



**REQUEST FOR QUALIFICATIONS (RFQ) NO. 2025-157  
FOR  
City of Mesquite, TX**

**CLOSING DATE AND TIME: July 23, 2025 -2:00 P.M.**

**MULTI-YEARS PROFESSIONAL SERVICES**

**FOR CITY OF MESQUITE**

## **GENERAL CLAUSES AND CONDITIONS**

1. If you have questions regarding the preparation of your response you may contact Ryan Williams, Manager of Purchasing, at 972-216-6394 or email at: [purchasing@cityofmesquite.com](mailto:purchasing@cityofmesquite.com). For technical questions, contact Bob Blankenship, Park Project Manager, telephone 972-740-7436, [rblanken@cityofmesquite.com](mailto:rblanken@cityofmesquite.com)
2. Vendors who do not respond to this particular request, but who want to remain on our mailing list for future opportunities shall indicate "NO RESPONSE" on the face of this page by putting the date and signed by the authorized representative of your company and return this page to the Purchasing office. Your assistance in this matter is greatly appreciated.
3. Protection of Resident Workers: The City of Mesquite actively supports the Immigration and Nationality Act (INA) which includes provisions addressing employment eligibility, employment verification, and nondiscrimination. Under the INA, employers may hire only persons who may legally work in the United States (i.e., citizens and nationals of the U.S.) and aliens authorized to work in the U.S. The employer must verify the identity and employment eligibility of anyone to be hired, which includes completing the Employment Eligibility Verification Form (I-9). The Contractor shall establish appropriate procedures and controls.
4. Laws and Ordinances: The Contractor shall at all times observe and comply with all Federal, State and local laws, ordinances and regulations which in any manner affect the Contract or the work, and shall indemnify and save harmless the City against any claim arising from the violation of any such laws, ordinances and regulations whether by the Contractor or his employees.
5. **Bids/Proposals must be sent electronically** through the new online system at the following link: BidNet Direct, [www.bidnetdirect.com/cityofmesquite](http://www.bidnetdirect.com/cityofmesquite). Make sure all required documents are submitted as required per the RFQ. For questions regarding your login, submittal problems or resetting your password, contact BidNet Direct vendor support at [support@bidnet.com](mailto:support@bidnet.com) or at 800-835-4603, option 2. Responses must be submitted in sufficient time before the published date.
6. Responses will be received and publicly acknowledged at the location, date and time stated above. Only the name of the respondents responding to this request for qualifications shall be released at the response opening. Other information submitted by the respondent shall not be released by the City during the proposal evaluation process or prior to contract award. At no time will confidential information, as noted by the respondent, be released.
7. Respondent shall attach official documentation from the State of Texas or other qualified certification agency of M/WBE status of your company with bid/proposal. This data is for informational purposes only and will not affect the award.
8. A completed W-9 form will be required within five business days once notification has been received.
9. In submitting an offer, respondent certifies that they have not participated in nor have they been

party to any collusion, price fixing or any other illegal or unethical agreements with any company, firm or person concerning the pricing offered.

10. The attached Non-Exclusion Affidavit for General Contractors must be signed, notarized and submitted with response.
11. A representative of the proposing entity who is authorized to enter into contract on behalf of the proposing entity must manually sign response in ink. The person signing the response must indicate his/her title along with signature. Responses received without proper signature will not be considered.
12. Any ambiguity in the response as a result of omission, error, lack of clarity or non-compliance by the respondent with specifications, instructions and all conditions shall be construed in favor of the City.
13. The City of Mesquite reserves the right to reject any and all responses, waive formalities and to make award as may be deemed to the best advantage of the City. No response may be withdrawn within forty-five (45) days after date of opening.
14. This Contract may be terminated at any time with thirty (30) days written notice by either the City of Mesquite or successful respondent.
15. The City is not liable for any cost incurred by Respondents in replying to this RFQ/RFP. This includes costs to determine the nature of the response, submitting, negotiating, presentations or any other costs a vendor would incur in responding to the RFQ/RFP.
16. Respondents shall complete all information requested and blanks provided shall be filled in on the provided forms. Failure to completely describe the merchandise being proposed may result in rejection of your response.
17. The City is exempt from all sales and excise taxes.
18. The City of Mesquite reserves the right to evaluate variations from these specifications. If exceptions are made, respondent shall state wherein the merchandise fails to meet these specifications. Failure to completely describe the merchandise being proposed may result in rejection of your response.
19. It shall be understood all responses, inquires or correspondence relating to or in reference to this RFQ/RFP, and all reports, charges and responses or referencing information submitted in response to this RFQ/RFP shall become the property of the City, and will not be returned. The City will use discretion with regard to disclosure of proprietary information contained in any response, but cannot guarantee information will not be made public. As a governmental entity, the City is subject to making records available for disclosure.
20. All restrictions on the use of data contained within a response and all confidential information must be clearly stated in the RFQ/RFP. Proprietary information submitted in response to the RFQ/RFP, will be handled in accordance with the Texas Open Records Law and other applicable state statutes.

21. It is the vendor's responsibility to check for any addendums that might have been issued before the proposal closing date and time.
22. Cooperative Purchasing: As permitted under the Texas Local Government Code, Chapter 791025, other *government entities may wish to also participate under the same terms and conditions contained in this contract* (piggyback). Each entity wishing to piggyback must have prior authorization from the City of Mesquite and 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 Mesquite shall not be held responsible for any orders placed, deliveries made or payment for supplies/services ordered by these entities. Each entity reserves the right to determine their participation in this contract.

Successful respondent agrees to extend prices to all entities that have entered into or will enter into joint purchasing inter-local cooperation agreements with the City of Mesquite\_\_\_\_\_Yes  
\_\_\_\_\_No.

23. The response evaluation process will occur after the closing date. The City's evaluation and clarification process will commence. An evaluation team will review the responses. Criteria described in this RFQ/RFP will be considered, as well as any other factors the evaluation team determines may affect the suitability of the response for the City's requirements. A Respondent's submission constitutes their acceptance of the evaluation technique.
24. The insurance requirements are included in this document. Respondents agree to provide and to maintain the required types of insurance for the term of the contract. An original certificate of insurance will be required within 10 business days by the apparent successful contractor once notification has been received.
25. The Contract is included for respondent's information so that respondents may be familiar with their contents and requirements. **Respondent shall not fill in or execute these forms at time of proposal submittal. Upon award of the proposal, the awarded vendor will be required to execute the contract.**
26. Submissions that are incomplete or do not comply with mandatory submission requirements shall be rejected. In addition, the City of Mesquite reserves the right to reject in whole or in part any responses submitted, and to waive minor technicalities when in the best interest of the City. Responses may be disqualified for any of, but not limited to, the following reasons:
- Collusion among Respondents;
  - Failure to comply with or inclusion of terms and conditions in conflict with, the terms of this RFQ, or City of Mesquite procurement rules and procedures;
  - Failure to meet minimum response requirements established in the RFQ.

## SPECIAL PROVISIONS

1. The successful respondent's rights and duties awarded by the contract may not be assigned to another without written consent of the City signed by the City's authorized agent. Such consent shall not relieve the assigned of liability in the event of default by the assignee.
2. Any deviations from specifications and alternate responses must be clearly shown with complete information provided by the respondent. They may or may not be considered by the City.
3. 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 to the contract will be made in writing and shall not be effective unless signed by an authorized representative of the City.
4. The City shall have the right to modify this order subject to an adjustment in the price in accordance with the applicable provisions of the purchase order, if any, or pursuant to mutual agreements. No agreement or understanding to modify this order shall be binding on the City unless it is in writing and signed by an authorized representative of the City.
5. The City reserves the right to require additional technical information and negotiate all elements which comprise the Vendor's response to ensure that the best possible consideration be afforded to all concerned. The City reserves the right to accept all or part of any proposal, to reject any or all proposals and to re-solicit for proposals.
6. Services or products under the Contract Documents shall not be performed or manufactured by any worker who is not legally eligible to perform such services or employment.
7. A pre-proposal meeting is NOT anticipated at this time.
8. All questions must be submitted via fax at 972-216-6397 or email only by **10:00 a.m. on Friday, July 18, 2025**, to Ryan Williams, Manager of Purchasing at [purchasing@cityofmesquite.com](mailto:purchasing@cityofmesquite.com) prior to the July 23, 2025, closing date.
9. Respondents shall submit a total of three (3) work references.
10. Respondents shall fill out the following required documents. If the following forms are not included, the response may be considered non-responsive.

### Check List:

- ☐ Conflict of Interest Questionnaire
- ☐ Non-Exclusion Affidavit for General Contractors
- ☐ Prohibition On Contracts with Companies Boycotting Israel – House Bill 89
- ☐ References
- ☐ Contractor's Signature Page

## **I. GENERAL INFORMATION**

The City of Mesquite is issuing this Request for Qualifications (RFQ) for the purpose of inviting submittal of Statement of Qualifications from firms interested in providing park planning, architecture, engineering, and landscape design services to support the Parks and Recreation Department (MPAR). The responses will be evaluated using the established criteria to identify up to 4 firms in each category to assist City Staff on an “as needed” basis with future projects. This solicitation shall be valid for a period of no more than five (5) years.

The selection of a firm does not guarantee that the City will enter into a contract with the firm nor that funds will be allocated by City Council for project related work.

## **II. BACKGROUND**

It is the intent of the City to award professional service contract(s) for projects on a case-by-case basis to firms from a list developed from this RFQ, for an initial time period of five years beginning in August 2025 through August 2030.

The City reserves the right to remove a firm from the list during the duration of use. Reasons for removal include, but are not limited to, firm’s inability to meet requirements, failure to meet deadlines, failure to design to budget, previous project performance or changes to firm that results in qualifications differing from those submitted in the SOQ.

If determined to be in the best interest of the City, the City may award work to firms that were not selected under this RFQ or issue a separate solicitation for a specific project.

## **III. SCOPE OF WORK**

The City of Mesquite is issuing this "Request for Qualifications " to identify resources to support the Parks and Recreation Department (MPAR). It is anticipated that the results of this solicitation will establish a Consultant List that may be used to select consultants for future MPAR projects. However, the City may decide to solicit for services using separate RFQ for specific projects. This solicitation shall be valid for a period of no more than five (5) years.

The Parks and Recreation Department anticipates the need for professional planning, architecture, engineering, and landscape design services for future park related capital improvement projects. The possible services are described in the following categories:

- **Category 1:** Architecture: Projects will have a primary focus on structures and could range for building renovation to new structures such as park concessions buildings, Pro Shops, restroom facilities, offices, or storage buildings. Required services may include but are not limited to; programming, condition assessments, site survey, estimating, architectural design, material testing such as soil and earthwork testing as well as concrete testing, foundation engineering, structural inspection and design, mechanical, electrical, plumbing engineering, signage design, landscape design, construction support, preparation of presentation quality renderings and exhibits and preparation of construction documents.
- **Category 2:** Parks: Projects will have a primary focus on outdoor park facilities and could range from general park planning to design of specific park amenities or sports facilities such as baseball or football fields, playgrounds, picnic shelters, larger park pavilions, trails, pedestrian bridges, dog park, mountain biking and nature trails.

Required services may include but are not included to; programming, condition assessments, preparation of Grant or funding applications, site survey, estimating, design, soils boring, foundation engineering, electrical and plumbing engineering, signage design, landscape design, construction support, preparation of presentation quality renderings and exhibits and preparation of construction documents.

- **Category 3:** Landscape: Projects will have a primary focus on Landscape Architecture and landscaping improvements and could range from enhancements to existing parks or streetscape to design of new landscape features such as plazas, gateway features, memorials, and environmental graphic programs. Required services may include but are not limited to; programming, condition assessments, preparation of Grant or funding applications, site survey, estimating, design, soils boring, Structural, Electrical, Plumbing engineering, signage design, construction support, presentation of presentation quality renderings and exhibits and preparation of construction documents.
- **Category 4:** Small scale or quick response (low fee): This category is specifically targeted for firms suited to performing smaller projects of Category 1 or 2 or 3 that have a reduced/limited scope or require a quick response. It is anticipated that these services can be performed for a low/minimal fee. Responses should demonstrate the willingness and ability to performed small, limited scope project quickly and for an appropriate fee.

It is likely that a project could contain elements of more than one category therefore the project focus will be determined in the best interested of the project by Staff based on the largest portion of the work or the most critical element of the project. The City reserves the right to contract different elements of a project to more than one (1) consultant with the requirement that the two party coordinate the overall project.

So that Staff can respond quickly to projects needing professional services, this Request for Qualifications (RFQ) is be issued to allow qualified firms interested in being considered to submit their qualifications. Firms may submit qualifications for one or more categories however must provide a separate package for each category. The specific category shall be clearly labelled on the cover of the qualifications package. Submittals in each category shall be evaluated using the established criteria, the top four firms in each category establish the Consultant List.

As a project comes up, its focus will be determined and one of the four firms on the list for that category shall be identified to receive a request for proposal. The specific requirements, scope, and timing of the project shall be issued to the selected firm in order to negotiate the fee. If negotiation fail to agree on a fee, negotiations will be terminated and consider another consultant on the list. The city reserves the right to solicit for a specific project at any time if it is determined to be in the best interest of the project.

Firms should demonstrate throughout their SOQ in their project examples and firm qualifications that they will be capable of 1) Managing multiple design and construction contracts to a coordinated and predictable outcome, 2) Meeting project goals within scope, budget, and schedule 3) Implementing a QA/QC program, 4) Providing consistency between projects by utilizing the City's Standard Details, Design Criteria Manual, and Specifications when provided, 5) Providing reporting of project progress and project financials and 6) Design projects of varying complexity for the City of Mesquite.

#### **IV. EVALUATION CRITERIA**

Response to this RFQ should be limited to a single one-inch wide 8½"x11" binder, with single-sided 8½"x 11" or 11"x17" sheets. Each section shall be clearly identified and tabbed. Three (3) copies of the SOQ should be submitted to the City for Review.

Required Sections:

1. **Introductory Letter** – A letter of interest, not to exceed one (1) typed page, indicating why the firm is interested and qualified to perform services.
2. **Qualifications of Responding Firm** – The responding firm shall provide written pertinent information about the firm, Section should include:
  - a. Local Office(s) Qualifications detailing the following for each local office (for the purpose of this RFQ, the term ‘local office’ refers to offices located within the North Texas region):
    - i. Location Address
    - ii. Number of technical and professional personnel by discipline and training
    - iii. Resources available
  - b. Firm’s overall ability
    - i. Current Workload and projected workload for the next year
    - ii. Resources available that the firm would be able to allocate to the project
    - iii. Describe your Quality Assurance/Quality Control processes, including your tracking system(s) that will be used to monitor budget, schedule, and scope.
    - iv. Indicate the firm’s approach to Project Management. Describe all elements to your approach, including how your approach addresses contingencies that may arise during projects, how to resolve issues within the project team, and how your firms will manage the project.
    - v. Sub-consultant and their qualifications
    - vi. Copy of the firm’s current licensing
3. **Proposed Project Staff** - Provide a statement that identifies the key personnel who will be directly assigned to primary areas, not to exceed one (1) typed page per staff member. State the qualifications and related experience of each member of the proposed project team and designate the location and employment of each team member e.g. company employee, sub-consultant employee, contract employee, etc. Demonstrate Individual’s relevant experience to the type of work solicited. Provide an Organizational Chart with roles and responsibilities of key individuals assigned to support the project. Include State of Texas professional registration numbers for individuals that will have design, inspection, surveying, and testing. Respondent must be registered, or have personnel on their direct staffs that are registered in the professional services discipline required to perform the services requested. If sub-consultants are included to assemble a project team, their qualifications and experience of proposed key personnel should be described with respect to the relevant category or subcategory of work.

One person shall be designated as the primary contact for the City of Mesquite throughout the contract term. The Respondent agrees that the primary contact assigned shall remain available for the entirety of the term as long as that individual is employed by the Respondent or unless the City of Mesquite agrees to a change in the key personnel.

4. **Firm’s Knowledge of the City of Mesquite** – This section should detail the firm’s knowledge of working in, near, and/or with the City of Mesquite, not to exceed one (1) typed page. Firm should indicate previous work completed in the City of Mesquite and the firm’s knowledge of pertinent construction materials, vendor facilities and standard practices. Firm should also outline known challenges the City of Mesquite faces and proposed methods to tackle those challenges.



5. **Category Specific Project Experience**– The responding firm shall provide written pertinent information about the firm and related experience within the past five (5) years and within the North Texas region for each project category, not to exceed one (1) typed page. Each project listed should include a reference with contact information. A firm may provide no more than three (3), additional typed sheets for each project category containing information on specific project experience. Previous project experience should describe at a minimum:

- a. Project location and description
- b. Firm’s role (primary, subconsultant, etc.)
- c. Project owner with contact information
- d. Project manager within the firm
- e. Dates of design and construction

## **V. SELECTION PROCESS**

The RFQ provides information necessary to prepare and submit qualifications for consideration and ranking. Based on this ranking, the Staff will select the top four ranked respondents for each of the four categories to be included on a list that can be utilized by City departments to solicit project specific proposals.

**Acceptance of evaluation methodology:** By submitting its Qualifications in response to this RFQ, respondent accepts the evaluation criteria as outlined in Section IV and acknowledges and accepts that determination of the “most qualified” firm(s) may require subjective judgments by City of Mesquite Staff.

**Public information:** All information, documentation, and other materials submitted in response to this solicitation are considered non-confidential and/or non-proprietary and are subject to public disclosure under the Texas Public Information Act after the solicitation is completed and contract executed with the selected firm.

## **VI. REQUIREMENTS FOR STATEMENT OF QUALIFICATIONS**

Respondents shall carefully read the information in the following evaluation criteria and submit a complete statement of qualifications to all questions in this section formatted as directed in the section formatted as directed below. All sections should have tab dividers.

**RFQ 2025-157 EVALUATION SCORING MATRIX**

**An Evaluation Team consisting of City Staff shall review the information provided and score the information using the following:**

**SELECTION CRITERIA:**

	<u>POINTS</u>		<u>SCORE</u>
<b><u>1. QUALIFICATIONS OF THE RESPONDING FIRM</u></b>	<b><u>20</u></b>	=	
The evaluation is based on the Consultant's capability to provide the requested services. Number of appropriate staff in local office. Available in-house services. Location of office with respect to Mesquite. Access to necessary sub-consultants.			
<b><u>2. EXPERIENCE</u></b>	<b><u>25</u></b>	=	
The Consultant should demonstrate experience with and an understanding of the specifics and critical factors related to the Project type. Evaluation is based on experience with projects of similar type, cost, and complexity.			

**3. PROPOSED PROJECT STAFF**

	<b><u>25</u></b>	=	
The Consultant should provide the name and qualifications of the key staff that will be involved in project. Evaluation is based on their specialty and depth of experience with similar type projects. They need to demonstrate creativity and ability to perform their assigned responsibility in a timely manner and within budget.			

**4. KNOWLEDGE OF MESQUITE**

	<b><u>10</u></b>	=	
Response should demonstrate an understanding of Mesquite and any unique challenges the assignment has. What is their previous experience working for and within the City?			

**5. REFERENCES**

	<b><u>20</u></b>	=	
The Evaluation is based on information provided from the References provided. Their experience with the firm or staff. Its customer service, ability to delivery on time and within budget. Overall satisfaction.			

**TOTAL POSSIBLE SCORE**

	<b><u>100</u></b>	=	
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**QUALIFICATIONS OF THE RESPONDING FIRM (20 pts.):** A letter of interest, not to exceed one (1) typed page, indicating why the firm is interested and qualified to perform services:

- Legal name of firm
- Contact Person
- Date of firm formation
- Date of opening primary home office, and, if applicable, any branch and local offices
- Current address of office(s)
- Identify office that will be providing services
- Legal business description (Individual, Partnership, Corporation, Joint Venture, etc.)

The evaluation is based on the Consultant's capability to provide the requested services. Number of appropriate staff in local office. Available in-house services. Location of office with respect to Mesquite. Access to necessary sub-consultants.

**2. EXPERIENCE (25 pts.):** The responding firm shall provide written pertinent information about the firm, not to exceed two (2) typed pages. Section should include:

- Firm's overall ability
- Experience with municipal projects, cost, and complexity
- In-house resources available that could be allocated to a project
- Describe your Quality Assurance/Quality Control processes.
- Copy of the firm's current licensing

**3. PROPOSED PROJECT STAFF (25 pts.):** Provide a statement, not to exceed one (1) typed page, (not including individual resumes for each Key Staff member), that summarizes key personnel who will be directly assigned to primary areas, the qualifications and related experience of each member and designate the location and employment of each team member e.g. company employee, sub-consultant employee, contract employee, etc. Include an Organizational Chart. Respondent must be registered, or have personnel on their direct staffs that are registered in the professional services discipline required to perform the services requested. If sub-consultants are included to assemble a project team, their qualifications and experience of proposed key personnel should be described with respect to the relevant category or subcategory of work.

One person shall be designated as the primary contact for the City of Mesquite throughout the contract term. The Respondent agrees that the primary contact assigned shall remain available for the entirety of the term as long as that individual is employed by the Respondent or unless the City of Mesquite agrees to a change in the key personnel.

**4. KNOWLEDGE OF MESQUITE (10 PTS.):** This section should detail the firm's knowledge of working in, near, and/or with the City of Mesquite, and not to exceed one (1) typed page. Firm should indicate previous work completed in the City of Mesquite and the firm's knowledge of pertinent construction materials, vendor facilities and standard practices. Firm should also outline known challenges the City of Mesquite faces and proposed methods to tackle those challenges.

**5. REFERENCES (20 pts.):** The responding firm shall provide three (3) references who can be contacted to inquire about the firm's performance on a design project of similar nature.

## **VII. ADDITIONAL INFORMATION TO BE INCLUDED IN STATEMENT OF QUALIFICATIONS**

- The City of Mesquite requires professional liability insurance for firms with which it contracts. Please state what coverages your firm carries and in what amounts.
- Identify firm's executives who have current claims or who have participated in litigation against the City of Mesquite while with another firm. Firms currently under litigation with the City or whose executives have been in litigation with the City may not be considered.
- It will be incumbent on those persons or firms with persons, having potential conflicts of interest to identify and cure such conflict(s) prior to consideration of the work. Failure to identify such conflict may remove that person or firm from further consideration.
- Provide any brochures or other marketing literature you wish to include in your submittal.

#### **VIII. DUE DATE AND CONTACT**

**Bids/Proposals must be sent electronically** through the new online system at the following link: BidNet Direct, [www.bidnetdirect.com//cityofmesquite](http://www.bidnetdirect.com//cityofmesquite).

STATEMENTS OF QUALIFICATIONS are to be delivered **by 2:00 p.m. July 23, 2025**, to:

Ryan Williams  
Manager of Purchasing  
Purchasing Division

City of Mesquite  
757 N. Galloway  
Mesquite, Texas 75149

For technical questions concerning the Request for Qualifications you may contact:

Bob Blankenship, Parks Project Manager  
972-740-7436  
[rblanken@cityofmesquite.com](mailto:rblanken@cityofmesquite.com)

## **CONTRACTING WITH THE CITY OF MESQUITE**

Updated: January 8, 2016

### **Conflict of Interest Questionnaire And Disclosure of Interested Parties (Form 1295)**

YOU WILL BE REQUIRED TO COMPLY WITH THE FOLLOWING:

Chapter 176 of the Texas Local Government Code is an ethics law that was initially enacted by the Texas Legislature with HB 914 in 2005 that requires disclosure of employment and business relationships local government officers may have with contractors, consultants and vendors who conduct business with local government entities. The law applies to any written contract for the sale or purchase of real property, goods or services. Further information regarding Texas Conflict of Interest laws and the ***Conflict-of-Interest Questionnaire*** (FORM CIQ) can be found at the Texas Ethics Commission web site at the following web address:

[https://www.ethics.state.tx.us/filinginfo/conflict\\_forms.htm](https://www.ethics.state.tx.us/filinginfo/conflict_forms.htm)

PLEASE COMPLETE THE ATTACHED FORM CIQ AND SUBMIT WITH YOUR RESPONSE.

Section 2252.908 of the Texas Government Code was enacted in 2015, by the Texas Legislature pursuant to HB 1295, which provides that a governmental entity may not enter into certain contracts with a business entity on or after January 1, 2016, unless the business entity submits a disclosure of interested parties (FORM 1295) to the governmental entity at the time the business entity submits the signed contract to the governmental entity. Further information regarding the disclosure of interested parties law and FORM 1295 can be found at the Texas Ethics Commission web site at the following web address:

[https://www.ethics.state.tx.us/whatsnew/elf\\_info\\_form1295.htm](https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm)

PLEASE DO NOT COMPLETE FORM 1295 UNTIL YOU HAVE BEEN NOTIFIED OF CONTRACT AWARD AND REQUESTED TO ELECTRONICALLY FILE FORM 1295 WITH THE TEXAS ETHICS COMMISSION.

# CONFLICT OF INTEREST QUESTIONNAIRE

For vendor doing business with local governmental entity

FORM CIQ

This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.

This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a).

By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. See Section 176.006(a-1), Local Government Code.

A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.

## OFFICE USE ONLY

Date Received

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

2 ☐ Check this box if you are filing an update to a previously filed questionnaire. (The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)

3 Name of local government officer about whom the information is being disclosed.

\_\_\_\_\_  
Name of Officer

4 Describe each employment or other business relationship with the local government officer, or a family member of the officer, as described by Section 176.003(a)(2)(A). Also describe any family relationship with the local government officer. Complete subparts A and B for each employment or business relationship described. Attach additional pages to this Form CIQ as necessary.

A. Is the local government officer or a family member of the officer receiving or likely to receive taxable income, other than investment income, from the vendor?

☐ Yes

☐ No

B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer or a family member of the officer AND the taxable income is not received from the local governmental entity?

☐ Yes

☐ No

5 Describe each employment or business relationship that the vendor named in Section 1 maintains with a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership interest of one percent or more.

6 ☐ Check this box if the vendor has given the local government officer or a family member of the officer one or more gifts as described in Section 176.003(a)(2)(B), excluding gifts described in Section 176.003(a-1).

7

\_\_\_\_\_  
Signature of vendor doing business with the governmental entity

\_\_\_\_\_  
Date

**CONFLICT OF INTEREST QUESTIONNAIRE**  
**For vendor doing business with local governmental entity**

A complete copy of Chapter 176 of the Local Government Code may be found at <http://www.statutes.legis.state.tx.us/Docs/LG/htm/LG.176.htm>. For easy reference, below are some of the sections cited on this form.

**Local Government Code § 176.001(1-a):** "Business relationship" means a connection between two or more parties based on commercial activity of one of the parties. The term does not include a connection based on:

- (A) a transaction that is subject to rate or fee regulation by a federal, state, or local governmental entity or an agency of a federal, state, or local governmental entity;
- (B) a transaction conducted at a price and subject to terms available to the public; or
- (C) a purchase or lease of goods or services from a person that is chartered by a state or federal agency and that is subject to regular examination by, and reporting to, that agency.

**Local Government Code § 176.003(a)(2)(A) and (B):**

- (a) A local government officer shall file a conflicts disclosure statement with respect to a vendor if:

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- (2) the vendor:

(A) has an employment or other business relationship with the local government officer or a family member of the officer that results in the officer or family member receiving taxable income, other than investment income, that exceeds \$2,500 during the 12-month period preceding the date that the officer becomes aware that

- (i) a contract between the local governmental entity and vendor has been executed;

or

- (ii) the local governmental entity is considering entering into a contract with the vendor;

(B) has given to the local government officer or a family member of the officer one or more gifts that have an aggregate value of more than \$100 in the 12-month period preceding the date the officer becomes aware that:

- (i) a contract between the local governmental entity and vendor has been executed; or
- (ii) the local governmental entity is considering entering into a contract with the vendor.

**Local Government Code § 176.006(a) and (a-1)**

- (a) A vendor shall file a completed conflict of interest questionnaire if the vendor has a business relationship with a local governmental entity and:

(1) has an employment or other business relationship with a local government officer of that local governmental entity, or a family member of the officer, described by Section 176.003(a)(2)(A);

(2) has given a local government officer of that local governmental entity, or a family member of the officer, one or more gifts with the aggregate value specified by Section 176.003(a)(2)(B), excluding any gift described by Section 176.003(a-1); or

(3) has a family relationship with a local government officer of that local governmental entity.

- (a-1) The completed conflict of interest questionnaire must be filed with the appropriate records administrator not later than the seventh business day after the later of:

- (1) the date that the vendor:

(A) begins discussions or negotiations to enter into a contract with the local governmental entity; or

(B) submits to the local governmental entity an application, response to a request for proposals or bids, correspondence, or another writing related to a potential contract with the local governmental entity; or

- (2) the date the vendor becomes aware:

(A) of an employment or other business relationship with a local government officer, or a family member of the officer, described by Subsection (a);

(B) that the vendor has given one or more gifts described by Subsection (a); or

(C) of a family relationship with a local government officer.

## STANDARDS OF CONDUCT

The City of Mesquite conducts business with the public, business partners, vendors and contractors under a set of rules to ensure that all City officials and employees discharge their duties in a manner designed to promote public trust and confidence in our city. This code of ethics, titled Standards of Conduct, is taken from the Mesquite City Code, Chapter 2, Art. IV, Sec 2-123.

The City wants you to be aware of the rules that its employees are required to follow while performing their services to you. A violation of state or federal statutes may occur if these rules are broken. It is hoped that by outlining these rules for you, your experience in dealing with the City of Mesquite will be both rewarding and satisfactory.

### **Acceptance of Gifts or Gratuities**

Accepting gifts or gratuities by employees in consideration for the performance of their duties, or as an appreciation for their performance, is strictly prohibited.

- Please do not offer employees any gift, loans or any other thing of value.
- Employees may not receive any fee or compensation for their services from any source other than the City, so please don't offer.
- Please do not offer to buy meals for employees.
- Employees may accept coffee, tea, soft drinks, snacks, etc. when attending meetings in your office.
- Letters to supervisors for exceptional service by employees are always welcome.

### **Conflicts of Interest**

Employees are prohibited from engaging in any outside activities that conflict with, or have the appearance of conflicting with, the duties assigned to them in the employment of the City.

- Please do not ask employees for any special favor or consideration that is not available to every other citizen.
- Please do not ask an employee to disclose any information that is not available to every other citizen through normal public information channels.
- Please do not offer to compensate the employee by offering to hire, or do business with any business entity of the employee or family member.
- Do not ask employees to represent you or your company or make any recommendations on your behalf other than those that are a part of their official duties with the City.
- Please do not ask employees to endorse the products or services of your company.
- Please do not ask employees to hand out or post advertising materials.

### **Solicitation by City Employees**

Employees may not solicit gifts, loans, or any other items of value from people doing City business that will be used by them personally.

- If you are asked to pay a fee for services that you believe is improper or illegal, please contact the



City's ethic's officer at **972-329-8723**. (payments should only be made to designated cashiers or clerks)

- Employees are prohibited from taking retaliatory action against you for failing to comply with any request unless the request is within the scope of the employee's official duties for the City.

### **Use of City Equipment, Facilities and Resources**

Use of City equipment, facilities and resources is authorized only for City purposes and for those activities permitted by City ordinance and policy.

- Please do not ask employees to use City equipment to run errands or perform tasks for your benefit.
- Employees may not perform tasks, nor conduct any business not related to their official duties while on City time.

### **Your Rights and Expectations**

When dealing with employees of the City of Mesquite you have the right to honest, fair and impartial treatment. You may expect prompt, courteous and professional service from our employees who are expected to understand and practice good customer service skills. Employees are tasked to uphold the public trust through the ethical performance of their duties. We understand that the enforcement of regulatory guidelines and codes may sometimes be a cause for concern; however, you may rest assured that we are responsible to all of the citizens of Mesquite and our goal is to serve them to the best of our ability.

**Should you have any concerns or questions concerning this information or the conduct of any of our employees please contact the City's ethics officer at 972-329-8723.** All calls to the City's ethics officer are confidential and your name (or any other identifying information) will not be disclosed.

Cliff Keheley  
City Manager

## NON-EXCLUSION AFFIDAVIT FOR GENERAL CONTRACTORS

Federal, state, and local government agencies, not-profits, and other organizations that use federal money to fund all or part of any program or project are required to follow specific requirements regarding the use of such federal funds. One of these requirements is that no contract, subcontract, grant, financial assistance, or other forms of assistance provided using federal funds may be awarded to individuals or entities that have been suspended, debarred, or otherwise excluded from participation in federally funded programs.

The U.S. federal government maintains a Web site known as the "System for Award Management" (SAM) at [www.sam.gov](http://www.sam.gov). One of the purposes of the SAM Web site is to provide a comprehensive list of all individuals, firms, and other entities that have been suspended, debarred, or otherwise excluded from participation in federally funded contracts, subcontracts, grants, etc. SAM provides a simple means of helping government, non-profit agencies, and other organizations ensure that they do not award federally-funded grants, contracts, subcontracts, or other financial or non-financial benefits to any individual, firm, or other entity that has been excluded by any agency from participation in such federally funded activities.

I, \_\_\_\_\_ (Contractor Representative), hereby certify that neither I nor \_\_\_\_\_ (Name of the company or organization I represent) nor any subcontractors that I or said company may employ to work on any federally funded activity have been suspended, debarred, or otherwise excluded by any federal agency from participation in any federally funded activity. I further acknowledge my understanding that, before entering into a contract with me or with the company or organization I represent, City of Mesquite staff will perform a search on [www.sam.gov](http://www.sam.gov) to verify whether I, the organization I represent, or any subcontractors I may employ to work on any federally funded activity, have been excluded from participation in any federally funded activity.

\_\_\_\_\_  
Signature of Contractor Representative

\_\_\_\_\_  
Date

Sworn to and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
Notary Public in and for \_\_\_\_\_ County, \_\_\_\_\_ (Insert State Name)



**INSURANCE VERIFICATION PROGRAM  
LETTER OF AUTHORITY**

TO: All Awarded Vendors

RE: Insurance Verification

Dear Vendor:

The City of Mesquite has provided Insurance Certificate Administrators (ICA) authority to monitor certificates of insurance, endorsements and other policy information from our vendors and contractors. ICA will request, receive, evaluate and order corrections from such companies.

ICA will provide the City of Mesquite with verification that any insurance document your agent or insurer certifies conforms to the contract requirements.

It is necessary that you have your agent or insurer promptly cooperate with ICA by having them provide the information ICA requests.

All correspondence regarding certificates of insurance and insurance policy information for the City of Mesquite should be sent to the following address. There is no need to provide copies to the City of Mesquite.

***City of Mesquite***  
c/o ICA  
input@icaprogram.com  
P.O. Box 2566  
Fort Worth, TX 76113-2566  
Phone: 817-332-5313

Please forward the enclosed instructions to your agent/broker. Thank you for your cooperation.

## **INSURANCE**

### **For Engineering Service Contracts in the Amount of \$50,000 or less:**

- General Liability for bodily injury, death, or property damage with minimum limits of \$1,000,000 per Occurrence, \$1,000,000 General Aggregate, \$1,000,000 Products/Completed Operations Aggregate.
- General Liability for bodily injury, death, or property damage with minimum limits of \$1,000,000 per Occurrence, \$1,000,000 General Aggregate, \$1,000,000 Products/Completed Operations Aggregate.
- Professional Liability/Errors & Omissions coverage with minimum limits of \$500,000 per Claim (with no less than a two-year ERP).
- Auto Liability with minimum limits of \$500,000 Combined Single Limit.
- The Certificate(s) must include a statement listing the City of Mesquite, Texas as additional insured on the General Liability coverages.
- Employers Liability with minimum limits of \$100,000 Occupational Disease, \$100,000 per Accident, and \$100,000 per Employee.
- The Certificate must include a statement providing a Waiver of Subrogation on the Employer's Liability, as well as the General Liability coverage.
- All Certificates must provide for at least 30-day's notice of cancellation and bear an authorized signature.
- All deductibles, self-insured retentions must be noted on the Certificates.
- Claims-made policies are only acceptable for the Professional Liability policy.
- Declarations or copies of policies, in addition to a certificate of insurance, must be provided if requested by the City.
- All coverages must be afforded by a carrier that is licensed or authorized to sell insurance in Texas and have an AM Best rating of A- and a financial solvency rating of VII or better.

### **For Engineering Service Contracts in an Amount greater than \$50,000:**

- General Liability with minimum limits of \$1,000,000 per Occurrence, \$1,000,000 General Aggregate, \$1,000,000 Products/Completed Operations Aggregate.
- General Liability must include coverage for Premises and Operations, Products and Completed Operations, Contractual Liability, Independent Contractors, Broad Form Property Damage, and Personal/Advertising Injury.

- Professional Liability/Errors & Omissions coverage with minimum limits of \$1,000,000 per Claim (with no less than a two-year ERP).
- Auto Liability with minimum limits of \$500,000 Combined Single Limit required.
- The Certificate(s) must include a statement listing the City of Mesquite, Texas as additional insured on the General Liability coverages.
- Employers Liability with minimum limits of \$100,000 Occupational Disease, \$100,000 per Accident, and \$100,000 per Employee.
- The Certificate must include a statement providing a Waiver of Subrogation on the Employer's Liability, as well as the General Liability coverage.
- All Certificates must provide for at least 30-day's notice of cancellation and bear an authorized signature.
- All deductibles, self-insured retentions must be noted on the Certificates.
- Claims-made policies are only acceptable for the Professional Liability policy.
- Declarations or copies of policies, in addition to a certificate of insurance, must be provided if requested by the City.
- All coverages must be afforded by a carrier that is licensed or authorized to sell insurance in Texas and have an AM Best rating of A- and a financial solvency rating of VII or better.

**MULTI-YEAR PROFESSIONAL SERVICES  
FOR CITY OF MESQUITE  
RFQ No. 2025-157**

I hereby certify that the information contained in this proposal and any attachments is true and correct and may be viewed as an accurate representation of proposed services to be provided by this organization. I certify that no employee or agent of the City of Mesquite has assisted in the preparation of this proposal. I acknowledge that I have read and understand the requirements and provisions of the solicitation and that the \_\_\_\_\_ (name of organization) will comply with the regulations and other applicable local, state, and federal regulations and directives in the implementation of this contract.

I also certify that I have and with full knowledge for the requirements, do hereby agree to furnish the coverage in full accordance with the specifications and requirements.

I certify that \_\_\_\_\_ and its response complies with these specifications.  
(Name of Organization)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Type/Print Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

## REFERENCES

Using the format outlined below, please provide three (3) client references for which you provided the same services. References should be based on the office that shall be providing services to THE CITY.

### Reference 1

Organization name:	Contact and title:
Address:	Phone number:
Effective date of contract:	Number of enrolled employees:
Description of services provided:	

### Reference 2

Organization name:	Contact and title:
Address:	Phone number:
Effective date of contract:	Number of enrolled employees:
Description of services provided:	

### Reference 3

Organization name:	Contact and title:
Address:	Phone number:
Effective date of contract:	Number of enrolled employees:
Description of services provided:	

CITY OF MESQUITE  
CONTRACT STATEMENT

RFP No. 2025-157  
MULTI-YEAR PROFESSIONAL SERVICES

NOTICE

The following **CONSTRUCTION CONTRACT boilerplate** illustrates the standard contract form the CITY intends to use to contract for subsequent professional services. It contains the provisions, terms, and indemnification the CITY will require.

Please review the document and indicate your acceptance or indicate any concerns or exceptions below.

\_\_\_\_\_ I accept the proposed Contract language.

\_\_\_\_\_ I have the following concerns or exceptions to the terms:

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Concerns or exceptions NOT indicated at this time shall NOT be considered by the CITY at a later date.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date



**EXAMPLE**  
**ARCHITECT'S CONTRACT**  
**FOR**  
**NAME OF FUTURE PROJECT**

STATE OF TEXAS  
COUNTY OF DALLAS

§  
§  
§

KNOW ALL MEN BY THESE PRESENTS:

THIS CONTRACT is made and entered into as of the \_\_\_ **day of** \_\_\_\_\_, **20**\_\_\_\_, by and between the CITY OF MESQUITE, a municipal corporation of Dallas County, Texas (hereinafter called "CITY", which term shall be construed to include any officer, representative, or Board of the CITY having authority to represent or act for it, in relation to any part of the subject of this Contract), and \_\_\_\_\_, company with offices located at \_\_\_\_\_ (hereinafter called "ARCHITECT").

W I T N E S S E T H:

WHEREAS, CITY intends to construct **FUTURE PROJECT**, hereinafter called the "Project", at a total budgeted construction cost not to exceed \$\_\_\_\_\_ for the completion of the Project; and

WHEREAS, CITY desires to contract with ARCHITECT for complete architectural and engineering services in connection with design and construction of the Project, and for the administration of the Construction Contract during construction of the Project, all as stipulated in this Contract and within the budgeted limits set by CITY; and

WHEREAS, ARCHITECT has agreed to provide such professional services for the compensation provided in this Contract.

NOW, THEREFORE, CITY and ARCHITECT, in consideration of the mutual promises, terms, covenants and conditions contained in this Contract, agree as follows:

ARTICLE 1  
SCOPE OF SERVICES; COMPENSATION; CONTRACT ADMINISTRATION

1.1. ARCHITECT, as an independent ARCHITECT and professional consultant in its relationship with CITY, agrees to perform all professional services for the Project as set forth in this Contract and in ARCHITECT's Proposal Letter to CITY, dated \_\_\_\_\_, attached to and made a part of this Contract; provided, however, that in the event of any conflict between the terms of the Proposal Letter and this Contract, the terms of this Contract shall control.

1.2. CITY shall compensate ARCHITECT in accordance with the terms and conditions of this Contract as follows:

1.2.1. For ARCHITECT's Basic Services, including the services of any professional consultants engaged for complete architectural services and complete structural, mechanical, electrical and civil engineering services, a maximum Basic Fee not to exceed \$\_\_\_\_\_.

1.2.2. For approved Reimbursable Expenses, as defined in Article 5 hereof, an allowance not to exceed \$\_\_\_\_\_. Eligible Reimbursable Expenses, other than Special Consultants, shall be billed to the CITY at cost. Eligible Reimbursable Expenses for Special Consultants shall be billed to the CITY at 1.10 times the amount billed ARCHITECT for same.

1.2.3. For ARCHITECT's Additional Services, if any be authorized in advance by CITY as hereinafter

provided, a supplemental fee to be computed as follows:

A. Principals' time at a fixed rate of \$\_\_\_\_\_ per hour. For purposes of this Contract, the Principals are:

B. Employees' time shall be paid at the following agreed rates:

Senior Engineer	\$ per hour
Junior Engineer	\$ per hour
Technician	\$ per hour

C. Additional Services of Basic Consultants (including structural, mechanical, electrical, and civil engineering) shall be computed at 1.10 times the amounts billed to ARCHITECT. Additional Services of Special Consultants shall be computed at 1.10 times the amount billed ARCHITECT for such services.

D. Unless subsequently changed by Supplemental Agreement to this Contract, ARCHITECT's total compensation under this Contract for Basic Services shall not exceed \$\_\_\_\_\_, plus a not-to-exceed amount of \$\_\_\_\_\_ for approved Reimbursable Expenses. These amounts, totaling \$\_\_\_\_\_, represent the absolute limit of CITY's liability to ARCHITECT under this Contract, unless the limit is changed by Supplemental Agreement to this Contract.

1.2.4. The times and further conditions of payment shall be as described in Article 6 below.

1.3. This Contract shall be administered on behalf of CITY by its Director of **Parks and Recreation**, or the Director's designee (hereinafter called the "Director"), and by ARCHITECT through its duly designated and authorized representatives. ARCHITECT shall fully comply with any and all instructions from the Director. Any dispute between ARCHITECT and CITY or need for interpretation regarding what performance is required of ARCHITECT under this Contract shall be submitted to the Director, and the Director's decision in the matter shall be final and binding.

## ARTICLE 2 ARCHITECT'S SERVICES

2.1. Basic Services. ARCHITECT's Basic Services consist generally of the five phases described below, and include complete architectural services and complete structural, mechanical, electrical and civil engineering services, and such other services as may be necessary to assist the CITY in the design and construction of the Project, within the budgeted limits set by CITY. All services set out in ARCHITECT's Proposal Letter are to be performed whether specifically set out in this Contract or not. ARCHITECT agrees that upon execution of this Contract, it will submit to CITY within ten (10) days a list of all additional consultants it intends to utilize, not previously identified in ARCHITECT's Proposal Letter, delineating their respective tasks. All of ARCHITECT's subconsultants shall be subject to the approval of CITY through its Director, and CITY reserves the right to reject any subconsultant. ARCHITECT shall perform all work under this Contract in a manner satisfactory and acceptable to CITY, represented by its Director. ARCHITECT's Final Plans and Specifications shall include plans and profiles necessary to tie all Project water, sewer and storm drainage lines into adjacent existing lines and facilities, as authorized and approved by Director. A Performance Schedule shall be agreed to by ARCHITECT and Director, and ARCHITECT agrees to use its best efforts to complete all services under this Contract in accordance with the Performance Schedule, which Schedule shall be automatically incorporated into this Contract by reference upon agreement of ARCHITECT and the Director without need of a Supplemental Agreement. All services shall be performed to the highest professional standard.

### 2.1.1. Schematic Design Phase.

A. ARCHITECT shall survey and evaluate those environmental conditions in the immediate vicinity of the Project site which may influence the design of the Project. ARCHITECT shall, for consideration and approval by the Director, prepare the Schematic Design Studies and submit to the Director a sufficient

number (as determined by the Director) of copies of drawings and other documents which illustrate the scale and relationship of the Project components within the time allotted under the agreed Performance Schedule.

B. ARCHITECT shall submit to CITY a Statement of Probable Construction Cost based on current area, volume, or other unit costs in a form acceptable to the Director.

C. ARCHITECT will make recommendations to CITY where a conflict may exist between the established Project Budget and projected market costs. The recommendations will provide for adjustments to enable construction of the facility within the budget and during the forecast period that the Project will be bid.

D. ARCHITECT shall submit outline specifications for all major elements of construction including but not limited to: structural, mechanical and electrical systems, special equipment.

E. After approval of the Schematic Design documents by the Director, ARCHITECT will submit a Statement, in triplicate, for services rendered for the unpaid balance of the Basic Fee, not to exceed fifteen (15%) percent of the Basic Fee, as authorized under Article 6.1.

#### 2.1.2. Design Development Phase.

A. ARCHITECT shall prepare Design Development Documents based on the approved Schematic Design Documents to include adequate Specifications for elements of the Project for consideration and approval by the Director. A sufficient number of copies (as determined by the Director) of the Design Development Documents will be submitted to the Director for distribution, each copy consisting of drawings and other documents to fix and describe the size, cross sections and character of the Project as to architectural, structural, mechanical and electrical systems, materials, and such other essentials as may be necessary and appropriate. The Design Development Phase shall be completed within the agreed Performance Schedule.

B. ARCHITECT shall submit to CITY a Revised Statement of Probable Construction Cost in a form acceptable to the Director. Any variance in the estimated construction costs that will adversely affect the established Project Budget will be submitted to the Director with appropriate comments and recommendations prior to beginning the Construction Documents Phase.

C. After approval of the Design Development Documents by the Director, the ARCHITECT will submit a Statement, in triplicate, for services rendered for the unpaid balance of the Basic Fee, not to exceed thirty-five (35%) percent of the Basic Fee, as authorized under Article 6.1.

#### 2.1.3. Construction Documents Phase.

A. ARCHITECT shall prepare from the approved Design Development Documents, for consideration and approval by the Director, complete Working Drawings and Specifications. The Working Drawings and Specifications shall set forth in complete detail the requirements of the entire Project, including the necessary bidding information prepared in such a way to allow CITY, if it so desires, to advertise for the award of one or more contracts for the construction and completion of the entire Project, or any phase of the Project. ARCHITECT shall also assist CITY in preparation of the Bidding Forms, utilizing, without modification, all of CITY's standard General Provisions, and shall draft all special provisions or conditions of the Contract Documents subject to the approval of the Director. The latest edition of the Standard Specifications for Public Works Construction (North Central Texas Fourth Edition October 2004), Division 100, as amended and supplemented by the City of Mesquite's Addendum (hereinafter referred to as the "General Provisions") shall be used by ARCHITECT. CITY may, upon prior consultation, approve of any changes to the General Provisions that may be necessary for specific situations. Any special conditions pertaining to the Project that are approved by CITY will be included under the Special Conditions portion of the Construction Documents. CITY's standard form of construction contract between CITY and any Project construction ARCHITECT shall also be utilized without modification, along with CITY's forms of Bid Bond, Performance Bond, and Payment Bond. ARCHITECT shall obtain the approval of the Texas Department of Licensing and Regulation prior to submittal of all Construction Documents to CITY for approval. Any fees charged by the Department for this approval shall be

paid by ARCHITECT and billed to CITY as a reimbursable expense under Article 5 of this Contract.

B. ARCHITECT shall furnish CITY in writing a revised Statement of Probable Construction Cost, indicating cost changes resulting from changes in Project requirements or general market conditions, in a form acceptable to the Director.

C. Following approval by the Director of the Design Development Documents, ARCHITECT shall, within the agreed Performance Schedule, submit two (2) complete sets of proposed Construction Documents to the Director for review and official approval prior to the advertisement of bids for construction of the Project. Following approval of proposed Construction Documents, ARCHITECT shall prepare and have on hand one (1) additional sets at ARCHITECT's expense for bidding purposes. Should additional sets of Construction Documents be required or requested by the Director, ARCHITECT will be reimbursed for the actual cost of reproduction, upon approval in advance by CITY. At the same time, ARCHITECT shall also file with the Director the following items:

(1) Tracing of the Project Title Sheet, signed by ARCHITECT, with seal affixed. (This tracing shall be returned to ARCHITECT to print contract documents when the signatures of CITY officials have been properly affixed).

(2) Two (2) copies of detailed cost estimates in a form acceptable to CITY.

(3) Two (2) bound copies of the approved Project Construction Manual. The Project Construction Manual shall include the General Provisions, Specifications and Special Provisions, Advertisement, Instructions to Bidders and Bid Proposal Form, CITY's Bid Bond, Contract, Performance and Payment Bond Forms, approved Wage Rate schedules, Federal regulations (if any are applicable to the Project), and other required documents for construction of the Project. Should additional bound copies of the Project Construction Manual be required or requested by the Director, ARCHITECT will be reimbursed for the actual cost of reproduction, upon approval in advance by CITY.

#### 2.1.4. Bidding Phase.

A. Following CITY's approval of the Construction Documents and of the latest Statement of Probable Construction Cost, ARCHITECT shall assist CITY in awarding a construction contract following legal public bid requirements. During the bid process, ARCHITECT shall assist CITY as follows:

(1) Jointly conducting pre-bid conferences, including on-site visits as required, to endeavor to assure that bidders understand the Construction Documents, the various on-site conditions, and the coordination and scheduling requirements.

(2) Preparation of required addenda to Contract Documents.

(3) Tabulation and evaluation of bids received.

(4) Jointly conducting pre-award conferences where necessary.

ARCHITECT's assistance to CITY shall include submitting written reviews and recommendations for awards based upon the acceptability of bids; and, if required by CITY, more detailed analyses of specific bids. Reviews shall also consider the responsiveness of bids and their conformity with Bid Documents.

B. Upon award of the Construction Contract, a statement, in triplicate, for services rendered for the unpaid balance of the Basic Fee, not to exceed eighty (80%) percent of the Basic Fee as authorized under Article 6.1, shall be submitted to the Director for payment.

#### 2.1.5. Construction Phase - Administration of the Construction Contract(s).

A. The Construction Phase will commence with the award of the first Construction Contract and will terminate following the final two-year warranty inspection of the completed Project, correction of all defects in Project materials and workmanship, and resolution of all Project-related claims and disputes.

B. ARCHITECT shall provide administration of the Construction Contract as set forth in the Construction Documents, specifically the General Provisions. ARCHITECT's assigned authority under the General Provisions will not be substantially modified without ARCHITECT's written consent.

C. ARCHITECT, as a representative of the CITY, shall advise and consult with the Director and will keep the Director informed in writing regarding the progress of the Project, including but not limited to percentage of construction work completed on a monthly basis, during the Construction Phase. After issuance of the work order to any and all construction Contractors on the Project, all of CITY's instructions to its construction Contractors will be issued through ARCHITECT.

D. ARCHITECT shall provide, during construction, adequate and competent on-site construction observation, periodically visiting the site to the extent necessary to personally familiarize itself with the progress and quality of the work, and to determine if the work is proceeding in accordance with the Contract Documents. ARCHITECT shall not, however, be required to make continuous on-site inspections to check the work. Field Reports of each visit shall be prepared by ARCHITECT and submitted to the Director. ARCHITECT shall employ all reasonable measures to safeguard CITY against defects and deficiencies in the work of the Contractor. ARCHITECT shall not be responsible for the construction means, methods, techniques, sequences of procedures, nor for the safety precautions and programs employed in connection with the Project work. However, ARCHITECT will immediately inform Director whenever defects and deficiencies in the Project work are observed, or when any observed actions or omissions are undertaken by any Contractor or subcontractor which are not in the best interests of CITY or the Project.

E. Based upon the ARCHITECT'S on site observations and as a qualified and experienced design professional, and upon his review of applications of payment and the accompanying data and schedules, the ARCHITECT shall determine the amounts owing to the Contractor and recommend in writing payment to Contractor in such amounts. The recommendation of payment by the ARCHITECT shall constitute a recommendation by the ARCHITECT to the CITY based upon the ARCHITECT's observations at the site and on the data comprising the Contractor's Application for Payment, that the work has progressed to the point indicated and that, to the best of the ARCHITECT's knowledge, information and belief, the quality of the work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to minor deviations from the Contract Documents correctable prior to completion and to specific qualifications expressed by the ARCHITECT. The issuance of a Certificate for Payment shall further constitute a representation the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate of Payment shall not be a representation that the ARCHITECT has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the CITY to substantiate the Contractor's right to payment, or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

F. ARCHITECT shall have authority to reject work which does not conform to the Contract Documents. ARCHITECT shall make recommendations on all claims and disputes of CITY or Contractor relating to the execution and progress of the work or the interpretation of the Contract Documents, based upon such review and analysis by ARCHITECT as may reasonably be required. In the event of litigation, where ARCHITECT is named as an additional party with CITY, assistance will include the availability of knowledgeable witnesses in the employ of ARCHITECT for expert testimony.

G. ARCHITECT shall use its best efforts to promptly review and approve or reject shop drawings, samples, and other submissions of the Contractor for conformance only with the design concept of the Project and with the information given in the Contract Documents. ARCHITECT shall establish and

implement precise procedures, to be approved by the Director, for expediting the processing and approval of these submissions without delay. Prompt review by ARCHITECT of submissions is of prime importance to CITY and an absolute necessity under the time restraints of the Project.

H. ARCHITECT shall prepare Change Orders to the construction contract, in two (2) copies, after review and approval by CITY. **Each Change Order shall be specific and final as to prices and extensions of time, with no reservations or other provisions allowing for future additional money or time as a result of the particular changes identified and fully compensated in the Change Order.**

I. ARCHITECT shall conduct inspections to determine the dates of substantial completion and final completion, shall receive written guarantees and related documents assembled by the Contractor for submittal with the final Certificate of Payment, and shall prepare and present a final Certificate for Payment to the Director for CITY's approval and payment. In addition, ARCHITECT shall make an inspection of the Project at least thirty (30) days before the expiration of the two (2) year Warranty contained in the Contractor's Performance Bond.

J. ARCHITECT shall conduct regularly scheduled progress meetings with CITY, each contractor, and major subconsultants. Minutes of all progress meetings shall be prepared by ARCHITECT with copies submitted to the Director.

K. ARCHITECT shall have authority to order minor changes in the construction work, consistent with the Contract Documents, and not involving an adjustment in the Contractor's bid price or an extension of the Project Schedule. Minor changes shall be accomplished by Field Order. In addition, ARCHITECT may issue written Field Orders which interpret the Plans and Specifications, with copies submitted to the Director.

L. ARCHITECT shall assemble and deliver to CITY a set of reproducible Record Construction Drawings showing significant changes in the work during the construction process and final location of mechanical and electrical service lines and outlets, based upon marked-up prints of drawings and other data furnished by the Contractor to ARCHITECT. ARCHITECT shall provide Record Construction Specifications which will identify the changes in the specifications on a sheet, which sheet will be inserted at the beginning of each section to which they pertain.

2.2. Project Representation Beyond Basic Services. In the event that circumstances should develop whereby continuous, full-time representation at the Project site is required, the conditions under which the representation shall be furnished and the Project representatives selected, employed, and directed shall be governed by a written supplemental agreement between CITY and ARCHITECT.

2.3. Additional Services. ARCHITECT shall perform Additional Services, as requested by CITY, after a not-to-exceed amount has been mutually agreed upon in writing by Director and ARCHITECT. Where authorization is required, ARCHITECT shall not proceed until the appropriate City Council authorization or City Manager approval has been obtained. The following services are not covered under ARCHITECT's Basic Services. If any of these Additional Services are authorized in writing by Director in advance of their performance, they shall be paid for in the manner agreed to at the time of authorization.

2.3.1. Preparing Change Orders and supporting data or revising previously approved plans when the changes in approved Plans and Specifications are required by CITY. If changes are required to be made because of error, oversight, clarification, discrepancy, or budget overruns in the work of Contractor, CITY shall not be liable to compensate ARCHITECT for Additional Services or expenses in such connection.

2.3.2. Providing consultation concerning replacement of any Project work damaged by fire or other cause during construction, and furnishing professional services as may be required in connection with the replacement of such work, unless damage was the result of ARCHITECT's error.

2.3.4. Providing other extraordinary professional services over and above the Contract requirements,

where required and requested by CITY, including extraordinary professional services which might result if CITY decides to "fast-track" the Project.

### ARTICLE 3 CITY'S RESPONSIBILITIES

3.1. CITY shall have the following responsibilities under this Contract:

3.1.1. To provide full information regarding CITY's requirements for the Project.

3.1.2. To designate, when necessary, representatives authorized to act on CITY's behalf.

3.1.3. To examine documents submitted by ARCHITECT and render decisions pertaining thereto promptly, in order to avoid unreasonable delay in the orderly progress of ARCHITECT's work.

3.1.4. To observe the procedure of issuing orders to its Project architects only through ARCHITECT.

3.1.5. To furnish, or direct ARCHITECT to obtain at CITY's expense, a certified survey of the site, giving, as required, grades and lines of streets, alleys, pavements and adjoining property; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries, contours and other data pertaining to existing buildings or adjacent to the site, other improvements and trees, full information as to available service and utility lines, both public and private, and test borings, pits, reports and soil bearing values and other necessary operations for determining subsoil conditions.

3.1.6. To furnish, or pay for structural, mechanical, chemical, soil mechanics, and other laboratory tests, reports and inspections as required by law or the Contract Documents.

3.1.7. To furnish the building permit without charge (electrical, plumbing and other trade permits will be the responsibility of all contractors on the Project; any charges which may be assessed for water utility service connection fees will be paid by CITY and are not to be included by ARCHITECT in the Specifications for the Project).

3.2. CITY also agrees to provide ARCHITECT with items such as: one (1) copy of the latest edition of the Standard Specifications for Public Works Construction (North Central Texas Fourth Edition October 2004), Division 100, as amended and supplemented by the City of Mesquite's Addendum; Instructions to Bidders and Bid Proposal Forms; Prevailing Wage Rate Schedules; Contract and Bond Forms; Bid Advertisement Form; and other information and materials as may be necessary and practicable for the orderly and expeditious process of the Project work and the awarding of any and all Construction Contracts for the Project. To the extent practicable, these documents shall all be utilized in the preparation of the Construction Documents.

3.3. ARCHITECT shall be entitled to reasonably rely on the accuracy of the services, information, surveys, reports and other materials which CITY shall furnish at its expense.

3.4. CITY shall arrange and make all provisions for access to the site or other public or private property as required by ARCHITECT and ARCHITECT's consultants to perform the services under this Contract.

3.5. If CITY observes or otherwise becomes aware of any fault or defect in the Project or nonconformance with the Contract Documents, it shall give prompt written notice thereof to ARCHITECT.

### ARTICLE 4 FIXED LIMIT OF TOTAL BUDGETED CONSTRUCTION COST

4.1. The fixed limit of total Budgeted Construction Cost for this Project is \$\_\_\_\_\_. **This amount is established as a condition of this Contract, and shall provide the basis for ARCHITECT's design decisions.** ARCHITECT, in consultation with CITY, shall determine what materials, equipment, component

systems and types of construction are to be included in the Contract Documents, and will make reasonable adjustments in the scope of the Project to bring it within the fixed limit. With the Director's approval, ARCHITECT may also include in the Contract Documents alternate bids to adjust the construction cost to the fixed limit. If the lowest responsible bid is within the fixed limit of total Budgeted Construction Cost for the Project, **or** the ARCHITECT's latest detailed estimate of Probable Construction Cost is still less than the fixed limit of total Budgeted Construction Cost for the Project, established as a condition of this Contract, CITY shall pay the ARCHITECT fees for Basic Services in accordance with this Contract.

4.2. If the lowest responsible bid exceeds the fixed limit (or, in the case of multiple construction contracts bid, its portion of the fixed limit) of total Budgeted Construction Cost for the Project, and as a result thereof, or otherwise, the latest estimate of Probable Construction Cost exceeds the fixed limit of total Budgeted Construction Cost for the Project stated in Section 4.1, established as a condition of this Contract, CITY, at its sole option, may either: (1) give written approval of an increase in the fixed limit, with no obligation to increase ARCHITECT's fee; (2) authorize rebidding within a reasonable time; or (3) cooperate in revising the Project scope and quality as required to reduce the Probable Construction Cost. In the case of (3), ARCHITECT, **without additional charge to CITY**, shall immediately modify the Drawings and Specifications as necessary to bring the Project cost within the fixed limit of total Budgeted Construction Cost, or within any higher fixed limit subsequently authorized by CITY. The providing of the service as described above shall be the limit of ARCHITECT's responsibility to bring the Project cost within the fixed limit of total Budgeted Construction Cost, and if ARCHITECT does so, ARCHITECT shall be entitled to its fees for Basic Services in accordance with this Contract.

## ARTICLE 5 REIMBURSABLE EXPENSES

5.1. Reimbursable Expenses are in addition to the fees for Basic and Additional Services and include actual expenditures made by the ARCHITECT, its employees, or its consultants in the interest of the Project for the incidental expenses set forth below. All reimbursable expenses must be authorized in advance. An allowance for Reimbursable Expenses not to exceed \$\_\_\_\_\_ is established as a condition of this Contract.

5.2. When authorized in advance by CITY, reasonable transportation and living expenses of principals and employees when traveling in connection with the Project outside of the Dallas/Fort Worth statistical metropolitan area, essential long distance calls and telegrams, fees paid for the securing of approval of authorities having jurisdiction over the Project, postage, and reproduction of Drawings and Specifications, excluding copies for ARCHITECT's office use and the required number of sets at each phase of the work for CITY's review, approval, and records, shall be reimbursable.

5.3. If authorized in advance by CITY, the expense of extraordinary overtime work, not due to delays or other breach of this Contract by ARCHITECT, requiring higher than regular rates, renderings, slides, photographs or models for CITY's use shall be reimbursable.

5.4. Any fees charged to ARCHITECT by the Texas Department of Licensing and Regulation for review and approval of Design of Development documents shall be reimbursable.

5.5. If the employment of special consultants for specialized design services is authorized by CITY, (for example, special lighting and landscape consultants, special soil mechanics engineers, communications consultants, etc.), fees for other than normally required architectural, structural, mechanical, electrical, and civil engineering services and the Basic Services defined above shall be reimbursable.

## ARTICLE 6 PAYMENTS TO THE ARCHITECT

6.1. Payments on account of ARCHITECT's Basic Services shall be made monthly in proportion to the degree of completion of each Phase, but shall not exceed the following percentages of the Basic Fee at the completion



and approval of each Phase of the work:

Schematic Design Phase	15%
Design Development Phase	35%
Construction Documents	75%
Bidding Phase	80%
Construction Phase (periodic payments based Upon percentage of construction completed)	100%

6.2. Payments for authorized Reimbursable Expenses and Additional Services for ARCHITECT, as referred to above, shall be made following presentation, review and approval of the ARCHITECT's detailed invoice in triplicate.

6.3. No **deduction** shall be made from ARCHITECT's compensation on account of penalty, liquidated damages, or other sums withheld from payments to contractors.

6.4. No **addition** shall be made to ARCHITECT's compensation based upon Project construction claims, whether paid by CITY or denied.

6.5. If any work designed or specified by ARCHITECT during any Phase is abandoned or suspended, in whole or in part, ARCHITECT is to be paid for the services performed on account of it prior to receipt of written notice from the CITY through its Director of such abandonment or suspension.

6.6. ARCHITECT's invoices to CITY shall provide complete information and documentation to substantiate ARCHITECT's charges, and shall be in a form to be specified by Director. All payments to ARCHITECT shall be made on the basis of the invoices submitted by ARCHITECT and approved by Director. Such invoices shall conform to the schedule of services and costs in connection therewith set out hereinabove. All Reimbursable Expenses shall be clearly shown. Should additional backup material be requested by the Director, ARCHITECT shall comply promptly with the request.

6.7. CITY may review any and all of the services performed by ARCHITECT under this Contract. CITY is granted the right to audit, at CITY's election, all of ARCHITECT's records and billings relating to the performance of this Contract. Any payment, settlement, satisfaction, or release made or provided during the course of performance of this Contract shall be subject to CITY's rights as may be disclosed by an audit under this Section. ARCHITECT agrees to retain the records for a minimum of three (3) years following completion of this Contract.

6.8. CITY reserves the right to correct any error that may be discovered in any invoice that may have been paid to ARCHITECT and to adjust the same to meet the requirements of the Contract. Following approval of invoices, CITY will endeavor to pay ARCHITECT promptly, but not later than the time period required under the Texas Prompt Payment Act; however, under no circumstances shall ARCHITECT be entitled to receive interest on payments which are late because of a good faith dispute between ARCHITECT and CITY or because of amounts which CITY has a right to withhold under this Contract or state law.

6.9. CITY may, at its option, offset any amounts due and payable under this Contract against any debt (including taxes) lawfully due to CITY from ARCHITECT, regardless of whether the amount due arises pursuant to the terms of this Contract or otherwise and regardless of whether or not the debt due to CITY has been reduced to judgment by a court.

## ARTICLE 7 ARCHITECT'S ACCOUNTING RECORDS

7.1. Records of ARCHITECT's Consultant and Reimbursable Expenses pertaining to the Project, and records of all other accounts between CITY and ARCHITECT shall be kept on the basis of generally accepted accounting principles and shall be available to CITY or its authorized representatives at mutually convenient times.

## TERMINATION, DEFAULT, TIME OF THE ESSENCE, AND FORCE MAJEURE

8.1. CITY, acting through the Director, may at its option and without prejudice to any other remedy CITY may be entitled to at law, in equity, or elsewhere under this Contract terminate further work under this Contract in whole or in part for cause or for the convenience of CITY by giving at least fifteen (15) days advance written notice of termination to ARCHITECT, with the understanding that all performance being terminated shall cease as of a date to be specified in the notice. CITY also has the right to request, at its option, that ARCHITECT assign and transfer to CITY all of ARCHITECT's rights and obligations under existing sub consulting contracts it has to perform Project work in the event of termination under this Section. CITY shall compensate ARCHITECT in accordance with the terms of this Contract for Project work properly performed prior to the date of termination specified in the notice, following review and acceptance of same by the Director. ARCHITECT shall not, however, be entitled to lost or anticipated profits should CITY choose to exercise its option to terminate this Contract. All plans, field surveys, maps, cross sections and other data, designs and work related to the Project shall become the property of CITY upon termination of this Contract, and shall be promptly delivered to CITY in a reasonably organized form without restriction on future use. Should CITY subsequently contract with a new ARCHITECT for continuation of services on the Project, ARCHITECT shall cooperate in providing information.

8.2. Nothing contained in Section 8.1 above shall require CITY to pay for any work which is unsatisfactory as determined by the Director or which is not submitted in compliance with the terms of this Contract. CITY shall not be required to make any payments to ARCHITECT when ARCHITECT is in default under this Contract, nor shall this Article constitute a waiver of any right, at law and at equity, which CITY may have if ARCHITECT is in default, including the right to bring legal action for damages or to force specific performance of this Contract.

8.3. ARCHITECT understands and agrees that time is of the essence of this Contract. Any failure of ARCHITECT to complete the services for each phase of this Contract within the agreed Project Performance Schedule will constitute a material breach of this Contract. ARCHITECT shall be fully responsible for its delays or for failures to use its best efforts in accordance with the terms of this Contract. Where damage is caused to CITY due to ARCHITECT's failure to perform in these circumstances, CITY may withhold, to the extent of such damage, ARCHITECT's payments owed under this Contract without waiver of any of CITY's additional legal rights or remedies.

8.4. Neither CITY nor ARCHITECT shall be deemed in violation of this Contract if it is prevented from performing any of its obligations hereunder by reasons for which it is not responsible or circumstances beyond its control. However, notice of such impediment or delay in performance must be timely given in writing, and all reasonable efforts undertaken to mitigate its effects.

## ARTICLE 9 OWNERSHIP OF DOCUMENTS

9.1. All Plans and drawings will be prepared and submitted by ARCHITECT to CITY for approval on a minimum 24-inch by 36-inch or maximum 32-inch by 42-inch drafting sheets, with all lettering processed in ink or pencil and clearly legible when the sheets are reproduced and reduced to half size.

9.2. All ARCHITECT's designs and work product under this Contract including, but not limited to, Tracings, Drawings, Estimates, Specifications, Investigations, Studies and other documents, completed or partially completed, shall be the property of the CITY, to be used as CITY desires, without restriction on future use; by execution of this Contract and in consideration of the fee for services to be paid under the Contract, ARCHITECT hereby conveys, transfers and assigns to CITY all rights under the Federal Copyright Act of 1976 (or any successor copyright statute), as amended, all common law copyrights and all other intellectual property rights acknowledged by law in the Project designs and work product developed under this Contract. Copies may be retained by ARCHITECT. ARCHITECT shall be liable to CITY for any loss or damage to any such documents while they are in the possession of or while being worked upon by the ARCHITECT or anyone connected with ARCHITECT, including agents, employees, consultants or subconsultants. All documents so lost or damaged shall be replaced or restored by ARCHITECT without cost to CITY.

9.3. Upon completion of the construction of the Project, ARCHITECT shall, within thirty (30) calendar days following final inspection, deliver to CITY the reproducible Record Drawings and Record Specifications as previously described in Section 2.1.5.L. hereinabove. In addition, ARCHITECT shall submit originals of all documents listed under Section 9.2, modified to actual as-built conditions.

9.4. ARCHITECT shall have no liability for changes made to the drawings by other ARCHITECTs subsequent to the completion of the Project. Any such change shall be sealed by the ARCHITECT making that change and shall be appropriately marked to reflect what was changed or modified.

#### ARTICLE 10 RESPONSIBILITY FOR WORK; INDEMNIFICATION; INSURANCE

10.1. Approval by the CITY shall not constitute nor be deemed a release of the responsibility and liability of ARCHITECT, its employees, subconsultants, agents and consultants for the accuracy and competency of their Designs, Working Drawings, Specifications or other documents and work; nor shall such approval be deemed to be an assumption of such responsibility by the CITY for any defect, error or omission in the Designs, Working Drawings, and Specifications or other documents prepared by ARCHITECT, its employees, subconsultants, agents and consultants.

10.2. **ARCHITECT, its officers, agents and employees agree to assume responsibility and liability and shall waive any and all claims, release, indemnify and hold harmless, at ARCHITECT's cost, the CITY, its City Council, its officers, agents, and employees from and against any and all claims, costs, demands, expenses, fines, judgments, losses, penalties, demands or suits for injuries, damages, loss, or liability of whatever kind of character, arising out of or in connection with the performance by the ARCHITECT of those services contemplated by the Contract, to the extent that such damage is caused by or results from an act of negligence, intentional tort, intellectual property infringement, or failure to pay a subcontractor or supplier committed by the ARCHITECT, its officers, agents, employees, consultants and subcontractors, whether or not caused solely by the ARCHITECT, its officers, agents, employees, consultants or subcontractors or any other entity over which the ARCHITECT exercises control subject to the limitations in Texas Local Government Code, §271.904 and Texas Civil Practice and Remedies Code, §130.002(b).**

10.3. Indemnified items shall include reasonable attorney's fees and costs, court costs and settlement costs in proportion to the ARCHITECTS's liability.

10.4. ARCHITECT agrees that ARCHITECT is solely responsible for the safety of ARCHITECT and its employees in the performance of this Contract and agrees to hold harmless CITY, its officers and agents from and against any liability arising from the personal injury or death of the ARCHITECT or the employees of the ARCHITECT arising out of or in connection with this Contract.

10.5. **Indemnity for Patent and Copyright Violations.**

10.5.1. ARCHITECT further agrees to completely defend and indemnify CITY, its officers, agents and employees, against a claim that any of the Designs, Plans or Specifications prepared by ARCHITECT, its employees, associates, or subconsultants, pursuant to this Contract infringe a U.S. patent or copyright directly, indirectly or contributorily, regardless of whether or not CITY is proven to have actively induced or contributed to the infringement. ARCHITECT will pay any and all resulting costs, damages and attorney's fees finally awarded, provided that (1) CITY promptly notifies ARCHITECT in writing of the claim, and (2) ARCHITECT has sole control of the defense and all related settlement negotiations.

10.5.2. If ARCHITECT defends CITY against such claims, the CITY Attorney of CITY shall be kept informed of settlement negotiations, and shall execute any settlement agreement reached by ARCHITECT on CITY's behalf.

**10.5.3. ARCHITECT's defense and indemnification under this Subsection is conditioned on CITY's agreement that if any of the designs, plans, or specifications, become, or in ARCHITECT's opinion are likely to become, the subject of such a claim, CITY will permit ARCHITECT, at ARCHITECT's option and expense, either to procure the right for CITY to continue using the designs, plans or specifications or to replace or modify the same so that they become non-infringing; and if neither of the foregoing alternatives is available on terms which are reasonable in ARCHITECT's judgment, CITY, to the extent CITY is legally able to do so, will cease using the designs, plans, or specifications on the written request of ARCHITECT, in which instance CITY has the sole option to either require ARCHITECT to perform new design work at ARCHITECT's sole expense, or to terminate this Contract.**

**10.5.4. ARCHITECT has no liability under this Section for any claim of infringement based upon the modification or alteration of the designs, plans, or specifications prepared under this Contract subsequent to the Project by CITY, or by any architectural consultant subsequently employed by CITY.**

**10.5.5. The foregoing states the entire obligation of ARCHITECT with respect to infringement of patents and copyrights.**

10.6. ARCHITECT shall procure, pay for, and maintain during the term of this Contract, with a company authorized to do business in the State of Texas and otherwise acceptable to CITY, the minimum insurance coverage contained in Attachment 1, attached to and made a part of this Contract.

10.7. Approval, disapproval or failure to act by CITY regarding any insurance supplied by ARCHITECT or its subconsultants shall not relieve ARCHITECT of full responsibility or liability for damages, errors, omissions, or accidents as set forth in this Contract. The bankruptcy or insolvency of ARCHITECT's insurer or any denial of liability by ARCHITECT's insurer shall not exonerate ARCHITECT from the liability or responsibility of ARCHITECT set forth in this Contract.

#### ARTICLE 11 ASSIGNMENT

11.1. This Contract provides for unique professional services. ARCHITECT, therefore, shall not assign, transfer, or convey its rights, obligations, or interest in this Contract, in whole or in part, without the prior written consent of the Director.

#### ARTICLE 12 COMPLIANCE WITH LAWS AND REGULATIONS

12.1. This Contract is entered into subject to and controlled by the Charter and ordinances of the CITY, as amended, and all applicable laws, rules, and regulations of the State of Texas and the Government of the United States of America. ARCHITECT shall, during the course of performance of this Contract, comply with all applicable CITY codes and ordinances, as amended, all applicable State and Federal laws, as amended, and with all applicable rules and regulations promulgated by all local, State, and national boards, bureaus, and agencies.

12.2. ARCHITECT will pay all taxes, if any, required by law arising by virtue of the services performed under this Contract. CITY is qualified for exemption from sales and use taxation pursuant to the provisions of Section 151.309 of the Texas Limited Sales, Excise, and Use Tax Act.

#### ARTICLE 13 INDEPENDENT ARCHITECT

13.1. ARCHITECT's status shall be that of an independent ARCHITECT. Except in the course and for the sole purpose of Project construction contract administration, ARCHITECT shall not be considered an agent or representative of CITY in the performance of services under this Contract. ARCHITECT shall exercise

independent judgment in performing services under this Contract and is solely responsible for setting working hours, scheduling or prioritizing the work flow and determining how the work is to be performed. Notwithstanding the above, no term or provision of this Contract or act of ARCHITECT in the performance of this Contract shall be construed as making ARCHITECT an employee of CITY, or making ARCHITECT or any of its employees eligible for the fringe benefits, such as retirement, insurance and worker's compensation, which CITY provides its employees.

ARTICLE 14  
VENUE AND GOVERNING LAW

14.1. The obligations of the parties to this Contract shall be performable in Dallas County, Texas, and if legal action is necessary in connection with or to enforce rights under this Contract, exclusive venue shall lie in Dallas County, Texas.

14.2. This Contract shall be governed by and construed in accordance with the laws and court decisions of the State of Texas, without regard to conflict of law or choice of law principles of Texas or of any other state.

ARTICLE 15  
NOTICES

**15.1. Any notice, payment, statement, or demand required or permitted to be given under this Contract by either party to the other may be effected by personal delivery in writing or by mail, postage prepaid. Mailed notices shall be addressed to the parties at the addresses appearing below, but each party may change its address by written notice in accordance with this section. Mailed notices shall be deemed communicated as of three (3) days after mailing.**

To CITY:

To ARCHITECT:

**Robert Blankenship**

\_\_\_\_\_

ARTICLE 16  
TERM

16.1. Unless sooner terminated in accordance with the applicable provisions of this Contract, or extended by supplemental agreement approved by both parties, the term of this Contract shall be from the date of its execution until final completion of the Project and all architectural/engineering and construction administration services in connection therewith, including the final two (2) year warranty inspection and resolution of any outstanding Project-related claims or disputes.

16.2. ARCHITECT understands that the Project Performance Schedule is of critical importance, and agrees to undertake all necessary efforts to expedite the performance of services required under this Contract, so that construction of the Project will be commenced as scheduled. In this regard, ARCHITECT shall proceed with sufficient qualified personnel and consultants necessary to fully and timely accomplish all services required under this Contract in the highest professional manner.

ARTICLE 17  
FINANCIAL INTEREST PROHIBITED

17.1. ARCHITECT covenants and represents that ARCHITECT, its officers, employees, agents, consultants and subconsultants will have no financial interest, direct or indirect, in the purchase or sale of any product,

materials or equipment that will be recommended or required for the construction of the Project.

17.2. ARCHITECT shall at all times observe and comply with all Federal, State and local laws, ordinances and regulations relating to conflicts of interest. In particular, ARCHITECT is put on notice that City will require compliance with Chapter 176 of the Texas Local Government Code (hereinafter referred to as "Chapter 176") requiring any person who contracts or seeks to contract with the City to disclose potential conflicts of interest as defined in Chapter 176 by completing the Conflict of Interest Questionnaire and returning to the City in accordance with provisions thereof. Failure to comply with any applicable laws, including provisions of Chapter 176, may result in: (1) the forfeiture by ARCHITECT of all benefits of this CONTRACT; (2) the retainage by City of all services performed by ARCHITECT; and (3) the recovery by City of all consideration, or the value of all consideration, paid to ARCHITECT pursuant to this CONTRACT.

ARTICLE 18  
SEVERABILITY

18.1. In case any one or more of the provisions contained in this Contract shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Contract, and this Contract shall be considered as if such invalid, illegal, or unenforceable provision had never been contained in this Contract.

ARTICLE 19  
COUNTERPARTS

19.1. This Contract may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument. If this Contract is executed in counterparts, then it shall become fully executed only as of the execution of the last such counterpart called for by the terms of this Contract to be executed.

ARTICLE 20  
ENTIRE AGREEMENT; NO ORAL MODIFICATION

20.1. This Contract (with all referenced Exhibits, attachments, and provisions incorporated by reference) embodies the entire agreement of both parties, superseding all oral or written previous and contemporary agreements between the parties relating to matters set forth in this Contract. Except as otherwise provided elsewhere in this Contract, this Contract cannot be modified without written supplemental agreement executed by both parties.

IN WITNESS WHEREOF, the CITY OF MESQUITE has caused this Contract to be signed in its name by its City Manager, duly authorized to execute the same by the City Council, and has been signed by ARCHITECT, signing by and through its duly authorized representatives, thereby binding both parties, their successors, assigns and representatives for the faithful and full performance of the terms and provisions of this Contract.

CITY OF MESQUITE, TEXAS

ARCHITECT

BY \_\_\_\_\_  
Assistant City Manager

BY \_\_\_\_\_

ATTEST:

ATTEST:

BY \_\_\_\_\_  
City Secretary

BY \_\_\_\_\_

APPROVED AS TO FORM:

BY \_\_\_\_\_  
Assistant City Attorney

THE TEXAS BOARD OF ARCHITECTURAL EXAMINERS, P.O. BOX 12337, AUSTIN, TEXAS  
78711-2337, OR 333 GUADALUPE, SUITE 2-350, AUSTIN, TEXAS 78701-3942, (512) 305-9000, HAS  
JURISDICTION OVER COMPLAINTS REGARDING THE PROFESSIONAL PRACTICES OF  
PERSONS REGISTERED AS ARCHITECTS IN TEXAS.