



# CITY OF PLANO COUNCIL AGENDA ITEM

<b>CITY SECRETARY'S USE ONLY</b>				
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date:		10/14/13		
Department:		Parks and Recreation		
Department Head		Amy Fortenberry		
Agenda Coordinator (include phone #): <b>Susan Berger (7255)</b>				
<b>CAPTION</b>				
Approval of a Landscape Architecture Services Agreement by and between the City of Plano and La Terra Studio, Inc. in the amount of \$97,740 for design services for Skate Park Facility and authorizing the City Manager or his designee to execute all necessary documents.				
<b>FINANCIAL SUMMARY</b>				
<input type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input checked="" type="checkbox"/> CIP				
FISCAL YEAR:	<b>2013-14</b>	<b>Prior Year (CIP Only)</b>	<b>Current Year</b>	<b>Future Years</b>
				<b>TOTALS</b>
Budget		0	1,075,000	0
Encumbered/Expended Amount		0	0	0
This Item		0	-97,740	0
BALANCE		0	977,260	0
<b>FUND(S):     PARK IMPROVEMENT CIP</b>				
<p><b>COMMENTS:</b> Funds are included in the FY 2013-14 Park Improvement CIP. This item, in the amount of \$97,740, will leave a current year balance of \$977,260 for the Special Use Facilities project.</p> <p>STRATEGIC PLAN GOAL: Planning, designing and selecting a site for the proposed skate park relates to the City's goal of Great Neighborhoods - 1st Choice to Live.</p>				
<b>SUMMARY OF ITEM</b>				
<p>This Landscape Architectural Services agreement is for the site selection and conceptual planning of a skate park. Improvements will include skateable features such as stairs, rails, bowls and ramps, as well as lighting, benches or viewing areas, shade structures, and safety signage.</p> <p>The estimated construction cost for this project is \$950,000. The total conceptual design fee is \$97,740 and includes site selection, community outreach meetings, conceptual design, surveying, geotechnical investigation, and reimbursable expenses. The fee is 10.2% of the estimated construction budget for the project. Completion of construction documents will be included in a separate contract after the site has been selected and a conceptual design has been completed.</p> <p>La Terra Studio, Inc. was selected through an Request for Qualifications (RFQ) process. Five other Landscape Architect/Skate Park Design firms responded to the RFQ.</p>				



# CITY OF PLANO COUNCIL AGENDA ITEM

List of Supporting Documents:		Other Departments, Boards, Commissions or Agencies
Landscape Architecture Services Agreement		

**PROFESSIONAL SERVICES AGREEMENT  
BY AND BETWEEN THE CITY OF PLANO, TEXAS AND  
LA TERRA STUDIO, INC.  
2013-30-B**

**THIS AGREEMENT** is made and entered by and between the **CITY OF PLANO, TEXAS**, a home-rule municipal corporation, hereinafter referred to as "City", and **LA TERRA STUDIO, INC.**, a Texas corporation, hereinafter referred to as "Professional" to be effective from and after the date as provided herein.

**WITNESSETH:**

**WHEREAS**, the City desires to engage the services of Professional for planning and design (Phase 1 and Phase 2) of a Skate Park Facility, hereinafter referred to as the "Project"; and

**WHEREAS**, Professional desires to render such services for the City upon the terms and conditions provided herein.

**NOW, THEREFORE**, for and in consideration of the covenants contained herein, and for the mutual benefits to be obtained hereby, the parties hereto agree as follows:

**I. ENGAGEMENT**

The City hereby agrees to retain Professional to perform professional services in connection with the planning and design (Phase 1 and Phase 2) of a Skate Park Facility and Professional agrees to perform such services in accordance with the terms and conditions of this Agreement.

**II. SCOPE OF SERVICES**

Professional shall provide all labor, supervision, materials and equipment necessary for the planning and design (Phase 1 and Phase 2) of a Skate Park Facility. These services shall be provided in accordance with the Specifications for Skate Park Facility, a copy of which is attached hereto and incorporated herein as **Exhibit "A"**, and the Professional's Bid in response thereto, a copy of which is attached hereto and incorporated herein for all purposes as **Exhibit "B"**. The Contract consists of this written agreement and the following items which are attached hereto and incorporated herein by reference:

- (a) The Specifications for Skate Park Facility (**Exhibit "A"**);
- (b) The Professional's Bid (**Exhibit "B"**);
- (c) Insurance Requirements (**Exhibit "C"**); and
- (d) Affidavit of No Prohibited Interest (**Exhibit "D"**).

These documents make up the Contract documents and what is called for by one shall be as binding as if called for by all. In the event of an inconsistency or conflict in any of the provisions of the Contract documents, the inconsistency or conflict shall be resolved by giving precedence first to this written agreement then to the contract documents in the order in which they are listed above. These documents shall be referred to collectively as "Contract Documents."

### **III. TIME OF COMPLETION**

Contractor agrees and covenants that all work hereunder shall be completed by December 31, 2014, following notice to proceed from City.

### **IV. PAYMENT**

Payments hereunder shall be made to Professional following City's acceptance of the work and within thirty (30) days of receiving Professional's invoice for the services delivered. Total compensation under this contract shall not exceed the sum of **NINETY SEVEN THOUSAND SEVEN HUNDRED FORTY AND NO/100 DOLLARS (\$97,740.00)**.

Professional recognizes that this Contract shall commence upon the effective date herein and continue in full force and effect until termination in accordance with its provisions. Professional and City herein recognize that the continuation of any contract after the close of any given fiscal year of the City of Plano, which fiscal year ends on September 30th of each year, shall be subject to Plano City Council approval. In the event that the Plano City Council does not approve the appropriation of funds for this contract, the Contract shall terminate at the end of the fiscal year for which funds were appropriated and the parties shall have no further obligations hereunder.

### **V. INSURANCE**

Professional agrees to meet all insurance requirements, and to require all consultants who perform work for Professional to meet all insurance requirements, as set forth in **Exhibit "C"**, which is attached hereto and thereby made a part of this Agreement.

### **VI. INDEMNIFICATION**

**PROFESSIONAL AGREES TO DEFEND, INDEMNIFY AND HOLD THE CITY AND ITS RESPECTIVE OFFICERS, AGENTS AND EMPLOYEES, HARMLESS AGAINST ANY AND ALL CLAIMS, LAWSUITS, JUDGMENTS, FINES, PENALTIES, COSTS AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE OR OTHER HARM OR VIOLATIONS FOR WHICH RECOVERY OF DAMAGES, FINES, OR PENALTIES IS SOUGHT, SUFFERED BY ANY PERSON OR PERSONS, THAT MAY ARISE OUT OF OR BE OCCASIONED BY PROFESSIONAL'S BREACH OF ANY OF THE TERMS OR PROVISIONS OF THIS CONTRACT, VIOLATIONS OF LAW, OR BY ANY NEGLIGENT, GROSSLY NEGLIGENT, INTENTIONAL, OR STRICTLY LIABLE ACT OR OMISSION OF THE PROFESSIONAL, ITS OFFICERS, AGENTS, EMPLOYEES, INVITEES, SUBCONTRACTORS, OR SUB-SUBCONTRACTORS AND THEIR RESPECTIVE OFFICERS, AGENTS, OR REPRESENTATIVES, OR ANY OTHER PERSONS OR ENTITIES FOR WHICH THE PROFESSIONAL IS LEGALLY RESPONSIBLE IN THE PERFORMANCE OF THIS CONTRACT. THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE SOLE NEGLIGENCE OF THE CITY, AND ITS OFFICERS, AGENTS, EMPLOYEES OR SEPARATE CONTRACTORS. THE CITY DOES NOT WAIVE ANY GOVERNMENTAL IMMUNITY OR OTHER DEFENSES AVAILABLE TO IT UNDER TEXAS OR FEDERAL LAW. THE PROVISIONS OF THIS PARAGRAPH ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND ARE NOT INTENDED TO**

CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY.

PROFESSIONAL AT ITS OWN EXPENSE IS EXPRESSLY REQUIRED TO DEFEND CITY AGAINST ALL SUCH CLAIMS. CITY RESERVES THE RIGHT TO PROVIDE A PORTION OR ALL OF ITS OWN DEFENSE; HOWEVER, CITY IS UNDER NO OBLIGATION TO DO SO. ANY SUCH ACTION BY CITY IS NOT TO BE CONSTRUED AS A WAIVER OF PROFESSIONAL'S OBLIGATION TO DEFEND CITY OR AS A WAIVER OF PROFESSIONAL'S OBLIGATION TO INDEMNIFY CITY PURSUANT TO THIS AGREEMENT. PROFESSIONAL SHALL RETAIN DEFENSE COUNSEL WITHIN SEVEN (7) BUSINESS DAYS OF CITY'S WRITTEN NOTICE THAT CITY IS INVOKING ITS RIGHT TO INDEMNIFICATION UNDER THIS AGREEMENT. IF PROFESSIONAL FAILS TO RETAIN COUNSEL WITHIN THE REQUIRED TIME PERIOD, CITY SHALL HAVE THE RIGHT TO RETAIN DEFENSE COUNSEL ON ITS OWN BEHALF AND PROFESSIONAL SHALL BE LIABLE FOR ALL COSTS INCURRED BY THE CITY.

#### **VII. INDEPENDENT CONTRACTOR**

Professional covenants and agrees that it is an independent contractor and not an officer, agent, servant or employee of City; that it shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and consultants; that the doctrine of respondeat superior shall not apply as between City and Professional its officers, agents, employees, contractors, subcontractors and consultants, and nothing herein shall be construed as creating a partnership or joint enterprise between City and Professional.

#### **VIII. ASSIGNMENT AND SUBLETTING**

Professional agrees that neither this Agreement nor the work to be performed hereunder will be assigned or sublet without the prior written consent of the City. Professional further agrees that the assignment or subletting of any portion or feature of the work or materials required in the performance of this Agreement shall not relieve the Professional from its full obligations to the City as provided by this Agreement.

#### **IX. AUDITS AND RECORDS**

Professional agrees that at any time during normal business hours and as often as City may deem necessary, Professional shall make available to representatives of the City for examination all of its records with respect to all matters covered by this Agreement, and will permit such representatives of the City to audit, examine, copy and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to all matters covered by this Agreement, all for a period of three (3) years from the date of City's acceptance of the final Project, or for such other or longer period, if any, as may be required by applicable statute or other lawful requirement.

## **X. PROHIBITED INTEREST**

Professional agrees that it is aware of the prohibited interest requirements of the City Charter and Code of Conduct and will abide by the same. Further, a lawful representative of Professional shall execute the affidavit shown in **Exhibit "D"**. Professional understands and agrees that the existence of a prohibited interest during the term of this Agreement will render the Agreement voidable.

## **XI. CONTRACT TERMINATION**

City may, at its option, with or without cause, and without penalty or prejudice to any other remedy it may be entitled to at law, or in equity or otherwise under this Agreement, terminate further work under this agreement, in whole or in part by giving at least thirty (30) days prior written notice thereof to Professional with the understanding that all services being terminated shall cease upon the date such notice is received unless otherwise indicated in writing by the City.

In the event of such termination, Professional shall deliver to City all finished or unfinished documents, data, studies, surveys, drawings, maps, models, reports, photographs or other items prepared by Professional in connection with this Agreement. Professional shall be entitled to compensation for any and all work completed to the satisfaction of City in accordance with the provisions of this Agreement prior to termination.

## **XII. OWNERSHIP OF DOCUMENTS**

Upon termination of this Agreement, Professional shall transfer, assign and make available to City, or its representatives, all property and materials in its possession or control belonging to the City and paid for by the City. In the event that the material, which is the subject of this Agreement, is copyrightable subject matter, Professional and City agree that for the purposes of this order the material shall be a work made for hire and the property of the City. In the event that the material which is the subject of this Agreement is not copyrightable subject matter, or for any reason is determined not to be a work made for hire, then and in such event Professional hereby assigns all right, title and interest to said material to City for the fees specified herein.

## **XIII. TRADE SECRETS**

In conducting business and in anticipation of conducting business with Professional it may be necessary for the City to share trade secrets and/or other confidential and/or proprietary information or matter with Professional. The parties agree that such information and the materials referenced in the Agreement, the results and developments therefrom are confidential and/or proprietary information belonging to the City. Professional agrees not to disclose to any third party any such trade secrets and/or confidential or proprietary information for its own separate benefit. Professional will be responsible for its employees or agents complying with the provisions of this Agreement.

Similarly the City agrees that the Project created is intended solely for the use and benefit of Plano, Texas and any distribution to another destination marketing organization without the written consent of Professional is prohibited unless required by law or court order.

The City will be responsible for its employees or agents complying with the provisions of this Agreement.

#### **XIV. COMPLETE AGREEMENT**

This Agreement, including the Exhibits lettered "A" through "D", constitute the entire agreement by and between the parties regarding the subject matter hereof and supersedes all prior or contemporaneous written or oral understandings. This Agreement may only be amended, supplemented, modified or canceled by a duly executed written instrument.

#### **XV. MAILING OF NOTICES**

Unless instructed otherwise in writing, Professional agrees that all notices or communications to City permitted or required under this Agreement shall be addressed to City at the following address:

City of Plano, Texas  
Parks and Recreation Department  
Attn: Liz Del Turco  
P.O. Box 860358  
Plano, TX 75086-0358

City agrees that all notices or communications to Professional permitted or required under this Agreement shall be addressed to Professional at the following address:

la terra studios, Inc.  
Attn: Kris M. Brown  
2111 Commerce St.  
Dallas, TX 75201

All notices or communications required to be given in writing by one party or the other shall be considered as having been given to the addressee on the date such notice or communication is posted by the sending party.

#### **XVI. AUTHORITY TO SIGN**

The undersigned officers and/or agents of the parties hereto are the properly authorized officials and have the necessary authority to execute this Agreement on behalf of the parties hereto.

#### **XVII. MISCELLANEOUS**

A. Paragraph Headings:

The paragraph headings contained herein are for convenience only and are not intended to define or limit the scope of any provision in this Agreement.

B. Agreement Interpretation:

This is a negotiated Agreement, should any part be in dispute, the parties agree that the terms of the Agreement shall not be construed more favorably for either party.

C. Venue/Governing Law:

The parties agree that the laws of the State of Texas shall govern this Agreement, and that it is performable in Collin County Texas. Exclusive venue shall lie in Collin County, Texas.

D. Successors and Assigns:

City and Professional and their partners, successors, subcontractors, executors, legal representatives, and administrators are hereby bound to the terms and conditions of this Agreement.

E. Severability:

In the event a term, condition, or provision of this Agreement is determined to be void, unenforceable, or unlawful by a court of competent jurisdiction, then that term, condition, or provision, shall be deleted and the remainder of the Agreement shall remain in full force and effect.

F. Effective Date:

This Agreement shall be effective from and after the date of execution by the last signatory hereto as evidenced below.

**SIGNED** on the date indicated below.

**LA TERRA STUDIO, INC.**

DATE: 2013/09/30

BY: [Signature]  
Name: Kris Brown  
Title: president

**CITY OF PLANO, TEXAS**

DATE: \_\_\_\_\_

BY: \_\_\_\_\_  
Bruce D. Glasscock  
CITY MANAGER

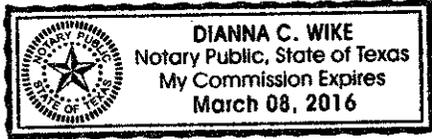
**APPROVED AS TO FORM:**

\_\_\_\_\_  
Diane C. Wetherbee, City Attorney

**ACKNOWLEDGMENTS**

STATE OF TEXAS           §  
  §  
COUNTY OF Collin       §

This instrument was acknowledged before me on the 30<sup>th</sup> day of September, 2013 by Kristopher Brown, (Authorized representative) President (Title) of LA TERRA STUDIO, INC., a Texas corporation, on behalf of said corporation.



Dianna C Wike  
Notary Public, State of Texas

STATE OF TEXAS           §  
  §  
COUNTY OF COLLIN       §

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 2013 by **BRUCE D. GLASSCOCK**, City Manager of the **CITY OF PLANO, TEXAS**, a home-rule municipal corporation, on behalf of said municipal corporation.

\_\_\_\_\_  
Notary Public, State of Texas

EXHIBIT A

**Solicitation 2013-30-B**

**RFQ for Skate Park Facility**

**Bid designation: Public**



**City of Plano**

EXHIBIT     A      
PAGE   1   OF   15

## Bid 2013-30-B RFQ for Skate Park Facility

Bid Number **2013-30-B**  
Bid Title **RFQ for Skate Park Facility**

Bid Start Date **Jan 31, 2013 7:59:12 AM CST**  
Bid End Date **Feb 15, 2013 2:00:00 PM CST**  
Question &  
Answer End **Feb 8, 2013 2:00:00 PM CST**  
Date

Bid Contact **Nicole Griffin**  
**Buyer**  
**Purchasing Division**  
**nicoleg@plano.gov**

**Description**

The City of Plano invites the submittal of responses to this RFQ from extensively experienced, highly qualified firms or teams for planning, conceptual design, construction documents, and assist with construction administration of a Skatepark Facility in Plano, Texas.

EXHIBIT     A      
PAGE   2   OF  15



RFQ NO.: 2013-30-B

**REQUEST FOR QUALIFICATIONS**

For

**SKATE PARK FACILITY**

DOCUMENTS ARE DUE TO THE PURCHASING DIVISION PRIOR TO:

**2:00 PM (CST) on FRIDAY, FEBRUARY 15, 2013**

*NO LATE RFQ'S WILL BE ACCEPTED*

**\*\*\*VENDOR MUST SUBMIT ONE (1) ORIGINAL AND FIVE (5) COPIES. NO PRICING IS REQUIRED AT THIS TIME. IF "COPIES" ARE NOT SUBMITTED WITH THE ORIGINAL, YOUR RFQ MAY BE CONSIDERED "NON-RESPONSIVE TO SPECIFICATIONS" AND MAY NOT BE CONSIDERED FOR FURTHER EVALUATION.**

Time Critical RFQ Deliveries: The City of Plano, Texas cannot guarantee, due to internal procedures, any RFQs sent Priority Mail will be picked up and delivered by the closing date and time. It is recommended that critical RFQs deliveries be made either in person or via an alternate delivery method.

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FOR ADDITIONAL INFORMATION CONCERNING THIS SOLICIATION PLEASE CONTACT:

Nicole Griffin  
Buyer II  
[nicoleg@plano.gov](mailto:nicoleg@plano.gov)

EXHIBIT   A    
PAGE   3   OF  15

**REQUEST FOR QUALIFICATIONS  
For  
SKATE PARK FACILITY**

**RFQ NO.: 2013-30-B**

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**STATEMENT OF PURPOSE**

The City of Plano invites the submittal of responses to this RFQ from extensively experienced, highly qualified firms or teams for planning, conceptual design, construction documents, and assist with construction administration of a Skate Park Facility in Plano, Texas.

**The selection of the design consultant will be based on information provided in both written and graphic form and on interviews as requested.**

- A. Key Personnel and Project Manager Qualifications, and proven stability of your firm (20%)
- B. Project team experience including experience with projects of similar size and scope, experience at conducting public meetings, experience garnering public feedback online, and other relevant project experience (20%)
- C. Project Understanding and Approach (15%)
- D. Methods of Cost Estimating and Accuracy Controls (10%)
- E. Quality of work exhibited in both written and graphic form (20%)
- F. References (15%)

**Public Opening**

RFQ's will be publicly opened in the Purchasing Division, Municipal Center, 1520 Avenue K, Suite 370, Plano, TX 75074 on **Friday, February 15, 2013 at 2:00 pm (CST)**. Only the names of the firms submitting RFQs will be read aloud at the public opening.

**Delivery of RFQ Instructions**

Mark RFQ package(s): **"RFQ No. 2013-30-B, RFQ for SKATE PARK FACILITY"**. All RFQ's must be delivered or mailed sealed to the following location **prior to 2:00 pm (CST), Friday, February 15, 2013**.

City of Plano – Purchasing Division  
Attn: Nicole Griffin- Buyer II  
1520 Avenue K, Suite 370  
Plano, TX 75074

**Questions Concerning this RFQ**

To ensure that all prospective respondents have accurately and completely understood the requirements, questions will accept questions up until **2:00 pm (CST) on Friday, February 8, 2013**. Questions **must** be submitted online through [www.bidsync.com](http://www.bidsync.com). Please **do not** email your questions. You will be directed to submit your questions online through [www.bidsync.com](http://www.bidsync.com). Questions **will not** be accepted after **2:00 pm (CST) on Friday, February 8, 2013**.

**CITY OF PLANO  
GENERAL TERMS AND CONDITIONS**

1. **THESE TERMS AND CONDITIONS APPLY TO ANY PROCUREMENT OF PRODUCTS OR SERVICES BY THE CITY OF PLANO (CITY).**
2. **ADDITIONAL TERMS:** Notwithstanding acceptance by the City of the goods or services ordered hereby, no additional terms or conditions of vendor, whether contained within vendor's invoice or otherwise, shall be accepted by City.
3. **CONFLICTS:** In the event the terms and conditions herein expressed conflict with the terms and conditions of any specifications issued by the City in conjunction with this purchase, the specifications shall supersede these terms and conditions to the extent of the conflict.
4. **AUTHORIZATION:** The City of Plano will not accept or pay for articles delivered or services performed without a specific written Purchase Order.
5. **CONFORMITY OF GOODS/SERVICES:** All goods to be delivered or services to be performed shall conform in every respect to the specifications issued by the City in conjunction with its solicitation of bids or proposals. In the event no such specifications were issued, the goods or services shall conform to the proposal submitted by the vendor.
6. **WARRANTY/GUARANTEE LAWS AND REGULATIONS:** By acceptance of this order, in addition to the guarantees and warranties provided by law, contractor expressly guarantees and warrants as follows:
  - A. that the articles to be delivered hereunder will be in full conformity with the specifications or with the approved sample submitted, and agreed that this warranty shall survive acceptance of delivery and payment for the articles and that the contractor will bear the cost of inspecting and/or testing articles rejected.
  - B. that the articles to be delivered hereunder will not infringe on any valid patent, trademark, trade name, or copyright, and that the contractor will, at contractor's own expense, defend any and all actions or suits charging such infringement and will save and hold harmless the City, its officers, employees, agents, and representatives from any and all claims, losses, liabilities and suits arising there from.
  - C. that the articles to be delivered hereunder will be manufactured, sold and/or installed in compliance with the provisions of all applicable federal, state and local laws and regulations.
  - D. that nothing contained herein shall exclude or affect the operation of any implied warranties otherwise arising in favor of the City.
7. **PRICING:** Unit pricing shall be in strict conformity with the bid or proposal submitted by vendor, unless a price increase is authorized by the City.
8. **PRICE ESCALATION:** price escalations may be permitted by the City of Plano during the term of the contract. All requests for price escalation shall be in written form and shall demonstrate industry-wide or regional increases in the contractor's costs. Include documents supporting the price escalation, such as manufacturer's direct cost, postage rates, railroad commission rates, federal/state minimum wage laws, federal/state unemployment taxes, FICA, etc. Increases will apply only to the products(s) and/or service(s) affected by an increase in raw material, labor, or another like cost factor. The City of Plano reserves the right to accept or reject any/all price escalations.
9. **PRICE REDUCTION:** if during the life of the contract, the contractor's net prices to other customers for the same product(s) and/or service(s) are lower than the City of Plano's contracted prices, an equitable adjustment shall be made in the contract price.
10. **TAXES:** the City of Plano is exempt from federal manufacturer's excise and state sales and use tax. Tax exemption certificates will be executed by the City and furnished upon request.
11. **PACKAGING:** unless otherwise indicated, items will be new, unused, and in first rate condition in containers suitable for damage-free shipment and storage.
12. **F.O.B./DAMAGE:** all orders shall be F.O.B. delivered, designated location, and shall include all delivery and packaging costs. The City of Plano assumes no liability for goods delivered in damaged or unacceptable condition. The contractor shall handle all claims with carriers, and in case of damaged goods, shall ship replacement goods immediately upon notification by the City of damage.
13. **DELIVERY TIMES:** deliveries will be acceptable only during normal working hours at the designated location.
14. **DELIVERY PROMISE – PENALTIES:** default in promised delivery without acceptable reasons, or failure to meet specifications, authorizes the purchasing division to purchase goods elsewhere, and charge any increase in cost and handling to the defaulting contractor.

**CITY OF PLANO  
GENERAL TERMS AND CONDITIONS**

15. **INSPECTION, REJECTION, AND EXCESS SHIPMENT:** In addition to other rights provided by law, the City reserves the right (a) to inspect articles delivered and to return those which do not meet specifications or reasonable standards of quality, (b) to reject articles shipped contrary to instructions or in containers which do not meet recognized standards, and (c) to cancel the order if not filled within the time specified. The City may return rejected articles or excess shipment on this order, or may hold the articles subject to the vendor's order and at vendor's risk and expense, and may in either event charge the vendor with the cost of shipping, unpacking, inspecting, repacking, reshipping and other like expenses.
16. **INVOICES:** invoices must be submitted by the contractor to the City of Plano, Accounting Department, P.O. Box 860279, Plano, TX, 75086-0279. The City Purchase Order number must appear on all invoices, delivery memoranda, bills of lading, packing and correspondence.
17. **PAYMENT TERMS:** payment terms are net 30 unless otherwise specified by the City. Upon receipt of a properly executed invoice and verification of delivery from the consignee, payment will be processed for items or services delivered.
18. **PATENT RIGHTS:** the contractor agrees to indemnify and hold the City harmless from any claim involving patent right infringement or copyrights on goods supplied.
19. **FUNDING:** the contractor recognizes that any contract shall commence upon the effective date and continue in full force and effect until termination in accordance with its provisions. Contractor and City herein recognize that the continuation of any contract after the close of any given fiscal year of the City of Plano, which fiscal year ends on September 30th of each year, shall be subject to Plano City Council approval. In the event that the Plano City Council does not approve the appropriation of funds for the contract, the contract shall terminate at the end of the fiscal year for which funds were appropriated and the parties shall have no further obligations hereunder.
20. **ASSIGNMENT:** the contractor shall not sell, assign, transfer or convey this contract in whole, or part, without the prior written consent of the purchasing division.
21. **INTERLOCAL AGREEMENT:** contractor agrees to extend prices and terms to all entities who have entered into or will enter into joint purchasing interlocal cooperation agreements with the City of Plano.
22. **AUDIT:** the City of Plano reserves the right to audit the records and performance of contractor during the contract and for three years thereafter.
23. **INSURANCE:** the City requires contractor to carry the minimum insurance as required by state laws and insurance requirements outlined in the bid/proposal documents.
24. **CHANGE ORDERS:** no oral statement of any person shall modify or otherwise change, or affect the terms, conditions or specifications stated in this contract. All change orders to the contract will be made in writing by the City of Plano.
25. **INDEMNIFICATION:** contractor agrees to defend, indemnify and hold the City and its respective officers, agents and employees, harmless against any and all claims, lawsuits, judgments, fines, penalties, costs and expenses for personal injury (including death), property damage, intellectual property infringement claims (including patent, copyright and trademark infringement) or other harm or violations for which recovery of damages, fines, or penalties is sought, suffered by any person or persons that may arise out of or be occasioned by contractor's breach of any of the terms or provisions of the contract, violations of law, or by any negligent, grossly negligent, intentional, or strictly liable act or omission of the contractor, its officers, agents, employees, invitees, subcontractors, or sub-subcontractors and their respective officers, agents, or representatives, or any other persons or entities for which the contractor is legally responsible in the performance of the contract. The indemnity provided for in this paragraph shall not apply to any liability resulting from the sole negligence of City, and its officers, agents, employees or separate contractors. City does not waive any governmental immunity or other defenses available to it under Texas or federal law. The provisions of this paragraph are solely for the benefit of the parties hereto and are not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

Contractor, at its own expense, is expressly required to defend City against all such claims. City reserves the right to provide a portion or all of its own defense; however, City is under no obligation to do so. Any such action by City is not to be construed as a waiver of contractor's obligation to defend City or as a waiver of contractor's obligation to indemnify City pursuant to this agreement. Contractor shall retain defense counsel within seven (7) business days of City's written notice that City is invoking its right to indemnification under this agreement. If contractor fails to retain counsel within the required time period, City shall have the right to retain defense counsel on its own behalf and contractor shall be liable for all costs incurred by City.

**CITY OF PLANO  
GENERAL TERMS AND CONDITIONS**

In addition to contractor's intellectual property infringement indemnification and defense requirements herein, if an infringement claim occurs, or in contractor's opinion is likely to occur, contractor shall, at its expense: (a) procure for city the right to continue using the product; (b) replace or modify the product so that it becomes non-infringing while providing functionally equivalent performance; or (c) accept the return of the product and grant city a reimbursement for the product. Contractor will proceed under subsection (c) above only if subsections (a) and (b) prove to be commercially unreasonable.

The intellectual property infringement indemnification herein applies to all products provided, supplied or sold under this agreement by contractor to City whether manufactured by contractor or a third party. Contractor represents that, to the best of its knowledge, City's use of products that are provided supplied, or sold by contractor to City as part of this agreement does not constitute an infringement of any intellectual property rights and City has the legal right to use said products. City enters into this agreement relying on this representation.

The indemnification herein survives the termination of the contract and/or dissolution of this agreement including any infringement cure provided by the contractor.

26. **TERMINATION FOR DEFAULT:** the City of Plano reserves the right to enforce the performance of the contract in any manner prescribed by law or deemed to be in the best interest of the City in the event of breach or default of the contract. The City reserves the right to terminate the contract immediately in the event the contractor fails to 1) meet delivery schedules or, 2) otherwise perform in accordance with these specifications. Breach of contract or default authorizes the City to award contract to another contractor, purchase elsewhere and charge the full increase in cost and handling to the defaulting contractor.
27. **REMEDIES:** the contractor and the City of Plano agree that each party has rights, duties, and remedies available as stated in the uniform commercial code and any other available remedy, whether in law or equity.
28. **VENUE:** this agreement will be governed and constructed according to the laws of the state of Texas. This agreement is performable in Collin/Denton County, Texas. Exclusive venue shall be in Collin County, Texas.
29. **NO PROHIBITED INTEREST:** contractor acknowledges and represents that they are aware of the laws, City Charter, and City Code of Conduct regarding conflicts of interest. The City charter states that "no officer or employee of the City shall have a financial interest, direct or indirect, in any contract with the City, nor shall be financially interested, directly or indirectly, in the sale to the City of any land, or rights or interest in any land, materials, supplies or service....."
30. **DELINQUENT TAXES:** section 2-2 of the City Code of Ordinances prohibits the payment of public funds to persons that owe delinquent taxes to the City of Plano. Therefore, payment to a contractor for goods or services provided to the City under contract or Purchase Order may be withheld in the event the contractor owes delinquent taxes to the City.
31. **EMPLOYMENT ELIGIBILITY VERIFICATION:** the immigration reform and control act of 1986 (IRCA) makes it illegal for employers to knowingly hire or recruit immigrants who do not possess lawful work authorization and requires employers to verify their employees' work eligibility on a U.S. department of justice form I-9.

The contractor warrants that contractor is in compliance with IRCA and will maintain compliance with IRCA during the term of the contract with the City. Contractor warrants that contractor has included or will include a similar provision in all written agreements with any subcontractors engaged to perform services under this contract.

**SMWBE POLICY**

IT IS THE POLICY OF THE CITY OF PLANO TO INVOLVE SMALL BUSINESSES AND MINORITY/WOMAN OWNED BUSINESSES TO THE GREATEST EXTENT POSSIBLE IN THE PROCUREMENT OF GOODS, EQUIPMENT, SERVICES AND CONSTRUCTION PROJECTS. TO ASSIST US WITH OUR RECORDKEEPING, VENDORS SHOULD IDENTIFY ANY SMALL/MINORITY/WOMAN-OWNED COMPANY BEING UTILIZED IN THIS BID AND NOTE THE MONETARY INVOLVEMENT.

REQUEST FOR QUALIFICATIONS (RFQ)  
CITY OF PLANO  
SKATEPARK FACILITY



## REQUEST FOR QUALIFICATION (RFQ)

### CITY OF PLANO

### SKATEPARK FACILITY

#### INVITATION TO SUBMIT QUALIFICATIONS

The City of Plano invites the submittal of responses to this RFQ from extensively experienced, highly qualified firms or teams for planning, conceptual design, construction documents, and assist with construction administration of a Skatepark Facility in Plano, Texas.

#### COMMUNITY PROFILE

The City of Plano has earned a national reputation as one of the best places in the country for employers to do business and for families to live and work. Plano's Parks and Recreation Department is a nationally accredited department and has been recognized three times with the NATIONAL RECREATION AND PARKS ASSOCIATION GOLD MEDAL AWARD FOR EXCELLENCE IN THE FIELD OF PARKS AND RECREATION MANAGEMENT. Plano was incorporated in 1873 and was chartered as a home rule city in 1961. Located 20 miles north of downtown Dallas, Plano, with an estimated population of 267,000, is expected to reach its build-out population of 280,000 persons in 2025.

#### PROJECT INTENT

The City of Plano, "Owner," is in the process of selecting an experienced, qualified design professional for the planning, design, and construction administration of a poured-in-place Skatepark Facility to be located at an existing park site. The new facility will complement existing facilities and activities, as well as engage and challenge skateboard users of a broad range of ages and skills.

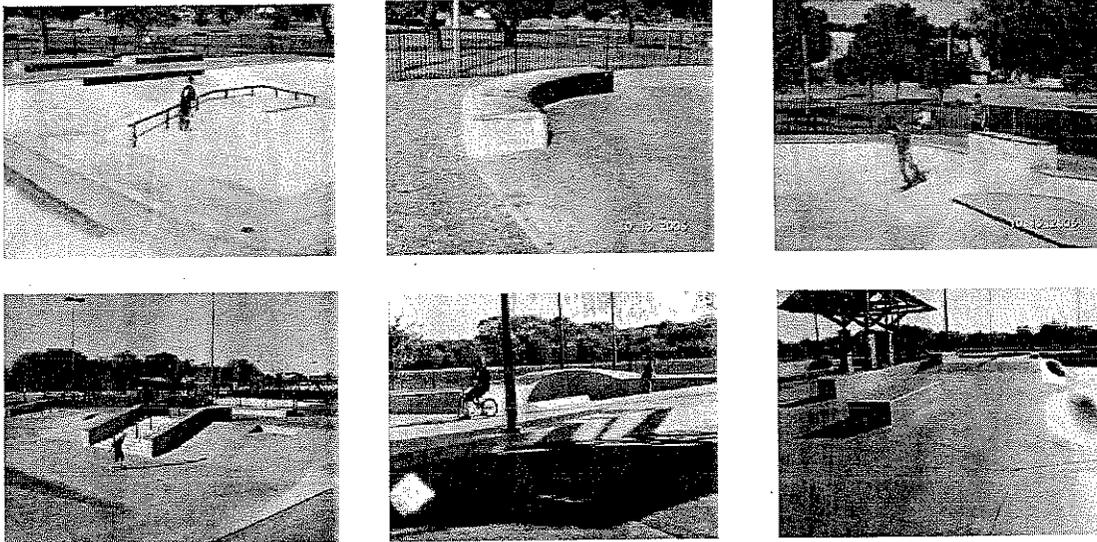
The consultant will be required to work closely with the Owner and the Community throughout the process.

Submitting firms are encouraged to consider subcontracting portions of the engagement to small, minority, and woman-owned firms where appropriate. If this is done, that fact, and the name of the proposed subcontracting firm(s), must be clearly identified in the proposal. Following award of the contract, no additional subcontracting will be allowed without the express prior written consent of the City.

**PROJECT DESCRIPTION**

The Skatepark Facility location has yet to be determined. The scope of work will entail determining the best location for a poured-in-place concrete skate facility, coordinating input from Parks staff and other stakeholders, determine appropriate improvements and program elements and their locations within the site, and develop a Conceptual Plan that may later be made into Construction Documents.

The location for Skatepark Facility will be based upon a range of criteria including but not limited to park size, potential for controlled access and monitoring, parking, compatible activities, noise, adjacent land use, and neighborhood demographics. The facility will connect and blend into existing park facilities, with similar features to those shown in the photos below; sizes and limits will be determined by the City and the consultant:



It is expected that there will be information gathered at two to three public meetings as well as the provision of an online forum for public comment and input for skating patrons from Plano and the surrounding area. The firm selected will be required to be at each of these meetings with Parks staff, incorporating the requests of those patrons into renderings that can be shown and discussed at subsequent meetings and in the online forum with participants.

Improvements and program elements should include the addition of appurtenances such as fencing around the skate facility, lighting, and webcam for security. Staff has developed the preliminary list of possible improvements for the park. This list is preliminary and may be modified based on input from the Public and the selected Consultant:

- A. Additional Parking
- B. Access point(s) from or within Existing Park
- C. Poured-in-place Concrete Skate Ramps, Stairs, Bowls, Plazas, Rails, etc.

- D. Drainage Structures and Other Infrastructure Improvements
- E. Decorative Fencing
- F. Perimeter Landscape Plantings
- G. Lighting
- H. Security Webcam
- I. Benches or Viewing Stands
- J. Shade Structure for Seating Areas
- K. Drinking Fountain
- L. Safety Signage, as required by State Law

Project will culminate in site-specific Conceptual Design and Estimate of Probable Cost from which Construction Documents may be derived.

**SERVICES REQUIRED**

The first phase will entail working with Parks staff to develop site selection. It is anticipated that the first phase will take a fresh look at potential park properties. This may include research into similar parks throughout the state and country and site analysis of potential park sites for opportunities and constraints.

The second phase of the project will be to provide a Conceptual Design including site elements and their layout for a Skatepark Facility that is specific to the location selected in Phase One. An estimate of probable cost will be necessary to this phase. Schematic plan(s) will be produced and posted for public comment. The development of the final concept plan will require 2 to 3 public input meetings and an online forum and/or surveys to determine the validity of the program elements for proposed park users. Revisions will be made in response to the comments, in collaboration with Parks staff. Although the project will not be LEED certified, environmental considerations should be taken into account and impacts minimized to every extent possible without sacrificing user safety.

In the third phase, the consultant will provide the City with construction documents, a construction cost estimate, and provide construction administration services. Construction plans and details must focus on user safety, especially as expressed by surface quality and overall fit and finish of all elements at the Skatepark Facility. Any required geotechnical investigation and engineering will be performed during this phase. Construction administration services may include but are not limited to bidding services, addenda items, bid review, preconstruction conference, submittal and/or substitution review, site review visits, plan compliance, completion certification, project close-out, and post contract evaluation.

The cost for the third phase will be negotiated separately after the Conceptual Plan is complete.

## **QUALIFICATION STATEMENT CONTENTS AND FORMAT**

Submit one original and five copies with all supporting RFQ documents. If copies are not submitted with the original, your response may be considered nonresponsive and might not be considered for further evaluation.

The statement of qualifications should, at a minimum, include:

### **SECTION I—EXECUTIVE SUMMARY**

#### **Table of Contents**

A table of contents of the entire response.

#### **Executive Summary**

In the executive summary, the Respondent shall provide a concise narrative summary of the entire proposal that indicates their understanding of the City of Plano's needs, their knowledge of the elements involved in the project, and the approach to be taken, including a highlight of any key or unique features, excluding cost/price. The salient features should tie in with the stated evaluation factors.

### **SECTION II—COMPANY PROFILE**

#### **Overview**

Provide an overview of the company's structure, longevity, and relevant experience.

#### **Company Address and Identifying Codes**

Provide company/division's street address, Federal Identification Number, DUNS Code, and size of business.

#### **Proposed Planning/Design/Project Teams**

Identify the project team members and their specific roles that will be involved in each phase of the project.

#### **Personnel Qualifications and Experience**

Provide resumes, licenses, registrations or certifications for all personnel and subcontractors to be assigned to this project.

#### **Subcontracting Plan**

If the Respondent intends to use subcontractors, a Subcontracting Plan must be included in this section. The Subcontracting Plan shall include a detailed explanation of the work to be subcontracted and the percentage of that work to the total project for each proposed subcontractor. The City of Plano reserves the right to approve or disapprove of any subcontracting plan.

Respondents are encouraged to subcontract portions of the engagement to small, minority, and woman-owned firms where appropriate. However, no additional subcontracting will be allowed following award of the contract without the express prior written consent of the City

The respondent will be the sole contract holder and shall be responsible for any approved subcontractor's work. The City of Plano will not establish a contractual relationship with the subcontractor.

**SECTION III—TECHNICAL RESPONSE**

**Project Understanding and Approach**

Describe how your firm will approach this project including your firm's motivation for being involved in this project and the priority this project will be assigned relative to other commitments.

Address firm's methods of cost estimating and accuracy controls.

**SECTION IV—RELEVANT PAST AND PRESENT PERFORMANCE**

**Performance**

Provide comparable project examples where Respondent has provided services similar to those described in this RFQ along with summaries of work completed and photographs of installed facilities.

**References**

Provide at least five (5) references that entailed projects of similar scope. Include current contact information (address, phone, and email), a description of the projects(s) that were completed, whether the projects were on time and in budget, and if not, an explanation of the deviations.

Respondents are cautioned that the City may use data provided by each Respondent in this Section as well as data obtained from other sources in the evaluation of past and present performance.

In addition to narrative description of completed projects, photographic representation of installed, completed projects is required.

**SELECTION CRITERIA**

The selection of the design consultant will be based on information provided in both written and graphic form and on interviews as requested.

- A. Key Personnel and Project Manager Qualifications, and proven stability of your firm (20%)
- B. Project team experience including experience with projects of similar size and scope, experience at conducting public meetings, experience garnering public feedback online, and other relevant project experience (20%)
- C. Project Understanding and Approach (15%)
- D. Methods of Cost Estimating and Accuracy Controls (10%)
- E. Quality of work exhibited in both written and graphic form (20%)
- F. References (15%)

A review committee will judge the merit of qualifications received in accordance with the evaluation criteria published herein. After initially reviewing the responses to the RFQ, the evaluation committee will establish a shortlist of respondents to submit additional information. If the City chooses, it may interview these respondents.

The city will then rank the respondents according to the RFQ and select the firm that is best qualified based on the published selection criteria and its ranking evaluations. After selection by the review committee, City Staff will negotiate fees, schedules, and a contract with the firm recommended by the review committee.

## EXHIBIT B

### The Professional's Bid

Available at the Parks and Recreation Department administrative offices.

## EXHIBIT C

### CONSTRUCTION

#### INSURANCE

INSURANCE: (Review this section carefully with your insurance agent prior to bid or proposal submission. See "Insurance Checklist" on the last page or specific coverages applicable to this contract).

#### **1. General Insurance Requirements:**

- 1.1 The Contractor shall not start work under this Contract until the Contractor has obtained at his own expense all of the insurance called for here under and such insurance has been approved by the City; nor shall the Contractor allow any subcontractor to start work on any subcontract until all insurance required of the subcontractor has been so obtained and approved by the Contractor. Approval of insurance required of the Contractor and subcontractors for the City of Plano will be granted only after submission to the Director of Public Works of original, signed certificates of insurance or, alternately, at the City's request, certified copies of the required insurance policies.
- 1.2 The Contractor shall require all subcontractors to maintain during the term of this agreement, Commercial General Liability insurance, Business Automobile Liability insurance, and Workers' Compensation and Employer's Liability insurance, in the same manner as specified for the Contractor. The Contractor shall furnish subcontractors' certificates of insurance to the City immediately upon request.
- 1.3 All insurance policies required hereunder shall be endorsed to include the following provision: "It is agreed that this policy is not subject to cancellation, non-renewal, until ten (10) days prior written notice has been given to the Director of Public Works, City of Plano."
- 1.4 **Contractor agrees to notify the City of any changes in insurance policy coverage, including but not limited to changes in limits and cancellation. The Contractor shall notify the City in writing of any changes within forty-eight (48) hours of the change. The Contractor's notice shall include a description of the changes and how those changes vary from the insurance requirements of the contract/agreement."**
- 1.5 No acceptance and/or approval of any insurance by the City shall be construed as relieving or excusing the Contractor, or the surety, or its bond, from any liability or obligation imposed upon either or both of them by the provisions of the Contract Documents.

1.6 The City of Plano (including its elected and appointed officials, agents, volunteers, and employees) is to be named as an additional insured under all coverages except Workers' Compensation and Automobile Liability, and the certificate of insurance, or the certified policy, if requested, must so state. Coverage afforded under this paragraph shall be primary as respects the City, its elected and appointed officials, agents and employees.

1.6.1 The following definition of the term "City" applies to all policies issued under the Contract:

The City Council of the City of Plano and any affiliated or subsidiary Board, Authority, Committee, or Independent Agency (including those newly constituted), provided that such affiliated or subsidiary Board, Authority, Committee, or Independent Agency is either a Body Politic created by the City Council of the City of Plano, or one in which controlling interest is vested in the City of Plano; and City of Plano Constitutional Officers.

1.7 The Contractor shall provide insurance as specified in the "Insurance Checklist" (Checklist) found on the last page of the bid or proposal form. Full limits of insurance required in the Checklist of this agreement shall be available for claims arising out of this agreement with the City of Plano.

1.8 The Contractor covenants to save, defend, hold harmless and indemnify the City and all of its elected or appointed officials, agents and employees (collectively the "City") from and against any and all claims, loss, damage, injury, cost (including court costs and attorney's fees), charges, liability or exposure, however caused, resulting from or arising out of or in any way connected with the Contractor's performance or non-performance of the terms of the Contract Documents or its obligations under the Contract. This indemnification shall continue in full force and effect until the Contractor completes all of the work required under the Contract, except that indemnification shall continue for all claims involving products or completed operations after final acceptance of the work by the City for which the City gives notice to the Contractor after the City's final acceptance of the work.

1.9 The Contractor shall be responsible for the work performed under the Contract Documents and every part thereof, and for all materials, tools, equipment, appliances, and property of any and all descriptions used in connection with the work. The Contractor assumes all risks for direct and indirect damage or injury to the property or persons used or employed on or in connection with the work contracted for, and of all damage or injury to any person property wherever located, resulting from any action, omission, commission or operation under the Contract, or in connection in

any way whatsoever with the contracted work, until final acceptance of the work by the City.

- 1.10 Insurance coverage required in these specifications shall be in force throughout the Contract Term. Should the Contractor fail to provide acceptable evidence of current insurance within seven (7) days of written notice at any time during the Contract Term, the City shall have the absolute right to terminate the Contract without any further obligation to the Contractor, and the Contractor shall be liable to the City for the entire additional cost of procuring performance and the cost of performing the incomplete portion of the Contract at time of termination.
- 1.11 Contractual and other liability insurance provided under this Contract shall not contain a supervision, inspection or engineering services exclusion that would preclude the City from supervising or inspecting the project as to the end result. The Contractor shall assume all on-the-job responsibilities as to the control of persons directly employed by it and of the subcontractors and any persons employed by the subcontractor.
- 1.12 Nothing contained in the specifications shall be construed as creating any contractual relationship between any subcontractor and the City. The Contractor shall be as fully responsible to the City for the acts and omissions of the subcontractors and of persons employed by them as it is for acts and omissions of persons directly employed by it.
- 1.13 Precaution shall be exercised by the Contractor at all times for the protection of persons, (including employees) and property. All existing structures, utilities, roads, services, trees and shrubbery shall be protected against damage or interruption of service at all times by the Contractor and its subcontractors during the term of the Contract, and the Contractor shall be held responsible for any damage to property occurring by reason of its operation on the property.
- 1.14 Written requests for consideration of alternate coverages must be received by the City Purchasing Manager at least ten (10) working days prior to the date set for receipt of bids or proposals. If the City denies the request for alternative coverages, the specified coverages will be required to be submitted.
- 1.15 All required insurance coverage must be acquired from insurers authorized to do business in the State of Texas and acceptable to the City. The City prefers that all insurers also have a policyholder's rating of "A-" or better, and a financial size of "Class VI" or better in the latest edition of A.M. Best, or A or better by Standard and Poors, unless the City grants specific approval for an exception, in the same manner as described in 1.13 above.

1.16 The City will consider deductible amounts as part of its review of the financial stability of the bidder. Any deductibles shall be disclosed in the Checklist and all deductibles will be assumed by the Contractor. Contractor/Vendor may be required to provide proof of financial ability to cover deductibles, or may be required to post a bond to cover deductibles.

**2. Contractor's Insurance - "Occurrence" Basis:**

2.1 The Contractor shall purchase the following insurance coverages, including the terms, provisions and limits shown in the Checklist.

2.1.1 Commercial General Liability - Such Commercial General Liability policy shall include any or all of the following as indicated on the Checklist:

- i. General aggregate limit is to apply per project.
- ii. Premises/Operations.
- iii. Actions of Independent Contractors.
- iv. Products/Completed Operations to be maintained for one year. Final completion and acceptance of the work, with evidence of same filed with owner.
- v. Contractual Liability including protection for the Contractor from claims arising out of liability assumed under this contract.
- vi. Personal Injury Liability including coverage for offenses related to employment.
- vii. Explosion, Collapse, or Underground (XCU) hazards; if applicable. Coverage required for any and all work involving drilling, excavation, etc.

2.1.2 Business Automobile Liability including coverage for any owned, hired, or non-owned motor vehicles and automobile contractual liability.

2.1.3 Workers' Compensation - statutory benefits as required by the State of Texas, or other laws as required by labor union agreements, including Employers' Liability coverage.

2.2 Owner's Protective Liability Insurance:

In addition to the insurance described above, the Contractor shall obtain, pay for and maintain at all times during the prosecution of the work under the contract, an owner's protective liability insurance policy naming the Owner and Engineer as insured for property damage and bodily injury, including death, which may arise in the prosecution of the work or Contractor's operation under this contract. Coverage shall be on an "occurrence" basis, and the policy shall be issued by the same insurance company that carries the Contractor's liability insurance.

Limits of liability shall be as follows:

Bodily Injury	\$500,000 each occurrence
Property Damage	\$500,000 each occurrence

**EXHIBIT A-1  
WORKERS' COMPENSATION  
INSURANCE COVERAGE**

A. Definitions:

Certificate of coverage ("certificate" - A copy of a certificate of insurance, a certificate of authority to self-insure issued by the commission, or a coverage agreement (TWCC-81, TWCC-82, TWCC-83, or TWCC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on a project, for the duration of the project.

Duration of the project - Includes the time from the beginning of the work on the project until the Contractor's/person's work on the project has been completed and accepted by the governmental entity.

Persons providing services on the project ("subcontractor" in Texas Labor Code § 406.096) - Includes all persons or entities performing all or part of the services the contractor has undertaken to perform on the project, regardless of whether that person contracted directly with the Contractor and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. "Services" does not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

- B. The Contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, § 401.011(44) for all employees of the contractor providing services on the project, for the duration of the project.
- C. The Contractor must provide a certificate of coverage to the governmental entity prior to being awarded the contract.
- D. If the coverage period shown on the Contractor's current certificate of coverage ends during the duration of the project, the Contractor must, prior to the end of the coverage period, file a new certificate of coverage with the governmental entity showing that coverage has been extended.

- E. The Contractor shall obtain from each person providing services on a project, and provide to the governmental entity:
- (1) a certificate of coverage, prior to that person beginning work on the project, so the governmental entity will have on file certificates of coverage showing coverage for all persons providing services on the project; and
  - (2) no later than seven days after receipt by the Contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.
- F. The Contractor shall retain all required certificates of coverage for the duration of the project and for one year thereafter.
- G. The Contractor shall notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the Contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project.
- H. The Contractor shall post on each project site a notice, in the text, form and manner prescribed by the Texas Workers' Compensation Commission, informing all persons providing services on the project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.
- I. The Contractor shall contractually require each person with whom it contracts to provide services on a project to:
- (1) provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, § 401.011(44) for all of its employees providing services on the project, for the duration of the project;
  - (2) provide to the Contractor, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project, for the duration of the project;
  - (3) provide the Contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;

- (4) obtain from each other person with whom it contracts, and provide to the Contractor:
  - (a) a certificate of coverage, prior to the other person beginning work on the project; and
  - (b) a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
- (5) retain all required certificates of coverage on file for the duration of the project and for one year thereafter;
- (6) notify the governmental entity in writing by certified mail or personal delivery, within ten (10) days after the person knew or should have known, if any change that materially affects the provision of coverage of any person providing services on the project; and
- (7) contractually require each person with whom it contracts to perform as required by paragraphs (1) - (7), with the certificates of coverage to be provided to the person for whom they are providing services.

J. By signing this contract or providing or causing to be provided a certificate of coverage, the Contractor is representing to the governmental entity that all employees of the Contractor who will provide services on the project will be covered by workers' compensation coverage for the duration of the project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the Contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.

K. The Contractor's failure to comply with any of these provisions is a breach of contract by the Contractor which entitles the governmental entity to declare the contract void if the Contractor does not remedy the breach within ten days after receipt of notice of breach from the governmental entity.

**WORKERS COMPENSATION  
LANGUAGE TO BE IN POSTED NOTICE BY CONTRACTOR**

**TWCC Rule 110.110, Section D.7**

Each Contractor is required to post a notice on each project site informing all persons providing services on the project that they are required to be covered, and stating how a person may verify current coverage and report failure to provide coverage. This notice does not satisfy other posting requirements imposed by the Act or other commission rules. This notice must be printed with a title in at least 30 point bold type and text in at least 19 point normal type, and shall be in both English and Spanish and any other language common to the worker population. The text for the notices shall be the following text in Figure 2:28 TAC §110 (d) (7) of this section, provided by the commission on the sample notice, without any additional words or changes.

Figure 2:28 TAC §110 (d) (7)

**REQUIRED WORKERS COMPENSATION COVERAGE**

"The law requires that each person working on this site or providing services related to this construction project must be covered by workers' compensation insurance. This includes persons providing, hauling, or delivering equipment or materials, or providing labor or transportation or other service related to the project, regardless of the identity of their employer or status as an employee."

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

*Effective September 1, 1994*

## CONSTRUCTION

### City of Plano - Insurance Checklist

("X" means the coverage is required.)

Coverages Required

Limits (Figures Denote Minimums)

- |   |  |
|---|--|
| <input checked="" type="checkbox"/> 1. Workers' Compensation & Employers' Liability | Statutory limits of State of Texas<br>\$100,000 accident \$100,000 disease<br>\$500,000 policy limit disease |
| <input type="checkbox"/> 2. For Future Use  |  |
| <input type="checkbox"/> 3. City Approved Alternative Workers' Comp. Program        | 150,000 medical, safety program  |
| <input checked="" type="checkbox"/> 4. General Liability                            | Complete entry No. 26<br>Minimum 500,000 each incident<br>1,000,000 occurrence                               |
| <input checked="" type="checkbox"/> 5. General aggregate applies per project (CGL)  |  |
| <input checked="" type="checkbox"/> 6. Premises/Operations                          | (Items No. 3-10 & 12 require)  |
| <input checked="" type="checkbox"/> 7. Independent Contractors                      | \$500,000 combined single limit for bodily injury and property damage  |
| <input checked="" type="checkbox"/> 8. Products                                     | damage each occurrence with  |
| <input checked="" type="checkbox"/> 9. Completed Operations                         | \$1,000,000 general aggregate that applies to project under contract   |
| <input checked="" type="checkbox"/> 10. Contractual Liability                       |  |
| <input checked="" type="checkbox"/> 11. Personal Injury Liability                   | \$500,000 each offense & aggregate   |
| <input checked="" type="checkbox"/> 12. XCU Coverages                               |  |
| <input checked="" type="checkbox"/> 13. Automobile Liability                        | \$500,000 Bodily Injury & Property   |
| <input checked="" type="checkbox"/> 14. Owned, Hired & Non-owned                    | Damage each accident   |
| <input type="checkbox"/> 15. Motor Carrier Act Endorsement                          |  |
| <input type="checkbox"/> 16. Professional Liability                                 | \$1,000,000 each claim<br>\$2,000,000 aggregate  |
| <input type="checkbox"/> 17. Garage Liability                                       | \$ _____ BI & PD each occurrence   |
| <input type="checkbox"/> 18. Garagekeepers' Legal                                   | \$ _____ - Comprehensive<br>\$ _____ - Collision   |

X 19. Owners Protective  
Liability

\$500,000 Combined single limits

X 20. City named as additional insured on other than W/C and Auto. This coverage is primary to all other coverages the City may possess.

X 21. City provided with Waiver of Subrogation on Workers' Compensation or Alternative program if applicable.

X 22. Ten (10) days notice of cancellation, non-renewal, material change or coverage reduction endorsement required. The words "endeavor to" and "but failure" (to end of sentence) are to be eliminated from the Notice of Cancellation provision on standard ACORD certificates.

X 23. The City of Plano prefers an A.M. Best's Guide Rating of "A-", "VI" or better or Standard and Poors Rating AA or better; Authorized to do business in the State of Texas (not applicable for workers' compensation assigned through pool or alternative compensation programs).

X 24. The Certificate must state bid number and bid title or project.

     25. Other Insurance Required:



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

09/06/2013

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Keller-Lowry Insurance Inc 1777 S Harrison St #700 Denver, CO 80210	CONTACT NAME: Teresa Heupel	
	PHONE (A/C, No., Ext): (303) 756-9909 FAX (A/C, No.): (303) 756-8818 E-MAIL ADDRESS: icanhelp@kellerlowry.com	
INSURED La Terra Studio, Inc. 2109 Commerce Street Dallas, TX 75201	INSURER(S) AFFORDING COVERAGE	NAIC #
	INSURER A: Hartford Accident & Indemnity	22357
	INSURER B: Hartford Underwriters Ins Co	30104
	INSURER C: Landmark American Insurance Co	33138
	INSURER D:	
	INSURER E:	
INSURER F:		

## COVERAGES

CERTIFICATE NUMBER: 12-13 GL,AU,WC, E&amp;O

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY		34SBAPD2497	09/29/2012	09/29/2013	EACH OCCURRENCE \$ 1,000,000
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY	<input checked="" type="checkbox"/>				DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000
	<input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR					MED EXP (Any one person) \$ 10,000
	<input checked="" type="checkbox"/> BLKT ADDITIONAL INSURED					PERSONAL & ADV INJURY \$ 1,000,000
	<input checked="" type="checkbox"/> BLKT WAIVER OF SUBRO					GENERAL AGGREGATE \$ 2,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER:					PRODUCTS - COMP/OP AGG \$ 2,000,000
	<input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC					\$
A	AUTOMOBILE LIABILITY		34SBAPD2497	09/29/2012	09/29/2013	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000
	<input type="checkbox"/> ANY AUTO					BODILY INJURY (Per person) \$
	<input type="checkbox"/> ALL OWNED AUTOS	<input type="checkbox"/> SCHEDULED AUTOS				BODILY INJURY (Per accident) \$
	<input checked="" type="checkbox"/> HIRED AUTOS	<input checked="" type="checkbox"/> NON-OWNED AUTOS				PROPERTY DAMAGE (Per accident) \$
						\$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB	<input checked="" type="checkbox"/> OCCUR	34SBAPD2497	09/29/2012	09/29/2013	EACH OCCURRENCE \$ 1,000,000
	<input type="checkbox"/> EXCESS LIAB	<input type="checkbox"/> CLAIMS-MADE				AGGREGATE \$ 1,000,000
	<input type="checkbox"/> DED	<input checked="" type="checkbox"/> RETENTION \$ 10,000				\$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY		34WECNX1027	09/29/2012	09/29/2013	<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICE/MEMBER EXCLUDED?	<input type="checkbox"/> Y <input type="checkbox"/> N/A <input checked="" type="checkbox"/> X				E.L. EACH ACCIDENT \$ 1,000,000
	(Mandatory in NH)					E.L. DISEASE - EA EMPLOYEE \$ 1,000,000
	If yes, describe under DESCRIPTION OF OPERATIONS below					E.L. DISEASE - POLICY LIMIT \$ 1,000,000
C	PROFESSIONAL LIABILITY		LHR736627	11/13/2012	11/13/2013	PER AGGREGATE \$2,000,000
						PER CLAIM \$1,000,000
						DEDUCTIBLE \$5,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

Project: Skate Facility Planning &amp; Concept Development -2013

The City of Plano (including its elected and appointed officials, agents, volunteers, and employees) is Additional Insured on a primary and noncontributory basis for General Liability as required by written contract with the Insured subject to the terms and conditions of the policy contract. Umbrella follows form. A Waiver of Subrogation applies to the Workers' Compensation Policy.

## CERTIFICATE HOLDER

## CANCELLATION

City of Plano  
1520 K Avenue, 3rd Floor, Suite 370  
Plano, TX 75074

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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EXHIBIT D

AFFIDAVIT OF NO PROHIBITED INTEREST

I, the undersigned declare that I am authorized to make this statement on behalf of **LA TERRA STUDIOS, INC.**, a Texas corporation, and I have made a reasonable inquiry and, to the best of my knowledge, no person or officer of **LA TERRA STUDIOS, INC.**, is employed by the City of Plano or is an elected or appointed official of the City of Plano within the restrictions of the Plano City Charter.

I am aware that Section 11.02 of the City Charter states:

"No officer or employee of the city shall have a financial interest, direct or indirect, in any contract with the city, nor shall be financially interested, directly or indirectly, in the sale to the city of any land, or rights or interest in any land, materials, supplies or service. The above provision shall not apply where the interest is represented by ownership of stock in a corporation involved, provided such stock ownership amounts to less than one (1) per cent of the corporation stock. Any violation of this section shall constitute malfeasance in office, and any officer or employee of the city found guilty thereof shall thereby forfeit his office or position. Any violation of this section with the knowledge, express or implied, of the persons or corporation contracting with the city shall render the contract voidable by the city manager or the city council."

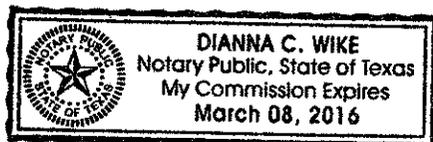
I further understand and acknowledge that a violation of Section 11.02 of the City Charter at anytime during the term of this contract will render the contract voidable by the City.

**LA TERRA STUDIOS, INC.**

By: *Kris*  
Signature  
Kris Brown  
Print Name  
President  
Title  
2013/09/30  
Date

STATE OF TEXAS §  
COUNTY OF Collin §

SUBSCRIBED AND SWORN TO before me this 30<sup>th</sup> day of September 2013.



Dianna C Wike  
Notary Public, State of Texas