



**REQUEST FOR QUALIFICATIONS (RFQ) NO. 2022-005
FOR
CITY OF MESQUITE, TX**

CLOSING DATE AND TIME: OCTOBER 14, 2021 2:00 P.M.

**ARCHITECTURAL SERVICES FOR DESIGN AND CONSTRUCTION OF
NEW FIRE STATION NO. 2**

A pre-submittal conference will be held at 9:00 a.m. on Thursday, October 7, 2021 in the Fire Administration Conference Room located on the first floor of The City of Mesquite Municipal Center, 1515 N. Galloway Avenue.

GENERAL CLAUSES AND CONDITIONS

1. If you have questions regarding the preparation of your response, you may contact Ryan Williams, Manager of Purchasing, at 972-216-6201 or email at purchasing@cityofmesquite.com.
2. Respondents 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 authorized representative of your company date, sign, 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 so no services or products under the Contract Documents will be performed or manufactured by any worker who is not legally eligible to perform such services or employment.
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. Submit one (1) **original** and one (1) **complete** copy of the entire Response with one (1) complete consolidated **electronic** copy of files in PDF format on a flash drive. Responses must be received prior to the closing date and time to be considered. Responses must be submitted in sufficient time to be received and time-stamped at the above location on or before the published date and time shown on the RFQ. The City of Mesquite will not be responsible for mail delivered from the post office. Responses received after the published time and date cannot be considered and will be returned unopened.
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 and submitted with bid.

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 responding entity who is authorized to enter into contract on behalf of the responding entity must manually sign the 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 noncompliance 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 to the most highly qualified provider of services on the basis of demonstrated competence and qualifications with whom the City is able to negotiate a satisfactory contract at a fair and reasonable price. 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) day's 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. 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.
16. Respondents shall complete all information requested and blanks provided shall be filled in on the provided forms.
17. The City is exempt from all sales and excise taxes.
18. It shall be understood all responses, inquires or correspondence relating to or in reference to this RFQ, and all reports, charges and responses or referencing information submitted in response to this RFQ 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.
19. All restrictions on the use of data contained within a response and all confidential information must be clearly stated in the RFQ. Proprietary information submitted in response to the RFQ, will be handled in accordance with the Texas Open Records Law and other applicable state statutes.
20. It is the vendor's responsibility to check for any addenda that might have been issued before the proposal closing date and time.

21. The response evaluation process will occur after the closing date. The City will first select the most highly qualified provider of those services on the basis of demonstrated competence and qualifications based on the responses to this RFQ; and then attempt to negotiate with that provider a contract at a fair and reasonable price. If a satisfactory contract cannot be negotiated with the most highly qualified provider of architectural, engineering, or land surveying services, the City shall: (1) formally end negotiations with that provider; (2) select the next most highly qualified provider; and (3) attempt to negotiate a contract with the provider at a fair and reasonable price. If necessary, the City will continue the process of formally ending negotiations with one provider and selecting another provider for negotiations until a contract is obtained.
22. 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 prior to the execution of the contract.
23. 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.**
24. 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. All questions must be submitted via email only by **12:00 Noon CST Friday, October 8, 2021** to Ryan Williams, Manager of Purchasing at purchasing@cityofmesquite.com.
8. Respondents shall submit a total of five (5) professional references.
9. 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
- Secretary of State Certificate of Filing (SOS)
- W-9

I. GENERAL INFORMATION

The City of Mesquite is soliciting Statements of Qualifications for the selection of Architects as listed in this request for qualifications.

II. ARCHITECTURE AND ENGINEERING SERVICES

Architecture and Engineering Services Mesquite Fire Department Fire Chief Russell Wilson

Purpose:

The City of Mesquite's ("City") Request for Qualifications is meant to specify a scope of work for qualified vendors of architecture and engineering services as set forth in the recommendations by the Fire Department.

Background:

The City of Mesquite ("City") is issuing this Request for Qualifications (RFQ) for the purpose of inviting submittal of Statement of Qualifications from design. Respondents interested in providing professional architectural services for the programming, design, construction documents and construction administration of a New Fire Station in close proximity to and replacing the existing **Fire Station No. 2 located at 4609 Sarazen Drive, Mesquite, Texas 75150-1835**. Existing Fire Station No. 2 will remain in operation during the construction phase. Demolition of the existing Fire Station No. 2 will occur after completion of the New Fire Station No. 2.

The City will utilize the Construction Manager at Risk (CMaR) delivery method for management of this project. The architectural firm selected will work with the City and within the CMaR team throughout all stages of the process.

Scope of Work:

The architectural firms selected will provide a full range of basic services (from Programming to Construction Administration). The City anticipates negotiating a full service architectural contract including, but not limited to, programming and needs assessment; landscape design; interior design; engineering; furniture, fixtures, and equipment selection; statements of probable construction cost; building design; bid documents; construction administration; assisting with project closeout; and coordination with and submittals to governing agencies (including TAS/TDLR, City of Mesquite Planning and Building Inspection, etc.). Interested candidates must exhibit the required knowledge, qualifications, and expertise to deliver such professional services within the framework of a CMaR construction delivery method.

To prepare for any subsequent negotiations, should your firm be selected, please be aware that the City will require a fixed fee; strike provisions for arbitration from all contracts; and not accept cost multipliers for special services and reimbursable expenses.

Time Schedule:

The New Fire Station No. 2 is targeted to open late 2023 to early 2024. Firms should outline their approach to designing the facility in this time frame and also comment on the constraints and/or resources required to make this design schedule feasible.

Provide a schedule illustrating current and anticipated work/projects currently underway by your firm.

III. SELECTION PROCESS

City Staff will analyze and evaluate the Statements of Qualification (SOQ). Based on the evaluation criteria established for the project; a shortlist of candidates will be developed. The RFQ provides information necessary to prepare and submit qualifications for consideration and ranking. Based on this ranking, Staff will select the appropriate number of top ranked respondents. It may be necessary to interview several top respondents. The highest ranked firm, representing the most highly qualified provider of the needed services on the basis of demonstrated competence and qualifications will be asked to submit a fee proposal to begin contract negotiations. In the event that Staff fail to reach a final contract with that firm, Staff will continue negotiations with the next most highly qualified firm and will continue with one of the other firms until the selected vendor is awarded the negotiated contract. Upon completion of the negotiations, separate contracts shall be executed by the governing body of the City of Mesquite in a form acceptable to each entity.

Acceptance of evaluation methodology: By submitting its Qualifications in response to this RFQ, respondent accepts the evaluation process as outlined in Section IV and, acknowledges, and accepts that determination of the “most qualified” firm may require subjective judgments by Fire Department 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.

Firms associating with other firms is encouraged in order to bring specific expertise and experience to the project.

IV. 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 2022-005 EVALUATION SCORING MATRIX

An evaluation team consisting of City staff shall review the information provided and score the information using the following:

<u>SELECTION CRITERIA:</u>	<u>POINTS</u>		<u>SCORE</u>
<u>1. QUALIFICATIONS OF THE RESPONDING FIRM AND EXPERIENCE</u>	<u>40</u>	=	
<p><i>Evaluation of qualifications is based on the Consultant's:</i></p> <ul style="list-style-type: none"> • <i>Capability to provide the requested services</i> • <i>Number of appropriate staff in local office</i> • <i>Available in-house services</i> • <i>Location of office with respect to Mesquite</i> • <i>Access to necessary sub-consultants</i> <p><i>The Consultant should demonstrate experience with, and an understanding of the specifics and critical factors related to the Project type and the CMaR delivery method. Evaluation is based on experience with projects of similar type, cost, and complexity.</i></p>			
<u>2. PROPOSED PROJECT STAFF</u>	<u>20</u>	=	
<p><i>The Consultant should provide the name and qualifications of the key staff that will be involved in the 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.</i></p>			
<u>3. SCHEDULE</u>	<u>20</u>	=	
<p><i>Response should provide enough detail to confirm an ability to consistently and reasonably meet project schedule and that the City deadline can be reasonably met.</i></p>			
<u>4. REFERENCES</u>	<u>20</u>	=	
<p><i>The evaluation is based on information provided from the references provided, including their experience with the firm or staff, its customer service, its ability to delivery on time and within budget, and overall satisfaction.</i></p>			
<u>TOTAL POSSIBLE SCORE</u>	<u>100</u>	=	

1. QUALIFICATIONS OF THE RESPONDING FIRM AND EXPERIENCE: (40 Points)

The overall qualifications, experience, and reputation of the firm to provide the services sought in this RFQ. This category includes but is not limited to the Respondent's:

- Experience, reputation, and demonstrated competence on projects of similar scope and complexity;
- Experience with municipal clients;
- Experience in a design and construction process using the CMaR delivery method;

- Availability to respond to the needs of the City of Mesquite in a timely manner; ability to relate to project requirements;
- Level of conflict of interest between the Respondent and the City of Mesquite.

2. PROPOSED PROJECT STAFF: (20 Points)

Provide a statement that summarizes the proposed 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.

3. SCHEDULE: (20 Points)

This section should provide enough detail to confirm the firm’s ability to consistently and reasonably meet project schedule milestones and that the City deadline can be reasonably met.

The response should include a proposed schedule for this project, as well as examples of the firm’s proposed and actual design and construction schedule for completed projects of similar type, cost, and complexity.

- 4. REFERENCES: (20 Points)** The responding firm shall provide five (5) references who can be contacted regarding the firm’s performance on a design project of similar nature.

V. SUBMITTALS

Respondents must provide the following information in their submission in order to be considered responsive.

Elaborate covers, binding, dividers and other are not required, nor desired. Extensive marketing materials are not desired.

Submissions should give the full firm name, delivery address, and contact information of Respondent. The person signing the submission should show title and authority to bind his/her firm in future contract.

Each Respondent should submit a letter of transmittal, limited to two pages, that includes:

- A brief statement of the Respondent’s understanding of the scope of work;
- The names, titles, mailing and email addresses, and telephone numbers of the individuals who are authorized to make representations on behalf of the Respondent;
- A statement that the person signing the transmittal letter is authorized to legally bind the Respondent;

- Identification of a single point of contact to respond to any questions regarding the submission.

Each Respondent shall submit a brief overview of the firm and identify the project team to be assigned, along with each team member's credentials. The summary should include an overview of the firm, corporation, partnership, and provide a brief overview of each of the firms, corporations, partnerships or other to whom the Respondent intends to subcontract any portions of the work and are the project team members. On one page, list the team member firms, including the lead firm, and a simple organizational chart of the team, showing the reporting structure of the people proposed to do the work.

Respondents shall present information to demonstrate financial stability and performance, and firm history.

Respondents shall submit:

- Name and address of business entity submitting the response.
- Name and location of major offices and other facilities that relate to the Respondent's performance under the terms of the submission.
- Name, business addresses, business and fax telephone numbers and email addresses of the proposed principal contact person regarding all contractual matters relating to the RFQ.
- Pertinent information relating to the Respondent's organization and experience, competence, reputation and capability in providing programming, design, preparation of construction documents, and construction administration.
- Statement outlining each project team member's experience in projects of similar type and scope, specifically in regard to fire station design and construction services.
- Statement regarding prior business with the City of Mesquite, listing the project(s).
- Statement relating to existing facilities owned or business operations that present a potential conflict of interest with this project and the City of Mesquite.
- Length of time in business.
- The Respondent shall provide, on three pages or less, a narrative that describes:
 - Team's track record of meeting deadlines and working within a budget;
 - Team's systems and processes for ensuring quality and timely performance on similar projects;
 - Team's working relationship, including background information on key personnel and the roles and responsibilities for the various disciplines of architecture and engineering;
 - Team's specific experience delivering design and construction services working with a Construction Manager at Risk;
 - Each Respondent shall provide examples of challenges to schedule and methods taken to meet the project schedule.
- Narrative describing design considerations that address and promote firefighter health and safety, including but not limited to minimizing firefighter exposures to toxins, and reducing the possibility of workplace injury.
- Each Respondent must provide no less than five (5) client references for similar projects. In at least three of those projects, the Respondent should have served as lead in design team within the last eight years. The list of clients must include the following information:
 - Project name and location;
 - Name and address of client;
 - Name and current phone number of client contact who was directly involved with the project;
 - Contract start date and duration;

- Type and size of contract;
- Firm's role in project;
- Number of staff by position participating in the design, preparation of construction documents and participating in construction administration;
- Name of General Contractor.

These references will be contacted and used in conjunction with the evaluation of the submissions.

VI. 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 for this project.
- 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.

VII. DUE DATE AND CONTACT

One (1) original, one (1) copy, and one (1) electronic copy of the Statement of Qualifications are required. STATEMENTS OF QUALIFICATIONS are to be delivered by **2:00 p.m. on Thursday, October 14, 2021**, to:

Ryan Williams
Manager of Purchasing
City of Mesquite
1515 N. Galloway Avenue
Mesquite, Texas 75149

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/1295/>

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

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:

(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. 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 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)

**PROHIBITION ON CONTRACTS WITH
COMPANIES BOYCOTTING ISRAEL**

Chapter 2270, as amended by House Bill 793, provides that the City may not enter into a contract* with a company for goods or services unless the contract contains a written verification from the company that it: (i) does not Boycott Israel; and (ii) will not Boycott Israel during the term of the contract.

“Boycott Israel” is defined to mean refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes. “Company” is defined to mean a for-profit organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations that exists to make a profit.

*** The requirement applies only to a contract that: (1) is between the City and a company with 10 or more full-time employees; and has a value of \$100,000 or more that is to be paid wholly or partly from City funds.**

I, _____, the _____
(Name of Certifying Official) (Title or Position of Certifying Official)

of _____, does hereby verify on behalf of said
(Name of Company)

company to the City of Mesquite that said company does not Boycott Israel and will not Boycott Israel during the term of this contract.

Signature of Certifying Official

Title

Date of Certification

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 Architectural 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 Architectural 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.

REFERENCES

Five (5) Professional References (Include: Names, Addresses, Phone No's., Dates, Work Description and Contract Amounts.)

1. _____

2. _____

3. _____

4. _____

5. _____

CONTRACTOR'S SIGNATURE PAGE

ARCHITECTURAL SERVICES FOR DESIGN AND CONSTRUCTION OF NEW FIRE STATION NO. 2

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 comply with these
specifications.
(Name of Organization)

Signature

Type/Print Name

Title

Telephone Number

Email

Date

NOTICE

The following blank spaces in the contract are **not** to be filled in by the Proposer at the time of submitting his proposal. The contract form is submitted at this time to *familiarize* the Proposer with the form of contract, which the successful Proposer will be required to execute.

**ARCHITECT'S CONTRACT
FOR
ARCHITECTURAL SERVICES FOR DESIGN AND CONSTRUCTION OF
NEW FIRE STATION NO. 2**

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

KNOW ALL MEN BY THESE PRESENTS:

THIS CONTRACT is made and entered into as of the ____ **day of** _____, **2021**, 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").

WITNESSETH:

WHEREAS, CITY intends to construct the **NEW FIRE STATION NO. 2**, hereinafter called "Project", at a total budgeted construction cost **not to exceed \$**_____ for the completion of the Project ("Budgeted Construction Cost" or "Fixed Construction Budget"). This budgeted amount will be the CITY's targeted amount for the Guaranteed Maximum Price under a Construction Manager-at-Risk construction contract; and

WHEREAS, CITY desires to contract with ARCHITECT for complete architectural and engineering services in connection with the 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 _____, (the "Proposal Letter") 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, as defined in this Contract and the Proposal Letter, including the services of any professional consultants engaged for complete architectural services and complete structural, mechanical, electrical, and civil engineering services, a lump sum amount not to exceed \$_____ (“Basic Fee”).

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. ARCHITECT must receive written, advance authorization from CITY before performing any Additional Services. 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 hourly rates:

Project Manager	\$_____	per hour
Project Architect	\$_____	per hour
CAD Technician	\$_____	per hour
Administrative Asst.	\$_____	per hour

C. Additional Services of Consultants, not listed in the ARCHITECT'S proposal letter, (including structural, mechanical, electrical, and civil engineering) shall be computed at 1.10 times the amounts billed to ARCHITECT.

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 maximum 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 the CITY by its Fire Chief, or the Fire Chief's designee, and by ARCHITECT through its duly designated and authorized representatives. ARCHITECT shall fully comply with any and all instructions from the Manager. 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 Manager, and the Manager'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 six 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 Fire Chief, 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 Fire Chief. 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 the Fire Chief. A performance schedule shall be agreed to by ARCHITECT and the Fire Chief ("Performance Schedule"), 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 Fire Chief without need of a Supplemental Agreement. All services shall be performed to the highest professional standard.

2.1.1. Conceptual Design and CMaR Selection Phase.

A. ARCHITECT shall prepare exhibits of the Project Scope consistent with the Budgeted Construction Cost and assist the CITY with the preparation of the CMaR solicitation package.

B. ARCHITECT shall participate in the CMaR selection process and provide input as requested.

2.1.2. 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 Fire Chief and the CMaR, prepare the Schematic Design Studies and submit to the Fire Chief a sufficient number (as determined by the Fire Chief) 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 Fire Chief. Prior to submitting the Statement of Probable Construction Cost to Owner, the ARCHITECT shall review its Probable Construction Cost estimate in comparison with the construction cost estimate prepared by the CMaR, and shall reconcile any differences between the two construction cost estimates in coordination with the CMaR; if the ARCHITECT is unable to reconcile all differences between the two construction cost estimates, then the ARCHITECT shall provide a detailed explanation of the differences to the CITY.

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. The ARCHITECT shall provide the CMaR with copies of the Project document at the CMaR's expense to assist the CMaR in fulfilling its responsibilities to the City.

F. After approval of the Schematic Design documents by the Fire Chief, 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.

2.1.3. 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 Fire Chief and review by the CMaR. A sufficient number of copies (as determined by the Fire Chief) of the Design Development Documents will be submitted to the Fire Chief 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. The ARCHITECT shall provide the CMaR with copies of the ARCHITECT's document at the CMaR's expense to assist the CMaR in fulfilling its responsibilities to the CITY.

B. ARCHITECT shall submit to CITY a Revised Statement of Probable Construction Cost in a form acceptable to the Fire Chief. Prior to submission of its Revised Statement of Probable Cost to the CITY, ARCHITECT shall review its estimate in comparison with the construction cost estimate prepared by the CMaR, and shall reconcile any differences between the two estimates in coordination with the CMaR. Any variance in the estimated construction costs that will adversely affect the established Project Budget will be submitted to the Fire Chief with appropriate comments and recommendations prior to beginning the Construction Documents Phase.

C. At the completion of the Design Development Phase, or such other time as City may specify to ARCHITECT, at City's sole option and discretion, City will furnish ARCHITECT with a Guaranteed Maximum Price (GMP) proposal prepared by the CMaR based upon the Design Development Documents prepared by the ARCHITECT and approved by the CITY. The ARCHITECT shall assist the CITY and further advocate the CITY's interests in CITY's negotiations with the CMaR in an effort to develop a GMP proposal acceptable to CITY, in CITY's sole option and discretion. If the CITY does not accept the CMaR's GMP proposal, the ARCHITECT shall participate with the CITY and CMaR in constructability reviews and shall revise the documents as necessary in order to reach an agreement. If CMaR's GMP proposal exceeds the cost quantity survey furnished to CITY by ARCHITECT, and CITY directs ARCHITECT to revise the documents, then ARCHITECT

shall revise the documents at its own expense so that the GMP proposal for constructing the Project shall not exceed the City's budgeted construction costs limits and any previously approved construction cost estimate. If it is determined to be in the CITY's best interest, instead of requiring the ARCHITECT to revise the drawings and specifications, the CITY reserves the right to accept a GMP proposal that exceeds the stipulated budgeted construction cost limitation. ARCHITECT shall analyze the final GMP proposal document, together with supporting assumptions, clarifications, and contingencies, and shall submit a detailed written analysis of the document to the CITY. Such analysis shall include, without limitation, reference to and explanation of any inaccurate assumptions and clarifications.

D. After the GMP has been accepted, the ARCHITECT shall incorporate into the Design Development Documents any revisions which are necessary due to inaccurate assumptions and clarifications made in the development of the GMP.

E. After approval of the Design Development Documents by the Fire Chief, 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.

2.1.4. Construction Documents Phase.

A. ARCHITECT shall prepare from the approved Design Development Documents, for consideration and approval by the Fire Chief, 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 Fire Chief. 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. The ARCHITECT shall provide the CMAr with copies of the ARCHITECT's documents at the CMAr's expense to assist the CMAr in fulfilling its responsibilities to the CITY.

B. The ARCHITECT shall assist the CITY and the CMAr on matters such as construction phasing and scheduling, bid or proposal alternates, special cash allowances, liquidated damages, the construction contract time period, and other construction issues appropriate for the Project. ARCHITECT shall assist the CITY and CMAr in the preparation of the necessary bidding information, bidding forms, RFP information, and RFP forms, and the Conditions of the Contract.

C. 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 Fire Chief. ARCHITECT shall review its construction cost Statement of Probable Construction Cost in comparison with the construction cost estimate prepared by the CMaR and shall reconcile any differences between the two cost estimates in coordination with the CMaR. If the ARCHITECT is unable to reconcile all differences between the two estimates with the CMaR, then the ARCHITECT shall provide a detailed explanation of the differences to the CITY.

D. Following approval by the Fire Chief of the Design Development Documents, ARCHITECT shall, within the agreed Performance Schedule, submit three (3) complete sets of proposed Construction Documents to the Manager 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 three (3) additional sets at ARCHITECT's expense for bidding purposes. Should additional sets of Construction Documents be required or requested by the Manager, 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 Manager 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) Three (3) copies of detailed cost estimates in a form acceptable to CITY.

(3) Three (3) 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 Fire Chief, ARCHITECT will be reimbursed for the actual cost of reproduction, upon approval in advance by CITY.

2.1.5. Bidding Phase.

A. Following CITY's approval of the Construction Documents and of the latest Statement of Probable Construction Cost and/or the GMP, ARCHITECT shall assist CITY and CMaR by providing clarifications and responses for Bid questions, preparing addenda, accounting for addenda issued; and attending pre-bid and pre-proposal conferences. ARCHITECT shall answer inquiries from bidders and proposer's at CITY' s request and shall prepare and issue any necessary addenda to the bidding or proposal documents. Architect shall subsequently incorporate these clarifications and responses into the Construction Documents as part of Basic Services.

B. Bidding for construction shall be conducted by the CMaR with the assistance and participation of the ARCHITECT and CITY. Upon completion of the Bid period, CMaR shall provide a final Bid Tabulation indicating the proposed Project Construction Cost. If the cost exceeds the GMax pricing, the ARCHITECT shall assist with reconciling variances and determining the appropriate response with the CMaR and CITY. In the event, the construction documents need to be revised, except for items related to clarifications and responses in 2.1.5.A., this service shall be considered Additional Services. The ARCHITECT

shall prepare and submit a Fee proposal to the Fire Chief for approval before proceeding. Proceeding without approval shall indicate revisions are part of Basic Services.

C. Upon CITY approval of the final Construction Cost, ARCHITECT shall incorporate any and all approved revisions to the Construction Documents used for bidding and provide the CITY with three (3) printed sets of completed Construction Documents. ARCHITECT shall provide BIM drawing files to CMAr for use in preparing shop drawings and submittals.

D. 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 Fire Chief for payment.

2.1.6. 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 be a representative of the CITY during the Construction Phase and shall advise and consult with the CITY. Instructions to the CMAr shall be forwarded through the ARCHITECT and all communication by and with the ARCHITECT's consultants shall be through the ARCHITECT, except that CITY reserves the right to communicate directly with the CMAr and consultants as it deems necessary or appropriate at any time. ARCHITECT shall have authority to act on behalf of the CITY to the extent provided in the Contract Documents. Duties, responsibilities, and limitations of authority of the ARCHITECT shall not be restricted, modified, or extended without written acceptance by the CITY.

C. ARCHITECT shall review the CMAr's list of proposed subcontractors for the work, initial administrative submittals for Project Schedule, Schedule of Values, Submittal Schedule, and Equipment Matrix to establish appropriate bases for construction monitoring payment processing, and system commissioning. ARCHITECT shall identify necessary revisions to the documents in writing to the CMAr and recommend acceptance of the documents by the CITY when appropriate. ARCHITECT shall review periodic updates of all schedules with the CITY and CMAr to evaluate appropriateness.

D. ARCHITECT shall prepare appropriate materials for and participate in a Pre-Construction Conference at the site prior to commencement of construction by the CMAr.

E. ARCHITECT shall visit the site periodically (not less than every other week, but as appropriate for the work in progress) during the entire construction period to observe the progress and quality of the construction work ("Work") and determine, in general, if the Work is proceeding in accordance with the Contract Documents. Each of ARCHITECT's consultants shall visit the site periodically (not less than monthly) during construction activities related to the consultant's discipline to observe the progress and quality of the Work and to determine, in general, if the Work is proceeding in accordance with the Contract Documents. ARCHITECT and its consultants shall submit timely written reports of their site visits and

meetings. ARCHITECT shall not be required to make exhaustive or continuous on-site visits to inspect the quality or quantity of the Work. City may require site visits and inspections by ARCHITECT or its consultants at any time.

F. ARCHITECT shall attend bi-weekly construction status meetings with the CMaR and CITY.

G. ARCHITECT shall keep the CITY informed of the progress and quality of the Work and shall identify defects and deficiencies in the Work of the CMaR. ARCHITECT shall notify CITY in writing of any portions of the work, which ARCHITECT has observed as not being in conformity with the Construction Documents and make recommendations as to correction of the deficiencies or defects. ARCHITECT shall consult with CITY and CMaR when requested by CITY.

H. In addition to site visits for general inspection and observation, ARCHITECT shall visit the site as appropriate for specific purposes related to certification of progress payments, start-up or mock-up reviews for significant work activities, and for formal Work inspections. ARCHITECT shall provide written reports of all site visits to CITY and CMaR.

I. ARCHITECT shall not have control or charge of, and shall not be responsible for, construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the Work, for the acts or omissions of the CMaR, subcontractors, or any other person performing the Work.

J. ARCHITECT shall determine the amounts owing to the CMaR based on observations of Work placed at the site and on evaluations of the CMaR's Application for Payment and shall coordinate its review and evaluation with the CITY and shall certify CMaR's application for Payment in an appropriate time. 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 CMaR'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 CMaR 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 CMaR's right to payment, or (4) ascertained how or for what purpose the CMaR has used money previously paid on account of the Contract Sum.

K. ARCHITECT shall be the interpreter of the technical requirements of the Contract Documents. ARCHITECT shall render interpretations necessary for the proper execution or progress of the Work with reasonable promptness on request of either the CITY or the CMaR, and shall render written recommendations within a reasonable time, on all claims, disputes, and other matters in question between CITY and CMaR relating to the execution or progress of the Work or the interpretation of the Contract Documents. Interpretations and recommendations of the ARCHITECT shall be consistent with the intent

of and reasonably inferable from the Contract Documents and shall be in written or graphic form. If the Construction Documents are unclear, ARCHITECT shall issue supplemental documents to amplify or explain portions of the Construction Documents.

L. 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 CMaR 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.

M. ARCHITECT shall use its best efforts to promptly review and approve or reject shop drawings, samples, and other submissions of the CMaR 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 Fire Chief, 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.

N. ARCHITECT shall prepare exhibits for Change Orders as requested by CITY and assist the CITY in evaluating a Change Order price proposal from the CMaR.

O. ARCHITECT shall conduct inspections to determine the dates of substantial completion and final completion, shall receive written guarantees and related documents assembled by the CMaR for submittal with the final Certificate of Payment, and shall prepare and present a final Certificate for Payment to the Fire Chief 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 period.

P. 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 CMaR 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 the Fire Chief and ARCHITECT, or the not-to-exceed amount specifically provided for in the Proposal Letter. 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 the Fire Chief in advance of their performance, they

shall be paid for in the manner agreed to at the time of authorization or as specifically provided for in the proposal letter.

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.

2.3.3. 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.

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. To accommodate the Budgeted Construction Cost, the ARCHITECT shall determine what materials, equipment, component systems, and types of construction are to be included in the Construction Documents, may make reasonable adjustments in the scope of the Project, and may include in the Bid Documents alternate bids. ARCHITECT is responsible for ensuring that the CMAA has adequate information for estimating the construction costs throughout the Project.

4.2. It is recognized that neither the ARCHITECT, the CMAA, nor the CITY has control over the cost of labor, materials, or equipment, and that the ARCHITECT and the CITY do not have control over the CMAA's methods of determining bid prices, or over competitive bidding, market or negotiating conditions. However, ARCHITECT is required to respond appropriately to independent cost estimates prepared by the CMAA, and to work cooperatively with the CMAA in achieving a design which meets the requirements of this Contract. ARCHITECT has the responsibility to provide a design for the Project which can be constructed within the Fixed Limit of the Construction Budget, and has the alternatives described in 4.1. to achieve that responsibility. Therefore, any provision to the contrary notwithstanding, it is understood and agreed that regardless of fault, ARCHITECT and CMAA shall be jointly and severally liable for ensuring that the total cost of all Work to be performed by the CMAA, as measured by the lowest bona fide GMP proposal, does not exceed the Budgeted Construction Cost. If modifications to the Drawings and Specifications are necessary to comply with the established Budgeted Construction Cost, the ARCHITECT shall so modify the Drawings and Specifications without charge to the CITY as previously described.

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:

Conceptual Design and CMAA Selection Phase	5%
Schematic Design Phase	10%
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. 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 Fire Chief of such abandonment or suspension.

6.4. 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 Manager. All

payments to ARCHITECT shall be made on the basis of the invoices submitted by ARCHITECT and approved by Fire Chief. 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 Fire Chief, ARCHITECT shall comply promptly with the request.

6.5. 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.

6.6. 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.

6.7. 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.

ARTICLE 8 TERMINATION, DEFAULT, TIME OF THE ESSENCE, AND FORCE MAJEURE

8.1. CITY, acting through the Fire Chief, 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, at its option, to have 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 Fire Chief. 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 Fire Chief 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 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.

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, subcontractors, 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, subcontractors, subconsultants, agents and consultants.

10.2. TO THE FULLEST EXTENT PERMITTED BY LAW, ARCHITECT DOES HEREBY COVENANT AND AGREE TO INDEMNIFY, DEFEND, AND HOLD HARMLESS THE CITY, ITS CITY COUNCIL, AND ALL OF ITS OFFICERS, AGENTS, AND EMPLOYEES, IN BOTH THEIR PUBLIC AND PRIVATE CAPACITIES, FROM AND AGAINST ANY AND ALL LIABILITY FOR DAMAGE (INCLUDING EXPERT/CONSULTANT FEES, REASONABLE ATTORNEYS' FEES, AND EXPENSES OF ALTERNATIVE DISPUTE RESOLUTION) TO THE EXTENT THAT THE DAMAGE IS CAUSED BY OR RESULTS FROM AN ACT OF NEGLIGENCE, INTENTIONAL TORT, OR FAILURE TO PAY A SUBCONTRACTOR OR SUPPLIER COMMITTED BY ARCHITECT OR THE ARCHITECT'S AGENT, CONSULTANT UNDER CONTRACT, OR ANOTHER ENTITY OVER WHICH THE ARCHITECT EXERCISES CONTROL. THIS OBLIGATION SHALL NOT BE DEFEATED BY THE CONTRIBUTORY, JOINT, OR CONCURRENT NEGLIGENCE OR FAULT OF THE CITY, BUT SHALL BE LIMITED PROPORTIONATELY TO THE EXTENT OF THAT NEGLIGENCE OR FAULT, AS ULTIMATELY ADJUDGED BY THE FINDER OF FACT. ARCHITECT SHALL BE RESPONSIBLE FOR ALL ACTS OF NEGLIGENCE, AND/OR INTENTIONAL TORTS OF ARCHITECT'S SUBCONTRACTORS AND ANY AND ALL SUB-SUBCONTRACTORS AND ARCHITECT'S SUBCONSULTANTS AND ANY AND ALL SUB-SUBCONSULTANTS THAT IMPACT THE PROJECT OR CAUSE THE CITY TO SUFFER DAMAGES. IT IS UNDERSTOOD AND AGREED THAT ANY FAILURE TO COMPLY WITH THE APPLICABLE STANDARD OF CARE BY THE ARCHITECT'S SUBCONTRACTORS, SUBCONSULTANTS, SUB-SUBCONTRACTORS, OR SUB-SUBCONSULTANTS SHALL BE DEEMED TO BE A FAILURE BY ARCHITECT TO DISCHARGE THE STANDARD OF CARE OWED BY ARCHITECT TO THE CITY UNDER THIS CONTRACT.

10.3. INDEMNIFIED ITEMS SHALL INCLUDE REASONABLE ATTORNEY'S FEES AND COSTS, EXPERT AND CONSULTANT FEES, 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 (INCLUDING EXPERT FEES AND COSTS) 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-INFRINGEMENT; 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 and shall require its subcontractors and subconsultants and their sub-subcontractors and sub-subconsultants to 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 subcontractors or 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.

10.8 ARCHITECT shall contractually obligate its subcontractors and subconsultants and those subcontractors and subconsultants shall contractually obligate their sub-subcontractors and sub-subconsultants to list the CITY as an additional insured on all insurance policies required herein.

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 Fire Chief, which may be withheld by Fire Chief for any reason or no reason at all.

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:

ARTICLE 16
TERM

16.1. Unless sooner terminated in accordance with the applicable provisions of this Contract, or extended by supplemental agreement approved in writing 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 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.

ARTICLE 22
FLOW DOWN TO SUBCONTRACTORS

22.1 ARCHITECT shall include in its contracts with subcontractors and subconsultants a "flow-down" provision that incorporates by reference the terms of this Contract into the subcontract. The "flow down" provision shall state: "Subcontractor assumes all obligations and responsibilities that the ARCHITECT assumes toward CITY for the ARCHITECT's services as outlined in the Contract between ARCHITECT and CITY." Further, ARCHITECT shall require that its subcontractors and subconsultants include the same "flow down" provision in contracts with its sub-subcontractors and sub-subconsultants.

ARTICLE 23
CITY AS INTENDED THIRD-PARTY BENEFICIARY

23.1 ARCHITECT shall include in its contracts with subcontractors and subconsultants a provision stating that CITY is a third-party, intended beneficiary of the ARCHITECT's contracts with its subcontractors and subconsultants and with those subcontractors' and

subconsultants' contracts with any sub-subcontractors and sub-subconsultants. The third-party beneficiary provision shall state: "The City of Mesquite is an intended beneficiary of the services and scope of work to be provided for in this Agreement and this Agreement is expressly made in and for the City of Mesquite's benefit and use. The City of Mesquite, as an intended third-party beneficiary, may enforce the terms of this Agreement."

Article 24
PROFESSIONAL QUALITY

24.1 ARCHITECT shall be responsible for the professional quality, technical accuracy, timely completion, and coordination of all plans, designs, drawings, documents, estimates, specifications, reports, studies and other material (collectively, the "Project Documents") and Services furnished by the ARCHITECT, ARCHITECT's subcontractors and subconsultants, and any sub-subcontractors and sub-subconsultants under this Contract. ARCHITECT represents and warrants that all of the services and contemplated Project Documents are within the ARCHITECT's scope of expertise. As such, ARCHITECT shall be liable for any deficient or sub-standard work of any subcontractors or sub-subcontractors utilized in the performance of this Contract.

24.2 ARCHITECT shall perform the services required hereunder in accordance with the prevailing standard of care by exercising the skill and ability normally required of professionals performing the same or similar services, under the same or similar circumstances, in the State of Texas. Approval by the CITY of the Project Documents, services, and incidental architectural/engineering services shall not in any way relieve the ARCHITECT of responsibility for the technical accuracy of the services performed. The CITY's review, approval or acceptance of, or payment for any of the services described herein shall not be construed to operate as a waiver of any rights under this Contract or of any cause of action arising out of the performance of this Contract.

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 _____
Cliff Keheley, City Manager

BY _____

ATTEST:

ATTEST:

BY _____
Sonja Land, City Secretary

BY _____

APPROVED AS TO FORM:
David L. Paschall, City Attorney

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.