

Memorandum



CITY OF DALLAS

DATE December 6, 2018

TO Honorable Members of Public Safety and Criminal Justice Committee

SUBJECT **Installation of Art Crosswalks**

Last year, the Department of Transportation entered into an agreement with Uptown Dallas, Inc. for the installation of the first colored thermoplastic art crosswalk in the City of Dallas at the intersection of Lemmon East and McKinney Avenue. This agreement (see attached) was specifically tailored to Uptown Dallas, Inc. The Department of Transportation did not formalize the agreement for public use but it provides guidelines for financial responsibility, installation, maintenance, and removal of crosswalk enhancements. Other similar requests are currently in the process of review.

The agreement included the following requirements:

- 1) Enhancements must comply with the *Texas Manual on Uniform Traffic Control Devices*.
- 2) Enhancements shall be applied using thermoplastic, skid-resistant materials or other materials approved by the Department of Transportation.
- 3) Enhancements may not cover or interfere with existing pavers or other crosswalk enhancements or street car tracks.
- 4) Enhancements may not contain numbering, text, or a sign of any type.
- 5) Enhancements must be maintained by the proposing entity.

The insurance requirements are also attached. Typically, requests can be generated by Councilmembers, homeowners' associations, public improvement districts and other interested groups. The Department of Transportation will review these requests on a case-by-case basis and they will be subject to the above requirements.

Parties interested in pursuing art crosswalks may contact Steve Cherryholmes in the Transportation Operations Division of the Department of Transportation at (214)-670-6904.

A handwritten signature in blue ink, appearing to read 'Majed Al-Ghafry'.

Majed Al-Ghafry, P.E.
Assistant City Manager

[Attachments]

c: Honorable Mayor and Members of the City Council
T.C. Broadnax, City Manager
Chris Caso, City Attorney (I)
Carol Smith, City Auditor (I)
Biliera Johnson, City Secretary
Preston Robinson, Administrative Judge

Kimberly Bizer Tolbert, Chief of Staff to the City Manager
Jon Fortune, Assistant City Manager
Joey Zapata, Assistant City Manager
Nadia Chandler Hardy, Assistant City Manager and Chief Resilience Officer
M. Elizabeth Reich, Chief Financial Officer
Directors and Assistant Directors

April 13, 2017

Katy Slade
Uptown Dallas, Inc.
3600 McKinney Avenue, Suite 210
Dallas, Texas 75204



Re: Crosswalk enhancements at Lemmon Avenue East and McKinney Avenue

Dear Ms. Slade:

This agreement serves as a response to Uptown Dallas, Inc.'s ("UDI") request to make certain crosswalk enhancements in the form of art installations within the existing crosswalks at the intersection of Lemmon Avenue East and McKinney Avenue. The City of Dallas ("City") agrees to allow the installation, maintenance, and removal of crosswalk enhancements upon consideration of UDI agreeing to the following conditions:

1. UDI is financially responsible for the installation, maintenance, and removal of the crosswalk enhancements. There is no cost to the City.
2. UDI will comply with the insurance requirements outlined in Exhibit A.
3. UDI will obtain a permit from the Department of Mobility and Street Services for the installation, maintenance, or removal of the crosswalk enhancements if required by the Dallas Development Code.
4. The crosswalk enhancements must comply with the Texas Manual on Uniform Traffic Control Devices.
5. The crosswalk enhancements will be applied using thermoplastic, skid-resistant materials or other materials approved by the Department of Mobility and Street Services.
6. The crosswalk enhancements may not cover or interfere with existing pavers or other crosswalk enhancements or street car tracts.
7. The crosswalk enhancements may not contain numbering, text, or a sign of any type.
8. UDI must maintain the crosswalk enhancements. If the City makes a written request for repair/upkeep of the crosswalk enhancements and UDI fails to make the necessary repairs/upkeep, the City will remove the crosswalk enhancements at the expense of UDI.

9. UDI must remove the crosswalk enhancements within 15 days upon written request of the City of Dallas. If UDI fails to remove the crosswalk enhancements on or before the expiration of 15 days, the City shall remove the crosswalk enhancements at the expense of UDI.

10. UDI agrees to defend, indemnify, and hold the City, its officers, agents, and employees harmless from and against all claims, liabilities, lawsuits, judgments, costs, and expenses arising out of or in conjunction with this agreement. The provisions of this paragraph are solely for the benefit of the parties to this agreement and are not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

This agreement is made effective _____, 2017, by and between Uptown Dallas, Inc. and the City of Dallas.

CITY OF DALLAS

UPTOWN DALLAS, INC.

REPRESENTATIVE NAME

REPRESENTATIVE NAME

REPRESENTATIVE SIGNATURE

REPRESENTATIVE SIGNATURE

Insurance Requirements

SECTION A. Prior to the approval of this contract by the CITY, CONTRACTOR shall procure, pay for and maintain the following insurance written by companies approved by the State of Texas and acceptable to CITY. The insurance shall be evidenced by delivery to the CITY, at the address shown in REQUIRED PROVISIONS b.(i), certificates of insurance executed by the insurer or its authorized agent stating coverages, limits, expiration dates and compliance with all applicable required provisions. Upon request, the CITY shall be entitled to receive without expense, copies of the policies and all endorsements. CITY HAS NO DUTY TO PAY OR PERFORM UNDER THIS CONTRACT OR AGREEMENT UNTIL SUCH CERTIFICATE HAS BEEN DELIVERED TO THE CITY and no officer or employee shall have authority to waive this requirement.

SECTION B. The CITY reserves the right to review the insurance requirements of this section during the effective period of the contract and to modify insurance coverages and their limits when deemed necessary and prudent by City's Office of Risk Management based upon economic conditions, recommendation of professional insurance advisors, changes in statutory law, court decisions or other relevant factors. The CONTRACTOR agrees to make any reasonable request for deletion, revision or modification of particular policy terms, conditions, limitations, or exclusions (except where policy provisions are established by law or regulation binding upon either party to the contract). Upon request by CITY, CONTRACTOR shall exercise reasonable efforts to accomplish such changes in policy coverages and shall pay the cost thereof.

SECTION C. REQUIRED PROVISIONS

CONTRACTOR agrees that with respect to the below required insurance, all insurance contracts and certificate(s) of insurance will contain and state, in writing, the following required provisions:

- a. Name the City of Dallas and its officers, employees and elected representatives as additional insureds to all applicable coverages.
- b. State that coverage shall not be canceled except after thirty (30) days written notice to:
 - (i) Department of Streets, Attention: Aurobindo Majumdar, Project Manager, Buyer, 1500 Marilla, L1B-South, Dallas, Texas 75201 and
 - (ii) Director, Office of Risk Management, 1500 Marilla, 6A-South, Dallas, Texas 75201.
- c. Waive subrogation against the City of Dallas, its officers and employees, for bodily injury (including death), property damage or any other loss.
- d. Provide that the CONTRACTOR'S insurance is primary insurance as respects the CITY, its officers, employees and elected representatives.
- e. Ensure that all certificates of insurance identify the service or product being provided and name the City department shown in REQUIRED PROVISIONS b.(i) as the Certificate Holder.

SECTION D. INSURANCE COVERAGE REQUIRED

CONSTRUCTION INSURANCE REQUIREMENTS

Subject to CONTRACTOR'S right to maintain reasonable deductibles, CONTRACTOR shall obtain and maintain in full force and effect for the duration of this contract and any extension hereof, at CONTRACTOR'S sole expense, insurance coverage in the following type(s) and amounts:

1. **Workers' Compensation within the regulations of the Texas Workers' Compensation Act. The minimum policy limits for Employers Liability are:**

Bodily Injury by Accident: \$1,000,000 Each Accident

Bodily Injury by Disease: \$1,000,000 Policy Limit

Bodily Injury by Disease: \$1,000,000 Each Employee

2. **If vehicles will be used in the performance of services under the contract, then, Business Automobile Liability Insurance covering owned, hired, and non-owned vehicles, with a minimum combined bodily injury (including death) and property damage limit of \$1,000,000 per occurrence.**
3. **Commercial General Liability Insurance including, but not limited to, Premises/Operations, Personal & Advertising Injury, Products/Completed Operations, Independent Contractors and Contractual Liability with minimum combined bodily injury (including death) and property damage limits of \$1,000,000 per occurrence, \$2,000,000 products/completed operations aggregate, \$2,000,000 general aggregate. The policy shall include endorsement CG2503 Amendment of limits (designated project or premises) in order to extend the policy's limits specifically to the City's project. If this insurance is written on a claims-made form, coverage shall be continuous (by renewal or extended reporting period) for not less than twenty-four (24) months following completion of the contract and acceptance by the City. Coverage, including any renewals, shall have the same retroactive date as the original policy applicable to this contract.**

SECTION E. (1) Without limiting any of the other obligations or liabilities of the CONTRACTOR, the CONTRACTOR shall require each Subcontractor performing work under the contract, at the Subcontractor's own expense, to maintain during the term of the contract, levels of insurance that are necessary and appropriate for the services being performed, comply with all applicable laws and are consistent with industry standards. The Subcontractor's liability insurance shall name the CONTRACTOR as an additional insured. (2) The CONTRACTOR shall obtain and monitor the certificates of insurance from each Subcontractor. The CONTRACTOR must retain the certificates of insurance for the duration of the contract and shall have the responsibility of enforcing insurance requirements among its subcontractors. The CITY shall be entitled, upon request and without expense, to receive copies of these certificates.

SECTION F. Approval, disapproval or failure to act by the CITY regarding any insurance supplied by the CONTRACTOR or its subcontractors shall not relieve the CONTRACTOR of full responsibility or liability for damages and accidents as set forth in the contract documents. Neither shall the bankruptcy, insolvency nor denial of liability by the insurance company exonerate the CONTRACTOR from liability.

SECTION G. INDEMNITY

The CONTRACTOR agrees to defend, indemnify and hold CITY, its officers, agents and employees, harmless against any and all claims, lawsuits, judgments, costs and expenses for personal injury (including death), property damage or other harm for which recovery of damages is sought, suffered by any person or persons, that may arise out of or be occasioned by CONTRACTOR'S breach of any of the terms or provisions of this contract, or by any negligent or strictly liable act or omission of CONTRACTOR, its officers, agents, employees, or subcontractors, in the performance of this contract; except that the indemnity provided for in this paragraph shall not apply to any liability resulting from the sole negligence or fault of CITY, its officers, agents or employees and in the event of joint and concurrent negligence or fault of CONTRACTOR and CITY, responsibility and indemnity, if any, shall be apportioned comparatively in accordance with the laws of the State of Texas, without waiving any governmental immunity available to the CITY under Texas law and without waiving any defenses of the parties under Texas law. 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.