

ENGINEERING AND CONSTRUCTION AGREEMENT

This agreement ("the Agreement") is dated this ____ day of _____, 20__ by and between Denton Independent School District (hereinafter referred to as "Purchaser" or "DISD"), an independent school district organized and existing pursuant to the laws of the State of Texas whose principal office is located at 1307 North Locust Street, Denton, Texas 76201, and Henkels & McCoy, Inc. ("H&M"), a Pennsylvania corporation, with offices located at 985 Jolly Road, Blue Bell, Pennsylvania 19422;

WHEREAS, Purchaser wished H&M to perform certain services for Purchaser as agreed upon by the parties during the term of this Agreement; and

WHEREAS, H&M is able and willing to perform such services;

NOW THEREFORE, the parties hereto, in consideration of the mutual promises and covenants herein contained, and intending to be legally bound hereby; mutually agree as follows:

I. REQUESTS FOR WORK

1. Subject to the provisions set forth herein, H&M agrees to furnish services to Purchaser (together with all tools and equipment incidental thereto), when and as requested by Purchaser. Purchaser may provide H&M with a written request for work or a series of such request, issued from time to time during the tem of this Agreement. Such requests, which may be transmitted by fax or by mail in accordance with Article XIII hereof, shall contain a detailed description of work, schedule requirement including any required completion date(s), and the required location for performance of work (the "Work"). Within fourteen (14) calendar days following the receipt of such a request, H&M shall fax a written response (the "Response") to Purchaser's request stating whether H&M desires to perform the requested Work, and, if so, the Response shall set forth: (i) a price(s) for the Work in accordance with Article II below; and (ii) the projected starting and completion dates based upon Purchaser's stated requirements. If purchaser accepts the terms contained in the Response, Purchaser shall promptly fax a copy of the Response to H&M indicating acceptance.
2. Any modification of the work, including the time for completion or the means, methods, or techniques to be used, or the presence of concealed conditions or hazardous substances, may result in an adjustment by H&M in the price of the Work. H&M shall proceed with the modification, provided the Purchaser has faxed H&M Purchaser's agreement to the price.

II. PRICING AND PAYMENT TERMS

1. Prices charged by H&M shall be on a time and material basis (at agreed man-hour or man-day rates), unit prices (included in Attachment A of this Agreement), cost-plus rates, and/or lump sum prices as may be agreed upon. Where applicable, charges for premium time, holidays, travel, per-diem allowances for food and lodging and out-of-pocket costs will be billed separately.
2. Purchaser shall verify completion and quality of work and shall make payment to H&M within sixty (60) days from the date of invoice. The Parties agree DISD has thirty (30) days after the invoice date for notification by DISD to Contractor that the work is not in compliance with the contract. If no objections are made within thirty (30) days after the invoice date, payment is due thirty (30) days thereafter. Invoiced unpaid within sixty (60) days will bear interest at the rate of one and one-half percent (1½%) per month or any fraction thereof, provided that the interest rate shall not exceed the maximum rate allowed by law.
3. In the event Purchaser fails to timely remit payment pursuant to paragraph 2 above because of an alleged dispute charge on any invoice, Purchaser must give written notice to H&M setting forth in specific detail the reason for the nonpayment within the time specified in paragraph 2 above and if notice is not given, the charge shall be deemed accepted and the invoice amount correct and this shall be a waiver of any and all rights of Purchaser in this regard.
4. In the event Purchaser fails to pay any charges when due, including any additional charges, H&M shall have the right to suspend its performance upon providing written notice thereof to Purchaser and/or to terminate this Agreement if Purchaser has not paid to H&M all amounts due H&M within fifteen (15) days of H&M's written notice thereof. In event of termination or suspension of work by H&M because of Purchaser's non-payment of disputed charges, H&M shall not be liable for any damages, direct, indirect, or consequential, as a result of such suspension or termination.

III. CONSTRUCTION OBLIGATIONS

1. It is mandatory for the Contractor to perform coordination with all applicable Governmental Authorities, (Federal, State, Local and City powers that be), to ensure that public safety and security have not been jeopardized by action of this contract. During construction of the Improvements, Contractor shall have full control of and responsibility for the Site. Prior coordination with proper authorities is a must. Examples of proper authorities are but not limited to: TxDOT, City of Denton, City of Corinth and Denton County.
 - 1.1 Except as otherwise provided in this Agreement, the Plans and Specifications or the General Conditions, Contractor shall
 - (a) determine the method, manner and sequence of construction,
 - (b) select all laborers and subcontractors,
 - (c)

select all materials in accordance with original specifications of the General Conditions and provide all equipment and tools, (d) coordinate all aspects of the work, and (e) take all necessary precautions for the safety of persons and property during the progress of construction.

2. Except as otherwise provided in this Agreement, Contractor shall pay all costs of construction of the Improvements, including, but not limited to, costs of labor, materials, equipment, tools, supplies, subcontractors, utilities, construction permits (other than ROW, TxDOT or Railroad), building permits, connection fees, tap-in charges, inspection fees, taxes (other than real estate taxes), transportation, and all other facilities and services necessary for the construction.
3. For all underground construction, a videotape of the conditions existing prior to construction and a videotape of conditions after construction must be provided to Owner with site conditions returned to same or better conditions as existed prior to construction. During construction of the Improvements, Contractor shall keep the Site and Improvements free from accumulation of waste materials or rubbish caused by its operations. At the completion of the Improvements, Contractor shall remove from the Site and Improvements all of its waste materials and rubbish as well as its tools, construction equipment, machinery and leave the Improvements "broom clean" or its equivalent, except as otherwise specified in the Plans and Specifications.
4. Upon completion of construction, Contractor will provide to Owner two (2) complete sets of "as-built" drawings of the Improvements. The "as-built" drawings are acceptable as two (2) legible "red-line" hand drawn copies on an original set of drawings.

IV. INSURANCE

1. At all times during this Agreement, H&M shall maintain in full force and effect, at its sole expense, the following insurance with responsible insurance companies:
 - a. Comprehensive general liability insurance providing coverage for operations, completed operations and contractual liability with respect to liability assumed by H&M hereunder. The limits of coverage for such insurance shall be \$2,000,000 per occurrence and \$4,000,000 aggregate for bodily injury and \$1,000,000 for property damage.
 - b. Comprehensive automobile liability insurance covering the use and maintenance of owned, non-owned, hired and rented vehicles with a combined single limit of \$2,000,000 for bodily injury and property damage.
 - c. Evidence of Worker's Compensation insurance with statutory limits of coverage including employer's liability limits of \$1,000,000 each accident/ \$1,000,000 bodily injury by

disease each employee/ \$1,000,000 bodily injury by disease policy aggregate.

Prior to the commencement of any Work hereunder, H&M, upon written request, shall furnish proof of all such insurance.

V. TERM OF AGREEMENT

1. This agreement shall be valid until _____ of _____, 20_____. Pricing will be valid for one year and is subject to negotiation on a yearly basis.
2. Notwithstanding any other provision herein, this Agreement may be terminated without cause by either party upon thirty (30) days written notice to the other.
3. In event of such termination by Purchaser, Purchaser shall pay any amounts due for Work completed and material furnished hereunder, including materials delivered to Purchaser which were ordered for Work and not subject to cancellation by H&M.
4. Termination of this Agreement by H&M shall not constitute a waiver by H&M of any amounts due H&M for Work or any other additional charges.

VI. LIMITATION OF LIABILITY AND LIMITED WARRANTY

1. H&M agrees to perform services in a good and workmanlike manner and in accordance with standard business practices applicable to the Work.
2. In no event shall H&M's liability for any Work, services or materials furnished exceed Purchaser's actual damages. Parties agree to define actual damages to include reasonable cost to repair. Parties agree that down time consequential damages will not be included. The Work shall be considered to have been accepted after the last day such services were performed by H&M unless written notice to the contrary is received by H&M within thirty (30) days following the last day such services were performed.
3. H&M shall not be liable for damages caused by delay in rendering performances hereunder arising from any cause beyond the reasonable control of H&M, or as a result of strike, or work stoppages, civil disobedience, death, or Acts of God, and, in such event or events, H&M shall be excused from its performance on a day-to-day basis to the extend of the duration of such interference.
4. THE PARTIES AGREE THAT THE IMPLIED WARRANTIES OF MERCHANT ABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND ALL OTHER WARRANTIES,

EXPRESS OR IMPLIED, WRITTEN OR ORAL, ARE EXCLUDED FROM THIS AGREEMENT AND SHALL NOT APPLY TO THE EQUIPMENT OR REPLACEMENTS PROVIDED UNDER THIS AGREEMENT WHETHER PROVIDED BY H&M PURSUANT TO ITS OBLIGATIONS TO PROVIDE WORK OR ADDITIONAL WORK OR TO ANY WORK OR ADDITIONAL SERVICES PERFORMED UNDER THIS AGREEMENT. H&M'S OBLIGATION AND PURCHASER'S SOLE AND EXCLUSIVE REMEDY IN THE EVENT H&M PROVIDES MALFUNCTIONING EQUIPMENT OR REPLACEMENTS IS FOR H&M TO PERFORM SERVICE ON SUCH MALFUNCTIONING EQUIPMENT OR REPLACEMENTS, H&M SHALL NOT BE LIABLE FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY NATURE WHATSOEVER ARISING FROM ANY BREACH OF THIS AGREEMENT OR PERFORMANCE OF THE WORK UNDER THIS AGREEMENT.

VII. COMPLIANCE WITH LAWS

1. H&M agrees that its services rendered in connection herewith shall meet or exceed the safety standards established and promulgated under the Federal Occupational Safety and Health Act (Public Law 91-956) and its regulations in effect as of the date hereof, and as of the date of performance of any Work hereunder.
2. H&M agrees that, where applicable, this Agreement will be performed in compliance with all applicable equal opportunity requirements including, but not limited to, Executive Order 11246 (41 CFR 60-1 and 60-2), relating to equal employment opportunity and non-segregated facilities; Executive Order 11625 (41 CFR 1-1.13), relating to the utilization of minority business enterprises; the Vietnam Era Readjustment Assistance Act of 1974 and Executive Order 11701 (41 CFR 60-250), relating to the employment of veterans; the Rehabilitation Act of 1973 and Executive Order 11758 (41 CFR 60-741), relating to the employment of handicapped persons and all amendments thereto and all regulations, rules, and orders issued there under.

VIII. PROPRIETARY INFORMATION

1. Notwithstanding any termination of this Agreement, any information exchanged between the parties which is designated confidential or proprietary (hereinafter the "Data") shall be held in confidence. Information exchanged in tangible form which is not marked "confidential" or "proprietary" shall not be protected under this Article. Information exchanged in intangible form shall not be protected under this Article unless, within ten (10) days of the exchange, the disclosing party prepared a signed writing describing the information, designating it confidential or proprietary and sends it to the other party for signature.
2. Each party shall mark all copies of the Data with the same legends and notices found on the original thereof.
3. The recipient of the Data shall be relieved of its obligation under this Article with respect to any of the Data which other than by

breach of this Agreement, is or becomes publicly available or is obtained from a third party or is independently known or developed by the recipient.

IX. MODIFICATIONS

No amendment or modification hereof shall be valid unless the same shall be set forth in writing signed by the duly authorized representative of the parties hereto.

X. NONWAIVER

Failure by either party at any time to require performance by the other party or to claim a breach of any provision of this Agreement shall not be construed as affecting any subsequent breach or the right to require performance with respect thereof or to claim a breach with respect thereto.

XI. HEADINGS

Section headings are inserted for convenience only and shall not be used in any way to construe the terms of this Agreement.

XII. INTERPRETATION

The rights and obligations of the parties and all interpretations and performance of this Agreement shall be governed in all respects by the laws of Texas.

XIII. DISPUTE RESOLUTION

Any dispute between the parties hereto, arising out of or related to this Agreement, shall be resolved as follows:

1. The dispute shall be reduced to writing and submitted to the President of each party. The President of each party may designate a representative for purposes of resolving the dispute. Within thirty (30) days of receipt of the written dispute, the Presidents (or their representatives) shall meet in order to resolve the dispute by agreement. The Presidents (or their representatives) shall, within three (3) days after the conclusion of the meeting, issue a written statement either resolving the dispute or stating that they cannot achieve a resolution by agreement. Within thirty (30) days of receipt of the written dispute, H&M shall direct, by written notice to Purchaser that the dispute, if not resolved by agreement in accordance with this paragraph, shall be subject to either arbitration or to suite in court.
2. All deliberations of the parties shall be conducted in good faith, with the intent to resolve the dispute amicably. The

resolution by agreement shall be final and binding on the parties.

3. If no resolution is achieved in accordance with the procedure set forth in (1) and (2) above, the dispute may be resolved by mediation or by suit in court, in accordance with H&M's direction pursuant to (1) above. If H&M elects suit in court, suit may be instituted in, and the parties consent to the jurisdiction of, the State of Texas.

XIV. NOTICE

All notices and other communications (except fax communications pursuant to Article I) shall be transmitted in writing by certified mail, postage prepaid, return receipt requested, addressed to the parties as follows:

H&M: Henkels & McCoy, Inc.
Attn: Wesley R. Lee
Address: 515 Huffines Blvd.
Lewisville, TX 75056

Denton Independent School District
Attn: Ernie Stripling
Address: 1212 N Elm
Denton, TX 76201

XV. CONTRACTUAL RELATIONSHIP

The parties intend that H&M be an independent contractor and not an agent or employee of Purchaser. Neither party shall have authority to act for the other in any manner to create obligations or debts that would be binding on the other.

XVI. ASSIGNMENT

Purchaser shall not assign any right or interest under this Agreement without the prior written consent of H&M. Any attempted assignment in contravention of this clause shall be null and void.

XVII. HIRE AWAY

It is understood and agreed that Purchaser will not hire, directly or indirectly, any employee or employees of H&M working on or who has/have worked on Work subject to this Agreement, for at least six (6) months after the termination or expiration of this Agreement.

XVIII. SUCCESSION

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors.

WITNESS the execution hereof as of the date first written above.

Signed and acknowledged
in the presence of:

The DENTON INDEPENDENT SCHOOL DISTRICT
First Signatory

Witness Signature

By: _____

Printed Witness Name

Title: _____

The DENTON INDEPENDENT SCHOOL DISTRICT
Second Signatory

Witness Signature

By: _____
(if none state so)

Printed Witness Name

Title: _____

CONTRACTOR: _____
First Signatory

Witness Signature

By: _____

Printed Witness Name

Title: _____

CONTRACTOR: _____
Second Signatory

Witness Signature

By: _____
(if none state so)

Printed Witness Name

Title: _____

ATTACHMENT A
UNIT PRICING OF SERVICES

Engineering Unit Pricing

Description	UOM	Price
Field Survey (New Conduit Route)	Foot	\$0.38
Design Conduit and Permit (New Conduit Route)	Foot	\$0.38
Design Cable (New Conduit Route)	Foot	\$0.10
CAD (New Conduit and/or Cable)	Foot	\$0.44
Design Cable (Existing Conduit Route)	Foot	\$0.10
CAD New Cable (Existing Conduit Route)	Foot	\$0.12
Review and CAD As-built Drawings	Foot	\$0.15
Professional Engineer (Review and Stamp Drawings)	Drawing	\$125.00
Field Inspection (Based on Linear Feet of Project)	Foot	\$0.34

Construction Unit Pricing

Unit Code	Description	UOM	Unit Pricing	
			Labor	Material
1	Bore and Place (1) 1½" HDPE Duct	Foot	\$6.97	\$0.79
1A	Bore and Place 1½" Duct- Additional	Foot	\$1.55	\$0.79
2	Install 34" Diameter Handhole	Each	\$387.64	\$1,298.70
3A	Place Fiber (12F)	Foot	\$0.67	\$0.27
3B	Place Fiber (24F)	Foot	\$0.67	\$0.35
3C	Place Fiber (36F)	Foot	\$0.67	\$0.42
3D	Place Fiber (48F)	Foot	\$0.67	\$0.52
3E	Place Fiber (72F)	Foot	\$0.67	\$0.70
3F	Place Fiber (96F)	Foot	\$0.67	\$0.90
3G	Place Fiber (144F)	Foot	\$0.67	\$1.36
4	Install Locate Wire #12 AWG	Foot	\$0.08	\$0.22
5	Splice and Terminate Fiber	Fiber	\$37.50	\$1.27
6	Test Fiber	Strand	\$12.50	\$1.52
7A	Install Coyote Preformed Splice Case (8.5" x 22")	Each	\$156.25	\$779.39
7B	Install Coyote Preformed Splice Case (6.5" x 22")	Each	\$137.50	\$553.94
8A	Install ADC FL2000 Fiber Shelf (12F)	Each	\$56.25	\$646.92
8B	Install ADC FL2000 Fiber Shelf (24F)	Each	\$62.50	\$1,363.71
8C	Install ADC FL2000 Fiber Shelf (36F)	Each	\$68.75	\$1,710.12
8D	Install ADC FL2000 Fiber Shelf (48F)	Each	\$75.00	\$2,237.66
8E	Install ADC FL2000 Fiber Shelf (72F)	Each	\$87.50	\$3,320.52
8F	Install ADC FL2000 Fiber Shelf (96F)	Each	\$100.00	\$4,293.71