requirements

Event Crew Manager or Supervisor is responsible for completing a checklist and staffing reports, inspecting facility to ensure all Building Operations standards have been met and meeting with Director of Operations and Production regularly to discuss any issues.

Job Definition and Responsibility: *Manager / Supervisor*
Event Crew
Crew #2

The role of Manager or Supervisor during an Event Crew shift is to oversee Operations of the Event Crew. The Manager or Supervisor must have all employees that are working sign in and out and submit sign in sheet at the end of the shift. Upon arrival, he/she should check in with the Director of Operations and Production for direction.

The Manager or Supervisor ensures all tasks in regards to Building Operations have been completed and that all employees are working efficiently and effectively in the facility. The Manager or Supervisor will maintain communication with Allen Event Center Director of Operations and Production and Event Coordinator as well as other customers and clients, adhere to the Building Operations procedures and comply with Allen Event Center instruction. Performs all necessary duties and all necessary duties not outlined herein.

The Manager or Supervisor is expected to walk the facility at any time to maintain a presence with all staff and to ensure completion of assignments as well as develop a rapport with other contracted individuals and clients. The Manager or Supervisor will also maintain a record of where employees are stationed and what has been completed. All radio calls are to be responded to in an efficient manner and shall develop weekly, monthly, quarterly project work for approval.

The Manager and Supervisor are considered “working managers/supervisors” and should work alongside the Event Crew when not fulfilling the duties listed above.

Equipment Use:

Keys, proximity cards, ID badge, radio, sign in sheets, project list, production advances, fork lift, personnel lift, pallet jack, flat bed cart, upright dolly, impact wrench, power drill, various power tools, various hand tools, cleaning products, razor blades, squeegees, latex rubber gloves, dust masks, gaff tape, pipe and drape, tables, chairs.

Job Definition and Responsibility: Core Crew

Event Crew

Crew #2

In accordance to the Building Operations specifications, the Core Crew will consist of Lead 2s, Lead 1s, and Conversion Technician 3s and will perform the duties listed for the Building Operations Event Crew. The overall goal for the Core Crew of the Building Operations Event Crew is to prepare facilitate the needs of the building and its clients during events.

Core crew will also assist in the event of inclement weather or emergency situations with tasks related to Building Operations including shoveling snow, applying ice-melt, distributing sand bags to weight down objects in high wind, barricading off hazard areas, etc.

Area of Responsibilities:

The entire Allen Event Center premises including the arena, concourse, offices, back of house areas, adjoining Community Ice Rink, premium level loge and suites, parking structures, surface lots, sidewalks, and plazas.

Equipment Use:

Keys, proximity cards, ID badge, radio, sign in sheets, project list, production advances, fork lift, personnel lift, pallet jack, flat bed cart, upright dolly, impact wrench, power drill, various power tools, various hand tools, cleaning products, razor blades, squeegees, latex rubber gloves, dust masks, gaff tape, pipe and drape, tables, chairs

**Building Operations Conversion Crew Standard Operation Procedures
Allen Event Center**

Conversion Crew – (Crew #3)

Estimated Staff Requirement (based on building history and industry standards): All staffing number will be *EVENT DRIVEN*

- *Manager (1)*
- *Supervisor (1)*
- *Lead 1 & 2 (2-6 crew members)*
- *Conversion Technician 1,2, & 3 (10-40 crew members)*

Conversion Crew Report Time

Report times are event driven. Standard report time is roughly 30 minutes before the scheduled end time of the event preceding the conversion. The Conversion Crew often works late hours or overnight.

Conversion Crew Operation Standards

In accordance to the City of Allen - Allen Event Center Conversions specifications, the Conversion Crew will perform conversion and changeover services including the following and not limited to:

- Covering and uncovering the ice surface
- Installing and uninstalling the dasher board and glass systems
- Installing roll-a-way seating sections and stairs
- Retracting and extending telescopic seating systems
- Installing safety rails and hand rails on the retractable system
- Installing and uninstalling turf surfaces
- Building and striking pre-fabricated staging
- Setting up and striking booths consisting of tables, chairs, and pipe and drape
- Hanging curtains and seat covers
- Building and hanging truss from pre-hung points

Conversion Crew Reporting and Inspection Requirements

Conversion Crew Manager is responsible for completing a checklist and staffing reports, inspecting facility to ensure all Building Operations standards have been met and meeting with Director of Operations and Production regularly to discuss any issues.

Job Definition and Responsibility: *Manager*
Conversion Crew
Crew #3

The role of the Manager during conversions is to oversee Operations of the Conversion Crew. The Manager must have all employees that are working sign in and out and submit a sign in sheet at the end of the shift. Upon arrival, he/she should check in with the Director of Operations and Production for direction.

The Manager ensures all tasks in regards to Building Operations have been completed and that all employees are working efficiently and effectively in the facility. The Manager will maintain communication with Allen Event Center Director of Operations and Production and Event Coordinator as well as other customers and clients, adhere to the Building Operations procedures and comply with Allen Event Center instruction. Performs all necessary duties and all necessary duties not outlined herein.

The Manager is expected to walk the facility at any time to maintain a presence with all staff and to ensure completion of assignments as well as develop a rapport with other contracted individuals and clients. The Manager will also maintain a record of where employees are stationed and what has been completed. The Manager is to walk the facility with the Supervisor and Leads at the end of the Conversion to ensure that all work has been completed per specifications. All radio calls are to be responded to in an efficient manner and shall develop weekly, monthly, quarterly project work for approval. The Manager is to help ensure that the facility is secure at the end of each overnight shift.

The Manager is considered a “working manager” and should work alongside the Conversion Crew when not fulfilling the duties listed above.

Equipment Use:

Keys, proximity cards, ID badge, radio, sign in sheets, project list, production advances, fork lift, personnel lift, pallet jack, flat bed cart, upright dolly, impact wrench, power drill, various power tools, various hand tools, cleaning products, razor blades, squeegees, latex rubber gloves, dust masks, gaff tape, pipe and drape, tables, chairs.

**Job Definition and Responsibility: Supervisor
Conversion Crew
Crew #3**

The role of the Supervisor during conversions is to work alongside the Conversion Crew and support the Manager in his duties. The Supervisor must assist the manager in having all employees that are working sign in and out and submit a sign in sheet at the end of the shift. Upon arrival, he/she should check in with the Manager for direction.

The Supervisor ensures all tasks in regards to Building Operations have been completed and that all employees are working efficiently and effectively in the facility. The Supervisor will delegate and assign tasks as instructed by the Manager, adhere to the Building Operations procedures and comply with Allen Event Center instruction. Performs all necessary duties and all necessary duties not outlined herein.

The Supervisor is expected to walk the facility at any time to maintain a presence with all staff and to ensure completion of assignments as well as develop a rapport with other contracted individuals and clients. The Supervisor should assign employees their tasks at the beginning of the shift and check that they have been completed. The Supervisor is to walk the facility with the Manager and Leads at the end of the Conversion to ensure that all work has been completed per specifications. All radio calls are to be responded to in an efficient manner and shall develop weekly, monthly, quarterly project work for approval. The supervisor is to help ensure that the facility is secure at the end of each overnight shift, and that the tool box, loading dock, and all storage areas as properly organized and secured.

The Supervisor is considered "working supervisor" and should work alongside the Conversion Crew when not fulfilling the duties listed above.

Equipment Use:

Keys, proximity cards, ID badge, radio, sign in sheets, project list, production advances, fork lift, personnel lift, pallet jack, flat bed cart, upright dolly, impact wrench, power drill, various power tools, various hand tools, cleaning products, razor blades, squeegees, latex rubber gloves, dust masks, gaff tape, pipe and drape, tables, chairs

Job Definition and Responsibility: *Lead 1 & 2*
Conversion Crew
Crew #3

The role of the Leads during conversions is to lead the individual work groups designated by the Supervisor during the Conversion. The Leads oversee the work of their individual group and train Conversion Technicians on proper procedures.

The Leads ensures all tasks in regards to their work groups have been completed and that all employees are working efficiently and effectively in the facility. The Leads adhere to the Building Operations procedures, comply with Allen Event Center instruction, and perform all necessary duties and all necessary duties not outlined herein.

The Leads are expected to walk the facility with the Manager and Supervisor at the end of the Conversion to ensure that all work has been completed per specifications. All radio calls are to be responded to in an efficient manner. The Leads are to ensure that the tool box, loading dock, and all storage areas as properly organized and secured.

Equipment Use:

Keys, proximity cards, ID badge, radio, sign in sheets, project list, production advances, fork lift, personnel lift, pallet jack, flat bed cart, upright dolly, impact wrench, power drill, various power tools, various hand tools, cleaning products, razor blades, squeegees, latex rubber gloves, dust masks, gaff tape, pipe and drape, tables, chairs

Job Definition and Responsibility: *Conversion Technician 1, 2, & 3*
Conversion Crew
Crew #3

The role of the Conversion Technician is to perform the labor functions of the conversion as listed in the Conversion Crew Standard Operations Procedures. Conversion Technicians are to take direction from the Lead overseeing their work group, the Supervisor, and the Manager. Conversion Technicians will be responsible for covering and uncovering the ice surface, installing and uninstalling the dasher board and glass systems, installing roll-a-way seating sections and stairs, retracting and extending telescopic seating systems, installing safety rails and hand rails on the retractable system, installing and uninstalling turf surfaces, building and striking pre-fabricated staging, setting up and striking booths consisting of tables, chairs, and pipe and drape, hanging curtains and seat covers, building and hanging truss from pre-hung points and any other necessary labor intensive duties required to complete the conversion.

Equipment Use:

Keys, proximity cards, ID badge, radio, sign in sheets, project list, production advances, fork lift, personnel lift, pallet jack, flat bed cart, upright dolly, impact wrench, power drill, various power tools, various hand tools, cleaning products, razor blades, squeegees, latex rubber gloves, dust masks, gaff tape, pipe and drape, tables, chairs

**Ice Technician Services Day Crew Standard Operation Procedures
Allen Event Center**

Day Crew (Crew # 4)

Estimated Staffing Requirement: All staffing numbers are *EVENT DRIVEN*

- *Lead Technician (1)*
- *Ice Technicians and/or Ice Attendants (1-6 crew members)*

Day Crew Report Time

Report time is based upon the first programming of the Community Ice Rink and/or Special Events held at the Event Center. Maybe as early as 5:00 AM, but will stay nearly consistent through the week days.

Day Crew Operation Standards

In accordance to the City of Allen – Allen Event Center/Allen Community Ice Rink specifications, the Ice Technicians will perform ice maintenance and general maintenance services including the following but not limited to:

- Unlock applicable building doors and turn on appropriate levels of lighting
- Inspect building and ice condition
- Inspect the netting system, dasher boards, and glass for damage and safe daily operation
- Inspect ice at start of shift to confirm maintenance requirements (e.g., measuring depth of ice, chopping edging, building low areas, reducing high areas etc...); complete ice work as required.
- Prepare Zamboni Ice Resurfacers for daily operation
- Conduct a compressor room check; ensure that all equipment is operating properly; these steps should be repeated three to four times during the shift
- Clean rink glass inside the rink
- Inspect and sweep as required penalty box and players boxes.
- Provide assistance to user groups as required (on-ice set-ups, directions crowd control, etc.)
- Complete schedule ice resurfaces
- Do a visual check of the Automated External Defibrillator
- Inspect goal nets for repairs
- Maintain and inventory maintenance tools
- Perform required P.M. (e.g. blade changes; Daily, Weekly, Monthly, Semi Annual, and Annual Preventive Maintenance.
- Complete all necessary documentation in the Ice Makers Log and Building Log sheets. Indicate in the Log Book any building and equipment repairs that require attention. Prepare written information for the Closing Shift Ice Technician or Lead Ice Technician to report these details.

Day Crew Reporting and Inspection Requirements

Supervisor or Lead Technician is responsible for completing a checklist and staffing reports, inspecting facility, inspecting equipment and ice conditions to ensure all ice operations standards have been met and meeting with Community Ice Rink Center Supervisor regularly to discuss any issues

Job Definition and Responsibility: *Lead Ice Technician*
Ice Technician Day Crew
Crew #4

The role of the Lead Ice Technician during hours of operations is to oversee operations of the Ice Technicians. The Lead Ice Technician must have all employees that are working sign in and out and submit a sign in sheet at the end of the shift. Upon arrival, he/she should check the work logs, ice conditions and the compressors.

The Lead Ice Technician ensures all tasks in regards to ice operations are being completed and that all employees are working efficiently and effectively in the facility. The Lead Ice Technician will maintain communication with Allen Event Center/Allen Community Ice Rink Center Lead Ice Technician and Event Center Assistant General Manager as well as other ice technicians and Community Ice Rink Staff, adhere to the Building Operations policies and procedures and comply with Allen Event Center and or Allen Community Ice Rinks instruction. Performs all necessary duties and all necessary duties not outlined herein.

The Lead Ice Technician is expected to inspect areas of the building that is in the job scope of Ice Technicians at any time to maintain a presence with all staff and to ensure completion of assignments as well as develop a rapport with other contracted individuals and clients. The Lead Ice Technician will also maintain a record of where staff attendance and what duties have been completed. The Lead Ice Technician is to inspect ice operations with the Lead Ice Technician or Ice Technicians or Ice Attendants at a low program time or end of special event to ensure that all work has been completed per specifications. All communication to Lead Ice Technician is to be responded to in an efficient manner and shall develop weekly, monthly, quarterly project work for approval. The Lead Ice Technician is to help ensure that the facility's "Authorized Personnel Only" areas are secure at the end of shift.

The Lead Ice Technician is considered a "working manager" and should work alongside the Lead Ice Technician, Ice Technicians and or Ice Attendants when not fulfilling the duties listed above, other administrative duties as well as attending meetings.

Equipment Use:

Keys, proximity cards, ID badge, two way radio, sign in sheets, project list, production advances, 545 Zamboni Ice Resurfacer, personnel lift, pallet jack, flat bed cart, upright dolly, impact wrench, power drill, various power tools, various hand tools, cleaning products, razor blades, squeegees, latex rubber gloves, dust masks, gaff tape, pipe and drape, tables, chairs, ride along floor scrubber, paint spray, water hose, paint bush, chipper blades, flashlight, painters chalk, mop, broom, propane canisters, gas powered edger, bobcat front end loader, propane torch, ladder, general office equipment.

**Ice Technician Services Day Crew Standard Operation Procedures
Allen Event Center**

Afternoon Crew (Crew # 5)

Estimated Staffing Requirement: All staffing numbers are *EVENT DRIVEN*

- *Lead Ice Technician (1)*
- *Ice Technicians and/or Ice Attendants (1-6 crew members)*

Afternoon Crew Report Time

Report time is based upon the last start time of programming of the Community Ice Rink and/or Special Events held at the Event Center. May be held as late as 12:45am, but will stay nearly consistent through the week days.

Afternoon Crew Operation Standards

In accordance to the City of Allen – Allen Event Center/Allen Community Ice Rink specifications, the Ice Technicians will perform ice maintenance and general maintenance services including the following but not limited to:

- Check with Day Shift staff to determine the events for the day, ice conditions, work requirements, equipment status, etc.
- Conduct a compressor room check; ensure that all equipment is operating properly; these steps should be repeated three to four times during the shift.
- Identify and report any damage to area or equipment.
- Sweep players benches
- Reattach netting clips when necessary
- Provide assistance to user groups as required (on-ice set-ups, directions, crowd control, etc.).
- Complete scheduled ice resurfaces
- Clean rink glass inside and out
- Near the end of shift, sweep and spot-mop players benches.
- Complete final ice maintenance and prepare the ice for early morning sessions (e.g., measuring depth of ice, chopping, edging, building low areas, reducing high areas etc.)
- Clean and secure work area
- Complete all necessary documentation on Ice Maintenance log sheet, and the Building Log Sheets. Indicate in the log Book any building and equipment repairs that require attention. Prepare written information for the day shift and Lead Ice Technician
- When all users have vacated the facility shut off lights.

Job Definition and Responsibility: *Lead Ice Technician*
Ice Technician Afternoon Crew
Crew #5

The role of the Lead Ice Technician during hours of operations is to oversee operations of the Ice Technicians. The Lead Ice Technician must have all employees that are working sign in and out and submit a sign in sheet at the end of the shift. Upon arrival, he/she should check the work logs, ice conditions and the compressors.

The Lead Ice Technician ensures all tasks in regards to ice operations are being completed and that all employees are working efficiently and effectively in the facility. The Lead Ice Technician will maintain communication with Allen Event Center/Allen Community Ice Rink Center Lead Ice Technician and Event Center Assistant General Manager as well as other ice technicians and Community Ice Rink Staff, adhere to the Building Operations policies and procedures and comply with Allen Event Center and or Allen Community Ice Rinks instruction. Performs all necessary duties and all necessary duties not outlined herein.

The Lead Ice Technician is expected to inspect areas of the building that is in the job scope of Ice Technicians at any time to maintain a presence with all staff and to ensure completion of assignments as well as develop a rapport with other contracted individuals and clients. The Lead Ice Technician will also maintain a record of where staff attendance and what duties have been completed. The Lead Ice Technician is to inspect ice operations with the Lead Ice Technician or Ice Technicians or Ice Attendants at a low program time or end of special event to ensure that all work has been completed per specifications. All communication to Lead Ice Technician is to be responded to in an efficient manner and shall develop weekly, monthly, quarterly project work for approval. The Lead Ice Technician is to help ensure that the facility's "Authorized Personnel Only" areas are secure at the end of shift.

The Lead Ice Technician is considered a "working manager" and should work alongside the Lead Ice Technician, Ice Technicians and or Ice Attendants when not fulfilling the duties listed above, other administrative duties as well as attending meetings.

Equipment Use:

Keys, proximity cards, ID badge, two way radio, sign in sheets, project list, production advances, 545 Zamboni Ice Resurfacers, personnel lift, pallet jack, flat bed cart, upright dolly, impact wrench, power drill, various power tools, various hand tools, cleaning products, razor blades, squeegees, latex rubber gloves, dust masks, gaff tape, pipe and drape, tables, chairs, ride along floor scrubber, paint spray, water hose, paint brush, chipper blades, flashlight, painters chalk, mop, broom, propane canisters, gas powered edger, bobcat front end loader, propane torch, ladder, general office equipment.

Job Definition and Responsibility: *Lead Ice Technician*
Ice Technician Afternoon Crew
Crew #5

The role of the Lead Ice technician during special events or projects is to lead the assigned individual work group designated by the Lead Ice Technician during the special events, games or projects. The Lead oversees the work of his/her individual group and train Ice Technicians and/or Ice Attendants on proper procedures.

The Lead ensures all tasks in regards to their work groups have been completed and that all employees are working efficiently and effectively in the facility. The Lead adheres to the Building Operations procedures, comply with Allen Event Center and or Allen Community Ice Rink instruction, and perform all necessary duties and all necessary duties not outlined herein.

The Lead is expected to walk the authorized work areas with the Lead Ice Technician at any time that does not interferes with work duties to ensure that all work has been completed per specifications. All communications are to be responded to in an efficient manner. The Lead is to ensure that the all work equipment, supplies and all storage areas as properly organized and secured.

Equipment Use:

Keys, proximity cards, ID badge, two way radio, sign in sheets, project list, production advances, 545 Zamboni Ice Resurfacer, personnel lift, pallet jack, flat bed cart, upright dolly, impact wrench, power drill, various power tools, various hand tools, cleaning products, razor blades, squeegees, latex rubber gloves, dust masks, gaff tape, pipe and drape, tables, chairs, ride along floor scrubber, paint spray, water hose, paint bush, chipper blades, flashlight, painters chalk, mop, broom, propane canisters, gas powered edger, bobcat front end loader, propane torch, ladder, general office equipment

Job Definition and Responsibility: *Ice Technicians and/or Ice Attendants*
Ice Technician Afternoon Crew
Crew #5

The role of the Ice Technician or Ice Attendant is to perform the labor functions of the ice operations as listed in the Ice Operations Standard Operating Procedures. Ice Technicians and/or Ice Attendants are to take direction from the Lead overseeing their work group. Ice Technicians and/or Ice Attendants will be responsible for the maintenance of ice surfaces, cleaning and minor maintenance of the dasher boards and glass shielding systems, regular maintenance of Zamboni Ice Resurfacers, daily maintenance and cleaning of work areas, monitoring and tracking of the compressor readings, laying and taking up rubber flooring and any other necessary labor intensive duties required to keep a quality rink operations continuous without interruption.

Equipment Use:

Keys, proximity cards, ID badge, two way radio, sign in sheets, project list, production advances, 545 Zamboni Ice Resurfacer, personnel lift, pallet jack, flat bed cart, upright dolly, impact wrench, power drill, various power tools, various hand tools, cleaning products, razor blades, squeegees, latex rubber gloves, dust masks, gaff tape, pipe and drape, tables, chairs, ride along floor scrubber, paint spray, water hose, paint bush, chipper blades, flashlight, painters chalk, mop, broom, propane canisters, gas powered edger, bobcat front end loader, propane torch, ladder, general office equipment.

SECTION IV
EVALUATION PROCESS AND SELECTION CRITERIA
REQUEST FOR PROPOSAL 2014-2-130
ALLEN EVENT CENTER
BUILDING OPERATIONS/CONVERSION, AND ICE TECHNICIAN SERVICES

In order to be considered responsive, the Bidder shall submit with their Bid Proposal, such documentation is necessary and required to attest to the company's capabilities and qualifications to perform the work as specified and all aspects of this contract in a competent and expeditious manner. Each respondent to this proposal shall be capable of meeting the following minimum requirements.

A. BIDDER QUALIFICATIONS AND COMPANY OVERVIEW STATEMENT
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Respondent shall complete Bidders Qualification and References (see Exhibit 4 and 5) and provide the additional following information (in order) with their submission as requested below.

1. Proposers must demonstrate that they have the resources and capability to provide services per the RFP document.
2. Proposers must demonstrate that they are financially stable and that they have been a commercial provider for the past five years.
3. Proposers must be capable of and are required to submit criminal background checks on all employees performing this contract **prior to any work being performed.**
4. Proposers bid price shall be sufficient to pay all applicable Federal, State withholding, workmen's compensation, insurance and to comply with the current minimum wage.
5. Proposers must submit with their bid proof of insurance. The awarded contractor must provide the city with their certificate of insurance, meeting all of the city's insurance requirements within five (5) working days of award notification. Failure to provide the city with a certificate of insurance, meeting all of the city's insurance requirements within five (5) working days of award notification may result in the city awarding the contract to another contractor.
6. Define the measures you have taken to retain employees. Describe your firm's annual employee attrition rate for the past three (3) years.
7. Describe the organization, management philosophy and provide a brief history of the firm.
8. Vendor shall have a minimum of five (5) years of experience of staffing personnel in facilities of the same/scope as the Allen Event Center.
9. Proposers must submit with their proposal a list of at least three current or past (within one (1) year) references. References should include a contract name, email address and telephone number for jobs/contracts in the Public and/or Private sectors that are equal to size (115,000 square feet Arena), security and complexity of the City of Allen Event Center's requirements, provided herein.

B. COMPANY OPERATIONAL INFORMATION

1. Describe the firm's relevant experience with the planning, organization and implementation of similar "Arena" sized staffing needs.
2. Provide years of experience within "Arenas" similar in size of the Allen Event Center. If experienced, provide what size, name and geographical location of the Arena.
3. Provide a detailed Plan of Execution. This plan shall include a minimum of the following items:
 - a. Firm's management program which describes how your standard operating procedures will be consistently implemented managed and audited
 - b. Reporting structure for communication with the City of Allen Event Management and Staff
 - c. Training program which will include frequency and type of training
 - d. Include a list of key administrative and supervisory personnel you plan to assign to this project along with their resumes and certifications
 - e. Discuss why you feel these individuals are the best personnel for the City of Allen Event Center's requirements.
 - f. Describe your firm's clock-in/clock-out procedures & verification of hours

C. QUESTIONNAIRE

Proposals will be also evaluated against the questions below:

1. Working with a familiar team is beneficial to the process at Allen Event Center. Can the firm consistently provide the *same* employees for pre event, event and post event?
2. Does your organization hold enough capital at all times to cover a 30-60 day payroll? To avoid from "Non-Sufficient Fund" or "Bounced" checks made out to firm's employees?
3. What is the pay structure for the organization?
 - ☐ Weekly,
 - ☐ Bi-weekly
 - ☐ Monthly
4. Will your firm's policy and procedures manual be available and provided to the City of Allen Event Center management staff upon request?
5. If you were not awarded the "primary" contract and if the City of Allen decided on awarding a "secondary" contract, would your firm accept?
6. Employee background checks must be conducted by the firm before contractor start date with the City of Allen? Describe the firm's procedures and document maintenance of employee background checks and include how often a background check is conducted on existing employees.
7. Explain why you think that your firm is the best candidate to be selected for award of this contract.

PROPOSAL RESPONSE DOCUMENTS/ PROPOSAL FORMAT AND CONTENT

The City of Allen discourages lengthy and costly proposals, however, in order for the City to evaluate proposals fairly and completely, proposers should follow the format set out herein and provide the information requested.

EVALUATION COMMITTEE:

David Angeles, General Manager
Ross Girouard, Director of Operations/Production
Kelly Dennis, Ice Operations Coordinator

In order to be considered responsive, the Proposer shall submit with their Proposal, such documentation as is necessary or required to attest to the company's capabilities and qualifications to perform the work as specified and all aspects of this contract in a competent manner. RFP responses shall be submitted professionally to include clearly identifiable sections, in the same order for each section as required.

Response document checklist:

- ☐ Section V RFP Price Form
- ☐ Section V Bid Endorsement and Addenda Acknowledgment (if addenda issued)
- ☐ Section VI Exhibit 1 - Certificate of Insurance
- ☐ Section VI Exhibit 2 - Affidavit of No Prohibited Interest
- ☐ Section VI Exhibit 3 - Conflict of Interest
- ☐ Section VI Exhibit 4 - Bidder Qualifications
+Company Overview Statement
- ☐ Section VI Exhibit 6 – Supplemental Information
+Company Operational Information
+Company Manual
+Questionnaire
- ☐ Section VI Exhibit 7 - Vendor Application& W9
- ☐ Section VI Exhibit 8 - Bid Bond

The objective of this evaluation process is to identify and select the proposer that best satisfies the requirements of the City of Allen. The City of Allen's staff that will be responsible for these services will evaluate all proposals received by the submission deadline. The evaluation committee will review, rate and rank each proposer's proposal in accordance with the weighted ranking criteria contained in this document. RFP responses shall remain confidential until the contract has successfully been awarded.

If deemed necessary to the evaluation process, the City reserves the right to conduct presentations/interviews with proposers at no cost to the city.

There are 100 possible points for this proposal evaluation, as follows:

PRICE	25 points
EXPERIENCE AND CLIENT HISTORY	25 points
PROPOSAL OF SERVICES	50 points

SECTION V PRICING

BUILDING OPERATIONS/CONVERSION SERVICES

**(PARTIAL BIDS WILL BE ACCEPTED;
VENDORS CAN BID ON EITHER OPTION
OR BOTH OPTIONS)**

Please provide pricing in the price schedule listed below where applicable. All prices quoted shall be firm and fixed.

Position	Staff Quantity Estimate	Estimated # of hours annually	HOURLY Rate	ANNUAL TOTAL
Building Operations Day Crew				
Manager	1	1,976	\$	\$
Supervisor	1	1,820	\$	\$
Lead 2	1	3,120	\$	\$
Lead 1	5	3,120	\$	\$
Conversion Technician 3	10	12,800	\$	\$
Building Operations Event Crew				
Manager	1	1,976	\$	\$
Supervisor	1	1,820	\$	\$
Lead 2	1	3,120	\$	\$
Lead 1	5	3,120	\$	\$
Conversion Technician 3	10	12,800	\$	\$
Building Operations Conversion Crew				
Manager	1	1,976	\$	\$
Supervisor	1	1,820	\$	\$
Lead 2	1	3,120	\$	\$
Lead 1	5	3,120	\$	\$
Conversion Technician 3	10	12,800	\$	\$
Conversion Technician 2	15	12,800	\$	\$
Conversion Technician 1	15	12,800	\$	\$

Annual Total/All: \$_____

SECTION V PRICING (Continued)

ICE TECHNICIAN SERVICES

(PARTIAL BIDS WILL BE ACCEPTED;
VENDORS CAN BID ON EITHER OPTION
OR BOTH OPTIONS)

Please provide pricing in the price schedule listed below where applicable. All prices quoted shall be firm and fixed.

Position	Staff Quantity Estimate	Estimated # of Hours Annually	HOURLY Rate	ANNUAL TOTAL
Ice Technician Services Day Crew				
Lead Ice Technician	1	1,672	\$	\$
Ice Technician	3	4,720	\$	\$
Ice Attendant	3	1,546	\$	\$
Ice Technician Afternoon Crew				
Lead Ice Technician	1	1,672	\$	\$
Ice Technician	3	4,720	\$	\$
Ice Attendant	3	1,546	\$	\$
Ice Technician Event Crew				
Lead Ice Technician	1	1,672	\$	\$
Ice Technician	3	4,720	\$	\$
Ice Attendant	3	1,546	\$	\$

Annual Total/All: \$ _____

BID ENDORSEMENT

The undersigned, in submitting this bid proposal and their endorsement of same, represents that they are authorized to obligate their firm, that they have read this entire bid proposal package, is aware of the covenants contained herein and will abide by and adhere to the expressed requirements.

Submittals will be considered as being responsive only if entire Bid Package plus any/all attachments is returned with all blanks filled in.

SUBMITTED BY:

(OFFICIAL Firm Name)

By: _____
(Original Signature) **Must be signed to be considered responsive**

(Typed or Printed Name)

(Title)

(Date)

Remittance

Address: _____

(Zip Code)

Phone #: (____) _____

Fax #: (____) _____

E-Mail Address: _____

If an addendum is issued for this bid, please acknowledge receipt.

ADDENDUMS/AMENDMENTS:

1)	_____	date acknowledged
2)	_____	date acknowledged
3)	_____	date acknowledged

SECTION VI – EXHIBITS

EXHIBIT 1

CONTRACTOR INSURANCE REQUIREMENTS & AGREEMENT

- (a) Vendor on City property or public right-of-way for the City of Allen shall provide the City a certificate of insurance evidencing the coverage's and coverage provisions identified herein. Contractors shall provide the City evidence that all subcontractors performing work on the project have the same types and amounts of coverage's as required herein or that the subcontractors are included under the contractor's policy.
- (b) All insurance and certificate(s) of insurance shall contain the following provisions: (1) name the City, its officers, agents and employees as additional insureds as to all applicable coverage with the exception of Workers Compensation Insurance; (2) provide for at least thirty (30) days prior written notice to the City for cancellation, non-renewal, or material change of the insurance; (3) provide for a waiver of subrogation against the City for injuries, including death, property damage, or any other loss to the extent the same is covered by the proceeds of insurance.
- (c) All insurance companies providing the required insurance shall be authorized to transact business in Texas and rated at least "A" by AM Best or other equivalent rating service.

User shall during the term hereof maintain in full force and effect the following insurance: The City reserves the right to amend or require addition all types depending on the nature of the work.

Contracts in the Amount of \$0-\$100,000

Type of Insurance	Amount of Insurance	Provisions
1. Commercial General (Public) Liability to include coverage for: a) Premises/Operations b) Products/Completed Operations c) Independent Contractors d) Personal Liability e) Contractual Liability	\$500,000 each occurrence, \$1,000,000 general aggregate; or \$1,000,000 combined single limits	City to be listed as additional insured and provided 30-day notice of cancellation or material change in coverage. City prefers that insurer be rated A or higher by A.M. Best or equivalent. Waiver of Subrogation to apply
2. Business Auto Liability	\$500,000 combined single limit	Owned, non-owned, and hired vehicles
3. Workers' Comp & Employers' Liability	Statutory Limits \$1,000,000 each accident	Waiver of subrogation
4. a) Professional Liability b) E & O coverage	1,000,000 per occurrence	City to be named as an additional insured

Continued Next Page

Contracts in the Amount of \$100,000-\$1,000,000

Type of Insurance	Amount of Insurance	Provisions
1. Commercial General (Public) Liability to include coverage for: f) Premises/Operations g) Products/Completed Operations h) Independent Contractors i) Personal Liability j) Contractual Liability	\$1,000,000 each occurrence \$2,000,000 general aggregate \$2,000,000 Umbrella/ Excess Liability	City to be listed as additional insured and provided 30-day notice of cancellation or material change in coverage. City requires that insurer be rated A or higher by A.M. Best or equivalent. Waiver of subrogation
2. Business Auto Liability	<ul style="list-style-type: none"> • \$1,000,000 per occurrence • \$1,000,000 aggregate or; • \$1,000,000 combined single limits 	City to be named as a additional insured
3. Workers' Comp & Employers' Liability	Statutory Limits \$1,000,000 each accident	Waiver of subrogation
4. Builders Risk Policy	100% of construction total	If Applicable
5.a) Professional Liability b) E & O coverage	1,000,000 per occurrence	City to be named as an additional insured

Contracts in the Amount of \$1,000,000-\$8,000,000

Type of Insurance	Amount of Insurance	Provisions
1. Broad Form Commercial General Liability to include coverage for: k) Premises/Operations l) Products/Completed Operations m) Independent Contractors n) Personal Liability o) Contractual Liability	\$2,000,000 each occurrence, \$4,000,000 general aggregate; \$4,000,000 umbrella	City to be listed as additional insured and provided 30-day notice of cancellation or material change in coverage. City requires that insurer be rated A or higher by A.M. Best or equivalent. Waiver of Subrogation
2. Business Auto Liability	<ul style="list-style-type: none"> • \$1,000,000 per occurrence • \$2,000,000 aggregate or; • \$2,000,000 combined single limits 	City to be named as additional insured
3. Workers' Comp & Employers' Liability	Statutory Limits \$1,000,000 each accident	City to be provided a waiver of subrogation
4. Builders Risk Policy	100% of construction total	If Applicable
5. a) Professional Liability b) E & O coverage	1,000,000 per occurrence	If Applicable

All Contracts over \$8,000,000 must contact Risk Management for insurance specifications

All Certificates of Insurance need to reference job or contract number in comments section.

Questions regarding insurance should be directed to the City of Allen Purchasing Division (214)509-4630 or the City of Allen Risk Administrator at (214) 509-4685.

Indemnification

Company shall release, defend, indemnify and hold harmless City and its officers, agents and employees from and against all damages, injuries (including death), claims, property damages, (including loss of use), losses, demands, suits, judgments and costs, including reasonable attorney's fees and expenses, in any way arising out of, related to, or resulting from the performance of the work or caused by the negligent act or omission of Company, its officers, agents, employees, subcontractors, licensees, invitees or any other third parties for whom Company is legally responsible (hereinafter "Claims"). Company is expressly required to defend City against all such Claims.

In its sole discretion, City shall have the right to select or to approve defense counsel to be retained by Company in fulfilling its obligation hereunder to defend and indemnify City, unless such right is expressly waived by City in writing. City reserves the right to provide a portion or all of its own defense; however, City is under no obligation to do so. Any such action by City is not to be construed as a waiver of Company's obligation to defend City or as a waiver of Company's obligation to indemnify City pursuant to this Contract. Company shall retain City approved defense counsel within seven (7) business days of City's written notice that City is invoking its right to indemnification under this Contract. If Company fails to retain Counsel within such time period, City shall have the right to retain defense counsel on its own behalf, and Company shall be liable for all costs incurred by City. Neither party shall be liable to the other for special, indirect, consequential or punitive damages for any reason.

WORKERS COMPENSATION INSURANCE COVERAGE DEFINITIONS

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 entities' 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 had 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 person 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 meet 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 with bid submittal.
- 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 ten (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 person 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 its employees providing service 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 the services on the project, for the duration of the project;
 - (3) provide the contractor, prior to the end of the coverage period, an 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 ten (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 (10) days after receipt of notice of breach from the governmental entity.

EXHIBIT 3

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. This questionnaire is being filed in accordance with Chapter 176, 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). By law this questionnaire must be filed with the records administrator of the local governmental 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.

OFFICE USE ONLY

Date Received

1. Name of person who has a business relationship with local governmental entity.

2. Are filing an update to a previously filed questionnaire. YES_____ NO_____

(The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date the originally filed questionnaire becomes incomplete or inaccurate.)

3. Name of local government officer with whom filer has 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 employment or business relationship with the local government officer named in this section.

4. Signature of person doing business with the governmental entity

Date

EXHIBIT 4

BIDDERS QUALIFICATION STATEMENT

Project: Bid No. _____

Contractor: _____

Indicate One: ___ Sole Proprietor ___ Partnership ___ Other
 ___ Corporation ___ Joint Venture

Name: _____ Partner: _____

Title: _____ Title: _____

Address: _____ Address: _____

City: _____ City: _____

State & Zip: _____ State & Zip: _____

Phone: _____ Phone: _____

State and Date of Incorporation, Partnership, Ownership, Etc. _____

Location of Principal Office: _____

Contact and Phone at Principal Office: _____

Liability Insurance Provider and Limits of Coverage: _____

Workers compensation Insurance Provider: _____

Address: _____

Contact and Phone: _____

Number of Years in Business as a Contractor on Above Types of Work:

Claims and Suits (If the answer to any of the questions is yes, please attach details):

Has your organization ever failed to complete any work awarded to it?

Are there any judgments, claims, arbitration proceedings, or suits pending or outstanding against your organization or its officers?

Has your organization filed any lawsuits or requested arbitration with regard to construction contracts within the last five years?

Within the last five years, has any officer or principal of your organization ever been an officer or principal of another organization when it failed to complete a construction contract?

List your most current agreements/contracts, with information, similar to the type of work bid.
(Use Additional Sheets if Necessary)

Project: _____

Project Description: _____

Owner/Agency: _____

Contract Price: _____

Contact Person: _____ Phone: _____

Project: _____

Project Description: _____

Owner/Agency: _____

Contract Price: _____

Contact Person: _____ Phone: _____

Project: _____

Project Description: _____

Owner/Agency: _____

Contract Price: _____

Contact Person: _____ Phone: _____

Bank References (List Institution, Address, Contact Person, and Phone):

Please denote below the reason for not bidding on the above bid:

EXHIBIT 6
SUPPLEMENTAL INFORMATION

Please provide the following information for contract development:

Is the company a	1.	Sole Proprietorship	<input type="checkbox"/> Yes	<input type="checkbox"/> No?
	2.	General Partnership	<input type="checkbox"/> Yes	<input type="checkbox"/> No
	3.	Limited Partnership	<input type="checkbox"/> Yes	<input type="checkbox"/> No
	4.	Corporation	<input type="checkbox"/> Yes	<input type="checkbox"/> No
	5.	Other	<input type="checkbox"/> Yes	<input type="checkbox"/> No

If the company is a **sole proprietorship**, please list the owner's full legal name, the name under which business is conducted (i.e. d/b/a), the address for the company, including the state and county in which your business is located:

If the company is a **general partnership**, please list the exact name of the partnership, whether it is a partnership formed under the laws of the State of Texas or another state, the business address for the partnership, including the state and county, and list of the names of all of the partners for the partnership:

If the company is a **limited partnership**, please list the exact name of the limited partnership, whether it is a limited partnership formed under the laws of the State of Texas or another state, the business address for the limited partnership, including the state and county, and list the names of all the general partners for the partnership:

If the company is a **corporation**, please list the exact name of the corporation, whether it is a corporation formed under the laws of the State of Texas or another state, the business address for the corporation, including the state and county, and list the names of all of the officers for the corporation:

If the company is **another entity** not listed above, please list the exact name and type of company, the state under which it is formed, the business address for the company, including the state and county, and list the names of all of the persons authorized to act on the company's behalf:

Is the company a minority, or woman owned business enterprise?

☐ No ☐ Yes if yes, specify: ☐ MBE ☐ WBE

Has the company been certified as a minority/woman owned business by any governmental agency?

☐ No ☐ Yes

If yes, specify the governmental agency:

Date of certification:

Bidder/Vendor Application

Complete this application and fax or mail to City of Allen, Purchasing, Allen Civic Plaza, 305 Century Parkway, Allen, TX 75013. Fax # 214-509-4675

Company Name: _____ Tel: () _____

Mailing Address: _____ City: _____ State: _____ Zip: _____

Email: _____ Fax: _____ Tax I.D. NO: _____

Remit to Address: _____ City: _____ State: _____ Zip: _____

Representative(s) Name & Title: _____

Type of Organization (check one) Individual: _____ Partnership: _____ Corporation: _____
State of Incorporation: _____ Other: _____

Type of Business (check one) Manufacturer: _____ Wholesaler: _____ Retailer: _____ Broker: _____
Distributor: _____ Service Organization: _____ Other: _____

Name & Title of Person(s) Authorized to Sign Bids and/or Contracts: _____

Small and/or Disadvantaged Business Information (check applicable criteria)

Small Business:

_____ Less than 50
_____ 51-99 employees
_____ Less than \$1 million
annual gross receipts
_____ \$1-3 million annual
gross receipts

**Disadvantaged Business
(At Least 51% Ownership)**

_____ Black American
_____ Hispanic American
_____ Asian Pacific American
_____ Native American
_____ Women
_____ Other

- ☐ I am a currently employed by the City of Allen
☐ I have previously been employed by the City of Allen

☐ I am related to an employee of the City of Allen

Employment dates: _____

Employee name: _____

I hereby certify that the above information is true and correct to the best of my knowledge.

Signature: _____ Date: _____

Print Name & Title of Signatory: _____

**Request for Taxpayer
Identification Number and Certification**

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

Print or type
See Specific Instructions on page 2.

Name (as shown on your income tax return)

Business name, if different from above

Check appropriate box: ☐ Individual/Sole proprietor ☐ Corporation ☐ Partnership
☐ Limited liability company. Enter the tax classification (D=disregarded entity, C=corporation, P=partnership) ▶
☐ Other (see instructions) ▶

☐ Exempt
payee

Address (number, street, and apt. or suite no.)

Requester's name and address (optional)

City, state, and ZIP code

List account number(s) here (optional)

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on Line 1 to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

Social security number

or

Employer identification number

Note. If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

Part II Certification

Under penalties of perjury, I certify that:

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

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the Certification, but you must provide your correct TIN. See the instructions on page 4.

**Sign
Here**

Signature of
U.S. person ▶

Date ▶

General Instructions

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

Purpose of Form

A person who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
2. Certify that you are not subject to backup withholding, or
3. Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income.

Note. If a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

Definition of a U.S. person. For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien,
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States,
- An estate (other than a foreign estate), or
- A domestic trust (as defined in Regulations section 301.7701-7).

Special rules for partnerships. Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax on any foreign partners' share of income from such business. Further, in certain cases where a Form W-9 has not been received, a partnership is required to presume that a partner is a foreign person, and pay the withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid withholding on your share of partnership income.

The person who gives Form W-9 to the partnership for purposes of establishing its U.S. status and avoiding withholding on its allocable share of net income from the partnership conducting a trade or business in the United States is in the following cases:

- The U.S. owner of a disregarded entity and not the entity,



From what source do you normally receive notice of solicitations?

_____Newspapers

_____Other

City of Allen, Texas

Bid Information

Bid Owner Mindy Gallegos Contract Administrator
Email mgallegos@cityofallen.org
Phone (214) 5094631
Fax (214) 5094675

Bid Number 2017-4-74 Addendum 1
Title Building Operations, Conversion and Ice Technician Service for the Allen Event Center

Bid Type RFP
Issue Date 04/27/2017
Close Date 5/12/2017 02:00:00 PM (CT)

Contact Information

Address 305 Century Parkway
Allen, TX 75013

Contact Mindy Gallegos
Department Purchasing
Building
Floor/Room
Telephone (214) 509-4631
Fax (214) 509-4675
Email mgallegos@cityofallen.org

Ship to Information

Address

Contact
Department
Building
Floor/Room
Telephone
Fax
Email

Supplier Information

Company Name EBS SOLUTIONS INC

Contact Name ROBERTO AYALA

Address 2111 FARRINGTON ST

DALLAS, TX 75207

Telephone 214-558-8035

Fax 214-295-1073

Email

Supplier Notes

ROBERTO@EBSSOLUTIONSUSA.COM

By submitting your response, you certify that you are authorized to represent and bind your company.

Signature _____

Date 05/10/2017

Bid Notes

REQUEST FOR PROPOSAL
#2017-4-74 ALLEN EVENT CENTER
BUILDING OPERATIONS/CONVERSION AND ICE TECHNICIAN SERVICES

Vendors can bid on either service or both services. The City will determine and award what is in the best interest of the City.

Sealed offers are to be submitted to:
City of Allen
Purchasing Department
305 Century Parkway
Allen, TX 75013

NO LATE OFFERS WILL BE ACCEPTED
FACSIMILE / EMAIL PROPOSALS WILL NOT BE ACCEPTED

Proposals are due by: MAY 12, 2017 @ 2:00 P.M. Central Time
There will not be a public opening for this solicitation, as this is a request for proposal. A list of submitting vendors will be available after the due date.

Bid Activities

Date	Name	Description
5/5/2017 10:00 AM (CT)	Pre-Proposal Meeting	<p>PRE-PROPOSAL MEETING</p> <p>A pre-proposal meeting is scheduled for Friday, May 5, 2017 at 10:00 AM. The meeting will be held in the Meeting Room at the Allen Event Center, 200 E. Stacy Road, #1350, Allen, Texas 75002 (South side of the AEC). We will meet at the Box Office and then head to the meeting room.</p>

Bid Messages

Bid Attachments

The following attachments are associated with this opportunity and will need to be retrieved separately

Line	Filename	Description
Header	RFP.pdf	Request for Proposal
Header	Addendum 1.pdf	Addendum #1

Bid Attributes

Please review the following and respond where necessary

BID ENDORSEMENT

The undersigned, in submitting this bid proposal and their endorsement of same, represents that they are authorized to obligate their firm, that they have read this entire bid proposal package, is aware of the covenants contained herein and will abide by and adhere to the expressed requirements.

Submittals will be considered as being responsive only if entire Bid Package plus any/all attachments is returned with all blanks filled in.

SUBMITTED BY:

EBS SOLUTIONS INC.

(OFFICIAL Firm Name)

By:

(Original Signature) **Must be signed to be considered responsive**

JAY BILLINGSLEY

(Typed or Printed Name)

CEO

(Title)

05/10/2017

(Date)

Remittance

Address: PO BOX 192627

DALLAS, TX 75219

(Zip Code)

Phone #: () 214-2951073

Fax #: () 214-295-1073

E-Mail Address:

If an addendum is issued for this bid, please acknowledge receipt.

ADDENDUMS/AMENDMENTS:

- 1) 05/10/2017 date acknowledged
- 2) date acknowledged
- 3) date acknowledged

SECTION V PRICING

Please provide pricing in the price scheduled listed below where applicable. All prices quoted shall be firm and fixed

Position	Staff Quantity Estimate	Estimated # of hours annually	HOURLY Rate	ANNUAL TOTAL
Building Operations Day Crew				
Manager (note 1)	1	988	\$ 24.62	\$ 24,320.00
Supervisor	1	455	\$ 21.26	\$ 9,674.44
Lead 2	1	780	\$ 19.91	\$ 15,531.75
Lead 1	5	780	\$ 18.56	\$ 14,478.75
Conversion Technician 3	10	640	\$ 17.21	\$ 11,016.00
Building Operations Event Crew				
Manager	1	494	\$ 24.62	\$ 12,160.00
Supervisor	1	455	\$ 21.26	\$ 9,674.44
Lead 2	1	780	\$ 19.91	\$ 15,531.75
Lead 1	5	780	\$ 18.56	\$ 14,478.75
Conversion Technician 3	10	1920	\$ 17.21	\$ 33,048.00
Building Operations Conversion Crew				
Manager	1	494	\$ 24.62	\$ 12,160.00
Supervisor	1	910	\$ 21.26	\$ 19,348.88
Lead 2	1	1560	\$ 19.91	\$ 31,063.50
Lead 1	5	1560	\$ 18.56	\$ 28,957.50
Conversion Technician 3	40	10240	\$ 17.21	\$ 176,256.00
Conversion Technician 2 (note 2)	?	?	\$ 16.54	
Conversion Technician 1 **	?	?	\$ 16.20	
Annual Total				\$ 427,699.75

NOTE (1): This pricing structure is based on 1 (one) Full Time Manager; this position will be a salary position and expected to work FULL TIME. Without this position this pricing structure will not be valid.

NOTE (2) : Added Conversion Technicians 1 & 2 to price structure, estimated working hours are unknown.

SECTION V PRICING (Continued)

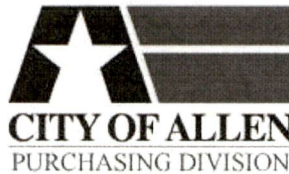
ICE TECHNICIAN SERVICES

**(PARTIAL BIDS WILL BE ACCEPTED;
VENDORS CAN BID ON EITHER OPTION
OR BOTH OPTIONS)**

Please provide pricing in the price schedule listed below where applicable. All prices quoted shall be firm and fixed.

Position	Staff Quantity Estimate	Estimated # of Hours Annually	HOURLY Rate	ANNUAL TOTAL
Ice Technician Services Day Crew				
Lead Ice Technician	1	1,672	\$ 24.98	\$ 41,766.56
Ice Technician	3	4,720	\$ 18.56	\$ 87,603.20
Ice Attendant	3	1,546	\$ 16.20	\$ 25,045.20
Ice Technician Afternoon Crew				
Lead Ice Technician	1	1,672	\$ 24.98	\$ 41,766.56
Ice Technician	3	4,720	\$ 18.56	\$ 87,603.20
Ice Attendant	3	1,546	\$ 16.20	\$ 25,045.20
Ice Technician Event Crew				
Lead Ice Technician	1	1,672	\$ 24.98	\$ 41,766.56
Ice Technician	3	4,720	\$ 18.56	\$ 87,603.20
Ice Attendant	3	1,546	\$ 16.20	\$ 25,045.20

Annual Total/All: \$ 463,244.88



MAY 9, 2017
OPERATIONS/CONVERSIONS & ICE TECHNICIAN SERVICES
ALLEN EVENT CENTER
RFP #2017-4-74

ADDENDUM 1

The following items take precedence over the initial bid specifications, where supplemented herein. The original requirements, shall not be affected by this addendum and shall remain in effect.

1. Language in SOW Item #11 on page 13 shall read as follows:
 11. The Contractor shall use reasonable care to employ and retain employees who are qualified, competent and trustworthy. As a minimum, the Contractor shall, prior to hiring an applicant, determine the following: compatibility of the applicant working in a customer service environment; All Contractor employees shall be a minimum of 18 years of age. Contractor shall test any applicant for the presence of illegal drugs and/or the presence of legal drugs in excess of medically-approved standards, should a need arise. Contractor shall employ experienced, knowledgeable personnel to perform duties to which they are assigned.
2. Remove all Uniform Requirements for Ice Technicians found on page 18. Any required uniforms for the technicians will be provided.
3. Replace Section IV/Pricing page with the attached, revised pricing structure.
4. See attached Pre-Proposal Sign-in sheet.

Please return one (1) signed copy of this addendum with your bid response.

EBS SOLUTIONS INC

Company Name

05/10/2017

Signature of Officer

Date

JAY BILLINGSLEY

CEO

Printed Name and Title

214-295-1073 / 214-295-1073

Phone Number/Fax Number

jay@ebssolutionsusa.com

Email Address



**RFP #2017-4-74
OPERATIONS/CONVERSIONS &
ICE TECHNICIAN SERVICES (AEC)**

	Est. # of Staff	EST. HOURS (ANNUALLY)	EBS SOLUTIONS INC.	Extended Pricing
HOURLY RATES:				
Building Operations Day Crew			Price Per Hour	
Manager	1	988	\$ 24.62	\$ 24,324.56
Supervisor	1	455	\$ 21.26	\$ 9,673.30
Lead 2	1	780	\$ 19.91	\$ 15,529.80
Lead 1	5	780	\$ 18.56	\$ 14,476.80
Conversion Technician 3	10	640	\$ 17.21	\$ 11,014.40
Building Operations Event Crew				\$ -
Manager	1	494	\$ 24.62	\$ 12,162.28
Supervisor	1	455	\$ 21.26	\$ 9,673.30
Lead 2	1	780	\$ 19.91	\$ 15,529.80
Lead 1	5	780	\$ 18.56	\$ 14,476.80
Conversion Technician 3	10	1920	\$ 17.21	\$ 33,043.20
Building Operations Conversion Crew				\$ -
Manager	1	494	\$ 24.62	\$ 12,162.28
Supervisor	1	910	\$ 21.26	\$ 19,346.60
Lead 2	1	1560	\$ 19.91	\$ 31,059.60
Lead 1	5	1560	\$ 18.56	\$ 28,953.60
Conversion Technician 3	10	2560	\$ 17.21	\$ 44,057.60
Conversion Technician 2	15	3840	\$ 16.54	\$ 63,513.60
Conversion Technician 1	15	3840	\$ 16.20	\$ 62,208.00
ANNUAL TOTAL BUILDING OPERATIONS:				\$ 421,205.52
Ice Technician Service Day Crew				\$ -
Lead Ice Technician	1	575	\$ 24.98	\$ 14,363.50
Ice Technician	3	1585	\$ 18.56	\$ 29,417.60
Ice Attendant	3	525	\$ 16.20	\$ 8,505.00
Ice Technician Afternoon Crew				\$ -
Lead Ice Technician	1	575	\$ 24.98	\$ 14,363.50
Ice Technician	3	1585	\$ 18.56	\$ 29,417.60
Ice Attendant	3	525	\$ 16.20	\$ 8,505.00
Ice Technician Event Crew				\$ -
Lead Ice Technician	1	575	\$ 24.98	\$ 14,363.50
Ice Technician	3	1585	\$ 18.56	\$ 29,417.60
Ice Attendant	3	525	\$ 16.20	\$ 8,505.00
ANNUAL TOTAL ICE TECHNICIANS:				\$ 156,858.30
ANNUAL TOTAL:				\$ 578,063.82

CITY COUNCIL AGENDA COMMUNICATION

AGENDA DATE:	June 13, 2017
SUBJECT:	Authorize the City Manager to Execute a Contract with Game Time by Total Recreation Products, for the Replacement of Green Park Playground Equipment in the Amount of \$302,542.
STAFF RESOURCE:	Tim Dentler, Director of Parks and Recreation Matt McComb, Landscape Architect Laura Cuellar, Park Planner Kelly McGinnis, Project/Grant Coordinator Debra Morris, Purchasing Manager
BOARD COMMISSION ACTION:	The Allen Community Development Corporation approved project funding in the amount of \$200,000 for the replacement of Green Park playground equipment.
ACTION PROPOSED:	Authorize the City Manager to Execute a Contract with Game Time by Total Recreation Products, for the Construction of Green Park Playground Replacement in the Amount of \$302,542.

BACKGROUND

Green Park is a five-acre existing park on the west side of Allen near the intersection of Alma Drive and Comanche Drive. The park was originally built in 1999. The playground has endured 18 years of use and is due for replacement. In 2016, the Parks and Recreation Department reached out to a number of playground companies seeking proposals for a playground concept with a "first responder's theme" due to the park's location adjacent to Fire Station #4. Game Time by Total Recreation Products exceeded expectations and proposed a higher quality product than the other companies by designing a custom playground with City of Allen details.

Funding, Bidding for Construction

Local Government Code, Chapter 271.102, authorizes a local government to participate in a cooperative program with another local government or a local cooperative organization. The Texas Local Government Code permits cooperative agreements between local governments for the purchase of goods and services and satisfies the requirements of local governments to seek competitive bids for purchase of such goods and services through supplier contracts.

The playground and construction services will be purchased through BuyBoard Cooperative Agreement, Contract #512-16.

The project will be funded with sales tax revenues administered by the Allen Community Development

Corporation, Neighborhood Park Bonds, and Park Dedication Fees. A final proposal with the utilization of Buy Board was received from Game Time on June 8, 2017 for the demolition of the existing playground, installation of playground drainage, and installation of the new playground, and is summarized in the table below:

Buy Board BID

Contractor	Project Amount	Calendar Days
Game Time by Total Recreation Products	\$302,541.55	75

BUDGETARY IMPACT

Green Park Playground Replacement	
Description	Costs
Construction	\$302,542
Contingency 2.5%	\$7,458
TOTAL	\$310,000

Green Park Playground Replacement Project Funding	
Fund	Amount
CDC Funding	\$200,000
Neighborhood Park Bond Funds	\$100,000
Park Dedication Fees	\$10,000
TOTAL	\$310,000

STAFF RECOMMENDATION

Staff recommends authorizing the City Manager to execute a contract with Game Time by Total Recreation Products, for the replacement of Green Park playground equipment in the amount of \$302,542.

MOTION

I make a motion to Authorize the City Manager to execute a contract with Game Time by Total Recreation Products, for the replacement of Green Park playground equipment in the amount of \$302,542.

ATTACHMENTS:

Vendor Quote
Contract



by Total Recreation Products, Inc.
 17802 Grant Road Cypress, Texas 77429
 Phone: 281-351-2402
 Toll Free: 800-392-9909
 Fax: 281-351-2493

QUOTE
 #77910

06/08/2017

TM-11074-16 Rev 3 City of Allen - First Responder's Theme Playgrounds

City of Allen
 Attn: Laura Cuellar
 301 Century Parkway
 Allen, TX 75013
 Phone: 214-509-4720
 lcuellar@cityofallen.org

Ship To Zip: 75013

Quantity	Part #	Description	Unit Price	Amount
1	RDU	Game Time - TM-11074-16-2A1 Custom 5-12 Unit	\$115,292.00	\$115,292.00
1	RDU	Game Time - TM-11074-16-2A2 Custom 2-5 Unit	\$47,874.00	\$47,874.00
1	RDU	Game Time - 2 Bay Xscape Swing, (2) Belt Seats, (1) Tot Seat, (1) Zero-G Swing	\$3,222.00	\$3,222.00
1	CUSTOM	Game Time - Freestanding Ambulance	\$17,600.00	\$17,600.00
1	CUSTOM	Game Time - Fire House Custom Components - <i>Includes Firehouse - Truck Step Link, all Firehouse Custom Facade Panels, and "Stop, Drop, Roll" Panel Addition Only</i>	\$29,960.00	\$29,960.00
1	CUSTOM	Game Time - Fire Truck Facade - <i>Includes Firetruck Facade Custom Panels and Custom HPL Firetruck Logo Panel for Door Only</i>	\$11,440.00	\$11,440.00
1	CUSTOM	Game Time - Police Car Facade - <i>Includes Police Car Facade Custom Panels and Post Mount Steering Wheel Only</i>	\$11,004.00	\$11,004.00
1	CUSTOM	Game Time - Police Station Facade - <i>Includes 2-Sided Custom Police Station Facade Panels Only</i>	\$11,528.00	\$11,528.00
1	Steppers	PlayWorx GFRC - (3) GFRC Siren Steppers	\$5,400.00	\$5,400.00
1	RDU	Game Time - Surfacing Accessories, (3) Rolls of Geo-Textile Fabric	\$1,898.00	\$1,898.00
1	30506	GT-Impax - 5,945 SF (294 CY) of Engineered Wood Fiber, Compacted at 12" Depth - <i>Pricing includes \$658.85 discount and freight.</i>	\$5,715.52	\$5,715.52

06/08/2017

Quantity	Part #	Description	Unit Price	Amount
1	INSTALL	Game Time - Installation of Above Equipment - <i>Installation of Above Equipment Only; Site work includes the installation of drainage for the area, and concrete subbase for custom climbers. Demolition includes the removal of existing unit. No other site work, demolition or concrete work included. Acquisition of any and all permits is the sole responsibility of the customer. Standard installation does not include any extra or additional machinery, drillers, etc., for rock excavation. If rock conditions are encountered, additional charges will apply.</i> <i>Installation to take approximately 3 weeks after demolition has been completed and site has been prepped for installation. - Installation scheduling is contingent on current weather conditions - weather may cause installation delays and potential to postpone to a later date.</i>	\$72,096.16	\$72,096.16
1	DEMOLITION	Game Time - Demolition to take approximately 3 - 5 business days - Demolition is contingent with current weather conditions. Should weather become inadequate for working conditions, dates may be postponed or have potential to be delayed.		
1	DEPOSIT	Game Time - Minimum Deposit Amount Required for Custom Components - Minimum deposit amount \$23,625.00		
1	BONDS	Game Time - Payment, Performance, & Maintenance Bonds	\$4,538.47	\$4,538.47

Freight Calculated to 1305 Comanche, Allen, TX 75013. Installer to meet delivery truck for delivery, unloading and installation.

SubTotal: \$337,568.15
Discount: (\$52,823.92)
Estimated Freight: \$17,797.32
Total Amount: \$302,541.55

DUE TO FLUCTUATING FUEL COSTS, FREIGHT SHOWN IS ESTIMATED FREIGHT. ACTUAL FREIGHT WILL BE DETERMINED AT THE TIME OF YOUR ORDER. PLEASE FEEL FREE TO CONTACT US TO VERIFY CURRENT FREIGHT CHARGES PRIOR TO PLACING YOUR ORDER.
Contract: Buy Board Contract #512-16

Important Terms & Conditions - Please Review

To place an order, you must provide one of the following: a Purchase Order assigned to GameTime; or this Price Quotation, signed by an authorized purchaser, with a check made payable to GameTime. GameTime will also accept payment by Visa, MasterCard, or American Express. A current approved credit application is required for Net 30 terms.

06/08/2017

This quotation explicitly excludes any and all items not expressly specified or identified above. No other product, equipment, or service is included, regardless of any Contract Document, Contract Section, Plans, Specifications, Drawing, or Addendum. Delivery for most GameTime equipment is approximately 5-6 weeks after all order documents have been received and payment terms have been approved. A current, approved credit application is required for N30 terms. To place an order, you must provide a purchase order or a signed Total Recreation Products, Inc. (hereafter described as TRP) quote, assigned to GameTime. Neither general contractor nor subcontractor contracts can be accepted. Purchase documents that contain indemnity or hold harmless conditions cannot be accepted. Retainage is not permitted. The following must be received before your order can be processed: complete billing and shipping addresses, a contact name and phone #, and all color choices. Manufacturer's colors may vary from year to year. You are responsible for ensuring that any required submittal approvals are completed before placing your order for processing. TRP reserves the right to limit submittals to one copy. Shop drawings, bluelines, sepias, are not available. Closeout documents may be limited to GameTime or TRP standard issue. If Sales Tax Exempt, a copy of your tax exemption form or resale certificate must accompany your order, or any applicable sales tax, will be added to your invoice. Most GameTime products are shipped from the Ft. Payne, AL plant. GameTime cannot hold orders or store equipment. Equipment is invoiced when shipped. If a cash sale, your payment must be received in full before the order will be processed. Contractors must also provide copies of current, fully executed bid/performance/payment bonds, as applicable. Pricing shown does not include any charges for permits, bonding, prevailing wage, or additional insured certifications. Unless otherwise noted, any quantity of surfacing or playcurbs quoted has been calculated specifically for the equipment and layout shown. No additional surfacing or curbing is included, and no allowance has been made, for an unlevelled, convoluted or larger site, or for a different layout. Neither GameTime nor TRP is responsible for any surface, curbing, border, or drain that is provided by others. Also please confirm that your area is adequate for the equipment that you are purchasing.

Installation charges, if quoted, are for a "standard" installation unless specifically noted to be otherwise. Installation charges are due upon completion. Standard installations are based upon a soil work site, that is freely accessible by truck, (no fencing, tree/landscaping or utility obstacles, etc.), and level, (+/- 1-2% maximum slope). An accessible water source must be available to the installer. Any site work that is not expressly described is excluded. Standard installation does not include any extra or additional machinery, drillers, etc., for rock excavation. If rock conditions are encountered, additional charges will apply. Standard installations generally require from 2-10 business days to complete, depending upon the amount and type of equipment, site conditions, weather, and the installer's schedule. Work may or may not be performed in consecutive days. Playcurbs are staked in, not set in concrete. Engineered wood fiber and shredded rubber surfacings are spread, not compacted, rolled, or watered. Landscape timbers are not warranted. The Customer is responsible for locating and clearly marking all underground utilities in the installation area before any installation work can begin. The installer is not responsible for damages, repairs, or discontinuance of business due to damaged utilities. If applicable, sprinkler system locates, re-working and repairs are excluded from installation charges. Installation of all products, (equipment, borders, fall surfacing and amenities) are as quoted and approved by acceptance of quotes and drawings. As a precautionary measure, work in progress areas will be taped off at the end of the workday. Pier spoils from installation shall be spread at site, site will be left rough grade. The installer is not responsible for any damages or re-work resulting from after hours events or activities during the work in progress period. Temporary fencing is only provided by specific request, and additional charges will apply. Collectively and/or individually, not the manufacturer, TRP, their representatives, nor the installation company shall be held liable for any damages resulting from misuse, vandalism, or neglect. Any deviations from approved and accepted placement of all items, along with additional work, over and above quoted items, will be chargeable to the customer. Once work is completed the customer will be notified if present at the job site, and all responsibility of any new work will be transferred to the customer. The customer is responsible for maintaining the integrity of completed installation work until all components have seated and/or cured (concrete footings, etc.). Your project site must be completely prepared and ready to receive your equipment before any installation work begins. Acquisition of any and all permits is the sole responsibility of the customer. Additional charges may be billed for any extra hours or trips needed as a result of the work site not being ready. Neither the installation contractor, GameTime nor TRP will be responsible for delays caused by shortages, incorrect parts, weather conditions, other contractors, or lack of site readiness.

If you are receiving your equipment, you are responsible for unloading and accepting delivery from the freight company and reporting any damaged freight or shortages on the freight bill at the time. You will also be responsible for a complete inventory of your received equipment and reporting any discrepancies to us immediately. Neither the freight company nor the manufacturer will resolve shipment discrepancies that are not reported immediately. Make sure that all items have been received before any type of installation work is scheduled. The freight carrier will be instructed to call your designated contact 24 hours before delivery to arrange a delivery appointment.

Once accepted, orders can only be changed or canceled with the consent of GameTime and TRP, and on terms that will indemnify them against loss. Changed or canceled orders are subject to a \$100.00 service charge. Additionally, canceled orders are subject to a 25% restocking fee, plus freight charges (to and from). Built-to-order equipment orders are non-cancelable. Changes to orders that have been shipped and invoiced are subject to the above \$100.00 service charge plus additional restocking/return charges of 25%. Non-returnable items shall be charged at full invoice value. Any return transportation charges shall be for the Buyer's account. Replacement parts are also subject to the cancellation/returns policy. Please carefully review any research information that has been sent to you and confirm that you are ordering the correct replacement parts for your equipment. This quotation is valid 30 days. After 30 days, please request an updated quote. Prices may be subject to material and fuel surcharges at the time of shipment and are subject to change without notice. Current prices will apply at the time of shipment. Acceptance of this quote indicates your agreement to GameTime's credit terms, which are net 30 days, FOB shipping with approved credit. Any deviations from this proposal may invalidate the quoted pricing and/or terms.

06/08/2017

THIS QUOTATION IS SUBJECT TO POLICES IN THE CURRENT GAMETIME PARK AND PLAYGROUND CATALOG AND THE FOLLOWING TERMS AND CONDITIONS. OUR QUOTATION IS BASED ON SHIPMENT OF ALL ITEMS AT ONE TIME TO A SINGLE DESTINATION, UNLESS NOTED, AND CHANGES ARE SUBJECT TO PRICE ADJUSTMENT. PURCHASES IN EXCESS OF \$1,000.00 TO BE SUPPORTED BY YOUR WRITTEN PURCHASE ORDER MADE OUT TO GAMETIME, C/O TOTAL RECREATION.

Please complete and return with your required form of payment:

Acceptance of quotation:

Accepted By (printed): _____

P.O. No: _____

Signature: _____

Date: _____

Title: _____

Phone: _____

Facsimilie: _____

Purchase Amount: **\$302,541.55**

Order Information:

Bill To: _____

Ship To: _____

Company: _____

Company: _____

Attn: _____

Attn: _____

Address: _____

Address: _____

City, State, Zip: _____

City, State, Zip: _____

Contact: _____

Contact: _____

Email Address: _____

Email Address: _____

Tel: _____

Tel: _____

Fax: _____

Fax: _____

For non-taxable purchases: Please also provide a copy of your Sales Tax Exemption Certificate or Resale Certificate.



STANDARD FIXED PRICE AGREEMENT

CITY OF ALLEN, TEXAS
Green Park Playground Replacement
Buy Board Contract #512-16
Vendor Quote#77910

City of Allen
Allen Civic Plaza
305 Century Parkway
Allen, Texas 75013

CITY OF ALLEN, TEXAS

This Agreement is made by and between the City of Allen, Texas, a home-rule municipality (hereinafter referred to as the "Owner") and Game Time c/o Total Recreation Products, (hereinafter referred to as the "Contractor") for the construction of Green Park Playground Replacement, (hereinafter referred to as the "Project"), the Owner and the Contractor hereby agreeing as follows:

ARTICLE I

THE CONTRACT AND THE CONTRACT DOCUMENTS

1.1 THE CONTRACT

1.1.1 The Contract between the Owner and the Contractor, of which this Agreement is a part, consists of the Contract Documents. It shall be effective on the date this Agreement is executed by the last party to execute it.

1.2. THE CONTRACT DOCUMENTS

1.2.1 The Contract Documents consist of this Agreement, the Requirements and Instructions to Bidders, the Specifications, the Drawings, all Change Orders and Field Orders issued hereafter, any other amendments hereto executed by the parties hereafter, together with the following (if any):

Addendum: None

Documents not enumerated in this Paragraph 1.2.1 are not Contract Documents and do not form part of this Contract.

1.3 ENTIRE AGREEMENT

1.3.1 This Contract, together with the Contractor's performance and payment bonds for the Project, all General Conditions, Special Conditions, Plans and Specifications, and Addenda attached thereto, constitute the entire and exclusive agreement between the Owner and the Contractor with reference to the Project. Specifically, but without limitation, this Contract supersedes any bid documents and all prior written or oral communications, representations and negotiations, if any, between the Owner and Contractor not expressly made a part hereof.

1.4 NO PRIVACY WITH OTHERS

1.4.1 Nothing contained in this Contract shall create, or be interpreted to create, privacy or any other contractual agreement between the Owner and any person or entity other than the Contractor.

1.5 INTENT AND INTERPRETATION

1.5.1 The intent of this Contract is to require complete, correct and timely execution of the Work. Any Work that may be required, implied or inferred by the Contract Documents, or any one or more of them, as necessary to produce the intended result shall be provided by the Contractor for the Contract Price.

1.5.2 This Contract is intended to be an integral whole and shall be interpreted as internally consistent. What is required by any one Contract Document shall be considered as required by the Contract.

1.5.3 When a word, term or phrase is used in this Contract, it shall be interpreted or construed, first, as defined herein; second, if not defined, according to its generally accepted meaning in the construction industry; and third, if there is no generally accepted meaning in the construction industry, according to its common and customary usage.

1.5.4 The words "include", "includes", or "including", as used in this Contract, shall be deemed to be followed by the phrase, "without limitation".

1.5.5 The specification herein of any act, failure, refusal, omission, event, occurrence or condition as constituting a material breach of this Contract shall not imply that any other, non-specified act, failure, refusal, omission, event, occurrence or condition shall be deemed not to constitute a material breach of this Contract.

1.5.6 Words or terms used as nouns in this Contract shall be inclusive of their singular and plural forms, unless the context of their usage clearly requires a contrary meaning.

1.5.7 The Contractor shall have a continuing duty to read, carefully study and compare each of the Contract Documents, the Shop Drawings, the Product Data, and any Plans and Specifications, and shall give written notice to the Owner of any inconsistency, ambiguity, error or omission which the Contractor may discover with respect to these documents before proceeding with the affected Work. The issuance, or the express or implied approval by the Owner or the Architect/Engineer of the Contract Documents, Shop Drawings or Product Data shall not relieve the Contractor of the continuing duties imposed hereby, nor shall any such approval be evidence of the Contractor's compliance with this Contract. The Owner has requested the Architect/Engineer to only prepare documents for the Project, including the Drawings and Specifications for the Project, which are accurate, adequate, consistent, coordinated and sufficient for construction. HOWEVER, THE OWNER MAKES NO REPRESENTATION OR WARRANTY OF ANY NATURE WHATSOEVER TO THE CONTRACTOR CONCERNING SUCH DOCUMENTS. By the execution hereof, the Contractor acknowledges and represents that it has received, reviewed and carefully examined such documents, has found them to be complete, accurate, adequate, consistent, coordinated and sufficient for construction, and that the Contractor has not, does not, and will not rely upon any representation or warranties by the Owner concerning such documents as no such representation or warranties have been or are hereby made. Further, the Contractor represents and warrants that it has had a sufficient opportunity to inspect the Project site and assumes any and all responsibility for inadequacies or ambiguities in the plans, drawings or specifications as well as for latent conditions of the site where the work is to be performed.

1.5.8 As between numbers and scaled measurements on the Drawings and in the Design, the numbers shall govern, as between larger scale and smaller scale drawings, the larger scale shall govern.

1.5.9 Neither the organization of any of the Contract Documents into divisions, sections,

paragraphs, articles, (or other categories), nor the organization or arrangement of the Design, shall control the Contractor in dividing the Work or in establishing the extent or scope of the Work to be performed by Subcontractors.

1.6 OWNERSHIP OF CONTRACT DOCUMENTS

1.6.1 The Contract Documents, and each of them, shall remain the property of the Owner. The Contractor shall have the right to keep one record set of the Contract Documents upon completion of the Project; provided, however, that in no event shall Contractor use, or permit to be used, any or all of such Contract Documents on other projects without the Owner's prior written authorization.

ARTICLE II

THE WORK

2.1 The Contractor shall perform all of the Work required, implied or reasonably inferable from, this Contract.

2.2 WORK

2.2.1 The term "Work" shall mean whatever is done by or required of the Contractor to perform and complete its duties under this Contract, including the following: construction of the whole or a designated part of the Project; furnishing of any required surety bonds and insurance, and the provision or furnishing of labor, supervision, services, materials, supplies, equipment, fixtures, appliances, facilities, tools, transportation, storage, power, permits and licenses required of the Contractor, fuel, heat, light, cooling and all other utilities as required by this Contract. The Work to be performed by the Contractor is generally described as follows:

Playground Replacement at Green Park to include; demo of existing playground structures and installation of drainage and new playground in place and complete per specifications and plans.

2.2.2 The Contractor shall be responsible for paying for and procuring all materials and labor and furnishing all services necessary or appropriate for the full performance of the Work and the for the full completion of the Project. All materials shall be new and materials and workmanship shall be of good quality. Upon request, the Contractor shall furnish satisfactory proof of the type, kind, and quality of materials.

ARTICLE III

CONTRACT TIME

3.1 TIME AND LIQUIDATED DAMAGES

3.1.1 The Contractor shall commence the Work within 14 days of receipt of a written Notice to Proceed, and shall achieve Substantial Completion of the Work no later than **(75) calendar days** from the date specified in the Notice to Proceed. The parties acknowledge that time is of the essence in the performance of the terms of this Contract. The term "calendar days" shall mean any and all days of the week or month, no days being excepted. It is contemplated by the parties that the progress of the Work may be delayed by certain conditions beyond the control of the parties; these delays have been contemplated by the parties and considered in the time allotted for performance specified herein and includes, but is not limited to delays occasioned on account of adverse weather, temporary unavailability of materials, shipment delays, and the presence and potential interference of other contractors who may be performing work at the Project site unrelated to this agreement. The number of calendar days from the date on which the Work is permitted to proceed, through the date set forth for Substantial Completion, shall constitute the "Contract Time".

3.1.2 The Contractor shall pay the Owner the sum of **(\$240) per day** for each and every calendar day of unexcused delay in achieving Substantial Completion beyond the date set forth herein for Substantial Completion of the Work. Any sums due and payable hereunder by the Contractor shall be payable, not as a penalty, but as liquidated damages representing an estimate of delay damages likely to be sustained by the Owner, estimated at or before the time of executing this Contract. When the Owner reasonably believes

that Substantial Completion will be inexcusably delayed, the Owner shall be entitled, but not required, to withhold from any amounts otherwise due the Contractor an amount then believed by the Owner to be adequate to recover liquidated damages applicable to such delays. If and when the Contractor overcomes the delay in achieving Substantial Completion, or any part thereof, for which the Owner has withheld payment, the Owner shall promptly release to the Contractor those funds withheld, but no longer applicable, as liquidated damages.

3.1.3 No claim shall be made by the Contractor to the Owner, and no damages, costs or extra compensation shall be allowed or paid by the Owner to the Contractor for any delay or hindrance from any cause in the progress or completion of the Work or this Contract. The Contractor's sole remedy in the event of any delay or hindrance shall be to request time extensions by written change orders as provided for hereinafter. Should the Contractor be delayed by an act of the Owner, or should the Owner order a stoppage of the Work for sufficient cause, an extension of time shall be granted by the Owner by written authorization upon written application, which extension shall not be unreasonably denied, to compensate for the delay.

3.1.4 The Owner shall have the authority to suspend the Work wholly or in part for such period or periods of time as it may deem appropriate due to unsuitable conditions considered unfavorable for the proper prosecution of the Work or for the failure of the Contractor to carry out instructions from the Owner or Owner's representative. During any period in which the Work is stopped or during which any of the Work is not actively in progress for any reason, Contractor shall properly protect the site and the Work from damage, loss or harm.

3.2 SUBSTANTIAL COMPLETION

3.2.1 "Substantial Completion" shall mean that stage in the progression of the Work when the Work is sufficiently complete in accordance with this Contract that the Owner can enjoy beneficial use or occupancy of the Work and can utilize the Work for its intended purpose, even though minor miscellaneous work and/or adjustment may be required.

3.3 TIME IS OF THE ESSENCE

3.3.1 All limitations of time set forth in the Contract Documents are of the essence of this Contract.

ARTICLE IV

CONTRACT PRICE

4.1 THE CONTRACT PRICE

4.1.1 The Owner shall pay, and the Contractor shall accept, as full and complete payment for all of the Work required herein, the fixed sum of **\$302,541.55 (Three hundred two thousand, five hundred forty one and 55/100 cents).**

The sum set forth in this Paragraph 4.1 shall constitute the Contract Price which shall not be modified except by written Change Order as provided in this Contract.

ARTICLE V

PAYMENT OF THE CONTRACT PRICE

5.1 SCHEDULE OF VALUES

5.1.1 Within ten (10) calendar days of the effective date hereof, the Contractor shall submit to the Owner and to the Architect/Engineer a Schedule of Values allocating the Contract Price to the various portions of the Work. The Contractor's Schedule of Values shall be prepared in such form, with such detail, and supported by such data as the Architect/Engineer or the Owner may require to substantiate its accuracy. The Contractor shall not imbalance its Schedule of Values nor artificially inflate any element thereof. The violation of this provision by the Contractor shall constitute a material breach of this Contract. The Schedule of Values shall be used only as a basis for the Contractor's Applications for Payment and shall only constitute such basis after it has been acknowledged and accepted in writing by the Architect/Engineer and the Owner.

5.2 PAYMENT PROCEDURE

5.2.1 The Owner shall pay the Contract Price to the Contractor as provided below.

5.2.2 ***PROGRESS PAYMENTS*** - Based upon the Contractor's Applications for Payment submitted to the Architect/Engineer and upon Certificates for Payment subsequently issued to the Owner by the Architect/Engineer, the Owner shall make progress payments to the Contractor on account of the Contract Price.

5.2.3 On or before the 25th day of each month after commencement of the Work, the Contractor shall submit an Application for Payment for the period ending the 15th day of the month to the Architect/Engineer in such form and manner, and with such supporting data and content, as the Owner or the Architect/Engineer may require. Therein, the Contractor may request payment for **ninety percent (90%)** of that portion of the Contract Price properly allocable to Contract requirements properly provided, labor, materials and equipment properly incorporated in the Work, less the total amount of previous payments received from the Owner. Such Application for Payment shall be signed by the Contractor and shall constitute the Contractor's representation that the Work has progressed to the level for which payment is requested in accordance with the Schedule of Values, that the Work has been properly installed or performed in full compliance with this Contract, and that the Contractor knows of no reason why payment should not be made as requested. Thereafter, the Architect/Engineer will review the Application for Payment and may also review the Work at the Project site or elsewhere to determine whether the quantity and quality of the Work is as represented in the Application for Payment and is as required by this Contract. The Architect/Engineer shall determine and certify to the Owner the amount properly owing to the Contractor. The Owner shall make partial payments on account of the Contract Price to the Contractor within thirty (30) days following the Architect/Engineer's receipt and approval of each Application for Payment. The amount of each partial payment shall be the amount certified for payment by the Architect/Engineer less such amounts, if any, otherwise owing by the Contractor to the Owner or which the Owner shall have the right to withhold as authorized by this Contract. The Architect/Engineer's certification of the Contractor's Application for Payment shall not preclude the Owner from the exercise of any of its rights as set forth in Paragraph 5.3 hereinbelow.

5.2.4 The Contractor warrants that title to all Work covered by an Application for Payment

will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment, all Work for which payments have been received from the Owner shall be free and clear of liens, claims, security interest or other encumbrances in favor of the Contractor or any other person or entity whatsoever.

5.2.5 The Contractor shall promptly pay each Subcontractor out of the amount paid to the Contractor on account of such Subcontractor's Work, the amount to which such Subcontractor is entitled. In the event the Owner becomes informed that the Contractor has not paid a Subcontractor as herein provided, the Owner shall have the right, but not the duty, to issue future checks in payment to the Contractor of amounts otherwise due hereunder naming the Contractor and such Subcontractor as joint payees. Such joint check procedure, if employed by the Owner, shall create no rights in favor of any person or entity beyond the right of the named payees to payment of the check and shall not be deemed to commit the Owner to repeat the procedure in the future.

5.2.6 No progress payment, nor any use or occupancy of the Project by the owner, shall be interpreted to constitute an acceptance of any Work not in strict accordance with this Contract.

5.3 WITHHELD PAYMENT

5.3.1 The Owner may decline to make payment, may withhold funds, and, if necessary, may demand the return of some or all of the amounts previously paid to the Contractor, to protect the Owner from loss because of:

- (a) defective Work not remedied by the Contractor nor, in the opinion of the Owner, likely to be remedied by the Contractor;
- (b) claims of third parties against the Owner or the Owner's property;
- (c) failure by the Contractor to pay Subcontractors or others in a prompt and proper fashion;
- (d) evidence that the balance of the Work cannot be completed in accordance with the Contract for the unpaid balance of the Contract Price,
- (e) evidence that the Work will not be completed in the time required for substantial or final completion;

- (f) persistent failure to carry out the Work in accordance with the Contract;
- (g) damage to the Owner or a third party to whom the Owner is, or may be, liable.

In the event that the Owner makes written demand upon the Contractor for amounts previously paid by the Owner as contemplated in this Subparagraph 5.3.1, the Contractor shall promptly comply with such demand. The Owner shall have no duty to third parties to withhold payment to the Contractor and shall incur no liability for a failure to withhold funds.

5.4 UNEXCUSED FAILURE TO PAY

5.4.1 If within fifteen (15) days after the date established herein for payment to the Contractor by the Owner, the Owner, without cause or basis hereunder, fails to pay the Contractor any amount then due and payable to the Contractor, then the Contractor may after ten (10) additional days' written notice to the Owner and the Architect/Engineer, and without prejudice to any other available rights or remedies it may have, stop the Work until payment of those amounts due from the Owner have been received. Late payments shall not accrue interest or other late charges.

5.5 SUBSTANTIAL COMPLETION

5.5.1 After completing work and before final inspection, the Contractor shall remove from the premises, all scaffolding, equipment, tools, and materials (including rejected materials, that are not the property of the Owner and all rubbish caused by its work. When the Contractor believes that the Work is substantially complete, the Contractor shall submit to the Architect/Engineer a list of items to be completed or corrected. When the Architect/Engineer on the basis of an inspection determines that the Work is in fact substantially complete, it will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion, shall state the responsibilities of the Owner and the Contractor for Project security, maintenance, heat, utilities, damage to the Work, and insurance, and shall fix the time within which the Contractor shall complete the items listed therein. Guarantees required by the Contract shall commence on the date of Substantial Completion of the Work. The Certificate of Substantial Completion shall be submitted to the

Owner and the Contractor for their written acceptance of the responsibilities assigned to them in such certificate.

Upon Substantial Completion of the Work, and execution by both the Owner and the Contractor of the Certificate of Substantial Completion, the Owner shall pay the Contractor an amount sufficient to increase total payments to the Contractor to one hundred percent (100%) of the Contract Price less one hundred percent (100%) of the reasonable cost as determined by the Owner and the Architect/Engineer for completing all incomplete Work, correcting and bringing into conformance all defective and nonconforming Work, and handling all unsettled claims.

5.6 COMPLETION AND FINAL PAYMENT

5.6.1 When all of the Work is finally complete and the Contractor is ready for a final inspection, it shall notify the Owner and the Architect/Engineer thereof in writing. Thereupon, the Architect/Engineer will make final inspection of the Work and, if the Work is complete in full accordance with this Contract and this Contract has been fully performed, the Architect/Engineer will promptly issue a final Certificate for Payment certifying to the Owner that the Project is complete and the Contractor is entitled to the remainder of the unpaid Contract Price, less any amount withheld pursuant to this Contract. If the Architect/Engineer is unable to issue its final Certificate for Payment and is required to repeat its final inspection of the Work, the Contractor shall bear the cost of such repeat final inspection(s) which cost may be deducted by the Owner from the Contractor's final payment.

5.6.1.1 If the Contractor fails to achieve final completion within the time fixed therefor by the Architect/Engineer in its Certificate of Substantial Completion, the Contractor shall pay the Owner the sum set forth herein above as liquidated damages per day for each and every calendar day of unexcused delay in achieving final completion beyond the date set forth herein for final completion of the Work. Any sums due and payable hereunder by the Contractor shall be payable, not as a penalty, but as liquidated damages representing an estimate of delay damages likely to be sustained by the Owner, estimated at or before the time of executing this Contract. When the Owner reasonably believes that final completion will be inexcusably delayed, the Owner shall be

entitled, but not required, to withhold from any amounts otherwise due the Contractor an amount then believed by the Owner to be adequate to recover liquidated damages applicable to such delays. If and when the Contractor overcomes the delay in achieving final completion, or any part thereof, for which the Owner has withheld payment, the Owner shall promptly release to the Contractor those funds withheld, but no longer applicable, as liquidated damages.

5.6.2 The Contractor shall not be entitled to final payment unless and until it submits to the Architect/Engineer its affidavit that all payrolls, invoices for materials and equipment, and other liabilities connected with the Work for which the Owner, or the Owner's property might be responsible, have been fully paid or otherwise satisfied; releases and waivers of lien from all Subcontractors of the Contractor and of any and all other parties required by the Architect/Engineer or the Owner; consent of Surety, if any, to final payment. If any third party fails or refuses to provide a release of claim or waiver of lien as required by the Owner, the Contractor shall furnish a bond satisfactory to the Owner to discharge any such lien or indemnify the Owner from liability.

5.6.3 The Owner shall make final payment of all sums due the Contractor within ten (10) days of the Architect/Engineer's execution of a final Certificate for Payment.

5.6.4 Acceptance of final payment shall constitute a waiver of all claims against the Owner by the Contractor except for those claims previously made in writing against the Owner by the Contractor, pending at the time of final payment, and identified in writing by the Contractor as unsettled at the time of its request for final payment.

5.6.5 Under no circumstance shall Contractor be entitled to receive interest on any payments or monies due Contractor by the Owner, whether the amount on which the interest may accrue is timely, late, wrongfully withheld, or an assessment of damages of any kind.

ARTICLE VI

THE OWNER

6.1 INFORMATION, SERVICES AND THINGS REQUIRED FROM OWNER

6.1.1 The Owner shall furnish to the Contractor, at the time of executing this Contract, any and all written and tangible material in its possession concerning conditions below ground at the site of the Project.

Such written and tangible material is furnished to the Contractor only in order to make complete disclosure of such material and for no other purpose. By furnishing such material, the Owner does not represent, warrant, or guarantee its accuracy either in whole, in part, implicitly or explicitly, or at all, and shall have no liability therefor. The Owner shall also furnish surveys, legal limitations and utility locations (if known), and a legal description of the Project site.

6.1.2 Excluding permits and fees normally the responsibility of the Contractor, the Owner shall obtain all approvals, easements, and the like required for construction and shall pay for necessary assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

6.1.3 The Owner shall furnish the Contractor, free of charge, one copy of the Contract Documents for execution of the Work.

6.2 RIGHT TO STOP WORK

6.2.1 If the Contractor persistently fails or refuses to perform the Work in accordance with this Contract, or if the best interests of the public health, safety or welfare so require, the Owner may order the Contractor to stop the Work, or any described portion thereof, until the cause for stoppage has been corrected, no longer exists, or the Owner orders that Work be resumed. In such event, the Contractor shall immediately obey such order.

6.3 OWNER'S RIGHT TO PERFORM WORK

6.3.1 If the Contractor's Work is stopped by the Owner under Paragraph 6.2, and the Contractor fails within seven (7) days of such stoppage to provide adequate assurance to the Owner that the cause of such stoppage will be eliminated or corrected, then the Owner may, without prejudice to any other rights or remedies the Owner may have against the Contractor, proceed to carry out the subject Work. In such a situation, an appropriate Change Order shall be issued deducting from the Contract Price the cost of correcting the subject

deficiencies, plus compensation for the Architect/Engineer's additional services and expenses necessitated thereby, if any. If the unpaid portion of the Contract Price is insufficient to cover the amount due the Owner, the Contractor shall pay the difference to the Owner.

ARTICLE VII

THE CONTRACTOR

7.1 The Contractor is again reminded of its continuing duty set forth in Subparagraph 1.5.7. The Contractor shall perform no part of the Work at any time without adequate Contract Documents or, as appropriate, approved Shop Drawings, Product Data or Samples for such portion of the Work. If the Contractor performs any of the Work knowing it involves a recognized error, inconsistency or omission in the Contract Documents without such notice to the Architect/Engineer, the Contractor shall bear responsibility for such performance and shall bear the cost of correction.

7.2 The Contractor shall perform the Work strictly in accordance with this Contract.

7.3 The Contractor shall supervise and direct the Work using the Contractor's best skill, effort and attention. The Contractor shall be responsible to the Owner for any and all acts or omissions of the Contractor, its employees and others engaged in the Work on behalf of the Contractor.

7.3.1 The Contractor shall give adequate attention to the faithful prosecution of the Work and the timely completion of this Contract, with authority to determine the manner and means of performing such Work, so long as such methods insure timely completion and proper performance.

7.3.2 The Contractor shall exercise all appropriate means and measures to insure a safe and secure jobsite in order to avoid and prevent injury, damage or loss to persons or property.

7.4 WARRANTY

7.4.1 The Contractor warrants to the Owner that all labor furnished to progress the Work under this Contract will be competent to perform the tasks undertaken, that the product of such labor will yield only first-class results, that materials and equipment furnished will be of good quality and new unless

otherwise permitted by this Contract, and that the Work will be of good quality, free from faults and defects and in strict conformance with this Contract. All Work not conforming to these requirements may be considered defective.

7.5 The Contractor shall obtain and pay for all permits, fees and licenses necessary and ordinary for the Work. The Contractor shall comply with all lawful requirements applicable to the Work and shall give and maintain any and all notices required by applicable law pertaining to the Work.

7.6 SUPERVISION

7.6.1 The Contractor shall employ and maintain at the Project site only competent supervisory personnel. Absent written instruction from the Contractor to the contrary, the superintendent shall be deemed the Contractor's authorized representative at the site and shall be authorized to receive and accept any and all communications from the Owner or the Architect/Engineer.

7.6.2 Key supervisory personnel assigned by the Contractor to this Project are as follows:

NAME	FUNCTION
_____	_____
_____	_____
_____	_____
_____	_____

So long as the individuals named above remain actively employed or retained by the Contractor, they shall perform the functions indicated next to their names unless the Owner agrees to the contrary in writing. In the event one or more individuals not listed above subsequently assume one or more of those functions listed above, the Contractor shall be bound by the provisions of this Subparagraph 7.6.2 as though such individuals had been listed above.

7.6.3 The Contractor's authorized superintendent shall directly oversee construction 100% of the time (i.e. supervise construction onsite at all times). "The maintenance of a full-time construction supervisor shall be a material term and condition of

this Agreement, the violation of which shall be deemed to be a material breach of this Agreement.

7.7 The Contractor, within fifteen (15) days of commencing the Work, shall submit to the Owner and the Architect/Engineer for their information, the Contractor's schedule for completing the Work. The Contractor's schedule shall be revised no less frequently than monthly (unless the parties otherwise agree in writing) and shall be revised to reflect conditions encountered from time to time and shall be related to the entire Project. Each such revision shall be furnished to the Owner and the Architect/Engineer. Failure by the Contractor to strictly comply with the provisions of this Paragraph 7.7 shall constitute a material breach of this Contract.

7.8 The Contractor shall continuously maintain at the site, for the benefit of the owner and the Architect/Engineer, one record copy of this Contract marked to record on a current basis changes, selections and modifications made during construction. Additionally, the Contractor shall maintain at the site for the Owner and Architect/Engineer the approved Shop Drawings, Product Data, Samples and other similar required submittals. Upon final completion of the Work, all of these record documents shall be delivered to the Owner.

7.9 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

7.9.1 Shop Drawings, Product Data, Samples and other submittals from the Contractor do not constitute Contract Documents. Their purpose is merely to demonstrate the manner in which the Contractor intends to implement the Work in conformance with information received from the Contract Documents.

7.9.2 The Contractor shall not perform any portion of the Work requiring submittal and review of Shop Drawings, Product Data or Samples unless and until such submittal shall have been approved by the Architect/Engineer. Approval by the Architect/Engineer, however, shall not be evidence that Work installed pursuant thereto conforms with the requirements of this Contract.

7.10 CLEANING THE SITE AND THE PROJECT

7.10.1 The Contractor shall keep the site reasonably clean during performance of the Work. Upon final completion of the Work, the Contractor shall clean the site and the Project and remove all waste, rubbish, temporary structures, and other materials together with all of the Contractor's property therefrom. Contractor shall dispose of all refuse at a Texas Natural Resource Conservation Commission approved landfill. The Contractor shall further restore all property damaged during the prosecution of the Work and shall leave the site in a clean and presentable condition. No additional payment shall be made by the Owner for this work, the compensation having been considered and included in the contract price.

7.11 ACCESS TO WORK AND INSPECTIONS

7.11.1 The Owner and the Architect/Engineer shall have access to the Work at all times from commencement of the Work through final completion. The Contractor shall take whatever steps necessary to provide access when requested. When reasonably requested by the Owner or the Architect/Engineer, the Contractor shall perform or cause to be performed such testing as may be necessary or appropriate to insure suitability of the jobsite or the Work's compliance with the Contract requirements.

7.12 INDEMNITY AND DISCLAIMER

7.12.1 OWNER SHALL NOT BE LIABLE OR RESPONSIBLE FOR, AND SHALL BE INDEMNIFIED, HELD HARMLESS AND RELEASED BY CONTRACTOR FROM AND AGAINST ANY AND ALL SUITS, ACTIONS, LOSSES, DAMAGES, CLAIMS, OR LIABILITY OF ANY CHARACTER, TYPE, OR DESCRIPTION, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEY'S FEES FOR INJURY OR DEATH TO ANY PERSON, OR INJURY OR LOSS TO ANY PROPERTY, RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS, INCLUDING THE CONTRACTOR, OR PROPERTY, ARISING OUT OF, OR OCCASIONED BY, DIRECTLY OR INDIRECTLY, THE

PERFORMANCE OF CONTRACTOR UNDER THIS AGREEMENT. WITHOUT, HOWEVER, WAIVING ANY GOVERN-MENTAL IMMUNITY AVAILABLE TO THE OWNER UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW. THE PROVISIONS OF THIS INDEMNIFICATION ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY. IT IS THE EXPRESSED INTENT OF THE PARTIES TO THIS AGREEMENT THAT THE INDEMNITY PROVIDED FOR IN THIS CONTRACT IS AN INDEMNITY EXTENDED BY CONTRACTOR TO INDEMNIFY AND PROTECT OWNER FROM THE CONSEQUENCES OF THE CONTRACTOR'S NEGLIGENCE, TO THE EXTENT SUCH NEGLIGENCE IS THE SOLE OR PARTIAL CAUSE OF ANY SUCH INJURY, DEATH, OR DAMAGE.

7.12.2 The Contractor will secure and maintain Contractual Liability insurance to cover this indemnification agreement that will be primary and non-contributory as to any insurance maintained by the Owner for its own benefit, including self-insurance. In addition, Contractor shall obtain and file with Owner a City of Allen Standard Certificate of Insurance evidencing the required coverage.

7.12.3 In claims against any person or entity indemnified under this Paragraph 7.12 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Paragraph 7.12 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

7.13 NONDISCRIMINATION

7.13.1 The Contractor shall not discriminate in any way against any person, employee or job applicant on the basis of race, color, creed, national origin, religion, age, sex, or disability where reasonable accommodations can be effected to enable the person to perform the essential functions of the job. The Contractor shall further insure that the foregoing nondiscrimination requirement shall be made a part and requirement of each subcontract on this Project.

7.14 PREVAILING WAGE RATES

7.14.1 The Contractor shall comply in all respects with all requirements imposed by any laws, ordinances or resolutions applicable to the Project with regard to the minimum prevailing wage rates for all classes of employees, laborers, subcontractors, mechanics, workmen and persons furnishing labor and services to the Project. The City of Allen has adopted a Prevailing Wage Rate Schedule, available to the Contractor by request, which specifies the classes and wage rates to be paid to all persons. The Contractor shall pay not less than the minimum wage rates established thereby for each class, craft or type of labor, workman, or mechanic employed in the execution of this Contract. The failure of the Contractor to comply with this requirement shall result in the forfeiture to the City of Allen of a sum of not less than Sixty Dollars (\$60.00) for each person per day, or portion thereof, that such person is paid less than the prevailing rate. Upon request by the Owner, Contractor shall make available for inspection and copying its books and records, including but not limited to its payroll records, account information and other documents as may be required by the Owner to insure compliance with this provision. The prevailing wage rates applicable to this Agreement, are attached.

7.15 JOB SITE SAFETY PRECAUTIONS

7.15.1 The Contractor shall at all times exercise reasonable precautions for the safety of its employees, laborers, subcontractors, mechanics, workmen and others on and near the job site and shall comply with all laws, ordinances, regulations, and standards

of federal, state and local safety laws and regulations. The Contractor shall provide such machinery guards, safe walkways, ladders, bridges, and other safety devices as may be necessary or appropriate to insure a safe and secure job site and shall require its subcontractors to comply with this requirement. The Contractor shall immediately comply with any and all safety requirements imposed by the Architect/Engineer during the progress of the Work.

7.15.2 The Architect/Engineer's review of the Contractor's performance does not include review of adequacy of Contractor's safety or health measures.

7.16 WARNING DEVICES AND BARRICADES

7.16.1 The Contractor shall furnish and maintain such warning devices, barricades, lights, signs, pavement markings, and other devices as may be necessary or appropriate or required by the Architect/Engineer to protect persons or property in, near or adjacent to the jobsite, including . No separate compensation shall be paid to the Contractor for such measures. Where the Work is being conducted in, upon or near streets, alleys, sidewalks, or other rights-of-way, the Contractor shall insure the placement, maintenance and operation of any and all such warning devices as may be required by the City of Allen and shall do so until no longer required by the City. Such devices shall be in compliance with and conform to the manual and specifications for the uniform system of traffic control devices adopted by the Texas Department of Transportation.

7.17 PROTECTION OF UTILITIES AND OTHER CONTRACTORS

7.17.1 The Contractor shall use best efforts to leave undisturbed and uninterrupted all utilities and utility services provided to the jobsite or which presently exists at, above or beneath the location where the Work is to be performed. In the event that any utility or utility service is disturbed or damaged during the progress of the Work, the Contractor shall forthwith repair, remedy or restore the utility at Contractor's sole expense.

7.17.2 The Contractor understands and acknowledges that other contractors of the Owner or of other entities may be present at the jobsite performing other work unrelated to the Project. The Contractor shall use best efforts to work around other contractors without impeding the work of others while still adhering to the completion date established herein. In the event that the Contractor's work is or may be delayed by any other person, the Contractor shall immediately give notice thereof to the Architect/Engineer and shall request a written Change Order in accordance with the procedures set forth by this Contract. The Contractor's failure to provide such notice and to request such Change Order shall constitute a waiver of any and all claims associated therewith.

ARTICLE VIII

CONTRACT ADMINISTRATION

8.1 THE ARCHITECT

8.1.1 When used in this Contract the term "Architect/Engineer" does not necessarily denote a duly licensed, trained or certified architect; as used herein, the term shall be used interchangeably and shall mean a designated Architect/Engineer, Architect/Engineer, or Contract Administrator (who may not be an architect or Architect/Engineer) for the Owner, said person to be designated or redesignated by the Owner prior to or at any time during the Work hereunder. The Architect/Engineer may be an employee of the Owner or may be retained by the Owner as an independent contractor but, in either event, the Architect/Engineer's duties and authority shall be as set forth hereinafter. The Contractor understands and agrees that it shall abide by the decisions and instructions of the Architect/Engineer notwithstanding the contractual relationship between the Owner and Architect/Engineer. All of the Owner's instructions to the Contractor shall be through the Architect/Engineer. In the event the Owner should find it necessary or convenient to replace the Architect/Engineer, the Owner shall retain a replacement Architect/Engineer and the status of the replacement Architect/Engineer shall be that of the former Architect/Engineer.

8.2 ARCHITECT/ENGINEER'S ADMINISTRATION

8.2.1 The Architect/Engineer, unless otherwise directed by the Owner in writing, will perform those duties and discharge those responsibilities allocated to the Architect/Engineer as set forth in this Contract. The Architect/Engineer shall be the Owner's representative from the effective date of this Contract until final payment has been made.

8.2.2 The Owner and the Contractor shall communicate with each other in the first instance through the Architect/Engineer.

8.2.3 The Architect/Engineer shall be the initial interpreter of the requirements of the drawings and specifications and the judge of the performance thereunder by the Contractor. The Architect/Engineer shall render written or graphic interpretations necessary for the proper execution or progress of the Work with reasonable promptness on request of the Contractor.

8.2.4 The Architect/Engineer will review the Contractor's Applications for Payment and will certify to the Owner for payment to the Contractor, those amounts then due the Contractor as provided in this Contract.

8.2.5 The Architect/Engineer shall have authority to reject Work which is defective or does not conform to the requirements of this Contract. If the Architect/Engineer deems it necessary or advisable, the Architect/Engineer shall have authority to require additional inspection or testing of the Work for compliance with Contract requirements.

8.2.6 The Architect/Engineer will review and approve, or take other appropriate action as necessary, concerning the Contractor's submittals including Shop Drawings, Product Data and Samples. Such review, approval or other action shall be for the sole purpose of determining conformance with the design concept and information given through the Contract Documents.

8.2.7 The Architect/Engineer will prepare Change Orders and may authorize minor changes in the Work by Field Order as provided elsewhere herein.

8.2.8 The Architect/Engineer shall, upon written request from the Contractor, conduct inspections to determine the date of Substantial Completion and the date of final completion, will receive and forward to the Owner for the Owner's review and records, written warranties and related documents required by this Contract and will issue a final Certificate for Payment upon compliance with the requirements of this Contract.

8.2.9 The Architect/Engineer's decisions in matters relating to aesthetic effect shall be final if consistent with the intent of this Contract.

8.3 CLAIMS BY THE CONTRACTOR

8.3.1 The Architect/Engineer shall determine all claims and matters in dispute between the Contractor and Owner with regard to the execution, progress, or sufficiency of the Work or the interpretation of the Contract Documents, including but not limited to the plans and specifications. Any dispute shall be submitted in writing to the Architect/Engineer within seven (7) days of the event or occurrence or the first appearance of the condition giving rise to the claim or dispute who shall render a written decision within a reasonable time thereafter. The Architect/Engineer's decisions shall be final and binding on the parties. In the event that either party objects to the Architect/Engineer's determination as to any submitted dispute, that party shall submit a written objection to the Architect/Engineer and the opposing party within ten (10) days of receipt of the Architect/Engineer's written determination in order to preserve the objection. Failure to so object shall constitute a waiver of the objection for all purposes.

8.3.2 Pending final resolution of any claim of the Contractor, the Contractor shall diligently proceed with performance of this Contract and the Owner shall continue to make payments to the Contractor in accordance with this Contract.

8.3.3 **CLAIMS FOR CONCEALED, LATENT OR UNKNOWN CONDITIONS** - The Contractor expressly represents that it has been provided with an adequate opportunity to inspect the Project site and thoroughly review the Contract Documents and plans and specifications prior to submission of its bid and the Owner's acceptance of the bid. Subject to the conditions hereof, Contractor assumes full responsibility and risk for any concealed, latent or unknown condition which may affect the Work. No claims for extra work or additional

compensation shall be made by Contractor in connection with concealed, latent or unknown conditions except as expressly provided herein. Should concealed, latent or unknown conditions encountered in the performance of the Work (a) below the surface of the ground or (b) in an existing structure be at variance with the conditions indicated by this Contract, or should unknown conditions of an unusual nature differing materially from those ordinarily encountered in the area and generally recognized as inherent in Work of the character provided for in this Contract, be encountered, the Contract Price shall be equitably adjusted by Change Order upon the written notice and claim by either party made within seven (7) days after the first observance of the condition. As a condition precedent to the Owner having any liability to the Contractor for concealed or unknown conditions, the Contractor must give the Owner and the Architect/Engineer written notice of, and an opportunity to observe, the condition prior to disturbing it. The failure by the Contractor to make the written notice and claim as provided in this Subparagraph shall constitute a waiver by the Contractor of any claim arising out of or relating to such concealed, latent or unknown condition and the Contractor thereby assumes all risks and additional costs associated therewith.

8.3.4 **CLAIMS FOR ADDITIONAL COSTS** - If the Contractor wishes to make a claim for an increase in the Contract Price, as a condition precedent to any liability of the Owner therefor, the Contractor shall give the Architect/Engineer written notice of such claim within seven (7) days after the occurrence of the event, or the first appearance of the condition, giving rise to such claim. Such notice shall be given by the Contractor before proceeding to execute any additional or changed Work. The failure by the Contractor to give such notice and to give such notice prior to executing the Work shall constitute a waiver of any claim for additional compensation.

8.3.4.1 In connection with any claim by the Contractor against the Owner for compensation in excess of the Contract Price, any liability of the Owner for the Contractor's costs shall be strictly limited to direct costs incurred by the Contractor and shall in no event include indirect costs or consequential damages of the Contractor. The Owner shall not be liable to the Contractor for claims of third parties, including Subcontractors. The Owner shall not be liable to the Contractor for any claims based upon delay to the Contractor for

any reason whatsoever including any act or neglect on the part of the Owner.

8.3.5 CLAIMS FOR ADDITIONAL TIME - If the Contractor is delayed in progressing any task which at the time of the delay is then critical or which during the delay becomes critical, as the sole result of any act or neglect to act by the Owner or someone acting in the Owner's behalf, or by changes ordered in the Work, unusual delay in transportation, unusually adverse weather conditions not reasonably anticipated, fire or any causes beyond the Contractor's control, then the date for achieving Substantial Completion of the Work shall be extended upon the written notice and claim of the Contractor to the Owner and the Architect/Engineer, for such reasonable time as the Architect/Engineer may determine. Any notice and claim for an extension of time by the Contractor shall be made not more than seven (7) days after the occurrence of the event or the first appearance of the condition giving rise to the claim and shall set forth in detail the Contractor's basis for requiring additional time in which to complete the Project. In the event the delay to the Contractor is a continuing one, only one notice and claim for additional time shall be necessary. If the Contractor fails to make such claim as required in this Subparagraph, any claim for an extension of time shall be waived.

8.4 FIELD ORDERS

8.4.1 The Architect/Engineer shall have authority to order minor changes in the Work not involving a change in the Contract Price or in Contract Time and not inconsistent with the intent of the Contract. Such changes shall be effected by Field Order and shall be binding upon the Contractor. The Contractor shall carry out such Field Orders promptly.

8.5 MEDIATION

8.5.1 In the event that a dispute arises under the terms of this Contract, following an adverse determination by the Architect/Engineer and proper preservation of the issue as required herein, the parties agree to submit to mediation. In such event, the parties shall agree to a designated person to serve as mediator and each party shall be responsible for payment of one-half of the total mediation fees. The parties shall submit the dispute to mediation as soon as practical and in no event later than one (1) year after the

Architect/Engineer's written decision on the matter. At least one designated representative of each party must attend and participate in good faith in an effort to resolve the matters in dispute.

8.5.2 In no event shall the foregoing provision justify or authorize any delay in the progress of the Work; the parties shall abide by the decision of the Architect/Engineer in accomplishing the timely completion of the Project.

ARTICLE IX

SUBCONTRACTORS

9.1 DEFINITION

9.1.1 A Subcontractor is an entity which has a direct contract with the Contractor to perform a portion of the Work. No Subcontractor shall be in privity with the Owner.

9.2 AWARD OF SUBCONTRACTS

9.2.1 Upon execution of the Contract, the Contractor shall furnish the Owner, in writing, the names of persons or entities proposed by the Contractor to act as a Subcontractor on the Project. The Owner shall promptly reply to the Contractor, in writing, stating any objections the Owner may have to such proposed Subcontractor. The Contractor shall not enter into a subcontract with a proposed Subcontractor with reference to whom the Owner has made timely objection. The Contractor shall not be required to subcontract with any party to whom the Contractor has objection.

9.2.2 All subcontracts shall afford the Contractor rights against the Subcontractor which correspond to those rights afforded to the Owner against the Contractor herein, including those rights afforded to the Owner by Subparagraph 12.2.1 below. All subcontracts shall incorporate by reference the provisions hereof and shall provide that no claims, causes or demands shall be made by any Subcontractor against the Owner.

9.2.3 The Contractor shall indemnify, defend and hold harmless the Owner from and against any and all claims, demands, causes of action, damage, and liability asserted or made against the Owner by or on behalf of any Subcontractor.

ARTICLE X

CHANGES IN THE WORK

10.1 CHANGES PERMITTED

10.1.1 Changes in the Work within the general scope of this Contract, consisting of additions, deletions, revisions, or any combination thereof, may be ordered without invalidating this Contract, by Change Order or by Field Order.

10.1.2 Changes in the Work shall be performed under applicable provisions of this Contract and the Contractor shall proceed promptly with such changes.

10.2 CHANGE ORDER DEFINED

10.2.1 Change Order shall mean a written order to the Contractor executed by the Owner and the Architect/Engineer, issued after execution of this Contract, authorizing and directing a change in the Work or an adjustment in the Contract Price or the Contract Time, or any combination thereof. The Contract Price and the Contract Time may be changed only by written Change Order.

10.3 CHANGES IN THE CONTRACT PRICE

10.3.1 Any change in the Contract Price resulting from a Change Order shall be determined as follows: (a) by mutual agreement between the Owner and the Contractor as evidenced by (1) the change in the Contract Price being set forth in the Change Order, (2) such change in the Contract Price, together with any conditions or requirements related thereto, being initialed by both parties and (3) the Contractor's execution of the Change Order, or (b) if no mutual agreement occurs between the Owner and the Contractor, then, as provided in Subparagraph 10.3.2 below.

10.3.2 If no mutual agreement occurs between the Owner and the Contractor as contemplated in Subparagraph 10.3.1 above, the change in the Contract Price, if any, shall then be determined by the Architect/Engineer on the basis of the reasonable expenditures or savings of those performing, deleting or revising the Work attributable to the change, including, in the case of an increase or decrease in the Contract Price, a reasonable allowance for direct job site overhead and profit. In such case, the Contractor shall present, in such form and with such content as the Owner or the Architect/Engineer requires, an

itemized accounting of such expenditures or savings, plus appropriate supporting data for inclusion in a Change Order. Reasonable expenditures or savings shall be limited to the following: reasonable costs of materials, supplies, or equipment including delivery costs, reasonable costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance, reasonable rental costs of machinery and equipment exclusive of hand tools whether rented from the Contractor or others, reasonable costs of premiums for all bonds and insurance, permit fees, and sales, use or other taxes related to the Work, and reasonable cost of direct supervision and jobsite field office overhead directly attributable to the change. In no event shall any expenditure or savings associated with the Contractor's home office or other non-jobsite overhead expense be included in any change in the Contract Price. Pending final determination of reasonable expenditures or savings to the Owner, payments on account shall be made to the Contractor on the Architect/Engineer's Certificate for Payment.

10.3.3 If unit prices are provided in the Contract, and if the quantities contemplated are so changed in a proposed Change Order that application of such unit prices to the quantities of Work proposed will cause substantial inequity to the Owner or to the Contractor, the applicable unit prices shall be equitably adjusted.

10.4 MINOR CHANGES

10.4.1 The Architect/Engineer shall have authority to order minor changes in the Work not involving a change in the Contract Price or an extension of the Contract Time and not inconsistent with the intent of this Contract. Such minor changes shall be made by written Field Order, and shall be binding upon the owner and the Contractor. The Contractor shall promptly carry out such written Field Orders.

10.5 EFFECT OF EXECUTED CHANGE ORDER

10.5.1 The execution of a Change Order by the Contractor shall constitute conclusive evidence of the Contractor's agreement to the ordered changes in the Work, this Contract as thus amended, the Contract Price and the Contract Time. The Contractor, by executing the Change Order,

waives and forever releases any claim against the Owner for additional time or compensation for matters relating to or arising out of or resulting from the Work included within or affected by the executed Change Order.

10.6 NOTICE TO SURETY; CONSENT

10.6.1 The Contractor shall notify and obtain the consent and approval of the Contractor's surety with reference to all Change Orders if such notice, consent or approval are required by the Contractor's surety or by law. The Contractor's execution of the Change Order shall constitute the Contractor's warranty to the Owner that the surety has been notified of and consents to, such Change Order and the surety shall be conclusively deemed to have been notified of such Change Order and to have expressly consented thereto.

ARTICLE XI

UNCOVERING AND CORRECTING WORK

11.1 UNCOVERING WORK

11.1.1 If any of the Work is covered contrary to the Architect/Engineer's request or to any provisions of this Contract, it shall, if required by the Architect/Engineer or the Owner, be uncovered for the Architect/Engineer's inspection and shall be properly replaced at the Contractor's expense without change in the Contract Time.

11.1.2 If any of the Work is covered in a manner not inconsistent with Subparagraph 11.1.1 above, it shall, if required by the Architect/Engineer or Owner, be uncovered for the Architect/Engineer's inspection. If such Work conforms strictly with this Contract, costs of uncovering and proper replacement shall by Change Order be charged to the Owner. If such Work does not strictly conform with this Contract, the Contractor shall pay the costs of uncovering and proper replacement.

11.2 CORRECTING WORK

11.2.1 The Contractor shall immediately proceed to correct Work rejected by the Architect/Engineer as defective or failing to conform to this Contract. The Contractor shall pay all costs and expenses associated with correcting such rejected Work, including any additional testing and inspections, and reimbursement to the

Owner for the Architect/Engineer's services and expenses made necessary thereby.

11.2.2 If within **two (2) years** after Substantial Completion of the Work any of the Work is found to be defective or not in accordance with this Contract, the Contractor shall correct it promptly upon receipt of written notice from the Owner. This obligation shall survive final payment by the Owner and termination of this Contract. With respect to Work first performed and completed after Substantial Completion, this two years obligation to specifically correct defective and nonconforming Work shall be extended by the period of time which elapses between Substantial Completion and completion of the subject Work.

11.2.3 Nothing contained in this Paragraph 11.2 shall establish any period of limitation with respect to other obligations which the Contractor has under this Contract. Establishment of the two years time period in Subparagraph 11.2.2 relates only to the duty of the Contractor to specifically correct the Work.

11.3 OWNER MAY ACCEPT DEFECTIVE OR NONCONFORMING WORK

11.3.1 If the Owner chooses to accept defective or nonconforming Work, the Owner may do so. In such event, the Contract Price shall be reduced by the greater of (a) the reasonable cost of removing and correcting the defective or nonconforming Work, and (b) the difference between the fair market value of the Project as constructed and the fair market value of the Project had it not been constructed in such a manner as to include defective or nonconforming Work. If the remaining portion of the unpaid Contract Price, if any, is insufficient to compensate the Owner for its acceptance of defective or nonconforming Work, the Contractor shall, upon written demand from the Owner, pay the Owner such remaining compensation for accepting defective or nonconforming Work.

ARTICLE XII

CONTRACT TERMINATION

12.1 TERMINATION BY THE CONTRACTOR

12.1.1 If the Work is stopped for a period of ninety (90) days by an order of any court or other public authority, or as a result of an act of the

Government, through no fault of the Contractor or any person or entity working directly or indirectly for the Contractor, the Contractor may, upon ten (10) days' written notice to the Owner and the Architect/Engineer, terminate performance under this Contract and recover from the Owner payment for the actual reasonable expenditures of the Contractor (as limited in Subparagraph 10.3.2 above) for all Work executed and for materials, equipment, tools, construction equipment and machinery actually purchased or rented solely for the Work, less any salvage value of any such items.

12.1.2 If the Owner shall persistently or repeatedly fail to perform any material obligation to the Contractor for a period of fifteen (15) days after receiving written notice from the Contractor of its intent to terminate hereunder, the Contractor may terminate performance under this Contract by written notice to the Architect/Engineer and the Owner. In such event, the Contractor shall be entitled to recover from the Owner as though the Owner had terminated the Contractor's performance under this Contract for convenience pursuant to Subparagraph 12.2.1 hereunder.

12.2 TERMINATION BY THE OWNER

12.2.1 FOR CONVENIENCE

12.2.1.1 The Owner may for any reason whatsoever terminate performance under this Contract by the Contractor for convenience. The Owner shall give written notice of such termination to the Contractor specifying when termination becomes effective.

12.2.1.2 The Contractor shall incur no further obligations in connection with the Work and the Contractor shall stop Work when such termination becomes effective. The Contractor shall also terminate outstanding orders and subcontracts. The Contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders. The Owner may direct the Contractor to assign the Contractor's right, title and interest under terminated orders or subcontracts to the Owner or its designee.

12.2.1.3 The Contractor shall transfer title and deliver to the Owner such completed or partially completed Work and materials, equipment, parts, fixtures, information and Contract rights as the Contractor has.

- 12.2.1.4 (a) The Contractor shall submit a termination claim to the Owner and the Architect/Engineer specifying the amounts due because of the termination for convenience together with costs, pricing or other data required by the Architect/Engineer. If the Contractor fails to file a termination claim within one (1) year from the effective date of termination, the Owner shall pay the Contractor, an amount derived in accordance with subparagraph (c) below.
- (b) The Owner and the Contractor may agree to the compensation, if any, due to the Contractor hereunder.
- (c) Absent agreement to the amount due to the Contractor, the Owner shall pay the Contractor the following amounts:
- (i) Contract prices for labor, materials, equipment and other services accepted under this Contract;
- (ii) Reasonable costs incurred in preparing to perform and in performing the terminated portion of the Work, and in terminating the Contractor's performance, plus a fair and reasonable allowance for overhead and profit thereon (such profit shall not include anticipated profit or consequential damages), provided however, that if it appears that the Contractor would have not profited or would have sustained a loss if the entire Contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss, if any;
- (iii) Reasonable costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to Subparagraph 12.2.1.2 of this Paragraph. These costs shall not include amounts paid in accordance with other provisions hereof.

The total sum to be paid the Contractor under this Subparagraph 12.2.1 shall not exceed the total Contract Price, as properly adjusted, reduced by the amount of payments otherwise made, and shall in no event include duplication of payment.

12.2.2 FOR CAUSE

12.2.2.1 If the Contractor persistently or repeatedly refuses or fails to prosecute the Work in a timely manner, abandons the jobsite and fails to resume work within five (5) days of written notice thereof by the Owner, fails to grant or allow access to the jobsite by the Owner or Architect/Engineer, fails to supply enough properly skilled workers, supervisory personnel or proper equipment or materials, fails to make prompt payment to Subcontractors or for materials or labor, persistently disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or otherwise is guilty of a violation of a material provision of this Contract, then the Owner may by written notice to the Contractor, without prejudice to any other right or remedy, terminate the employment of the Contractor and take possession of the site and of all materials, equipment, tools, construction equipment and machinery thereon owned by the Contractor and may finish the Work by whatever methods it may deem expedient. In such case, the Contractor shall not be entitled to receive any further payment until the Work is finished.

12.2.2.2 If the unpaid balance of the Contract Price does not exceed the cost of finishing the work, including compensation for the Architect/Engineer's additional services and expenses made necessary thereby, such difference shall be paid by the Contractor to the Owner. This obligation for payment shall survive the termination of the Contract.

12.2.2.3 In the event the employment of the Contractor is terminated by the Owner for cause pursuant to Subparagraph 12.2.2 and it is subsequently determined by a Court of competent jurisdiction that such termination was without cause, such termination shall thereupon be deemed a Termination for Convenience under Subparagraph 12.2.1 and the provisions of Subparagraph 12.2.1 shall apply.

ARTICLE XIII

INSURANCE

13.1 CONTRACTOR SHALL MAINTAIN INSURANCE

13.1.1 The Contractor at his own expense shall purchase, maintain and keep in force during the life of this contract, adequate insurance that will protect the Contractor and/or any Additional Insured from claims which may arise out of or result from operations under this contract. The insurance required shall provide adequate protections from all claims, whether such operations be by the Contractor or by any Additional Insured or by any Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone whose acts of any of them may be liable and from any special hazards, such as blasting, which may be encountered in the performance of this contract in the amounts as shown below in Paragraph 13.2.1.

13.1.2 The Contractor shall not commence work on any Contract in the City of Allen until the Contractor has obtained all the insurance required under this paragraph and such insurance has been approved by the City.

13.2 TYPES AND AMOUNTS OF CONTRACTOR'S INSURANCE

13.2.1. The Contractor shall furnish and maintain during the life of the contract adequate Worker's Compensation and Commercial General Liability (Public) Insurance in such amounts as follows:

<u>Type of Insurance</u>	<u>Amount</u>
Commercial General (Public) Liability	\$1,000,000 each occurrence; \$1,000,000 general aggregate; \$2,000,000 Umbrella/ Excess Liability
Business Auto Liability	\$1,000,000 per occurrence; \$1,000,000 aggregate or; \$1,000,000 combined single limits

Worker's Comp &
Employers Liability

Statutory Limits
\$1,000,000 Each
Accident

Builders Risk Policy

100% of construction
total

Builders Risk/Installation Floater Builder's Risk or Installation Floater (whichever is applicable). It shall be written on an *"All Risks" of Physical Loss* form, insuring all work in place and/or materials stored at the building site, including foundations and building equipment. Insurance shall be for the benefit of the Contractor and City of Allen as their interests may appear and City of Allen shall be named "Additional Insured." Policies shall furnish coverage at all times for the full cash value of all construction, as well as materials in place and/or stored at the site(s), whether or not partial payment has been made by City of Allen. If the Contractor is installing equipment supplied by City of Allen, it shall carry insurance on such equipment from the time the Contractor takes possession thereof until the Contract work is accepted by City of Allen. As respects buildings, the Contractor shall not terminate this insurance until they are occupied by City of Allen.

13.3 ADDITIONAL INSURED

The City of Allen, (its officers and employees), shall be an additional insured, during and until completion of the work on the Commercial General Liability (Public) Insurance Policy and the Automobile Liability Insurance Policy furnished by the Contractor.

13.4 WRITTEN NOTIFICATION

Each insurance policy shall contain a provision requiring that thirty (30) days prior to expiration, cancellation, non-renewal or any material change in coverage, a notice there of shall be given by certified mail to the City of Allen, Parks and Recreation Department, One Civic Plaza, Allen, Texas, 75013.

13.5 PREMIUMS AND ASSESSMENTS

Companies issuing the insurance policies shall have no recourse against the City for payment of any premiums or assessments for any deductibles which

are at the sole responsibility and risk of the Contractor.

13.6 CERTIFICATE OF INSURANCE

Proof that the insurance is in force shall be furnished to the City on City of Allen Standard Certificate of Insurance Forms. In the event any insurance policy shown on the Certificate of Insurance has an expiration date that is prior to the completion and final acceptance of the project by the City of Allen, the contractor shall furnish the City proof of identical continued coverage no later than five (5) days following the expiration date shown on the Certificate of Insurance.

13.7 PRIMARY COVERAGE

The coverage provided herein shall be primary and noncontributory with any other insurance maintained by the City of Allen, Texas, for its benefit, including self insurance.

13.8 WORKER'S COMPENSATION INSURANCE COVERAGE

13.8.1 The Contractor shall:

- (1) provide coverage for its employees providing services on a project, for the duration of the project based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements;
- (2) provide a certificate of coverage showing workers' compensation coverage to the governmental entity prior to beginning work on the project;
- (3) provide the governmental entity prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the contractor's current certificate of coverage ends during the duration of the project;
- (4) obtain from each person providing services on a project, and provide to the governmental entity:
 - (A) 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

- (B) 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;

- (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 contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project;
- (7) post a notice on each project site informing all persons providing services on the project that they are required to be covered, and stating how a person may verify current coverage and report failure to provide coverage. This notice does not satisfy other posting requirements imposed by the Act or other commission rules. This notice must be printed with a title in at least 30 point bold type and text in at least 19 point normal type, and shall be in both English and Spanish and any other language common to the worker population. The text for the notices shall be the following text provided by the Texas Worker's Compensation Commission on the sample notice, without any additional words or changes:

REQUIRED WORKERS' COMPENSATION COVERAGE

"The law requires that each person working on this site or providing services related to this construction project must be covered by workers' compensation insurance. This includes persons providing, hauling, or delivering equipment or materials, or providing labor or transportation or

other service related to the project, regardless of the identity of their employer or status as an employee."

"Call the Texas Workers' Compensation Commission at 512-440-3789 to receive information on the legal requirement for coverage, to verify whether your employer has provided the required coverage, or to report an employer's failure to provide coverage."

and

- (8) contractually require each person with whom it contracts to provide services on a project, to:

- (A) provide coverage based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements for all of its employees providing services on the project, for the duration of the project;
- (B) provide a certificate of coverage to the contractor prior to that person beginning work on the project;
- (C) include in all contracts to provide services on the project the language in subsection (e)(3) of this rule;
- (D) 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;
- (E) obtain from each other person with whom it contracts, and provide to the Contractor:
 - (i) a certificate of coverage, prior to the other person beginning work on the project; and
 - (ii) prior to the end of the coverage period, a new

certificate of coverage showing extension of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;

- (F) retain all required certificates of coverage on file for the duration of the project and for one year thereafter;
- (G) 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
- (H) contractually require each other person with whom it contracts, to perform as required by subparagraphs (A) - (H) of this paragraph, with the certificate of coverage to be provided to the person for whom they are providing services.

ARTICLE XIV

MISCELLANEOUS

14.1 LAWS AND ORDINANCES

14.1.1 The Contractor shall at all times and in all respects observe and comply with all federal, state and local laws, ordinances, and regulations applicable to the Project and Work. The Contractor shall further insure that all Subcontractors observe and comply with said laws, ordinances and regulations.

14.2 GOVERNING LAW

14.2.1 The Contract shall be governed by the laws of the State of Texas. Venue for any causes of action arising under the terms or provisions of this Contract or the Work to be performed hereunder shall be in the courts of Collin County, Texas.

14.3 SUCCESSORS AND ASSIGNS

14.3.1 The Owner and Contractor bind themselves, their successors, assigns and legal representatives to the other party hereto and to successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in this Contract. The Contractor shall not assign this Contract without written consent of the Owner.

14.4 SURETY BONDS

14.4.1 If the Contract Price exceeds the sum of \$25,000.00, the Contractor shall furnish separate performance and payment bonds to the Owner, according to the requirements set out in the bid documents and state statutes to guaranty full and faithful performance of the Contract and the full and final payment of all persons supplying labor or materials to the Project. Each bond required by the bid documents or state statute shall set forth a penal sum in an amount not less than the Contract Price. Each bond furnished by the Contractor shall incorporate by reference the terms of this Contract as fully as though they were set forth verbatim in such bonds. In the event the Contract Price is adjusted by Change Order executed by the Contractor, the penal sum of both the performance bond and the payment bond shall be deemed increased by like amount. The performance and payment bonds furnished by the Contractor shall be in form suitable to the Owner and shall be executed by a surety, or sureties, reasonably suitable to the Owner and authorized to do business in the State of Texas by the State Board of Insurance.

14.4.2 If the Contract Price exceeds the sum of \$25,000.00, the Contractor, upon execution of the Contract and prior to commencement of the Work, shall furnish to the Owner a maintenance bond in the amount of one hundred percent (100%) of the Contract Price covering the guaranty and maintenance prescribed herein, written by an approved surety authorized and duly licensed to conduct business in the State of Texas. The cost of said maintenance bond shall be included in the Contractor's unit bid prices and shall be paid by the Contractor. **A maintenance bond shall be for a period of (1) year from the date of final acceptance of the project.**

14.5 SEVERABILITY

14.5.1 The provisions of this Contract are herein declared to be severable; in the event that

any term, provision or part hereof is determined to be invalid, void or unenforceable, such determination shall not affect the validity or enforceability of the remaining terms, provisions and parts, and this Contract shall be read as if the invalid, void or unenforceable portion had not be included herein.

14.6 AMENDMENTS

14.6.1 This Contract may be amended by the parties only by a written agreement duly executed by both parties. The failure of the Owner to object to any nonperformance or nonconforming work or to enforce any provision hereof shall in no event be regarded as or construed to be a waiver, release or

modification of any term or provision in this Contract, nor shall such failure to object or enforce, stop the Owner from insisting on strict compliance with this Contract or from recovering damages, costs or expenses arising as a result of such nonperformance or nonconforming work.

14.7 NOTICES

14.6.1 All notices required by this Contract shall be presumed received when deposited in the mail properly addressed to the other party or Architect/Engineer at the address set forth herein or set forth in a written designation of change of address delivered to all parties and the Architect/Engineer.

EXECUTED in single or multiple originals, this _____ day of _____, 2017.

CITY OF ALLEN, TEXAS

By: _____
Peter H. Vargas, City Manager

Allen Civic Plaza
305 Century Parkway
Allen, Texas 75013
214-509-4118 (Fax)

ATTEST:

By: _____
Shelley B. George, City Secretary

EXECUTED in single or multiple originals, this _____ day of _____, 2017.

CONTRACTOR

By: _____
(Signature of Authorized Officer)

(Print Name and Title)

(Street Address)

(City/State/Zip)

(Fax)

CORPORATE ACKNOWLEDGMENT

THE STATE OF _____

COUNTY OF _____

BEFORE ME, the undersigned authority, a Notary Public in and for said County and State, on this day personally appeared:

(Print Name)

(Print Title)

of _____, the Contractor designated herein above, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the said Contractor, a corporation, that he was duly authorized to perform the same by appropriate resolution of the board of directors of such corporation and that he executed the same as the act and deed of such corporation for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the _____ day of _____, A.D., 2017.

Notary Public In and For

County, _____

My Commission expires: _____

CITY COUNCIL AGENDA COMMUNICATION

AGENDA DATE: June 13, 2017

SUBJECT: Authorize the City Manager to Execute an Economic Development Incentive Agreement with NetScout Systems Texas, LLC.

STAFF RESOURCE: Dan Bowman, Executive Director/CEO Allen Economic Development Corporation

BOARD COMMISSION ACTION: On March 15, 2017, the Board of Directors of the Allen Economic Development Corporation voted unanimously to authorize the AEDC Executive Director to negotiate and execute an Economic Development Agreement with NetScout and to recommend that the Allen City Council provide a 10 year, 50% tax abatement or equivalent to NetScout.

ACTION PROPOSED: Authorize the City Manager to Execute an Economic Development Incentive Agreement with NetScout Systems Texas, LLC.

BACKGROUND

The Allen Economic Development Corporation (AEDC) has negotiated the recruitment of NetScout Systems Texas, LLC to locate in Watters Creek Office Park near the northwest corner of Bethany Drive and US 75. The company will lease over 145,000-square feet of space in a new three story office building to be constructed on the northern portion of the office park.

NetScout plans to relocate approximately 540 employees with an average annual salary of \$138,000 to the facility and cause construction of a new building with an investment in real and business personal property estimated at \$55 million. The project is estimated to generate over \$12.3 million in tax revenues to local taxing entities over the next 10 years, based on an economic impact analysis completed by the AEDC.

The AEDC Board of Directors authorized an economic development incentive from the AEDC to assist with the project. During the course of negotiations, it was determined that a Chapter 380 Economic Development Incentive Agreement from the City of Allen to provide the equivalent of a 10 year, 50% tax abatement would play a critical role in recruiting the project to Allen.

BUDGETARY IMPACT

Based on a minimum required taxable value of \$40 million, annual property tax revenue generated by the project to the City of Allen is estimated to be \$208,000. The annual reimbursement from the City of Allen to NetScout in the form of this Chapter 380 Economic Development Incentive Agreement (equivalent to a tax abatement) is estimated at \$104,000 per year.

STAFF RECOMMENDATION

Staff recommends authorizing the City Manager to execute an Economic Development Incentive Agreement with NetScout Systems Texas, LLC.

MOTION

I make a motion to authorize the City Manager to execute an Economic Development Incentive Agreement with NetScout Systems Texas, LLC.

ATTACHMENTS:

Economic Development Incentive Agreement

STATE OF TEXAS §
 § ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT
COUNTY OF COLLIN §

This Economic Development Incentive Agreement ("Agreement") is made by and between City of Allen, Texas ("City") and NetScout Systems Texas, LLC, a Delaware limited liability company ("Company") (each a "Party" and collectively the "Parties"), acting by and through their respective authorized representatives.

W I T N E S S E T H:

WHEREAS, Kaizen Development Partners, LLC ("Kaizen") and the Allen Economic Development Corporation ("AEDC") have entered that certain purchase and sale agreement dated May 8, 2017 (the "PSA") for the land described in Exhibit "A" (the "Land") and a related restriction agreement (the "Restriction Agreement") pursuant to which BTS One Bethany North, LP, a Texas limited partnership and an affiliate of Kaizen ("Landlord") has agreed to construct the Improvements and Parking Garage (hereinafter defined); and

WHEREAS, Company has or intends to enter a lease with Landlord to lease the Improvements and the Parking Garage following completion thereof for a period of at least twelve (12) years (hereinafter defined as the "Lease"); and

WHEREAS, Company is a world leader in application and network performance management products and solutions with over thirty (30) years of research and innovation into network operations, and has developed the unique ability to capture, order, and analyze network traffic in real time; and

WHEREAS, Company has advised City that a contributing factor that would induce Company to enter the Lease and relocate its operations to the Improvements would be an agreement by City to provide Annual Grants (hereinafter defined) to Company to defray a portion of the costs of relocation to the Improvements; and

WHEREAS, City desires to encourage business relocations and expansions within City that will add property tax base and generate additional sales tax and other revenue for City; and

WHEREAS, City has adopted programs for promoting economic development, and this Agreement and the economic development incentives set forth herein are given and provided by City pursuant to and in accordance with those programs; and

WHEREAS, City is authorized by Article III, Section 52-a of the Texas Constitution and Texas Local Government Code Chapter 380 to provide economic development grants to promote local economic development and to stimulate business and commercial activity in City; and

WHEREAS, City has determined that making the Annual Grants to Company in accordance with this Agreement is in accordance with City Economic Development Program and will: (i) further the objectives of City; (ii) benefit City and City's inhabitants; and (iii) will promote local economic development and stimulate business and commercial activity in City;

NOW THEREFORE, in consideration of the foregoing, and on the terms and conditions hereinafter set forth, and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

Article I Definitions

For purposes of this Agreement, each of the following terms shall have the meaning set forth herein unless the context clearly indicates otherwise:

"AEDC" shall mean the Allen Economic Development Corporation.

"Annual Grants" shall mean ten (10) consecutive annual economic development grants to be provided by City to Company, each in an amount equal to fifty percent (50%) of the ad valorem taxes assessed by City against the Improvements, the Parking Garage and the Tangible Personal Property and collected by the City for the applicable Grant Year.

"Appraisal District" shall mean the Collin County Appraisal District, or its successor.

"Bankruptcy or Insolvency" shall mean the dissolution or termination of a Party's existence as a going business, insolvency, appointment of receiver for any part of such Party's property and such appointment is not terminated within ninety (90) days after such appointment is initially made, any general assignment for the benefit of creditors, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against such Party and such proceeding is not dismissed within ninety (90) days after the filing thereof.

"Capital Investment" shall mean the capitalized cost paid by Landlord and/or Company: (i) to construct the Parking Garage and Improvements; and (ii) of acquiring new Tangible Personal Property or Tangible Personal Property previously acquired by Company, and in each case located at the Improvements.

"City" shall mean City of Allen, Texas.

"Commencement Date" shall mean the date a certificate of occupancy is issued by the City for the occupancy of the Improvements by Company and the Lease Inception Date has occurred.

“Commencement of Construction” shall mean that: (i) the plans have been prepared and all approvals thereof required by applicable governmental authorities have been obtained for commencement of construction of the Improvements and the Parking Garage; (ii) all necessary permits for the commencement of construction of the Improvements and the Parking Garage, as the case may be, pursuant to the respective plans therefore have been issued by all the applicable governmental authorities; and (iii) in the case of the Improvements, clearing and/or grading of the Land and vertical construction of the Improvements has commenced, and in the case of the Parking Garage, grading of the Land has commenced.

“Company” shall mean NetScout Systems Texas, LLC, a Delaware limited liability company.

“Company Affiliate” shall mean a wholly owned and/or majority owned affiliate entity related to Company by direct or indirect common or overlapping majority ownership or control.

“Completion of Construction” shall mean: (i) substantial completion of the Improvements and the Parking Garage; and (ii) the City has issued a certificate of occupancy for occupancy of the Improvements by the Company, and with respect to the Parking Garage a final inspection by the City has been conducted or a certificate of occupancy has been issued.

“Employment Period” shall mean each twelve (12) consecutive month period following the Commencement Date during the Term of this Agreement.

“Employment Positions” shall mean FTE Position eligible for employee benefits that have been created, maintained and filled at the Improvements per Employment Period provided however not more than ten percent (10%) of the required Employment Positions may include full time employees eligible for benefits scheduled to work at the Improvements for a combined total of at least 1664 hours during an Employment Period.

“Expiration Date” shall mean the date of payment of the last of the Annual Grants, unless sooner terminated as provided herein.

“FTE Position” or “FTE” means a position filled by an individual scheduled to work at the Improvements for a combined total of at least 2,080 hours during an Employment Period.

“Force Majeure” shall mean any contingency or cause beyond the reasonable control of a Party including, without limitation, acts of God or the public enemy, war, terrorist act, or threat thereof, riot, civil commotion, insurrection, government action or inaction (unless caused by the intentionally wrongful acts or omissions of the Party), fires, earthquake, tornado, hurricane, explosions, floods, strikes, a delay by Landlord in the

Commencement of Construction and/or Completion of Construction not due to the actions or inactions of Company, slowdowns or work stoppages.

“Freeport Goods” shall have the same meaning as assigned by Section 11.251 of the Tax Code and Article VIII, Section 1-j of the Texas Constitution and located on the Improvements. Freeport Goods does not include “Goods in Transit” as defined by Tax Code, Section 11.253.

“Goods in Transit” shall have the same meaning assigned by Tax Code, Section 11.253.

“Grant Year” shall mean a given Tax Year, except the “First Grant Year” shall mean the Tax Year beginning January 1 of the calendar year following the Commencement Date.

“Impositions” shall mean all taxes, assessments, use and occupancy taxes, charges, excises, license and permit fees, and other charges by public or governmental authority, general and special, ordinary and extraordinary, foreseen and unforeseen, which are or may be assessed, charged, levied, or imposed by any public or governmental authority on Company or any property or any business owned by Company within City.

“Improvements” shall mean a Class A office building of at least three (3) stories in height containing a minimum of 142,500 square feet of leasable space following construction thereof on the Land.

“Land” shall mean the real property described in Exhibit “A”.

“Lease” shall mean a lease for a minimum of 142,500 square feet of leasable space in the Improvements and of the Parking Garage for a period of at least twelve (12) years commencing on the Lease Inception Date.

“Lease Inception Date” shall mean the date the term of the Lease commences but no later than sixty (60) days after Completion of Construction of the Improvements and the Parking Garage.

“Parking Garage” shall mean a structured above ground parking garage to be constructed on the Land containing approximately 535 parking spaces, being the number of parking spaces that are required to satisfy not less than ninety percent (90%) of the number of the off-street parking spaces required for the Improvements as determined by the City.

“Payment Request” shall mean a written request from Company to City for payment of the applicable Annual Grant, which request shall be accompanied by: (i) copies of the applicable tax statement and/or receipt(s) and/or other evidence reasonably satisfactory to City to establish that the ad valorem taxes assessed by City against the Improvements and the Tangible Personal Property have been timely paid for such Grant

Year; (ii) employment records and other records as may be reasonably requested by City to establish and document the required Employment Positions; and other records as may be reasonably requested by City and (iii) invoices, receipts, bills and other records as may be reasonably requested by City to establish and document the Capital Investment.

“Real Property” shall collectively mean the Land and the Improvements.

“Related Agreements” shall mean any agreement (not including this Agreement) between the AEDC and/or City and Company or any Company Affiliate.

“Required Use” shall mean the continuous use for office and technology uses by Company including the operation of Company’s business of the application and network performance management products and solutions serving the public and its customers. Required use shall require Company to maintain at least one hundred (100) Employment Positions.

“Tangible Personal Property” shall mean any personal property, equipment, furniture and fixtures, owned or leased by Company and located on the Improvements. Tangible Personal Property shall not include Freeport Goods or Goods in Transit.

“Tax Year” shall have the meaning assigned to such term in Section 1.04 of the Texas Tax Code (i.e., the calendar year).

“Taxable Value” shall mean the appraised value as certified by the Appraisal District, or its successor, for a given year.

Article II

Term

The term of this Agreement shall begin on the last date of execution hereof (the “Effective Date”) and continue until the Expiration Date, unless sooner terminated as provided herein.

Article III

Project; Economic Development Grants

3.1 Annual Grants.

(a) Annual Grants. Subject to the continued satisfaction of all the terms and conditions of this Agreement by Company, and the obligation of Company to repay the Annual Grants pursuant to Article V hereof, City agrees, to provide Company with the Annual Grants, to be paid within thirty (30) days after City’s receipt of the applicable Payment Request following March 1 of each calendar year (or the immediately following business day if March 1 is not a business day), beginning with March 1 of the calendar year following the first Grant Year; provided City has timely received the ad valorem taxes assessed against the Real Property and the Tangible Personal Property in full for the respective Grant Year (i.e., the tax year immediately preceding the year in

which an Annual Grant is to be made. Company shall submit the applicable Payment Request no earlier than the March 1 of the calendar year and no later than One Hundred Eighty (180) days after such date. Failure to timely submit a Payment Request for a given Grant Year shall operate as a forfeiture of the Annual Grant for such Grant Year provided City has provided written notice thereof to Company not earlier than March 1 of the applicable calendar year and not later than 90 days after March 1, of the applicable calendar year.

(b) Tax Protest. In the event Company or another party timely and properly protests or contests (including any motion to correct the appraisal roll) the Taxable Value and/or the taxation of the Real Property and/or the Tangible Personal Property with the Appraisal District, the obligation of City to provide the Annual Grant with respect to the respective Improvements, the Parking Garage and/or the Tangible Personal Property, for such Tax Year shall be abated until a final determination has been made of such protest or contest. In the event Company or another party protests and/or contests results in a final determination that changes the appraised value and/or the Taxable Value of the Real Property and/or the Tangible Personal Property or the amount of ad valorem taxes assessed and due for the Real Property and/or the Tangible Personal Property after an Annual Grant has been paid for such Tax Year, the Annual Grant for such Tax Year shall be adjusted (increased or decreased as the case may be) accordingly on the date of payment of the next Annual Grant or within thirty (30) business days after such determination in the event no further Annual Grants are due under the Agreement.

(c) Refunds and Underpayments of Annual Grants. In the event City or Company reasonably determines that the amount of an Annual Grant paid by City to Company was incorrect, such Party (the "Requesting Party") shall notify the other Party (the "Receiving Party") in writing within sixty (60) days of payment of the applicable Annual Grant. Such notice shall include such records, reports and other information reasonably necessary to support such determination. Receiving Party shall have thirty (30) days after receipt of such notification to dispute the Requesting Party's determination. If Receiving Party disputes the determination of the Requesting Party the Parties shall seek to amicably resolve the matter, subject to the Parties' right to pursue any available rights or remedies in connection therewith. If the adjustment is not disputed, the Company shall, within sixty (60) days after receipt of written notification thereof from City specifying the amount by which such Annual Grant exceeded the correct amount to which Company was entitled, pay such amount to City. If City reasonably determines that the amount by which such Annual Grant was less than the correct amount to which Company was entitled (together with such records, reports and other information necessary to support such determination), City shall, within sixty (60) days, pay the adjustment to Company.

3.2 Limitations of Grants. None of the obligations of City under this Agreement shall be pledged or otherwise encumbered in favor of any commercial lender and/or similar financial institution without the prior written consent of City.

3.3 Current Revenue. The Annual Grants made hereunder shall be paid solely from lawfully available funds pursuant to Texas Constitution Article II, Section 52-a, and Texas Local Government Code Chapter 380. Consequently, notwithstanding any other provision of this Agreement, City shall have no obligation or liability to provide any Annual Grants except as

allowed by law. Under no circumstances shall the obligations of City hereunder be deemed to create any debt within the meaning of any constitutional or statutory provision. The Grants shall be paid from the general funds of City or from such other funds of City consistent with Article III, Section 52(a) of the Texas Constitution.

Article IV Conditions to Grants

The obligation of City to pay the Annual Grants shall be conditioned upon the compliance and satisfaction by Company of the terms and conditions of this Agreement and each of the conditions set forth in this Article IV.

4.1 Payment Request. Company shall, as a condition precedent to the payment of the applicable Annual Grant, timely provide City with the applicable Payment Request. Subject to Section 3.1 (a), the failure to timely submit the Payment Request for the respective Annual Grant shall operate as a forfeiture of the Annual Grant for which the Payment Request is submitted.

4.2 Good Standing. Company shall not have an uncured breach or default of this Agreement or a Related Agreement.

4.3 Required Use. During the term of this Agreement following the Commencement Date and continuing thereafter until the Expiration Date, the Improvements shall not be used for any purpose other than the Required Use, and the operation and occupancy of the Improvements in conformance with the Required Use shall not cease for more than thirty (30) days except in connection with, and to the extent of an event of Force Majeure.

4.4 Lease. Company and Landlord shall have executed the Lease on or before September 30, 2017. Company shall occupy the Improvements on or before the Lease Inception Date.

4.5 Continuous Lease and Occupancy. Company and/or Company Affiliate shall, beginning on the Commencement Date and continuing for a period of ten (10) years thereafter: (i) continuously lease and occupy the Improvements; and (ii) maintain at least one hundred (100) Employment Positions.

4.6 Minimum Taxable Value. Except in the event of a casualty, the combined Taxable Value of the Improvements, the Parking Garage and the Tangible Personal Property shall be at least Forty Million Dollars (\$40,000,000.00) as of January 1 of the calendar year immediately following the Commencement Date and as of January 1 of each calendar year thereafter during the term of this Agreement.

4.7 Construction of the Improvements. Company shall, in cooperation with Landlord and subject to events of Force Majeure, cause the Commencement of Construction of the Improvements and Parking Garage to occur on or before March 31, 2018, and, subject to events

of Force Majeure, cause the Completion of Construction of the Improvements and the Parking Garage to occur on or before June 30, 2019.

4.8 Capital Investment. The total combined Capital Investment within three (3) years after the Commencement Date shall be at least Fifty-Five Million Dollars (\$55,000,000.00).

Article V

Termination; Repayment

5.1 Termination. This Agreement terminates on the Expiration Date, and may, prior to the Expiration Date, be terminated upon any one or more of the following:

- (a) by mutual written agreement of the Parties;
- (b) upon written notice by either Party, if the other Party defaults or breaches any of the terms or conditions of this Agreement and such default or breach is not cured within thirty (30) days after written notice thereof;
- (c) upon written notice by City, if any Impositions owed to City or the State of Texas by Company shall have become delinquent (provided, however, Company retains the right to timely and properly protest and contest any such taxes or Impositions);
- (d) upon written notice by City, if Company suffers an event of Bankruptcy or Insolvency; or
- (e) upon written notice by either Party if any subsequent Federal or State legislation or any decision of a court of competent jurisdiction declares or renders this Agreement invalid, illegal or unenforceable.

5.2 Repayment. In the event the Agreement is terminated by City pursuant to Section 5.1 (b), (c), (d) or (e), Company shall immediately refund to City an amount equal to the amount of the Annual Grants that have been provided by City to Company prior to the date of such termination. The repayment obligation of Company set forth in this Section 5.2 hereof shall survive termination.

5.3 Offsets. City may at its option, offset any amounts due and payable under this Agreement against any debt (including taxes) lawfully due to City from Company, regardless of whether the amount due arises pursuant to the terms of this Agreement, a Related Agreement or otherwise, and regardless of whether the debt due City has been reduced to judgment by a court.

Article VI

Miscellaneous

6.1 Binding Agreement. The terms and conditions of this Agreement are binding upon the successors and permitted assigns of the Parties hereto.

6.2 Limitation on Liability. It is understood and agreed between the Parties that Company and City, in satisfying the conditions of this Agreement, have acted independently, and City assumes no responsibilities or liabilities to third parties in connection with these actions.

6.3 No Joint Venture. It is acknowledged and agreed by the Parties that the terms hereof are not intended to and shall not be deemed to create a partnership or joint venture among the Parties.

6.4 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. The undersigned officers and/or agents of the Parties hereto are the properly authorized officials and have the necessary authority to execute this Agreement on behalf of the Parties hereto. City Manager shall have the authority to approve any amendments to this Agreement and any instruments related thereto.

6.5 Notice. Any notice required or permitted to be delivered hereunder shall be delivered and deemed received three (3) days thereafter sent by United States Mail, postage prepaid, certified mail, return receipt requested, addressed to the Party at the address set forth below (or such other address as such Party may subsequently designate in writing) or on the day actually received if sent by overnight delivery, courier or otherwise hand delivered.

If intended for City, to:

Peter H. Vargas
City Manager
City of Allen, Texas
305 Century Parkway
Allen, Texas 75013

With a copy to:

Peter G. Smith
City Attorney
Nichols, Jackson, Dillard,
Hager & Smith, L.L.P.
1800 Ross Tower
500 North Akard
Dallas, Texas 75201

If intended for Company, to:

NetScout Systems Texas, LLC
310 Littleton Road
Westford, MA 01886
Attn: Real Estate (S.Doben)

With a copy to:

NetScout Systems
Texas, LLC
310 Littleton Road
Westford, MA 01886
Attn: Legal

6.6 Entire Agreement. This Agreement is the entire Agreement between the Parties with respect to the subject matter covered in this Agreement. There is no other collateral oral or written Agreement between the Parties that in any manner relates to the subject matter of this Agreement.

6.7 Governing Law. The Agreement shall be governed by the laws of the State of Texas, without giving effect to any conflicts of law rule or principle that might result in the application of the laws of another jurisdiction; and exclusive venue for any action concerning this Agreement shall be in the State District Court of Collin County, Texas. The Parties agree to submit to the personal and subject matter jurisdiction of said court.

6.8 Amendment. This Agreement may only be amended by the mutual written agreement of the Parties. City Manager, or designee, shall have the authority to enter into any amendments to this Agreement on behalf of City.

6.9 Legal Construction. 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 other provisions, and it is the intention of the Parties to this Agreement that in lieu of each provision that is found to be illegal, invalid, or unenforceable, a provision shall be added to this Agreement which is legal, valid and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

6.10 Exhibits. All exhibits to this Agreement are incorporated herein by reference for all purposes wherever reference is made to the same.

6.11 Successors and Assigns. This Agreement may not be assigned without the prior written consent of City Manager, except Company may assign this Agreement to a Company Affiliate, provided the Company Affiliate expressly assumes the obligations and liabilities of the Company under the Agreement pursuant to an agreement in form and substance reasonably approved by City.

6.12 Recitals. The recitals to this Agreement are incorporated herein.

6.13 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.

6.14 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.

6.15 Employment of Undocumented Workers. During the term of this Agreement, Company agrees not to knowingly employ any undocumented workers, and if convicted of a violation under 8 U.S.C. Section 1324a (f) Company shall repay the Annual Grants herein and any other funds received by Company from City as of the date of such violation within one hundred twenty (120) days after the date Company is notified by City of such violation, plus interest at the rate of four percent (4%) compounded annually from the date of violation until paid. Company is not liable for a violation of this Section by a Company Affiliate, or franchisees of Company or by a person or entity with whom Company contracts.

6.16 Conditions Precedent. This Agreement is subject to and conditioned upon the following conditions which are a condition precedent to the effectiveness of this Agreement and obligations of the Parties hereunder: (i) Company and Landlord having entered the Lease on or before September 30, 2017 and having provided a redacted copy of the Lease to the City; (ii) Kaizen, or its assigns, and AEDC having closed the purchase and sale of the Land pursuant to the PSA on or before August 1, 2017; and (iii) Company occupying the Improvements on or before the Lease Inception Date.

[Signature Page to Follow]

EXECUTED on this _____ day of _____, 2017.

CITY OF ALLEN, TEXAS

By: _____
Peter H. Vargas, City Manager

APPROVED AS TO FORM:

By: _____
Peter G. Smith, City Attorney

EXECUTED on this 8th day of June, 2017.

NETSCOUT SYSTEMS TEXAS, LLC

By:  _____
Name: Greg Allen
Title: Controller

EXHIBIT "A"

Being an approximately 4.5± acre tract of land out of Lot 2, Block A, MILLENNIUM OFFICE PARK LOT 2, 2R-6, 2R-7 2R-8, BLOCK A, an addition to the City of Allen, Collin County, Texas, according to the plat thereof recorded as Instrument No. 20161216010005450, Official Public Records, Collin County, Texas, the boundaries of which are generally depicted on Exhibit "A-1," attached hereto and incorporated herein by reference, but which, along with the final determination of area, shall be determined prior to the Closing of the sale of the Land pursuant to the PSA.



CITY COUNCIL AGENDA COMMUNICATION
--

AGENDA DATE: June 13, 2017

SUBJECT: Accept the Resignation of Srivatsa Ramanathan and
Declare a Vacancy in Place No. 4 on the Library
Board.

STAFF RESOURCE: Shelley B. George, City Secretary

ACTION PROPOSED: Accept the Resignation of Srivatsa Ramanathan and
Declare a Vacancy in Place No. 4 on the Library
Board.

BACKGROUND

On May 31st, Srivatsa Ramanathan was appointed to fill a vacancy on the Allen ISD School Board of Trustees and thereby automatically tendered his resignation as a member of the Library Board.

MOTION

I make a motion to accept the resignation of Srivatsa Ramanathan and to declare a vacancy in Place No. 4 on the Library Board.

CITY COUNCIL AGENDA COMMUNICATION

AGENDA DATE: June 13, 2017

SUBJECT: Adopt an Ordinance Amending the Code of Ordinances by Amending Chapter 14, "Utilities," Article II, "Sewers Generally," Amending Section 14-2, "Definitions," and Adding a New Section 14-56, "Management of Fat, Oil, and Grease."

STAFF RESOURCE: Steve Massey, Director of Community Services

ACTION PROPOSED: Adopt an Ordinance Amending the Code of Ordinances by amending Chapter 14, "Utilities," Article II, "Sewers Generally," amending Section 14-2, "Definitions," and adding a new section 14-56, "Management of Fat, Oil, and Grease."

BACKGROUND

Allen and eleven other area cities that receive their wastewater (sewer) treatment from the North Texas Municipal Water District (NTMWD) are undertaking corrective actions stemming from the findings of an on-site wastewater system inspection conducted by the Environmental Protection Agency (EPA). One corrective action is to establish a Fat, Oil, and Grease (FOG) Control Program. The program is to protect both City and Regional wastewater infrastructure from the buildup of grease in the lines. Grease buildup in wastewater lines contributes to both reductions in sewage transporting capacity and system blockages that can lead to untreated wastewater escaping into the environment and potentially contaminating storm sewers, streams, and rivers. The goal of the new program is to implement measures that will stop sewer overflows caused by the buildup of FOG.

The Texas Commission on Environmental Quality (TCEQ) developed model standards for a Grease (FOG) Ordinance as directed by State of Texas House Bill 1979 that became law in the 78th Legislative Session on September 1, 2003. While many larger cities have previously adopted a city-specific version of the TCEQ model standard, Allen and most other cities served by NTMWD currently only have programs to monitor grease trap cleaning that are managed under their Environmental Health Programs. Allen's proposed new FOG ordinance was designed by City staff using the TCEQ model standards for a FOG ordinance. The measures will increase the effectiveness of the City at eliminating FOG related issues.

The new program requires the City's Water and Sewer Division to conduct periodic inspections of grease traps, grease interceptors, and grit traps (collectively termed "grease traps"). The inspection is to ensure that the grease generator (the business that is responsible for the grease trap) is cleaning grease traps with sufficient regularity to minimize the chance of FOG bypassing the devices and getting into the sewer collection system. The standard for inspection is that the City will consider grease traps full when twenty-five percent (25%) or more of the volume of the grease trap is filled with the combination of floating grease and settled deposits on the bottom of the trap.

The City will use an industry standard grease and sediment-measuring device to determine the fullness of grease traps. Generators, under the existing Environmental Health Program, already report grease trap cleanings by having their servicing cleaning company provide a copy of the cleaning and disposal manifest to the City.

There are currently 285 generators in the City which consist of restaurants, day care centers, churches, and schools. Through a potentially several year implementation period of the FOG program, the City will conduct unannounced grease trap inspections. City staff will base inspection timing on when the City's records reflect the last cleaning took place. Based on the percent full when inspected and the known last cleaning, City staff will establish specific initial cleaning intervals. Repeat inspections will validate that an appropriate cleaning interval has been established.

The plumbing code requires that all new grease generators include and design their grease traps in accordance with established standards. Facilities that are "recommissioned" into food service space must add grease traps if the plumbing code so requires, and must prove-up that any existing grease trap(s) are sufficient to manage the new restaurant/facility's FOG generation. Staff will assign all new facilities with an initial 90-day (three month) grease trap-cleaning interval.

Staff has mailed all 285 stakeholders a letter with information about the new program. Additionally, staff is holding three (3) stakeholder meetings in June to discuss the new program. Staff has completed courtesy inspections of grease traps requested by a number of generators.

The ordinance is set with an effective date of July 1, 2017. The water and sewer division has established and trained a FOG crew and is prepared to continue courtesy inspections and begin scheduling their unannounced inspections immediately thereafter.

BUDGETARY IMPACT

The Community Services Department's Water and Sewer Division will implement the FOG program at no new cost to grease generators/businesses. These inspection efforts are funded by sewer fees that are already being paid by water and sewer customers.

STAFF RECOMMENDATION

Staff recommends that Council Adopt an Ordinance amending the Code of Ordinances by amending Chapter 14, "Utilities," Article II, "Sewers Generally," amending Section 14-2, "Definitions," and adding a new section 14-56, "Management of Fat, Oil, and Grease."

MOTION

I make a motion to adopt Ordinance No. _____ amending the Code of Ordinances by amending Chapter 14, "Utilities," Article II, "Sewers Generally," amending Section 14-2, "Definitions," and adding a new section 14-56, "Management of Fat, Oil, and Grease."

ATTACHMENTS:

Ordinance

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, AMENDING THE CODE OF ORDINANCES BY AMENDING CHAPTER 14, "UTILITIES," ARTICLE II, "SEWERS GENERALLY," BY AMENDING SECTION 14-21 TO ADD AND AMEND DEFINITIONS; BY ADDING A NEW SECTION 14-56 "MANAGEMENT OF FAT, OIL AND GREASE", BY RENUMBERING THE REMAINING SECTIONS; PROVIDING A REPEALING CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING A PENALTY OF A FINE NOT TO EXCEED TWO THOUSAND (\$2000) FOR EACH OFFENSE; AND PROVIDING AN EFFECTIVE DATE.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, THAT:

SECTION 1. The Code of Ordinances of the City of Allen, Collin County, Texas, be and the same is hereby amended by amending Chapter 14, "Utilities," by amending section 14-21 in part to add and amend the following definitions to read as follows:

AMEND

"B.O.D. (biochemical oxygen demand). The quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory conditions for five (5) days at twenty (20) degrees Celsius expressed in mg/L. The laboratory determination shall be made in accordance with the procedures set forth in 40 CFR 136. B.O.D. is described in the latest edition of "Standard Methods for the Examination of Water & Wastewater."

"Bypass. Means the intentional diversion of waste streams from any portion of an industrial user's treatment facility."

"City. (For the purposes of this article) The City of Allen, Texas, and/or the city manager or their duly authorized representative."

"C.O.D. (chemical oxygen demand). The measure of oxygen consuming capacity of inorganic and organic matter present in water or wastewater. It is expressed in mg/L as the amount of oxygen consumed from a chemical oxidant in a specific test. It does not differentiate between stable and unstable organic matter and thus does not necessarily correlate with B.O.D. C.O.D is described in the latest edition of "Standard Methods for the Examination of Water & Wastewater."

"Grease trap or interceptor. A water tight device designed to use differences in specific gravities to separate and retain light density liquids, waterborne fats, oils, and greases prior to the wastewater entering the sanitary sewer collection system. These devices also serve to collect settleable solids, generated by and from food preparation activities, prior to the water exiting the trap and entering the sanitary sewer collection system. Grease traps and interceptors are also referred to herein as "grease traps/interceptors."

“Grease trap waste. Any greasy, fatty liquid, semiliquid, and/or solid wastes removed by a grease trap in the sanitary sewer service line of a commercial, institutional, or industrial food service or processing establishment, including the solids resulting from de-watering processes.”

“Interference. A discharge which, either alone or in conjunction with a discharge or discharges from other sources, both:

- (1) Inhibits or disrupts the POTW, its treatment processes or operations, or its sludge processes, use or disposal; and
- (2) Is the cause of a violation of any requirement of the POTW's NPDES/TPDES permit (including an increase in the magnitude or duration of a violation) or of the prevention of sewage sludge use or disposal by the POTW in compliance with the following statutory provisions and regulations or permits issued thereunder (or more stringent state or local regulations): Section 405 of the Clean Water Act, the Solid Waste Disposal Act (SWDA) (including Title II, more commonly referred to as the Resource Conservation and Recovery Act (RCRA), and including state regulations contained in any state sludge management plan prepared pursuant to Subtitle D of the SWDA), Texas Clean Air Act, V.T.C.A., Health and Safety Code ch. 382, the Toxic Substances Control Act, and the Marine Protection, Research, and Sanctuaries Act.”

“pH. Means the measure of the relative acidity or alkalinity of water and is defined as the negative logarithm (base 10) of the hydrogen ion concentration”

“POTW (publicly owned treatment works). A treatment works as defined by Section 212 of the Act, (33 U.S.C. 1292). This definition includes any devices and systems used in the storage, pumping, treatment, recycling and reclamation of municipal sewage or industrial wastes of a liquid nature. It also includes lift stations, sewers, pipes and other conveyances only if they convey wastewater to a POTW treatment plant. For the purposes of this article, POTW shall refer to both the City’s sanitary sewer system and the conveyance structures and wastewater treatment plant operated by the North Texas Municipal Water District.”

“Significant industrial user (SIU).

- (1) Except as provided in subsection (2) the term shall mean:
 - a. All industrial users subject to categorical standards under 40 CFR 403.6 and 40 CFR Chapter I, Subchapter N; and
 - b. Any other industrial user that discharges twenty-five thousand (25,000) gallons per day or more of process wastewater to the POTW (excluding sanitary, noncontact cooling and boiler blowdown wastewater); contributes a process waste stream which makes up five (5) percent or more of the average dry weather hydraulic or organic capacity of the POTW treatment plant; or is designated as such by the control authority as defined in 40 CFR 403.12(a) on the basis that the industrial user has a reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement (in accordance with 40 CFR 403.8(f)(6)).
- (2) Upon finding that an industrial user meeting the criteria in subsection (1)b. has no reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement, the control authority (as defined in 40 CFR 403.12(a)) may at any time, on its own initiative or in response to a petition received

from an industrial user or POTW, and in accordance with 40 CFR 403.8(f)(6), determine that such industrial user is not a significant industrial user.”

“*User*. Any person who contributes, causes or permits the contribution of wastewater into the city's sewer system, including persons who contribute such wastewater from mobile sources.”

ADD

“*Fats, oils, and greases (FOG)*. Means organic polar compounds derived from animal and/or plant sources that contain multiple carbon chain triglyceride molecules. These substances are detectable and measurable using analytical test procedures established in 40 CFR 136, as may be amended from time to time. All are sometimes referred to herein as “grease” or “greases.”

“*Generator*. Means any person who owns or operates a grease trap/grease interceptor, or whose act or process produces a grease trap waste.”

“*Polluted water*. Any water, liquid or gaseous wastes containing any of the following:

- (1) Soluble or insoluble substances of organic or inorganic nature; or
- (2) Settleable solids that may form sludge deposits; or
- (3) Grease and oils; or
- (4) Floating solids that may cause unsightly appearance or color;
- (5) Substances that would impart any taste or odor to the receiving stream; or
- (6) Toxic or poisonous substances.”

“*TCEQ*. Means the Texas Commission on Environmental Quality, and its predecessor and successor agencies.”

“*Transporter*. Means a person who is registered with and authorized by the TCEQ to transport sewage sludge, water treatment sludge, domestic septage, chemical toilet waste, grit trap waste, or grease trap waste in accordance with 30 TEXAS ADMINISTRATIVE CODE §312.142.”

“*TSS*. Means the value of the test for Total Suspended Solids, as described in the latest edition of “Standard Methods for the Examination of Water & Wastewater.”

SECTION 2. The Code of Ordinances of the City of Allen, Texas be and the same is hereby amended by renumbering section 14-56 “Penalties” as section 14-57 “Penalties”, and by adding regulations for fats, oils and grease generated by non-domestic users of the Publicly Owned Treatment Works as under new section 14-56 Management of Fat, Oil and Grease to read as follows:

“Sec. 14-56. Management of Fat, Oil, and Grease

(a) *Applicability and Prohibitions.*

- (1) This ordinance shall apply to all non-domestic users of the Publicly Owned Treatment Works (POTW), as defined in Section 14-21 of this Ordinance.
- (2) Grease traps or grease interceptors shall not be required for residential users.
- (3) Facilities generating fats, oils, or greases as a result of food manufacturing, processing, preparation, or food service shall install, use, and maintain appropriate grease traps or interceptors as required in Paragraph (b) of this Section. These facilities include but

- are not limited to restaurants, food manufacturers, food processors, hospitals, schools, day cares, hotels and motels, prisons, nursing homes, and any other facility preparing, serving, or otherwise making any foodstuff available for consumption.
- (4) No user may intentionally or unintentionally allow the direct or indirect discharge of any petroleum oil, non-biodegradable cutting oil, mineral oil, or any fats, oils, or greases of animal or vegetable origin into the POTW system in such amounts as to cause interference, obstruction, or blockage in the collection and treatment system, or as to cause pollutants to pass through the treatment works into the environment.
- (b) *Installation and Maintenance.*
- (1) *Installations.*
- Food processing or food service facilities that are newly proposed or constructed; or existing facilities which will be expanded or renovated to include a food service facility, where such facility did not previously exist, shall be required to design, install, operate and maintain a grease trap/interceptor in accordance with locally adopted plumbing codes or other applicable ordinances. Both newly proposed facilities, existing facility expansions/renovations, and facility reuse proposals for facilities that formerly had food processing and have an existing grease trap must submit their grease trap/interceptor design that is in accordance with the latest adopted edition of the International Plumbing Code. In the case of an existing facility expansions or renovations; or facility reuse proposals, the grease trap design must be certified and sealed by a State of Texas Registered Professional Engineer. Undersized grease traps from a prior use must be replaced with an appropriately sized grease traps. All grease trap/interceptor designs shall include a sample port of adequate size to facilitate effluent sampling. Grease traps/interceptors shall be installed and inspected prior to issuance of a certificate of occupancy.
- (2) *Operation and Maintenance.*
- a. Grease traps/interceptors shall remain in an efficient operating condition and at all times shall be operated and maintained in accordance with the manufacturer's recommendations and in accordance with these Model Standards, unless specified in writing and approved by the POTW.
- b. New generators will initially be assigned a ninety (90) day cleaning interval/schedule.
- c. All grease trap/interceptor waste shall be properly disposed of by a State licensed hauler/transporter at a facility that is licensed to receive such wastes in accordance with federal, state, or local regulations.
- d. Each grease trap pumped shall be fully evacuated unless the trap volume is greater than the tank capacity on the vacuum truck in which case the transporter shall arrange for additional transportation capacity so that the trap is fully evacuated within a 24-hour period, in accordance with 30 TEXAS ADMINISTRATIVE CODE §312.143.
- (3) *Self-Cleaning.*
- a. Grease trap self-cleaning operators must receive approval from the POTW annually prior to removing grease from their own grease trap(s) located inside a building, provided:
1. The grease trap is no more than fifty (50) gallons in liquid/operating capacity;
 2. Proper on-site material disposal methods are implemented (e.g. absorb liquids into solid form and dispose into trash);
 3. The local solid waste authority allows such practices;

4. Grease trap waste is placed in a leak proof, sealable container(s) located on the premises and in an area for the transporter to pump-out; and
 5. Detailed records on these activities are maintained in accordance with Manifest Requirements below.
- b. Grease trap self-cleaning operators must submit a completed self-cleaning request to the POTW for approval. The written request shall include the following information:
1. Business name and street address;
 2. Grease trap/interceptor operator name, title, and phone number;
 3. Description of maintenance frequency, method of disposal, method of cleaning and size (in gallons) of the grease trap/interceptor; and
 4. Signed statement that the operator will maintain records of waste disposal and produce them in response to compliance inspections by City, State and Federal authorities.
- c. Self-cleaners must adhere to all the requirements; procedures and detailed record keeping outlined in their approved application, to ensure compliance with this ordinance. A maintenance log shall be kept by self-cleaning operators that indicates, at a minimum, the following information:
1. Date the grease trap/interceptor was serviced;
 2. Name of the person or company servicing the grease trap/interceptor;
 3. Waste disposal method used;
 4. Gallons of grease removed and disposed of;
 5. Waste oil added to grease trap/interceptor waste; and
 6. Signature of the operator after each cleaning that certifies that all grease was removed, disposed of properly, grease trap/interceptor was thoroughly cleaned, and that all parts were replaced and in operable condition.
- d. Violations incurred by grease trap self-cleaners will be subject to enforcement action including fines and/or removal from the self-cleaner program.
- (4) *Cleaning Schedules.*
- a. Grease traps and grease interceptors shall be cleaned as often as necessary to ensure that sediment and floating materials do not accumulate to impair the efficiency of the grease trap/interceptor; to ensure the discharge is in compliance with local discharge limits; and to ensure no visible grease is observed in discharge.
 - b. Grease traps and grease interceptors subject to these standards shall be completely evacuated a minimum of every ninety (90) days, or more frequently as directed by the City when:
 1. Twenty-five (25) percent or more of the wetted height of the grease trap or grease interceptor, as measured from the bottom of the device to the invert of the outlet pipe, contains floating materials, sediment, oils or greases; or
 2. The discharge exceeds BOD, COD, TSS, FOG, pH, or other pollutant levels established by the POTW; or
 3. If there is a history of either non-compliance or sewer blockages in the grease trap or downstream of the grease trap in the entities' servicing sewer lateral/sewer main; or

4. If there is evidence of grease pass through and detrimental accumulation in the entities' servicing sewer lateral/sewer main as visualized and recorded by a City still or motion sewer camera.
 - c. Any person who owns or operates a grease trap/interceptor may submit to the POTW a request in writing for an exception to the ninety (90) day pumping frequency of their grease trap/interceptor. The POTW may grant an extension for required cleaning frequency on a case-by-case basis when:
 1. The grease trap/interceptor owner/operator has demonstrated the specific trap/interceptor will produce an effluent, based on defensible analytical results, in consistent compliance with established local discharge limits such as BOD, TSS, FOG, or other parameters as determined by the POTW and the trap/interceptor meets the twenty-five (25) percent rule in 4.c.3 below; or
 2. The facility that the grease trap serves operates intermittently and does not generate grease from cooking activities at least twenty-five (25) percent of the days in a year; and the trap/interceptor meets the twenty-five (25) percent rule in 4.c.3 below; or
 3. Less than twenty-five (25) percent of the wetted height of the grease trap or grease interceptor, as measured from the bottom of the device to the invert of the outlet pipe, contains floating materials, sediment, oils or greases at a point in time equal to the desired/established cleaning period.
 - d. A grease trap and grease interceptor shall be fully evacuated, cleaned, and inspected not less than once every 180 days unless it is operated intermittently per (4)c.2 above, then it shall be fully evacuated, cleaned, and inspected not less than once every 365 days.
- (5) *Manifest Requirements.*
- a. Each pump-out of a grease trap or interceptor must be accompanied by manifests to be used for record keeping purposes. Generators may only use collection, transportation, and disposal firms that are currently licensed by the State of Texas to perform these functions; and that provide for the disposition of correctly and completely prepared manifest copies as required in paragraphs b. and c. below.
 - b. Persons who generate, collect and transport grease waste shall maintain a record of each individual collection and deposit. Such records shall be in the form of a manifest. The manifest shall include:
 1. Name, address, telephone, and commission registration number of transporter;
 2. Name, signature, address, and phone number of the person who generated the waste and the date collected;
 3. Type and amount(s) of waste collected or transported;
 4. Name and signature(s) of responsible person(s) collecting, transporting, and depositing the waste;
 5. Date and place where the waste was deposited;
 6. Identification (permit or site registration number, location, and operator) of the facility where the waste was deposited;
 7. Name and signature of facility on-site representative acknowledging receipt of the waste and the amount of waste received;
 8. The volume of the grease waste received; and

9. A consecutive numerical tracking number to assist transporters, waste generators, and regulating authorities in tracking the volume of grease transported.
- c. Manifests shall be divided into five parts and records shall be maintained as follows.
 1. One part of the manifest shall have the generator and transporter information completed and be given to the generator at the time of waste pickup.
 2. The remaining four parts of the manifest shall have all required information completely filled out and signed by the appropriate party before distribution of the manifest.
 3. One part of the manifest shall go to the receiving facility.
 4. One part shall go to the transporter, who shall retain a copy of all manifests showing the collection and disposition of waste.
 5. One copy of the manifest shall be returned by the transporter to the person who generated the wastes within 15 days after the waste is received at the disposal or processing facility. The generator must maintain and make available the original pick-up copy and the final disposition copy for inspection by all City, State, and Federal authorities.
 6. One part of the manifest shall be provided by the transporter to the City of Allen Environmental Health Division within 15 days after the waste is received at the disposal or processing facility.
 - d. Copies of manifests provided or returned to the waste generator shall be retained for three years by the generator and must be made readily available for review/inspection by the City's Environmental Health Division as well as the City's Water and Sewer Division during City inspections.
 - e. While the generator may select the licensed transporter of their choice, the generator is responsible to select a transporter that can reliably complete and distribute the required manifest copies to both the generator and City of Allen. Failure of the generator to select a licensed transporter that reliably provides for disposition of manifest copies is a violation of this ordinance.
- (c) *City Inspections.*
- (1) *Manifests.* The City's Environmental Health staff shall perform inspections of required transporter manifest records as part of their inspection program and will receive and file the City's manifest copy.
 - (2) *Grease Traps.* The City Community Services Department's Water and Sewer Division will perform periodic physical inspections of grease traps.
 - a. Inspections will determine at a point in time near the end of the current cleaning frequency; if twenty-five (25) percent or more of the wetted height of the grease trap or grease interceptor, as measured from the bottom of the device to the invert of the outlet pipe, contains floating materials, sediment, oils or greases. This inspection is to determine if the current cleaning frequency is sufficient or if the cleaning needs to be performed at a different frequency. This may be either more or less often than the current cleaning frequency.
 - b. A copy of the City grease trap/interceptor inspection report will be discussed with, provided to, and signed for by the generator's on-duty manager or senior representative that is present for duty at the time.

- c. Facilities that exceed the twenty-five (25) percent criteria at the time of City inspection are required by annotation on the inspection report to service their grease trap within ten (10) calendar days after the date of the inspection.
 - d. Facilities will be notified by mail by the City if their cleaning frequency is changed from the current interval based on the results of the City's physical grease trap inspections.
 - e. Regardless of grease trap inspection observations, facilities that establish a history of generating illicit discharges, sewer backups, or sanitary sewer overflows due to grease deposition in the grease trap, floor drains, or in their servicing City sewer lateral may be required to implement grease trap cleaning more often than is currently performed.
 - f. City staff will maintain records of the currently required cleaning interval.
 - g. For the purpose of periodic cleaning, the generator is allowed a ten (10) calendar day window before and after the currently prescribed cleaning interval to complete the cleaning. In the event of an immediate cleaning being required as a result of exceeding the twenty-five (25) criteria during a City inspection, the generator has ten (10) calendar days after the date of the City inspection to have the cleaning performed.
- (d) *Alternative Treatment.*
- (1) *Offense.* A person commits an offense if the person introduces, or causes, permits, or suffers the introduction of any surfactant, solvent or emulsifier into a grease trap. Surfactants, solvents, and emulsifiers are materials which allow the grease to pass from the trap into the collection system, and include but are not limited to enzymes, soap, diesel, kerosene, terpene, and other solvents.
 - (2) *Defense.* It is an affirmative defense to an enforcement of (1) that the use of surfactants or soaps is incidental to normal kitchen hygiene operations.
 - (3) *Bioremediation media* may be used with the POTW's approval if the generator has proved to the satisfaction of the POTW that laboratory testing which is appropriate for the type of grease trap to be used has verified that:
 - a. The media is a pure live bacterial product which is not inactivated by the use of domestic or commercial disinfectants and detergents, strong alkalis, acids, and/or water temperatures of 160 degrees Fahrenheit (71 degrees Centigrade).
 - b. The use of the media does not reduce the buoyancy of the grease layer in the grease trap and does not increase the potential for oil and grease to be discharged to the sanitary sewer.
 - c. The use of the bioremediation media does not cause foaming in the sanitary sewer.
 - d. The BOD, COD, and TSS discharged to the sanitary sewer after use of the media does not exceed the BOD, COD, and TSS which would be discharged if the product were not being used and the grease trap was being properly maintained. pH levels must be between 5 and 11.
 - (4) *Testing.* All testing designed to satisfy the criteria set forth in Section 14-56 (g) shall be scientifically sound and statistically valid. All tests to determine oil and grease, TSS, BOD, COD, pH, and other pollutant levels shall use appropriate tests which have been approved by the Environmental Protection Agency and the Texas Commission on Environmental Quality and which are defined in Title 40, Code of Federal Regulations, Part 136 or Title 30, TEXAS ADMINISTRATIVE CODE §319.11, as amended. Testing shall be open to inspection by the POTW, and shall meet the POTW's approval.

Sec. 14-57. - Penalties.

- (a) In addition to prohibiting certain conduct by natural persons, it is the intent of this article to hold a corporation or association legally responsible for prohibited conduct performed by an agent acting in behalf of a corporation or association and within the scope of his office or employment.
- (b) Any person found to be guilty of violating provisions of this article shall become liable to the city for any expense, loss, or damage occasioned by the city for reason of appropriate clean-up and proper disposal of said waste materials. Additionally, an administrative fee up to one-half (½) of assessed clean-up costs may be levied by the city against the guilty person.
- (c) Additionally, the city is entitled to pursue all other criminal and civil remedies, including injunctive (judicial) relief to which it is entitled under the authority of statutes and/or other ordinances and/or under applicable state and federal laws against a person continuing prohibited discharges or violating any other provision of this article.
- (d) Any person, operator, or owner who shall violate any provision of this article, or who shall fail to comply with any provision hereof, shall be guilty of a misdemeanor and, upon conviction, shall be subject to a fine not to exceed two thousand dollars (\$2,000.00), and each day a violation exists shall constitute a separate offense and shall be punished accordingly.

Secs. 14-58—14-70. - Reserved.”

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

SECTION 4. Should any word, sentence, paragraph, subdivision, clause, phrase or section of this ordinance, as amended hereby, be adjudged or held to be void or unconstitutional, the same shall not affect the validity of the remaining portions of said ordinance, which shall remain in full force and effect.

SECTION 5. An offense committed before the effective date of this ordinance is governed by prior law and the Code of Ordinances of the City of Allen, as previously amended, in effect when the offense was committed and the former law is continued in effect for this purpose.

SECTION 6. Any person, firm or corporation violating any of the provisions or terms of this ordinance shall be subject to the same penalty as provided for in the Code of Ordinance of the City of Allen, as heretofore amended, and upon conviction shall be punished by a fine not to exceed the sum of Two Thousand Dollars (\$2,000) for each offense, and each, and every day such violation shall continue be deemed to constitute a separate offense.

SECTION 7. This ordinance shall take effect July 1, 2017, in accordance with the provisions of the Charter of the City of Allen, and it is accordingly so ordained.

**DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF ALLEN,
COLLIN COUNTY, TEXAS, ON THIS THE 13TH DAY OF JUNE 2017.**

APPROVED:

Stephen Terrell, MAYOR

APPROVED AS TO FORM:

ATTEST:

Peter G. Smith, CITY ATTORNEY
(PGS:5-15-17:36.84801)

Shelley B. George, TRMC, CITY SECRETARY

CITY COUNCIL AGENDA COMMUNICATION

AGENDA DATE: June 13, 2017

SUBJECT: Adopt a Resolution Establishing Permit, Inspection, and Administrative Fees Related to the Environmental Health Ordinance.

STAFF RESOURCE: Lee Battle, Assistant Director of Community Services

ACTION PROPOSED: Adopt a Resolution Establishing Permit, Inspection, and Administrative Fees Related to the Environmental Health Ordinance.

BACKGROUND

All food establishments, day cares, and semi-public swimming pools in Allen are required to obtain a "Health Permit" annually from the City. These same establishments are also inspected regularly to ensure compliance with health and safety regulations. A fee is paid annually by the establishment when they apply for their permit. The current fees have not been reviewed since 2010. With adoption of the new Environmental Health Ordinance (separate agenda item), it was an appropriate time to evaluate fees.

The fees collected are used to help cover some of the costs associated with operating the Environmental Health programs. The costs not covered by these fees are covered by tax revenues. The attached summary shows the operating costs of this function and the funding sources. In summary, increasing the health permit fees will reduce the amount that is funded by tax revenues.

A survey of the fees charged by surrounding cities was used to make sure that proposed fees are not comparatively burdensome and keeps Allen competitive. The proposed fees will keep Allen just below the average of surrounding cities in most cases.

LEGAL NOTICES:

None required.

STAFF RECOMMENDATION

Staff recommends adopting a Resolution establishing permit, inspection, and administrative fees related to the Environmental Health Ordinance.

MOTION

I make a motion to adopt Resolution No. _____ establishing permit, inspection, and administrative fees related to the Environmental Health Ordinance.

ATTACHMENTS:

Resolution

Explanation of Environmental Health Fees

Proposed Health Fee Changes

Health Fee Comparison

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, ESTABLISHING PERMIT, INSPECTION, AND ADMINISTRATIVE FEES RELATED TO THE CITY OF ALLEN ENVIRONMENTAL HEALTH ORDINANCE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Allen, Texas requires all food establishments, food processing establishments, mobile food establishments, temporary food establishments, seasonal food establishments, bed and breakfast food establishments, child care facilities, licensed childcare homes and public and semi-public swimming pools and spas located in the City of Allen to submit applications and obtain permits pursuant to the City of Allen Environmental Health ordinance; and,

WHEREAS, the City Council desires to establish the fees and charges, as set forth herein.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, THAT:

SECTION 1. The City Council hereby establishes the following permit fees and charges for food service, child care, and public and semi-public swimming pools:

“1. Food Establishment Permit Fees.	
(a) Grocery stores established for retail foods.	\$450.00 annually
(b) Food Establishments involved in Heavy Food Preparation include those where foods are prepared utilizing a grill, griddle, deep-fat fryer, commercial oven, and any similar food preparation equipment. In addition, this includes any area subject to flooding or wet cleaning procedures due to the cutting or processing of fish, pork, beef, poultry or other potentially hazardous foods. Heavy Food Preparation Food Establishments include, but is not limited to, cafeterias, fast-food restaurants, full-service restaurants, pizza preparation, and donut preparation.	\$400.00 annually
(c) Food Establishments involved in Light Food Preparation include those where foods are prepared without the use of fryers, grills, or other similar cooking equipment. Light Food Preparation is usually limited to the preparation of hot dogs, sandwiches, salads, coffee, fountain drinks, and similar foods.	\$250.00 annually
(d) Food Establishments involved in No Food Preparation shall include any entity in which foods are provided pre-wrapped or canned from an approved source. These include those that use microwaves or convection ovens for heating pre-wrapped foods, or cold holding units for chilling pre-wrapped foods.	\$150.00 annually

(2) Temporary Food Establishments Permit Fees.	
(a) Concession Stands shall include food service establishments located within a building or a permanent structure equipped with electricity, public water supply, sanitary sewer, and operated in association with sports and athletic or similar recreation activities on a seasonal basis of more than 14 days but less than 6 months.	\$150.00 annually

(b)	Temporary Food Establishments include food service stands and mobile food establishments (food trucks) that operate in a fixed location, including special events, for a period of time of not more than 14 consecutive days	\$100.00 annually
(3)	Mobile Food Units Permit Fees. Mobile Food Units, self-propelled vehicle mounted, or cart mounted, food establishments designed to be readily moveable that are equipped with food preparation equipment. These include, but are not limited to, ice cream vehicles, snow cone vehicles and prepackaged food vehicles (mobile sales at construction sites).	\$250.00 annually
(4)	Child Care Facilities Permit Fees.	\$300.00 annually
(5)	Public and Semi-Public Swimming Pools, Spas, and Public Interactive Water Features and Fountains (PIWFs) Permit Fees.	
(a)	All public and semi-public swimming pools, spas, as defined by the City of Allen Environmental Health ordinance, shall be permitted separately, unless bodies of water are shared by circulation, heating, or filtration systems.	\$200.00 annually per body of water; or \$150.00 annually for shared bodies of water, as determined by the regulatory authority
(b)	PIWFs at a location shall be permitted separately of swimming pools and spas, regardless if water is shared or interconnected with them, or operate using shared circulation, heating, or filtration systems.	\$200.00 annually at each location.
(6)	Administration Fees.	
(a)	All costs for abatement of any nuisance or violation, or any part thereof, and interest levied will be assessed and collected against such property upon which such nuisance or violation or any part thereof is located.	Actual costs not less than \$25.00, plus a fee of \$100.00 for administrative costs, in addition to costs for mailing notices and filing of statement with the County Clerk.
(b)	Any permitted establishment that receives an inspection score of "Poor" or "Fail" shall be required to submit a reinspection fee within three (3) business days, and these costs will be paid before a reinspection is conducted by the City of Allen.	\$75.00
(c)	A late fee may be assessed for any permit not renewed within 30 days of expiration if the facility continues to operate without a valid permit.	\$50.00
(d)	Food facilities required by the City of Allen to submit blueprints or drawings during the construction process shall be charged a health plan review fee.	\$200.00"

SECTION 2. Resolutions of the City of Allen, Collin County, Texas, in conflict with the provisions of this resolution be, and the same are hereby, repealed; provided, however, that all other provisions of said resolutions not in conflict with the provisions of this resolution shall remain in full force and effect.

SECTION 3. This Resolution shall become effective immediately from and after its passage, provided, however, the fees and charges established herein shall take effect on its passage.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, ON THIS THE 13TH DAY OF JUNE 2017.

APPROVED:

Stephen Terrell, MAYOR

ATTEST:

Shelley B. George, CITY SECRETARY
(PGS:5-10-17:36.85839)

Environmental Health Division Fees

Costs

The Environmental Health Division is currently staffed by three full time Environmental Health Specialist positions (not including the Health and Code Manager). The primary responsibility is to conduct health inspections of food establishments, daycares and swimming pools. Additional responsibilities include plan review, CO inspections, complaint investigations, public education and the mosquito abatement program. Current approximate costs of this division are:

Staff (salaries & benefits):	\$226,454
Operations:	\$16,310
Vehicles (replacement & fuel):	\$15,000
Total:	\$257,764

Fees

Annual Health Permit fees are collected for food establishments, daycares and semi-public swimming pools. These are the only regular revenues tied to environmental health operations. The current and proposed fee revenues are:

Current annual fee revenue:	\$136,200
Proposed annual fee revenue:	\$178,450

Analysis

Permit fees are collected to offset some of the costs of operating environmental health programs. These programs provide a service, and cost recovery is not an established goal for these fees.

Currently fees cover 52.8% of costs.

Proposed fees would cover 69.2% of costs.

Costs not covered by these fees, are covered through the general fund via tax revenues.

The fundamental choice is: how much of these costs will be covered by fees, and how much will be covered by tax revenues. The proposed increase in fees is one method by which the City can diversify revenue sources and minimize the tax burden.

Summary of Health Fee Changes

Permit Type		# Permits 2016	Current Fee	Proposed Fee	Increase	Current Annual Revenue	Future Annual Revenue	
GROCERY	HGRO	14	\$400	\$450	\$50	\$5,600	\$6,300	
HEAVY FOOD PREPARATION	HHFP	252	\$300	\$400	\$100	\$75,600	\$100,800	
LIGHT FOOD PREPARATION	HLIT	77	\$200	\$250	\$50	\$15,400	\$19,250	
NO FOOD PREPARATION	HNFP	22	\$100	\$150	\$50	\$2,200	\$3,300	
TEMP. 1-14 DAYS	HTMP	57	\$100	\$100	\$0	\$5,700	\$5,700	
CONCESSION STANDS	HCON	14	\$150	\$150	\$0	\$2,100	\$2,100	
CATERING TRUCKS	HCAT	12	\$150	\$250	\$100	\$1,800	\$3,000	
ICE CREAM/SNO CONE TR.	HICC	2	\$150	\$150	\$0	\$300	\$300	
DAY CARE	HDAY	41	\$200	\$300	\$100	\$8,200	\$12,300	
PUBLIC INTERACTIVE WTR	HPWF	5	\$200	\$200	\$0	\$1,000	\$1,000	
SWIMMING POOL	HSWI	122	\$150	\$200	\$50	\$18,300	\$24,400	
		618				\$136,200	\$178,450	\$42,250 Increased Revenue

Environmental Health Permit Fees of Surrounding Cities

<u>Allen</u>	Existing	Proposed	<u>McKinney</u>	<u>Richardson</u>	<u>Plano</u>	<u>Frisco</u>	<u>Garland</u>	<u>Carrollton</u>						
Grocery	\$400	\$450	Grocery	\$400	Food Svc >7500 sq ft	\$450	Grocery	\$650	Supermarket	\$350	Heavy Food	\$400		
Heavy Food	\$300	\$400	Restaurant	\$300	Food Svc 2,000-7500 sq ft	\$350	Full Svc Restaurant	\$500	Restaurant	\$500	Full Svc/Fast Food	\$450	Light Food	\$320
Light Food	\$200	\$250	Convenience	\$250	Food Svc <2000 sq ft	\$250	Fast Food	\$400	Convenience	\$250	Sandwich/Ice Cream	\$350	Additional Food	\$300
No Food Prep	\$100	\$150	No PHF	\$50			Convenience	\$300			Convenience	\$250	Non Food Prep	\$200
							Mega Store	\$1,000			School	\$350		
											Hospital/Nursing Hm	\$450		
											Asst. Living Facility	\$350		
Temp. Event	\$100	\$100	Temp. Event	\$50	Temp. Event	\$50	Temp. Event	\$75	Temp. Event	\$50	Temp. Event	\$50	Special Event	\$50
M.F.U./Catering	\$150	\$250	M. F. E.	\$150	M.F. U. Hot Truck	\$350	M.F.U. Hot Truck	\$300	M.F.U. Hot Truck	\$400	Hot Truck	\$450	M.F.U. Hot Truck	\$400
					M.F. U. Prepack Truck	\$200	M.F.U. Cold Truck	\$275	M.F.U. Cold Truck	\$300	Catering Truck	\$450	M.F.U. Cold Truck	\$200
Daycare	\$200	\$300	Daycare	\$300	Daycare	\$200	Daycare	\$400	Daycare	\$300	Daycare	\$350	Daycare	320-400
Pools/Spa	\$150	\$200	Pools	\$500	Pools	\$200	Pools/Spa	\$200	Pools/Spa	\$225	Pool	\$200	Pools/Spa	\$100