

**AGREEMENT FOR SERVICES
CITY OF LEWISVILLE
KIOSK SIGN CONSTRUCTION, INSTALLATION AND MANAGEMENT
LEWISVILLE, TEXAS**

This Agreement ("Agreement") is entered into by and between the City of Lewisville, Texas ("City") and Baker-Clearview Operating, Inc. ("Contractor") (collectively, the "Parties").

WHEREAS, Section 11-10(i) of the Lewisville City Code allows the City to install free-standing structures located in the city rights-of-way that feature the city identification panel at the top of each structure and display directional information ("Kiosk Signs") in accordance with the kiosk sign program outlined herein; and,

WHEREAS, the City desires to continue a Kiosk Sign program to direct the public to the location of new homes, municipal or community events or facilities, and businesses and to discourage the placement of unsightly and hazardous off-site directional signs; and

WHEREAS, the City desires to contract for the construction, installation and maintenance of the Kiosk Signs and sign panels; and

WHEREAS, Contractor desires to install Kiosk Signs at no cost to the City, as described more fully in this Agreement; and

WHEREAS, Contractor desires to maintain the Kiosk Signs after their installation and to lease space on the Kiosk Signs to developers, homebuilders, and businesses and to bill and collect fees from the developers, homebuilders and businesses for itself and for the City; and,

WHEREAS, Contractor submitted a proposal which best meets the City's needs.

NOW, THEREFORE in consideration of these recitals and other good and valuable consideration, the value and receipt of which is acknowledged, City and Contractor agree as follows:

1. **Recitals**. The Recitals above are hereby incorporated into this Agreement by reference.
2. **Contract Documents**. The Contract Documents, which set forth the entire Agreement of the Parties, are named below. In the event of a conflict between the terms of two or more documents, they shall take priority in the order set forth below:
 - A. This Agreement;
 - B. The City's Terms & Conditions, attached hereto as Exhibit B;
 - C. The City's Insurance Requirements, attached hereto as Exhibit C; and
 - D. The Contractor's Proposal, attached hereto as Exhibit A.

Each party shall comply with all of the terms, conditions and specifications contained in the Contract Documents.

3. Scope of Work. Contractor shall perform the work set forth in the Contract Documents. In general, this work shall consist of the following:

- A. Construct, install, maintain and repair approved Kiosk Signs and sign panels at no cost to the City;
- B. Contract with developers, homebuilders, and businesses for the placement of sign panels in a fair and equitable manner under the guidelines of the City as outlined herein;
- C. Assist City in determining appropriate locations for Kiosk Signs;
- D. Attend meetings as necessary with City staff and developers to coordinate the implementation of the Kiosk Sign program; and
- E. Collect all sign panel rental fees and remit a portion thereof to the City in the form of a quarterly administrative fee.

4. Definition, Kiosk Sign Program and Specifications of Kiosk Signs.

- A. Definition. For the purposes of this Agreement, a Kiosk Sign has the definition given in the recitals to this Agreement.
- B. Kiosk Sign Program. The Kiosk Sign program shall consist of the guidelines outlined in these Contract Documents. The purpose of Kiosk Sign Program is to direct the public to the location of new homes, municipal or community events or facilities, and businesses while discouraging the placement of unsightly and hazardous off-site directional signs.
- C. Specifications of Kiosk Signs and Sign Panels. Contractor agrees to manufacture and install Kiosk Sign structures and sign panels in accordance with the specifications set forth in Exhibit A attached hereto and the following:
 - (1) Kiosk Sign Structures shall not exceed ten (10) feet above average grade. Sign Structures shall be constructed in accordance with the specifications set forth in Exhibit A attached hereto.
 - (2) Signs shall be constructed of materials set forth in Exhibit A attached hereto.
 - (3) Kiosk sign installations shall include break-away design features as depicted in Texas Department of Transportation's Sign Mounting Details for Roadside Signs. Break-away fittings must be installed below the grade or concealed from public view in a manner approved by the City.
 - (4) The name and official logo of the City shall be prominently displayed on both sides of the topper at the top of a Kiosk Sign.

- (5) The color of all Kiosk Sign structures and sign panels shall be determined by the City. Both structures and sign panels shall be of a uniform design. Sign panels shall contain only the name of a public facility, the name of a subdivision, neighborhood, builder, developer, or business and an appropriate directional arrow. Directional arrows will be of a uniform size; a line of text at the bottom of the sign panel with directional information is permissible if circumstances warrant it. Advertisement, address or price information is prohibited.
- (6) The Contractor shall submit final design plans and a prototype Kiosk Sign to the City for approval prior to manufacturing or installing any sign.
- (7) No additions, signs, pennants, flags, streamers, attention-getting devices or other appurtenances shall be attached to any Kiosk Sign or sign panel.
- (8) At the City's request and direction, the Contractor shall remove and relocate any Kiosk Signs within seven (7) days at no cost to the City.
- (9) Contractor shall provide, at no cost to the City, the top two panels and topper of all permitted sign panels to the City for use as directional signage to municipal or community facilities or locations or community events. If no space for such City sponsored/mandated sign panels is available on a Kiosk Sign, a new sign shall be provided by the Contractor for the City's use at any location designated by the City, at no additional cost to the City.
- (10) Individual sign panels on the Kiosk Sign Structures shall not exceed forty-two and one-half (42.5) inches in horizontal length, and shall be either ten (10) inches or twenty-one (21) inches in height. The topper which shall be twenty-one (21) inches in height.
- (11) If any individual panel is not leased, or is removed for repairs, the Contractor shall insert a blank panel in its place.
- (12) An entity may not lease more than one panel per kiosk sign.
- (13) Kiosk signs shall not be illuminated.
- (14) Kiosk signs shall not interfere with the use of sidewalks, walkways, bike and hiking trails; shall not obstruct the visibility of motorists, pedestrians or traffic control signs; shall not be installed in the immediate vicinity of street intersections; and shall comply with the requirements of the twenty-five (25) foot visibility triangle or other visibility easements.
- (15) All Kiosk Sign structures shall be installed in a manner such that the structure and sign panels are level.
- (16) Sign panel installation and modification shall be subject to City's approval.

(17) Contractor shall not install or maintain any Kiosk Signs or sign panels within the City that are not in compliance with the terms of this Agreement.

(18) Number of Kiosk Signs. Kiosk Sign locations shall be approved and designated by the City. The City Council has sole discretion to determine the location of the Kiosk Signs in the right-of-way; provided, however that Kiosk Sign structures shall be located at least one hundred (100) feet apart from each other.

5. Price and Payment Schedule of the Kiosk Sign Administrative Fee. Subject to the provisions in paragraph 7 below, the price and payment schedule for the Kiosk Sign Administrative Fee, as hereinafter defined, shall be as follows:

- A. Contractor will install the Kiosk Signs and rotate City sponsored/mandated panels at no cost to City.
- B. Contractor may charge builders and developers a monthly rental fee of not greater than \$55.00 per sign panel for a ten (10) inch by forty-two and one-half (42.5) inch panel and \$80.00 per sign for a twenty-one (21) inch by forty-two and one-half (42.5) inch panel. Said fee may be amended only by written consent of the City.
- C. Out of the aforementioned rental fee, Contractor shall remit to City a commission of \$11.00 per month for each ten (10) inch by forty-two and one-half (42.5) inch panel rented and \$16.00 per month for each twenty-one (21) inch by forty-two and one-half (42.5) inch panel rented (the “Kiosk Sign Administrative Fee”). Said Kiosk Sign Administrative Fee shall be remitted by the first day of each quarter of the fiscal year, October 1, January 2, April 1, and July 1. Late fees shall accrue at an interest rate equivalent to the prime rate as published by the Wall Street Journal at the date of delinquency if payment is not made within ten (10) days of the dates mentioned above.

6. Term and Termination

- A. Term. The term of this Agreement is five (5) years (“Initial Term”). At any point following the first two (2) years of the Initial Term or at any point during the Extended Term, as hereinafter defined, City may terminate this Agreement for any reason. Upon said termination, Contractor shall remove all Kiosk Signs within seven (7) days of notice of termination at no cost to City and shall restore the rights-of-way to their original condition.
- B. Automatic Option to Extend. This Agreement shall renew automatically without the necessity of further action by City or Contractor for one (1) additional term of five years (“Extended Term”) effective immediately upon the Termination Date of the previous term, unless either party provides the other with written notice at least 60 days prior to the then applicable Termination Date, of its intent not to renew. The effective Extended Term will be under the same terms and conditions as provided in this Agreement.

Notwithstanding the foregoing, however, this Agreement shall not renew if there exists a default in the performance of any condition of this Agreement by Contractor for which a notice of such default has been given. In order to suspend the right of automatic renewal of this Agreement, any notice of Default given to Contractor shall specify that this Agreement shall not automatically renew until the default identified therein is substantially cured and City has acknowledged such cure in writing.

C. Termination. Except as provided otherwise in this Agreement, this Agreement may not be terminated by either party except for breach as provided for in this Agreement:

- (1) Termination by City. If the Contractor shall breach and fail to remedy said breach as provided for in this Agreement, the City may terminate this contract.
- (2) Termination by Contractor. If the Contractor terminates this Agreement at any point before the end of the Initial Term or Extended Term, including as outlined in Section 6.B., above, Contractor agrees that the Kiosk Signs shall remain in place, the sign panels and all receivables from the placement of the sign panels shall become the property of the City. Further, Contractor agrees to transfer promptly all information related to the numbers and placement of the sign panels to the City, including, but not limited to, the original contract documents, an accounting of all open accounts and all other relevant documents. After the transfer of all information, this Agreement shall be of no further effect.

D. Failure by the City to remove or abate any illegal signs in the right-of-way shall not be deemed a breach of this agreement. Contractor is not authorized to remove any illegal signs.

E. Ownership of Kiosk Signs. Upon termination of this Agreement by Contractor, completion of the Primary Term, or, if this Agreement extends to an Extended Term, completion of the Extended Term, the Contractor agrees that all Kiosk Signs and sign panels located within the City shall become the property of the City without the necessity of any legal action. Any lease of a sign panel in effect at the time of the transfer of ownership of the Kiosk Signs to the City shall automatically assign to the City, except that the City shall have the option, in its sole discretion, to terminate any or all leases rather than accept the assignment. Contractor shall make this possibility of assignment and the City's right to terminate clear in any lease agreements.

7. Placement of Sign Panels. Kiosk Signs may be placed under this Agreement only where Kiosk Signs currently exist. Placement of a Kiosk Sign in any other location shall require City Council approval. The City agrees to extend to the Contractor an exclusive right to manage the sign panels and maintain the Kiosk Signs and sign panels on City right-of-way subject to the terms of this Agreement.

- A. Contractor agrees to lease sign panels to builders, developers, and businesses. Contractor further agrees to use Contractor's best efforts to lease all available sign panels.
- B. Contractor agrees to coordinate all aspects of the sign panels, including entering into lease agreements, billing, collecting fees and payment of all applicable taxes and fees.
- C. Contractor must furnish to the City's Director of Finance a certified quarterly statement of gross receipts on or before October 1, January 2, April 1, and July 1 of each year of the Initial Term and Extended Term. Included in such statement Contractor shall include the number of sign panels leased and the amount billed for the City's administrative fees.

The Contractor must keep accurate books of account of all gross receipts collected. The books of account will be open for inspection, copying, or audit by the City at all times.

All underlying documentation for Contractor's certified monthly statements, including cash register tapes, purchase orders, invoices, sales receipts and the like, must be preserved by the Contractor during the Initial Term and any Extended Term of the Agreement and shall likewise be available for inspection or copying by the City at all times. City may terminate this Agreement for failure to preserve such records or to provide them to the City upon request. City may store copies of the records until such time as they may be disposed of in accordance with the City's record retention policy.

- D. Contractor agrees that in no event will City be liable for any payment or other fees related to the placement of the sign panels.
- E. City and Contractor agree that no sign panels other than those manufactured and installed by Contractor shall be allowed on the Kiosk Sign Structures.
- F. Contractor agrees to install kiosk sign structures within ninety (90) days after the effective date of the agreement.

8. Maintenance of Kiosk Signs:

- A. Contractor agrees to maintain the Kiosk Signs and sign panels for the term of this Agreement.
- B. Contractor agrees to provide to the City a telephone number and a contact person allowing the City to call requesting maintenance on the Kiosk Signs or sign panels 24 hours a day, seven days a week.
- C. Contractor agrees to maintain the ground within three (3) feet of a Kiosk Sign including the removal of trash and debris.
- D. Contractor agrees to replace damaged Kiosk Signs and sign panels as is necessary or as requested by the City. Contractor shall, at its own cost, maintain, repair,

replace and repaint Kiosk Sign structures within 5 days of the City's request for repair. Contractor further agrees to remove for repair all sign panels within 24 hours of notification of the need of repair from the City. All Sign panels removed for repair shall be replaced within 72 hours of notification.

E. Contractor agrees to maintain a regular maintenance schedule to check each Kiosk Sign and sign panel for all necessary repairs and will complete those repairs promptly.

F. At the City's request, Contractor agrees to place new or rotate existing City sponsored/mandated panels on the 15th and last day of each month at no charge to the City.

9. **HOLD HARMLESS AND INDEMNIFICATION**
THE CONTRACTOR AGREES TO DEFEND, INDEMNIFY AND HOLD THE CITY, ITS OFFICERS, AGENTS AND EMPLOYEES, HARMLESS AGAINST ANY AND ALL CLAIMS, LAWSUITS, JUDGMENTS, COSTS AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE OR OTHER HARM FOR WHICH RECOVERY OF DAMAGES IS SOUGHT, SUFFERED BY ANY PERSON OR PERSONS, THAT MAY ARISE OUT OF OR BE OCCASIONED BY CONTRACTOR'S BREACH OF ANY OF THESE TERMS AND CONDITIONS OR BY ANY NEGLIGENT OR STRICTLY LIABLE ACT OR OMISSION OR INTENTIONAL TORT, INTELLECTUAL PROPERTY INFRINGEMENT, OR FAILURE TO PAY A SUBCONTRACTOR OR SUPPLIER COMMITTED BY, CONTRACTOR, ITS OFFICERS, AGENTS, EMPLOYEES OR SUBCONTRACTORS, IN THE PERFORMANCE OF THIS AGREEMENT; EXCEPT THAT THE INDEMNITY PROVIDED FOR IN THE PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE SOLE NEGLIGENCE OR FAULT OF THE CITY, ITS OFFICERS, AGENTS, EMPLOYEES OR SEPARATE CONTRACTORS, AND IN THE EVENT OF JOINT AND CONCURRING NEGLIGENCE OR FAULT OF THE CONTRACTOR AND THE CITY, RESPONSIBILITY AND INDEMNITY, IF ANY, SHALL BE APPORTIONED IN ACCORDANCE WITH THE LAW OF THE STATE OF TEXAS, WITHOUT WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW AND THE CITY'S REASONABLE ATTORNEY'S FEES SHALL BE REIMBURSED IN PROPORTION TO THE CONSULTANT'S LIABILITY. THE PROVISIONS OF THIS PARAGRAPH ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY.

10. **Insurance.** Contractor shall maintain in full force and effect throughout the entire term of this Agreement insurance in accordance with Exhibit B.

The amount of all required insurance policies is not deemed to be a limitation on Contractor's agreement to indemnify, defend, and hold harmless, as outlined in Section 9, above.

11. Independent Contractor. It is expressly understood that Contractor is an independent contractor and not a City employee, and therefore is not entitled to any of the benefits normally accorded to City employees. Contractor shall not hold itself out as a City Employee.

Contractor shall employ a sufficient number of employees to operate its business; all such employees are under the sole control and employment of Contractor. Nothing contained in this Agreement shall be deemed or construed to create the relationship of principal and agent or of partnership or of joint venture, it being expressly understood that the payment of funds by Contractor to City nor any other provision contained in this Agreement nor any act or acts of the parties hereto shall be deemed to create the relationship of principal and agent or of partnership or of joint venture.

12. Notice. All notices, demands, requests or replies provided for or permitted by either party must be in writing and may be delivered by any one of the following methods: (1) by personal delivery; (2) by deposit with the United States Postal Service; or (3) by deposit with an overnight express delivery service. Notice deposited with the United States Postal Service in the manner described above will be deemed effective two (2) business days after deposit with the United States Postal Service. Notice by telegram or overnight express delivery service will be deemed effective one (1) business day after transmission to the telegraph company or overnight express carrier. All such communications must only be made to the following:

CITY:

City of Lewisville
Attn: City Secretary
PO Box 299002
Lewisville, TX 75029-9002

CONTRACTOR:

Baker-Clearview Operating, Inc.
Attn: George W. Faris, III
P.O. Box 16568
Fort Worth, Texas 76162

Change of address must be made by sending notice as set out above.

13. Assignment and Subcontracting. The City and Consultant each binds itself and its partners, successors, executors, administrators and assigns to the other party of this Agreement and to partners, successors, executors, administrators and assigns of each other in party in respect to all covenants of this Agreement. Contractor may not delegate, assign or subcontract all or any part of the work except the fabrication of the Kiosk Sign structures and production of the sign panels, which require equipment, materials and expertise which the Contractor cannot be reasonably expected to possess, without the City's prior written consent. Nothing herein shall be construed as giving any right or benefits hereunder to anyone other than the City and the Consultant.

14. Miscellaneous. The Contract Documents represent the entire and integrated Agreement between the City and the Contractor and supersedes all prior negotiations, representations of Agreements, whether written or oral, except as where noted. The Contract Documents may be modified only by a written document signed by both parties, except in the case of change of Kiosk Sign locations, which must be approved by the City Council.

15. Mutual Drafting. The City and the Contractor each has had opportunity to consult legal counsel regarding the drafting of this Agreement and the provisions of this Agreement shall not be construed against or in favor of either party.
16. Default and Remedies. If any Party fails to perform any of its obligations under the Contract Documents, such failure shall constitute a default. The non-defaulting Party shall give the defaulting Party written notice of the default and providing written proof of delivery. The defaulting Party shall have ten days after the receipt of such notice in which to cure the default. Failure to cure the default in a timely manner shall constitute a breach of this Agreement. In the event of a breach, the non-breaching party may terminate this Agreement and may obtain any remedy provided by law.
17. Governmental Immunity. Unless otherwise required under the law, the Parties agree that the City has not waived its governmental immunity by entering into and performing their obligations under this Agreement.
18. Waivers. The failure of either party to complain of any act or omission on the part of the other party, no matter how long the same may continue, will not be deemed a waiver by said party of any of its rights hereunder. No waiver by either party at any time, express or implied, of any breach of any provision of this Agreement will be deemed a waiver of a breach of any other provision of this Agreement or a consent to any subsequent breach of the same provision. If any action by the Contractor requires the consent or approval of the City on one occasion, any consent or approval given on said occasion will not be deemed a consent or approval of the same or any other action at any other occasion.
19. Severability. If any term or provision of this Agreement or the application hereof to any person or circumstance is, to any extent, unenforceable, invalid or illegal under present or future law, then the remainder of this Agreement, or the application of said term or provision to persons or circumstances other than those as to which it is held invalid, unenforceable or illegal, will not be affected thereby, and to the extent that any term or provision is held unenforceable, invalid or illegal in its application to persons or circumstances, a term or provision as similar in nature to said invalid, unenforceable or illegal term or provision as may be possible and be legal, valid and enforceable will be added to this Agreement automatically.
20. Captions. The captions in this Agreement are for convenience only and are not a part of this Agreement and do not in any way limit or amplify the terms and provisions of this Agreement.
21. No Debts. Contractor will incur no debts or obligations on the credit of the City of Lewisville, Texas.
22. Prevailing Wage. A contractor or subcontractor who is awarded a contract by the City shall comply with all applicable sections of Chapter 2258 of the Texas Government Code regarding prevailing wage.
23. Nondiscrimination. Contractor will not discriminate or permit discrimination against any person or groups of persons on the grounds of disability, sex, race, color, national origin or in any manner prohibited by the laws of the United States or the State of Texas. City

hereby reserves the right to take whatever action as the United States Government may direct to enforce this covenant.

24. Compliance with Laws. The Contractor shall comply with all applicable federal, state, and local statutes, regulations, ordinances, and other laws.
25. Governing Law and Venue. This Agreement is governed by the laws of the State of Texas. Exclusive venue for any dispute arising out of this Agreement is in Denton County, Texas.
26. Arbitration. In the event of a dispute which may arise under this Agreement, the City does not agree to arbitration.
27. Protection of Resident Workers. The City of Lewisville 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 Consultant shall establish appropriate procedures and controls so no services under the Contract Documents will be performed by any worker who is not legally eligible to perform such services or employment. The City reserves the right to audit consultant's employment records to verify the existence of a completed Employment Eligibility Verification Form (I-9) for every worker performing services under the Contract Documents. The audit will be at the City's expense.
28. Immigration Reform and Control Act (8 U.S.C. §1324a). The City of Lewisville supports the Immigration Reform and Control Act (IRCA) which is a comprehensive scheme prohibiting the employment of unauthorized aliens in the United States. The Contractor shall submit a declaration signed under penalty of perjury of the laws of the State of Texas stating that it has not been found in violation of IRCA by the United States Attorney General or Secretary of Homeland Security in the preceding five (5) years. The Contractor shall ensure that its Subcontractors submit a declaration signed under penalty of perjury of the laws of the State of Texas stating that they have not been found in violation of IRCA by the United States Attorney General or Secretary of Homeland Security in the preceding five (5) years. The Contractor and its Subcontractors shall at all times during the term of the contract with the City comply with the requirements of IRCA and shall notify the City within fifteen (15) working days of receiving notice of a violation of IRCA. The City may terminate a contract with the Contractor if the City determines that (a) the Contractor or its Subcontractors have been untruthful regarding IRCA violations in the preceding five (5) years; (b) if the Contractor fails to ensure that its Subcontractors submit the aforementioned declaration; or (c) the Contractor or its Subcontractors fail to timely notify the City of an IRCA violation.
29. ADA Compliance. All goods and services provided to the City must be compliant with the Americans with Disabilities Act ("ADA") and all regulations promulgated pursuant to the ADA. Consultant will be required to certify compliance, if applicable.

30. Disclosure. Pursuant to Chapter 176 of the Texas Local Government Code, a person or agent of a person who contracts or seeks to contract with the City of Lewisville must complete a conflict of interest questionnaire if the person or agent has an affiliation or business relationship that might cause a conflict of interest with the City. The conflict of interest questionnaire, which is available online at ethics.state.tx.us, must be filed with the City Secretary of the City of Lewisville no later than the seventh business day after the person or agent begins contract discussions or negotiations with the City of Lewisville or submits to the City of Lewisville an application, response to a request for proposal or bid, correspondence, or another writing related to a potential agreement with the City of Lewisville. An updated conflict of interest questionnaire must be filed in accordance with Chapter 176 of the Local Government Code.

Said person should consult with legal counsel if they have questions regarding its compliance with the requirements of Chapter 176. It is the responsibility of each person or agent who is contracting or seeking to contract with the City of Lewisville to comply with the filing requirements of Chapter 176.

31. Texas Government Code Chapter 2270. Pursuant to Texas Government Code Chapter 2270, Contractor affirms that execution of this Agreement serves as written verification that Contractor: (1) does not boycott Israel, as defined by Texas Government Code Section 808.001; and (2) will not boycott Israel during the term of the Agreement.

32. Texas Government Code Chapter 2252. Pursuant to Texas Government Code Chapter 2252, Subchapter F, Contractor affirms, by entering into this Agreement, that it is not identified on a list created by the Texas Comptroller of Public Accounts as a company known to have contracts with or provide supplies or services to Iran, Sudan, or a foreign terrorist organization.

33. Closure. By signature below, the parties to this Agreement hereby bind themselves to the terms stated herein, including all attachments referred to herein.

(SIGNATURES ON FOLLOWING PAGE)

In Witness Whereof, the parties have signed this Agreement on the dates written below.

City of Lewisville, Texas

By:

Donna Barron
City Manager

Date:

3-27-19

Baker-Clearview Operating, Inc.

By:

George W. Faris, III
Principal

Date:

3-19-2019

APPROVED AS TO FORM:

Lizbeth Plaster, City Attorney

EXHIBIT A



BAKER-CLEARVIEW COMPANY HISTORY & EXPERIENCE (RFP ITEM 1 & 2)

Baker-Clearview Operating, LLC was formed approximately 13 years ago by two long established sign companies, (Baker Sign Co. & Faris Outdoor Advertising, Inc.) to meet the growing demand by cities to implement Kiosk Directional Sign Programs. Baker-Clearview principals have a combined 65+ year's experience in the sign industry. We have been in continuous operation for over 30 years in the sign industry. We currently have 12 full time employees at our shop located at 5213 Sun Valley Dr. in Fort Worth. Additional administrative offices are located at 6301 Southwest Blvd., Ste. 102 also in Fort Worth.

We pride ourselves on quality craftsmanship and client satisfaction. All fabrication and installation is performed in house and all service is self performed. These "in house" resources allow us superior control and maintenance abilities compared to companies that outsource their services. We currently have kiosk projects in the cities of Burleson, Lewisville, Cedar Hill, Fort Worth, Saginaw, Joshua, Forney, Midlothian, Lake Worth, Aledo, Granbury, Weatherford, White Settlement, and Rowlett.

Authorized Representatives:

Eddie Baker, Principal/Program Manager: Has owned and continuously operated Baker Sign Company in Fort Worth, Texas for over 35 years. He is responsible for and familiar with all facets of the commercial sign industry including fabrication, installation and company administration. Mr. Baker has been involved with kiosk builder programs in the Dallas/Fort Worth Metroplex and installed the first program in Tarrant County.
Eddiebaker54@yahoo.com 817-737-4472 or shop 817-572-7346

George W. Faris III, Principal/Program Manager: Has owned and continuously operated Faris Outdoor Advertising, Inc. for 34 years. He is familiar with sign construction, management and installation with a heavy emphasis on client management.
gfaris@clearviewkiosk.com 817-737-4472 or shop 817-572-7346.

Proposal Item 3. Baker – Clearview Municipal Kiosk Programs In Place

Kiosk Program / City of Fort Worth – Susan Alanis (original contact) (817) 392 7353

The program consists of installation and management of a builder kiosk sign program to provide directional kiosks for the homebuilding community. The project is in the installation phase with approximately 200 kiosks to be completed by the end of July 2008. The initial contract term is 5 years with two 5 year options.

Kiosk Program / City of Saginaw –Mark White (817) -230-0500

The program consists of installation and management of a builder kiosk sign program to provide directional kiosks for the homebuilding community. The initial 25 kiosks were completed and in service on June 1, 2009. The initial contract term is 5 years with two 5 year options.

Kiosk Program / City of Cedar Hill – Stacey Graves (972) 291-5100- ext 1094

The program consists of installation and management of a builder kiosk sign program to provide directional kiosks for the homebuilding community. The project is in the installation phase with approximately 26 kiosks to be completed by the end of January 2008. The initial contract term is 5 years with two 5 year options.

Kiosk Program / City of Lake Worth – Stacey Almond (817) 237-1211

The program consists of installation and management of a kiosk sign program to provide directional kiosks for the local business community. The program currently has 21 locations installed. The initial contract term is 5 years with two 5 year options.

Kiosk Program / City of Midlothian –Alberto Mares (972) 775-7169

The program consists of installation and management of a builder kiosk sign program to provide directional kiosks for the homebuilding community. We took the program over from another vendor in 2009 and currently operate approximately 50 structures.

Kiosk Program / City of Granbury – Wayne McKethan (817) 573-1114

The program consists of installation and management of a kiosk sign program to provide directional kiosks for the local business community. The program currently has 23 locations installed. The initial contract term is 5 years with two 5 year options.

Kiosk Program / City of Burleson – Heather Shankle (817) 447-5400

The program consists of installation and management of a builder kiosk sign program to provide directional kiosks for the homebuilding community. The initial 50 kiosks were completed and in service on July 1, 2007. The initial contract term is 5 years with two 5 year options.

Kiosk Program / City of Lewisville – Todd White (972) 219-3461

The program consists of installation and management of a builder kiosk sign program to provide directional kiosks for the homebuilding community. The initial 19 kiosks were completed and in service on May 1, 2007. The initial contract term is 5 years.

Kiosk Program / City of Joshua – Mary Beth Thomas (817) 558-7447

The program consists of installation and management of a builder kiosk sign program to provide directional kiosks for the homebuilding community. The initial 10 kiosks were completed and in service on March 1, 2009. The initial contract term is 5 years with two 5 year options.

Kiosk Program / City of Forney –Rashad Jackson (972) 564-7386

The program consists of installation and management of a builder kiosk sign program to provide directional kiosks for the homebuilding community. The initial 14 kiosks were completed and in service on June 1, 2009. The initial contract term is 5 years with two 5 year options.

Kiosk Program / City of Aledo – Ken Pfeifer (817) 441-7016

The program consists of installation and management of a kiosk sign program to provide directional kiosks for the local business community. The program currently has 1 location installed. The initial contract term is 5 years with two 5 year options.

Kiosk Program / City of Weatherford – Terry Hughes (817-598-4244)

The program consists of installation and management of a kiosk sign program to provide directional kiosks for the local business community. The program currently has 43 locations installed. The initial contract term is 5 years with two 5 year options.

Kiosk Program / City of White Settlement – Doug Stephens (817-246-4971)

The program consists of installation and management of a kiosk sign program to provide directional kiosks for the local business community. The program currently has 18 locations installed. The initial contract term is 5 years with two 5 year options.

Kiosk Program / City of Rowlett – Susan Nix (972-463-3927)

The program consists of installation and management of a kiosk sign program to provide approximately 20 directional signs for homebuilders and developers. The initial term is 5 years with two five year renewal options.

PROPOSAL ITEM 4.

The proposed rate for a 10" x 42.5" panel is \$55.00 per month.

The proposed rate for a 21" x 42.5" panel is \$80.00 per month.

There will be no production fee charged to tenants.

PROPOSAL ITEM 5.

The length of time anticipated to install kiosk signs at locations designated by the city is 6 – 8 weeks.

PROPOSAL ITEM 6.

Kiosk Program with the City of Rowlett has been implemented in the last 3 years. See RFP Proposal item 3 for references. Contact for city of Rowlett is Susan Nix, Community Development Coordinator. Address is 3901 Main Street, Rowlett TX 75088. Phone 972-463-3927. All other kiosk programs have been ongoing for at least 5 years.

Additional commercial sign clients:

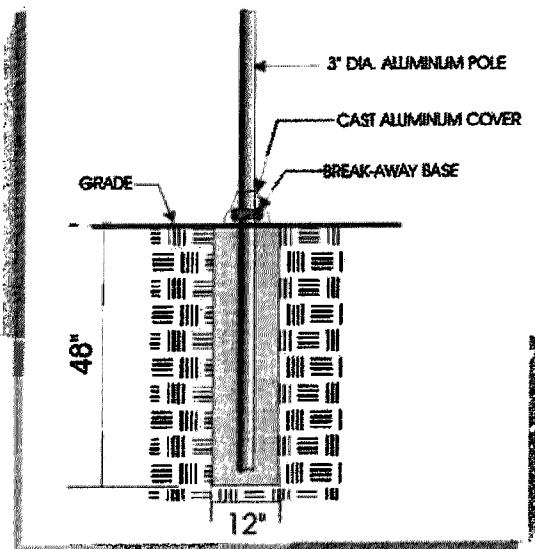
Greg Frantz Weber & Assoc. 972-739-8405

Bobby Nowell Springcreek BBQ 817-467-0505

Cary Albert Schlotzsky's 817-882-1414



SCALE: 3/8" = 1'-0"



POLE: 3" DIA. ALUMINUM POLE PAINTED BLACK AUTOMOTIVE ACRYLIC ENAMEL

MAIN ID: .040 ALUMINUM FACE WITH WHITE 3M REFLECTIVE VINYL OVERLAY. 3M VINYL GRAPHICS, 1" ALUMINUM SQUARE TUBE FRAMING.

TENANTS: .040 BAKED ON ENAMEL PURPLE ALUMINUM BACKGROUND WITH 1" ALUMINUM SQUARE TUBE FRAMING. WHITE 3M REFLECTIVE VINYL LETTERING.

BASE: BREAK-AWAY BASE SET AT GRADE LEVEL WITH ALUMINUM COVERS.

DIRECT BURIAL



**BAKER SIGN
COMPANY**

bakersigns@shcglobal.net

The design is sole property of Baker Sign Company. Any unauthorized use or duplication of this drawing is prohibited.

5213 SUN VALLEY DR. FT. WORTH, TX. 76119

Phone # 817-672-7346 FAX# 817-483-0839

Created for the approval of:

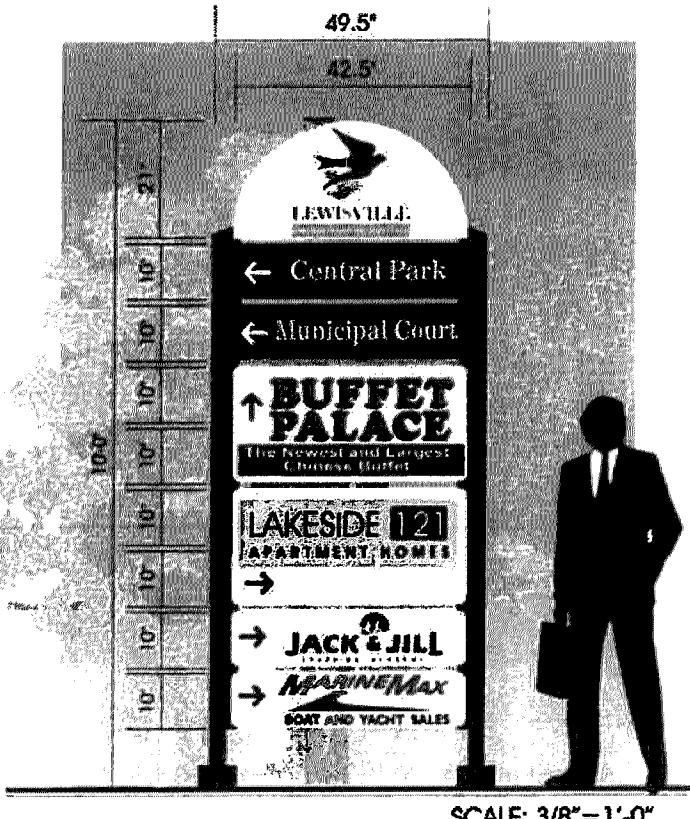
Scale: 3/8" = 1'-0" Location:

Approved by:

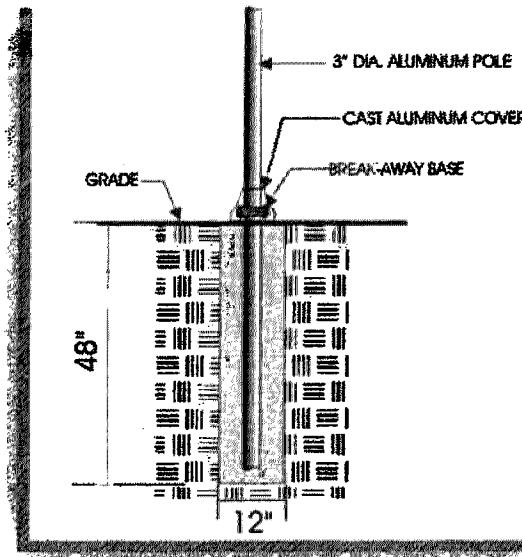
Soleman: EDDIE BAKER

Date: NOV. 02, 2010

Drawing#:



SCALE: 3/8"=1'-0"



POLE: 3" DIA. ALUMINUM POLE PAINTED BLACK AUTOMOTIVE ACRYLIC ENAMEL

MAIN ID: .040 ALUMINUM FACE WITH WHITE 3M REFLECTIVE VINYL OVERLAY. 3M VINYL GRAPHICS, 1" ALUMINUM SQUARE TUBE FRAMING.

TENANTS: .040 BAKED ON ENAMEL ALUMINUM BACKGROUND WITH 1" ALUMINUM SQUARE TUBE FRAMING. WHITE 3M REFLECTIVE VINYL LETTERING.

BASE: BREAK-AWAY BASE SET AT GRADE LEVEL WITH ALUMINUM COVERS.

DIRECT BURIAL



**BAKER SIGN
COMPANY**

bakersign@sbcglobal.net

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5213 SUN VALLEY DR. FT. WORTH, TX. 76119

Phone# 817-572-7346 FAX# 817-483-0839

Created for the approval of:

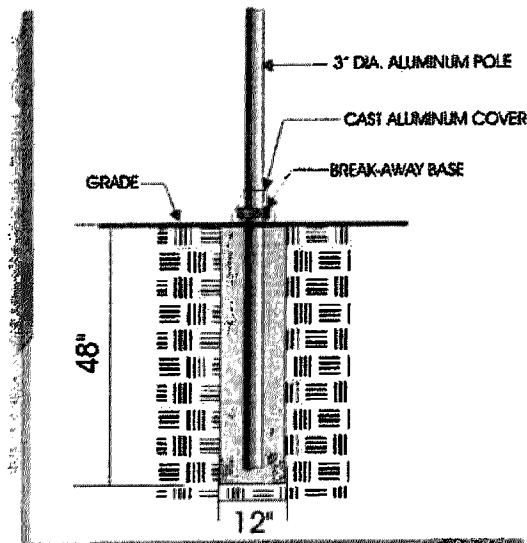
Scale: 3/8"=1'-0" Location:

Approved by:

Salesman: EDDIE BAKER Date: NOV. 02, 2018 Drawing#:



SCALE: 3/8" = 1'-0"



POLE: 3" DIA. ALUMINUM POLE PAINTED BLACK AUTOMOTIVE ACRYLIC ENAMEL

MAIN ID: .040 ALUMINUM FACE WITH WHITE 3M REFLECTIVE VINYL OVERLAY. 3M VINYL GRAPHICS, 1" ALUMINUM SQUARE TUBE FRAMING.

TENANTS: .040 BAKED ON ENAMEL BURGUNDY ALUMINUM BACKGROUND WITH 1" ALUMINUM SQUARE TUBE FRAMING. WHITE 3M REFLECTIVE VINYL LETTERING.

BASE: BREAK-AWAY BASE SET AT GRADE LEVEL WITH ALUMINUM COVERS.

DIRECT BURIAL



**BAKER SIGN
COMPANY**

bakersigns@abctglobal.net

The design is sole property of Baker Sign Company. Any unauthorized use or duplication of this drawing is prohibited.

5213 SUN VALLEY DR. FT. WORTH, TX. 76119

Created for the approval of:

Scale: 3/8" = 1'-0" Location:

Phone # 817-572-7348 FAX # 817-483-0839

Approved by:

Salesman: EDDIE BAKER

Date: NOV. 02, 2018

Drawing #:

PROPOSAL ITEM 8.

Proposer does not intend to request the use of or rent advertising space to advertise its own real estate holdings within the City.

PROPOSAL ITEM 9.

Proposed commission to be paid to the City is:

10" x 42.5" panels = \$11.00 per month

21" x 42.5" panels = \$16.00 per month

PROPOSAL ITEM 10.

- 1. The biggest element of stimulating usage of the program is to re-deploy kiosk structures to locations that have higher visibility making them more marketable and desirable to local businesses.**
- 2. Employ social media to create a higher digital visibility among the local marketplace in Lewisville.**
- 3. Re-engage with the Chamber of Commerce to push the program thru their local business community connections.**
- 4. Incorporate larger panels (21" x 42.5") on the kiosk structures.**

PROPOSAL ITEM 11.

Our proposal contemplates limiting advertisers to local businesses or businesses within the ETJ so we would not be negatively affected.

PROPOSAL ITEM 12.

The two most important elements to revitalizing the program would be to re-deploy kiosks to new locations and to allow the implementation of using larger size panels, (21" tall x 42.5" wide) in addition to the 10" tall x 42.5" wide panels. Visibility is better on the larger panels.

Having been involved in the current program, we feel that we have an excellent idea about effective placement of the locations moving forward which is vital to making the program effective.

EXHIBIT B

PURCHASE ORDER TERMS & CONDITIONS

Seller and Buyer agree to comply with the following terms and conditions. These Terms and Conditions along with the purchase order shall constitute a contract between the Seller and Buyer upon the Seller issuing an invoice and/or providing any of the goods and services described in the purchase order. In the event of a conflict between these Terms and Conditions and a separate written agreement between the Seller and Buyer, the terms of the separate written agreement shall prevail.

1. **SELLER TO PACKAGE GOODS:** Seller will package goods in accordance with good commercial practice. Each shipping container shall be clearly and permanently packed as follows: (a) Seller's name and address; (b) Consignee's name, address and purchase order or purchase order release number and the supply agreement number if applicable; (c) Container number and total number of containers, e.g. box 1 of 4 boxes; and (d) the number of the container bearing the packing slip. Seller shall bear cost of packaging unless otherwise provided. Goods shall be suitably packed to secure lowest transportation costs and to conform with requirements of common carriers and any applicable specifications. Buyer's count or weight shall be final and conclusive on shipments not accompanied by packing lists.
2. **SHIPMENT UNDER RESERVATION PROHIBITED:** Seller is not authorized to ship the goods under reservation and no tender of a bill of lading will operate as a tender of goods.
3. **TITLE AND RISK OF LOSS:** The title and risk of loss of the goods shall not pass to Buyer until Buyer actually receives and takes possession of the goods at the point or points of delivery.
4. **DELIVERY TERMS AND TRANSPORTATION CHARGES:** F.O.B. Inside Delivery, Municipal Facility, Lewisville, Texas, and shall include all delivery and packaging costs. The Buyer assumes no liability for goods delivered in damaged or unacceptable condition. The Seller shall handle all claims with carriers, and in case of damaged goods, shall ship replacement goods immediately upon notification by Seller of damage.
5. **NO REPLACEMENT OF DEFECTIVE TENDER:** Every tender or delivery of goods must fully comply with all provisions of this contract as to time of delivery, quality and the like. If a tender is made which does not fully conform, this shall constitute a breach and Seller shall not have the right to substitute a conforming tender provided, where the time for performance has not yet expired, the Seller may notify Buyer of his intention to cure and may then make a conforming tender within the contract time but not afterward.
6. **PLACE OF DELIVERY:** The place of delivery shall be that set forth on the purchase order. Any change thereto shall be effected by modification as provided for in Clause 20, "Modifications", hereof. The terms of this contract are "no arrival, no sale".
7. **INVOICES AND PAYMENTS:** (a) Seller shall submit separate invoices on each purchase order after each delivery. Invoices shall indicate the purchase order number, shall be itemized and transportation charges, if any, shall be listed separately. A copy of the bill of lading, and the freight weigh bill when applicable, should be attached to the invoice. Mail to: City of Lewisville Accounts Payable, PO Box 299002 Lewisville, Texas 75029-9002. Payments shall be made thirty days after the goods are delivered to the Buyer, or a correct invoice is received, whichever is later. Suppliers should keep the Accounts Payable Office advised of any changes in remittance addresses. (b) Buyer's obligation is payable only and solely from funds available for the purpose of the purchase. Lack of funds shall render this contract null and void to the extent funds are not available and any delivered but unpaid for goods will be returned to Seller by Buyer. (c) Do not include Federal Excise, State or City Sales Tax. Buyer shall furnish tax exemption certificate, if required.
8. **GRATUITIES:** The Buyer may, by written notice to the Seller, cancel this contract without liability to Seller if it is determined by Buyer that gratuities, in the form of entertainment, gifts, or otherwise, were offered or given by the Seller, or any agent, or representative of the Seller, to any officer or employee of the City of Lewisville with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending or the making or any determinations with respect to the performing of such a contract. In the event this contract is cancelled by Buyer pursuant to this provision, Buyer shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by Seller in providing such gratuities.
9. **SPECIAL TOOLS AND TEST EQUIPMENT:** If the price stated on the face hereof includes the cost of any special tooling or special test equipment fabricated or required by Seller for the purpose of filling this order, such special tooling equipment and any process sheets related thereto shall become the property of the Buyer and to the extent feasible shall be identified by the Seller as such.
10. **WARRANTY PRICE:** (a) The price to be paid by the Buyer shall be that contained in Seller's bid which Seller warrants to be no higher than Seller's current prices on orders by others for products of the kind and specification covered by this contract for similar quantities under similar or like conditions and methods of purchase. In the event Seller breaches this warranty, the prices of the items shall be reduced to the Seller's current prices on orders by others, or in the alternative, Buyer may cancel this contract without liability to Seller for breach or Seller's actual expense. (b) The Seller warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for commission, percentage, brokerage, or contingent fee excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Seller for the purpose of securing business. For breach of violation of this warranty, the Buyer shall have the right in addition to any other right or rights to cancel this contract without liability and to deduct from the contract price, or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.
11. **WARRANTY PRODUCTS:** Seller shall not limit or exclude any implied warranties and any attempt to do so shall render this contract voidable at the option of the Buyer. Seller warrants that the goods furnished will conform to the specifications, drawings and descriptions listed in the bid invitation and to the sample(s) furnished by Seller, if any. In the event of a conflict between the specifications, drawings and descriptions, the specifications shall govern.
12. **SAFETY WARRANTY:** Seller warrants that the product sold to Buyer shall conform to the standards promulgated by the U. S. Department of Labor under the Occupational Safety and Health Act of 1970. In the event the product does not conform to OSHA standards, Buyer may return the product for correction or replacement at the Seller's expense. In the event Seller fails to make the appropriate correction within a reasonable time, correction made by Buyer will be at Seller's expense.
13. **NO WARRANTY BY BUYER AGAINST INFRINGEMENTS:** As part of this contract for sale Seller agrees to ascertain whether goods manufactured in accordance with the specifications attached to this contract will give rise to the rightful claim of any third person by way of infringement or the like. Buyer makes no warranty that the production of goods according to the specification will not give rise to such a claim, and in no event shall Buyer be liable to Seller for indemnification in the event that Seller is sued on the grounds of infringement or the like. If seller is of the opinion that an infringement or the like will result, he will notify Buyer to this effect in writing within two weeks after the signing of this contract. If Buyer does not receive notice and is subsequently held liable for the infringement of the like, Seller will save Buyer harmless. If Seller in good faith ascertains that production of the goods in accordance with the specifications will result in infringement or the like, this contract shall be null and void except that Buyer will pay Seller the reasonable cost of his search as to infringements.
14. **RIGHT OF INSPECTION:** Buyer shall have the right to inspect the goods at delivery before accepting them.
15. **CANCELLATION:** Buyer shall have the right to cancel for default all or any part of the undelivered portion of this order if Seller breaches any of the terms hereof including warranties of Seller or if the Seller becomes insolvent or commits acts of bankruptcy. Such right of cancellation is in addition to and not in lieu of any other remedies which Buyer may have in law or equity.
16. **TERMINATION:** The performance of work under this order may be terminated in whole or in part by the Buyer in accordance with this provision. Termination of work hereunder shall be effected by the delivery to the Seller of a "Notice of Termination" specifying the extent to which performance of work under the order is terminated and the date upon which such termination becomes effective. Such right of termination is in addition to and not in lieu of rights of Buyer set forth in Clause 15, herein.
17. **FORCE MAJEURE:** If by reason of Force Majeure, either party hereto shall be rendered unable wholly or in part to carry out its obligations under this contract then such party shall give notice and full particulars of Force Majeure in writing to the other party within a reasonable time after occurrence of the event or cause relied upon, and the obligation of the party giving such notice, so far as it is affected by such Force Majeure, shall be suspended during the continuance of the inability then claimed, except as hereinafter provided, but for no longer period, and such party shall endeavor to remove or overcome such inability with all reasonable dispatch. The term Force Majeure as employed herein, shall mean acts of God, strikes, lockouts, or other industrial disturbances, act of public enemy, orders of any kind of government of the United States or the

State of Texas or any civil military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions, breakage or accidents to machinery, pipelines or canals, or other causes not reasonably within the control of the party claiming such inability.

18. **ASSIGNMENT DELEGATION:** No right or interest in this contract shall be assigned or delegation of any obligation made by Seller without the written permission of the Buyer. Any attempted assignment or delegation by Seller shall be wholly void and totally ineffective for all purposes unless made in conformity with this paragraph.

19. **WAIVER:** No claim or right arising out of a breach of this contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved.

20. **MODIFICATIONS:** This contract may be modified or rescinded only by a writing signed by both of the parties or their duly authorized agents. This shall include any change orders.

21. **INTERPRETATION PAROLE EVIDENCE:** This writing is intended by the parties as a final expression of their agreement and is intended also as a complete and exclusive statement of the terms of their agreement. No course of prior dealings between the parties and no usage of the trade shall be relevant to supplement or explain any term used in this contract. Acceptance or acquiescence in a course of performance rendered under this contract shall not be relevant to determine the meaning of this contract even though the accepting or acquiescing party has knowledge of the performance and opportunity for objection. Whenever a term defined by the Uniform Commercial Code is used in this contract, the definition contained in the Code is to control.

22. **APPLICABLE LAW:** This contract shall be governed by the Uniform Commercial Code. Wherever the term "Uniform Commercial Code" is used, it shall be construed as meaning the Uniform Commercial Code as adopted in the State of Texas as effective and in force on the date of this contract.

23. **ADVERTISING:** Seller shall not advertise or publish, without Buyer's prior consent, the fact that Buyer has entered into this contract, except to the extent necessary to comply with proper requests for information from an authorized representative of the federal, state or local government.

24. **RIGHT TO ASSURANCE:** Whenever one party to this contract in good faith has reason to question the other party's intent to perform he may demand that the other party give written assurance of his intent to perform. In the event that a demand is made and no assurance is given within five (5) days, the demanding party may treat this failure as an anticipatory repudiation of the contract.

25. **VENUE:** Both parties agree that venue for any litigation arising from this contract shall lie in Denton County, Texas.

26. **DISCLOSURE:** Pursuant to Chapter 176 of the Texas Local Government Code, a person or agent of a person who contracts or seeks to contract with the City of Lewisville must complete a conflict of interest questionnaire if the person or agent has an affiliation or business relationship that might cause a conflict of interest with the City. The conflict of interest questionnaire, which is available online at elitics.state.tx.us, must be filed with the City Secretary of the City of Lewisville no later than the seventh business day after the person or agent begins contract discussions or negotiations with the City of Lewisville or submits to the City of Lewisville an application, response to a request for proposal or bid, correspondence, or another writing related to a potential agreement with the City of Lewisville. An updated conflict of interest questionnaire must be filed in accordance with Chapter 176 of the Local Government Code

Seller should consult with legal counsel if you have questions regarding its compliance with the requirements of Chapter 176. It is the responsibility of each person or agent who is contracting or seeking to contract with the City of Lewisville to comply with the filing requirements of Chapter 176.

27. **INDEPENDENT CONTRACTOR:** Seller shall be considered an independent contractor and not an agent, servant, employee, or representative of Buyer in the performance of the work. No term or provision herein or act of the Seller shall be construed as changing that status.

28. **TERMINATION FOR DEFAULT:** Buyer reserves the right to enforce the performance of any Purchase Order in any manner prescribed by law or deemed to be in the best interest of Buyer in the event of breach or default. The Buyer reserves the right to terminate any purchase order and/or agreement with the Seller in the event the Seller fails to: (a) meet delivery schedules, or (b) otherwise perform in accordance with these terms and conditions.

29. **PROTESTS:** All protests regarding the solicitation process must be submitted in written form to the Purchasing Manager within five (5) working days following the opening of bids/proposals. This includes all protests relating to legal advertisements, deadlines, bid/proposal openings, and all other related procedures under the Local Government Code

Post-award protests must be submitted in written form to the City Manager within five (5) working days after award. The protest must include, at a minimum, the name of protester, bid/proposal number or description of goods or services, and a statement of grounds for protest.

30. **INDEMNIFICATION: SELLER AGREES TO DEFEND, INDEMNIFY AND HOLD BUYER, ITS OFFICERS, AGENTS AND EMPLOYEES, HARMLESS AGAINST ANY AND ALL CLAIMS, LAWSUITS, JUDGMENTS, COSTS AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE OR OTHER HARM FOR WHICH RECOVERY OF DAMAGES IS SOUGHT, SUFFERED BY ANY PERSON OR PERSONS, THAT MAY ARISE OUT OF OR BE OCCASIONED BY SELLER'S BREACH OF ANY OF THESE TERMS AND CONDITIONS OR BY ANY NEGLIGENT OR STRICTLY LIABLE ACT OR OMISSION, INTENTIONAL TORT, INTELLECTUAL PROPERTY INFRINGEMENT, OR FAILURE TO PAY A SUBCONTRACTOR OR SUPPLIER COMMITTED BY SELLER, ITS OFFICERS, AGENTS, EMPLOYEES OR SUBCONTRACTORS, IN THE PERFORMANCE OF THIS CONTRACT; EXCEPT THAT THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE SOLE NEGLIGENCE OR FAULT OF BUYER, ITS OFFICERS, AGENTS, EMPLOYEES OR SEPARATE CONTRACTORS, AND IN THE EVENT OF JOINT AND CONCURRING NEGLIGENCE OR FAULT OF THE SELLER AND BUYER, RESPONSIBILITY AND INDEMNITY, IF ANY, SHALL BE APPORTIONED IN ACCORDANCE WITH THE LAW OF THE STATE OF TEXAS, WITHOUT WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO BUYER UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW. THE PROVISIONS OF THIS PARAGRAPH ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY.**

31. **SEVERABILITY:** In case any one or more of the provisions contained in these Terms and Conditions 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 thereof, and these Terms and Conditions shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

32. **IMMIGRATION REFORM AND CONTROL ACT (8 U.S.C. 1324a):** The Buyer supports the Immigration Reform and Control Act (IRCA), which is a comprehensive scheme prohibiting the employment of unauthorized aliens in the United States. The Seller and its subcontractors shall at all times during the term of the contract with the Buyer comply with the requirements of IRCA and shall notify the Buyer within fifteen (15) working days of receiving notice of a violation of IRCA. The Seller also warrants that it has not had an IRCA violation within the last five (5) years. The Buyer may terminate a contract with the Seller if the Buyer determines that (a) the Seller or its subcontractors have been untruthful regarding IRCA violations in the preceding five (5) years or (b) the Seller or its subcontractors fail to timely notify the Buyer of an IRCA violation.

33. **ADA COMPLIANCE:** All goods and services provided to the Buyer must be compliant with the Americans with Disabilities Act and any amendments thereto (the "ADA") and all regulations promulgated pursuant to the ADA. Seller will be required to certify compliance, if required under the law or otherwise required by the Buyer.

34. **PROTECTION OF RESIDENT WORKERS:** The Buyer 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 Seller shall establish appropriate procedures and controls so no services under the contract will be performed by any worker who is not legally eligible to perform such services or employment. The Buyer reserves the right to audit Seller's employment records to verify the existence of a completed Employment Eligibility Verification Form (I-9) for every worker performing services under the contract. The audit will be at the Buyer's expense.

35. **NO BOYCOTT OF ISRAEL.** Pursuant to Texas Government Code Chapter 2270, the Seller agrees that acceptance of these Terms & Conditions serves as written verification that Contractor: (1) does not boycott Israel, as defined by Texas Government Code Section 808.001; and (2) will not boycott Israel during the term of the contract.

36. COMPANIES ENGAGED IN BUSINESS WITH IRAN, SUDAN, OR FOREIGN TERRORIST ORGANIZATION. Pursuant to Texas Government Code Chapter 2252, Subchapter F, Seller affirms that is it not identified on a list created by the Texas Comptroller of Public Accounts as a company known to have contracts with or provide supplies or services to a foreign terrorist organization.

EXHIBIT C

INSURANCE REQUIREMENTS **GENERAL CONTRACTS FOR SERVICES**

Service work, supplies requiring installation, Janitorial Services, Welding, Surveyors, Plumbing Contractors, Maintenance Agreements, Concessionaires, Tire Repairs, Tow Service, Painting, Electrical, Movers, Major street repairs and Waterline projects, etc.

Vendor shall procure and maintain for the duration of the contract, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the vendor, his agents, representatives, employees or subcontractors. The cost of such insurance shall be included in the vendor's bid.

A. MINIMUM SCOPE OF INSURANCE

Coverage shall be at least as broad as:

1. Insurance Services Office Commercial General Liability coverage "occurrence" form CG 00 01 (10 01). **"Claims Made" form is unacceptable.**
2. Workers' Compensation insurance as required by the Labor Code of the State of Texas, including Employers' Liability Insurance.
3. Automobile Liability – as required by the State of Texas, covering all owned, hired, or non-owned vehicles. Automobile Liability is only required if vehicle(s) will be used under this contract. Coverage not required for delivery services.

B. MINIMUM LIMITS OF INSURANCE

Vendor shall maintain limits throughout contract not less than:

1. Commercial General Liability: \$500,000 per occurrence/\$1,000,000 aggregate for bodily injury, personal injury and property damage. Policy will include coverage for:
 - a. Premises – Operations
 - b. Broad Form Contractual Liability
 - c. Products and Completed Operations
 - d. Personal Injury
 - e. Broad Form Property Damage
- f. If applicable, Explosion Collapse and Underground (XCU) Coverage, Fire Damage, and Medical Expense.

NOTE: The aggregate loss limit applies to each project.

2. Workers' Compensation and Employer's Liability: Workers' Compensation Statutory limits as required by the Labor Code of the State of Texas and Employer's Liability minimum limits of \$500,000 per injury, \$500,000 per occurrence, and \$500,000 per occupational disease.
3. Automobile Liability - \$500,000 Combined Single Limit. Limits can only be reduced if approved by the HR Director or designee.

C. DEDUCTIBLES AND SELF-INSURED RETENTIONS

Any deductible or self-insured retentions must be declared to and approved by the City.

D. OTHER INSURANCE PROVISIONS

The policies are to contain, or be endorsed to contain the following provisions:

1. General Liability and Automobile Liability Coverages
 - a. The City, its officers, officials, employees, Boards and Commissions and volunteers are to be added as "Additional Insured" as respects liability arising out of activities performed by or on behalf of the vendor, products and completed operations of the vendor, premises owned, occupied or used by the Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, officials, employees or volunteers. It is understood that the business auto policy under "Who is an Insured" automatically provides liability coverage in favor of the City. The coverage shall include defense of claims against the City as additional insured.
 - b. The vendor's insurance coverage shall be primary and non-contributory insurance as respects the City, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees or volunteers shall be excess of the vendor's insurance and shall not contribute with it.
 - c. Any failure to comply with reporting provisions of the policy shall not affect coverage provided to the City, its officers, officials, and employees, Boards and Commissions or volunteers.
 - d. The vendor's insurance shall apply separately to each insured against whose claim is made or suit is brought, except to the limits of the insured's liability.
2. Waiver of Subrogation – All Coverages
Each insurance policy required by this exhibit shall waive all rights of subrogation against the City, its officers, officials, employees, and volunteers for losses arising from work performed by the vendor for the City.
3. Notice of Cancellation - All Coverages
Each insurance policy required by this exhibit shall be endorsed to state that coverage shall not be suspended, voided, canceled or non-renewed by either party, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given the City, or ten (10) days prior written notice for non-payment of premium.

E. ACCEPTABILITY OF INSURERS

The City prefers that insurance be placed with insurers with an A.M. Best's rating of no less than **A-:VI, or, A or better** by Standard and Poors.

F. VERIFICATION OF COVERAGE

Contractor shall furnish the City with certificates of insurance affecting coverage required. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. Certificates of Insurance must be provided on forms approved by the Texas Department of Insurance. City will not accept Memorandums of Insurance or Binders as proof of insurance. The City reserves the right to require complete, certified copies of all required insurance policies at any time.

G. HOLD HARMLESS AND INDEMNIFICATION

THE CONSULTANT/CONTRACTOR AGREES TO DEFEND, INDEMNIFY AND HOLD THE CITY, ITS OFFICERS, AGENTS AND EMPLOYEES, HARMLESS AGAINST ANY AND ALL CLAIMS, LAWSUITS, JUDGMENTS, COSTS AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE OR OTHER HARM FOR WHICH RECOVERY OF DAMAGES IS SOUGHT, SUFFERED BY ANY PERSON OR PERSONS, THAT MAY ARISE OUT OF OR BE OCCASIONED BY CONSULTANT'S/CONTRACTOR'S BREACH OF ANY OF THESE TERMS AND CONDITIONS OR BY ANY NEGLIGENT OR STRICTLY LIABLE ACT OR OMISSION OR INTENTIONAL TORT, INTELLECTUAL PROPERTY INFRINGEMENT, OR FAILURE TO PAY A SUBCONTRACTOR OR SUPPLIER COMMITTED BY, CONSULTANT/CONTRACTOR, ITS OFFICERS, AGENTS, EMPLOYEES OR SUBCONTRACTORS, IN THE PERFORMANCE OF THIS AGREEMENT; EXCEPT THAT THE INDEMNITY PROVIDED FOR IN THE PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE SOLE NEGLIGENCE OR FAULT OF THE CITY, ITS OFFICERS, AGENTS, EMPLOYEES OR SEPARATE CONTRACTORS, AND IN THE EVENT OF JOINT AND CONCURRING NEGLIGENCE OR FAULT OF THE CONSULTANT/CONTRACTOR AND THE CITY, RESPONSIBILITY AND INDEMNITY, IF ANY, SHALL BE APPORTIONED IN ACCORDANCE WITH THE LAW OF THE STATE OF TEXAS, WITHOUT WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW AND THE CITY'S REASONABLE ATTORNEY'S FEES SHALL BE REIMBURSED IN PROPORTION TO THE CONSULTANT'S LIABILITY. THE PROVISIONS OF THIS PARAGRAPH ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY.