

THE STATE OF TEXAS           §  
  §  
COUNTY OF DENTON           §

FIRST AMENDMENT TO CONTRACT  
BY AND BETWEEN THE CITY OF DENTON, TEXAS  
AND DELOITTE & TOUCHE, LLP  
CONTRACT NO. 6469

THIS FIRST AMENDMENT TO CONTRACT 6469 (“Amendment”) by and between the City of Denton, Texas (“City”) and Deloitte & Touche, LLP (“Supplier”);

The original Agreement provided for Deloitte & Touche, LLP services related to Agreement for Denton Municipal Electric (“DME”) & Energy Management Operations (“EMO”) Analysis, as is contained in Contract # 6469 (on file in the Purchasing Office). The initial agreement for the Basic Services – (Exhibit A), was approved on July 25, 2017, in the not-to-exceed amount of \$26,000.

The CITY deems it necessary to further expand the goods/services provided by SUPPLIER to the CITY;

NOW THEREFORE,

1. Amendment #1 in the amount of \$60,000 increases the “Total Contract Amount for services shall not exceed \$86,000 per term. Pricing shall be per Exhibit B attached.”

All other provisions of the contract 6469, as heretofore amended, remain in full force and effect.

IN WITNESS WHEREOF, the CITY and the SUPPLIER, have each executed this Amendment, by and through their respective duly authorized representatives and officers on this the 7/25/2017.

“CITY”

CITY OF DENTON, TEXAS  
A Texas Municipal Corporation

By: \_\_\_\_\_  
DocuSigned by:  
*Todd Hileman*  
E776C711BA0D454...  
TODD HILEMAN  
CITY MANAGER

ATTEST:  
JENNIFER WALTERS, CITY SECRETARY

By: \_\_\_\_\_  
DocuSigned by:  
*Jennifer Walters*  
C5BFAFC1821948D...

APPROVED AS TO LEGAL FORM:  
AARON LEAL, INTERIM CITY ATTORNEY

By: \_\_\_\_\_  
DocuSigned by:  
*Jennifer W. Walters*  
5972538AC4584E9...

“SUPPLIER”

Deloitte & Touche, LLP  
A Corporation

By: \_\_\_\_\_  
DocuSigned by:  
*Stephen K. Engler*  
48625742423D4A8...  
AUTHORIZED SIGNATURE, TITLE

EXHIBIT A



DocuSign City Council Transmittal Coversheet

PSA	6469
File Name	PSA TO DELOITTE & TOUCHE, LLP
Purchasing Contact	Jody Word
City Council Target Date	NA
Contract Value	\$26,000
Piggy Back Option	no
Contract Expiration	

EXHIBIT A

PROFESSIONAL SERVICES AGREEMENT  
FOR DENTON MUNICIPAL ELECTRIC (“DME”) &  
ENERGY MANAGEMENT OPERATIONS (“EMO”) ANALYSIS  
(FILE 6469)

STATE OF TEXAS §

COUNTY OF DENTON §

5/25/2017

THIS AGREEMENT is made and entered into \_\_\_\_\_, by and between the City of Denton, Texas, a Texas municipal corporation, with its principal office at 215 East McKinney Street, Denton, Denton County, Texas 76201, hereinafter called “OWNER” and DELOITTE & TOUCHE, LLP, with its office at 100 Kimball Drive, Parsippany, NJ 07054-2176, hereinafter called “CONSULTANT,” acting herein, by and through their duly authorized representatives.

WITNESSETH, that in consideration of the covenants and agreements herein contained, the parties hereto do mutually agree as follows:

**ARTICLE I**  
**EMPLOYMENT OF CONSULTANT**

The OWNER hereby contracts with the CONSULTANT, as an independent contractor, and the CONSULTANT hereby agrees to perform the services herein in connection with the Project as stated in the sections to follow, with reasonable diligence and in accordance with applicable professional standards. **CONSULTANT DISCLAIMS ALL OTHER WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.**

The professional services set out herein are in connection with the following described project (the “Project”):

The Project shall be to develop a scope of work to perform an assessment and validation of the cost saving model used by Denton Municipal Electric (“DME”) to support the operations of the Energy Management Operations (“EMO”) group (the “Model”).

This document and any attachments thereto may contain information that is confidential, commercially-sensitive, proprietary, and/or public power utility competitive and financial information in accordance with the provisions of Texas Government Code, Section 552.101, 552.104, 552.110 and/or 552.133, and may be protected from required public disclosure



**ARTICLE II**  
**SCOPE OF SERVICES**

The CONSULTANT shall perform the following services (collectively, the "Services") in a professional manner:

- A. All those services set forth in the Statement of Work attached hereto and made a part hereof as Exhibit "A" as if written word for word herein.
- B. If there is any conflict between the terms of this Agreement and the exhibits attached to this Agreement, the terms and conditions of this Agreement will control over the terms and conditions of the attached exhibits. Notwithstanding the immediately preceding sentence, in the event that an exhibit expressly provides that certain provisions therein shall control over specified provisions of this Agreement, then, to the extent that such provisions of the exhibit conflict with the specified provisions of this Agreement, such provisions of the exhibit shall control.

The Services may include advice and recommendations, but CONSULTANT will not make any decisions on behalf of OWNER in connection with the implementation of such advice and recommendations.

**ARTICLE III**  
**Not Applicable**

**ARTICLE IV**  
**PERIOD OF SERVICE**

This Agreement shall become effective upon the later of the execution dates of this Agreement by the OWNER and the CONSULTANT, and shall remain in force for the period which may reasonably be required for the completion of the Project, including additional Services, if any are agreed by the parties, and any required extensions mutually agreed to in writing by the parties. This Agreement may be sooner terminated in accordance with the provisions of Article XII hereof. The CONSULTANT shall make all reasonable efforts to complete the services set forth herein promptly and to meet the schedule established by the OWNER, acting through its City Manager or his designee, as described in Exhibit A to this Agreement, or a schedule is otherwise mutually agreed in writing by the parties. Notwithstanding any other provision of this Agreement, all performance dates for the Services shall be regarded only as estimates. Nonetheless, CONSULTANT shall utilize diligent efforts to meet such dates and shall notify OWNER promptly if CONSULTANT encounters significant delays in completing the Services.

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EXHIBIT A

ARTICLE V  
**COMPENSATION**

- A. COMPENSATION TERMS: are specified in Exhibit A under the “ENGAGAEMENT FEES”.
- B. BILLING AND PAYMENT: For and in consideration of the professional services to be performed by the CONSULTANT herein, the OWNER agrees to pay, based on the cost estimate detail at an hourly rate shown in Exhibit A which is attached hereto and made a part of this Agreement as if written word for word herein, a total fee, including reimbursement for direct non-labor expenses not to exceed \$26,000.

Payments to the CONSULTANT will be made on the basis of detailed monthly statements rendered to the OWNER through its City Manager or his designee; however, under no circumstances shall any monthly statement for services exceed the value of the work performed at the time a statement is rendered. The OWNER may withhold the final five percent (5%) of the contract amount until completion of the Project.

Nothing contained in this Article shall require the OWNER to pay for any Services which are not approved, as described in Article VI below.

It is specifically understood and agreed that the CONSULTANT shall not be authorized to undertake any work pursuant to this Agreement which would require additional payments by the OWNER for any charge, expense, or reimbursement above the maximum not to exceed fee as stated, without first having obtained written authorization from the OWNER and that CONSULTANT will not be required to continue its performance of the Services hereunder absent a written agreement of the parties to continue.

- C. PAYMENT: If the OWNER fails to make payments due the CONSULTANT for services and expenses within sixty (60) days after receipt of the CONSULTANT’s statement thereof, the amounts due the CONSULTANT will be increased by the rate of one percent (1%) per month from the said sixtieth (60<sup>th</sup>) day, and, in addition, the CONSULTANT may, after giving seven (7) days’ written notice to the OWNER, suspend services under this Agreement until the CONSULTANT has been paid in full all amounts due for services, expenses, and charges, provided, however, nothing herein shall require the OWNER to pay the late charge of one percent (1%) set forth herein if the OWNER reasonably determines that the work does not conform with the terms of this Agreement in all material respects, and performs such other steps as required in accordance with this Article V, “Compensation.”

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**ARTICLE VI**  
**APPROVAL OF THE WORK**

OWNER shall approve all Deliverables provided by CONSULTANT that conform in all material respects to the requirements therefor set forth in Exhibit A, or as otherwise mutually agreed in writing by the parties. Approval shall be deemed given if OWNER has not provided CONSULTANT with written notice of such approval or with written notice that the Deliverable does not conform to the foregoing within fifteen (15) days of delivery.

**ARTICLE VII**  
**OWNERSHIP OF DOCUMENTS**

Upon full payment to CONSULTANT, and subject to the terms and conditions herein: (i) all documents prepared or furnished by the CONSULTANT (and CONSULTANT's subcontractors or sub-consultants) for delivery to OWNER pursuant to this Agreement (except to the extent this includes any CONSULTANT TECHNOLOGY, as defined below) shall become the property of the OWNER; (ii) CONSULTANT hereby grants to OWNER the right to use, for OWNER's internal business purposes, any CONSULTANT TECHNOLOGY included in the Deliverables, in connection with OWNER's use of the Deliverables. Except for the foregoing license grant, CONSULTANT or its licensors retain all rights in and to all CONSULTANT TECHNOLOGY. The CONSULTANT is entitled to retain copies of all such documents. The documents prepared and furnished by the CONSULTANT are intended only to be applicable to this Project, and OWNER's use of these documents in other projects shall be at OWNER's sole risk and expense. In the event the OWNER uses any of the information or materials developed pursuant to this Agreement in another project or for other purposes than specified herein, CONSULTANT is hereby expressly released from any and all liability relating to such use in that project. "CONSULTANT TECHNOLOGY" means all works of authorship, materials, information, and other intellectual property created prior to or independently of the performance of the Services, or created by CONSULTANT or its subcontractors as a tool for their use in performing the Services, plus any modifications or enhancements thereto and derivative works based thereon.

To the extent any CONSULTANT TECHNOLOGY provided to OWNER hereunder constitutes inventory within the meaning of section 471 of the Internal Revenue Code, such CONSULTANT TECHNOLOGY is licensed to OWNER by CONSULTANT as agent for its product company subsidiary on the terms and conditions contained herein. The rights granted in this Article VII do not apply to any works of authorship, materials, information, and other intellectual property (including any modifications or enhancements thereto or derivative works based thereon) that is subject to a separate license agreement between OWNER and any third party (including CONSULTANT's affiliates).

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**ARTICLE VIII**  
**INDEPENDENT CONTRACTOR**

CONSULTANT shall provide services to OWNER as an independent contractor, not as an employee, partner, fiduciary, agent or representative of the OWNER. CONSULTANT shall not have or claim any right arising from employee status.

**ARTICLE IX**  
**LIMITATION ON LIABILITY AND INDEMNITY**

CONSULTANT, its subsidiaries and subcontractors, and their respective personnel shall not be liable to OWNER for any claims, liabilities, or expenses relating to this Agreement for an aggregate amount in excess of the fees paid by OWNER to CONSULTANT pursuant to this Agreement, except to the extent resulting from the recklessness, bad faith, or intentional misconduct of CONSULTANT or its subcontractors. In no event shall CONSULTANT, its subsidiaries or subcontractors, or their respective personnel be liable to OWNER for any loss of use, data, goodwill, revenues, or profits (whether or not deemed to constitute a direct claim), or any consequential, special, indirect, incidental, punitive, or exemplary loss, damage, or expense relating to this Agreement.

The OWNER, to the extent permitted by law, shall indemnify and defend and hold harmless the CONSULTANT, its subsidiaries and subcontractors, and their respective officers and personnel from and against any and all liability, claims, demands, damages, losses, and expenses, including, but not limited to court costs and reasonable attorney fees incurred by the CONSULTANT related to the Services, except to the extent resulting from the recklessness, bad faith, or intentional misconduct of CONSULTANT or its subcontractors.

The CONSULTANT shall indemnify and defend and hold harmless the OWNER and its respective officers and personnel from and against any and all liability, claims, demands, damages, losses, and expenses, including, but not limited to court costs and reasonable attorney fees incurred by the OWNER attributable to claims of third parties solely for (1) bodily injury, death, or physical damage to real or tangible personal property, to the extent directly and proximately caused by the negligence or intentional misconduct of CONSULTANT while engaged in the performance of the Services; provided, however, that if there also is fault on the part of any entity or individual indemnified hereunder or any entity or individual acting on OWNER's behalf, the foregoing indemnification shall be on a comparative fault basis; and (2) infringement by a Deliverable of any U.S. patent existing at the time of delivery and known to CONSULTANT or copyright or any unauthorized use of any trade secret, except to the extent that such infringement or unauthorized use arises from, or could have been avoided except for (i) modification of such Deliverable other than by CONSULTANT or its subcontractors or use thereof in a manner not contemplated by Exhibit A, (ii) the failure of the indemnified party to use any corrections or modifications made available by CONSULTANT, (iii) information, materials,

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instructions, specifications, requirements or designs provided by or on behalf of the indemnified party, or (iv) the use of such Deliverable in combination with any platform, product, network or data not provided by CONSULTANT. If OWNER's use of any such Deliverable, or any portion thereof, is or is likely to be enjoined by order of a court of competent jurisdiction as such an infringement or unauthorized use, CONSULTANT, at its option and expense, shall have the right to (x) procure for OWNER the continued use of such Deliverable, (y) replace such Deliverable with a non-infringing Deliverable, or (z) modify such Deliverable so it becomes non-infringing; provided that, if (y) or (z) is the option chosen by CONSULTANT, the replacement or modified Deliverable is capable of performing substantially the same function. In the event CONSULTANT cannot reasonably procure, replace or modify such Deliverable in accordance with the immediately preceding sentence, CONSULTANT may require Owner to cease use of such Deliverable and refund the professional fees paid to CONSULTANT with respect to the Services giving rise to such Deliverable. The foregoing provisions of this clause (2) constitute the sole and exclusive remedy of the indemnified parties, and the sole and exclusive obligation of CONSULTANT, relating to a claim that any of CONSULTANT's Deliverables infringes any patent, copyright or other intellectual property right of a third party.

Nothing in this Agreement shall be construed to create a liability to any person who is not a party to this Agreement except as expressly described in this Article IX, and nothing herein shall waive any of the parties' defenses, both at law or equity, to any claim, cause of action, or litigation filed by anyone not a party to this Agreement, including the defense of governmental immunity, which defenses are hereby expressly reserved.

#### **ARTICLE X** **INSURANCE**

During the performance of the services under this Agreement, CONSULTANT shall maintain the following insurance with an insurance company licensed or eligible to do business in the State of Texas by the State Insurance Commission or any successor agency that has a rating with A. M. Best of at least an A- or above or the equivalent rating from a nationally recognized rating firm:

- A. Commercial General Liability Insurance with bodily injury limits of not less than \$500,000 for each occurrence and not less than \$500,000 in the aggregate, and with property damage limits of not less than \$100,000 for each occurrence and not less than \$100,000 in the aggregate.
- B. Automobile Liability Insurance with bodily injury limits of not less than \$500,000 for each person and not less than \$500,000 for each accident, and with property damage limits of not less than \$100,000 for each accident.
- C. Worker's Compensation Insurance in accordance with statutory requirements, and Employers' Liability Insurance with limits of not less than \$100,000 for each accident for bodily injury, \$100,000 policy limit for bodily injury by disease and \$100,000 per employee for bodily injury by disease.

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- D. Professional Liability Insurance with limits of not less than \$1,000,000 annual aggregate.
- E. The CONSULTANT shall furnish insurance certificates at the OWNER's request to evidence such coverages. The General Liability and Auto Liability insurance policies shall name the OWNER as an additional insured with respect to CONSULTANT'S acts or omissions in performance of Services under this Agreement, and shall contain a provision that all required insurance policies shall not be canceled or materially adversely modified without thirty (30) days' prior written notice to CONSULTANT. In such event, the CONSULTANT shall, prior to the effective date of the change or cancellation, serve substitute policies furnishing the same coverage.

**ARTICLE XI**  
**ARBITRATION AND ALTERNATE DISPUTE RESOLUTION**

The parties may agree to settle any disputes under this Agreement by submitting the dispute to arbitration or other means of alternate dispute resolution, such as mediation. No arbitration or alternate dispute resolution arising out of or relating to this Agreement, involving one party's disagreement, may include the other party to the disagreement without the other's approval.

**ARTICLE XII**  
**TERMINATION OF AGREEMENT**

- A. Notwithstanding any other provision of this Agreement, either party may terminate this Agreement by giving thirty (30) days' advance written notice to the other party. CONSULTANT may terminate performance of any part of the Services, upon written notice to OWNER, if CONSULTANT determines that performance of any part of the Services would be in conflict with law, or independence or professional rules.
- B. This Agreement may be terminated in the event of either party substantially failing to fulfill its obligations under this Agreement. No such termination will be affected unless the other party is given (1) written notice (delivered by certified mail, return receipt requested) of intent to terminate and setting forth the reasons specifying the non-performance, and not less than thirty (30) calendar days to cure the failure; and (2) an opportunity for consultation with the terminating party prior to termination.
- C. If the Agreement is terminated prior to completion of the services to be provided hereunder, CONSULTANT shall immediately cease all services and shall render a final bill for services to the OWNER within thirty (30) days after the date of termination. The OWNER shall pay CONSULTANT for all services rendered and performed in accordance with the terms hereof in all material respects and for reimbursable expenses incurred until the effective date of termination, in accordance with Article V

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“Compensation.” Should the OWNER subsequently contract with a new consultant for the continuation of services on the Project, CONSULTANT shall reasonably cooperate in providing information to OWNER upon receipt of written request and upon the payment by OWNER of an additional reasonable fee, as applicable, provided that such new consultant is appointed within thirty (30) days from the termination date. The CONSULTANT shall turn over all completed Deliverables for which payment has been made by OWNER, prepared or furnished by CONSULTANT pursuant to this Agreement to the OWNER on the date of termination, and CONSULTANT may maintain copies of such documents for its use.

**ARTICLE XIII**  
**Not Applicable**

**ARTICLE XIV**  
**NOTICES**

All notices, communications, and reports required or permitted under this Agreement shall be emailed, personally delivered or mailed to the respective parties by depositing same in the United States mail to the address shown below, certified mail, return receipt requested, unless otherwise specified herein. Mailed notices shall be deemed communicated as of receipt at:

To CONSULTANT:

Deloitte & Touche, LLP  
100 Kimball Drive  
Parsippany, NJ 07054-2176

To OWNER:

City of Denton  
Materials Management  
901B Texas Street  
Denton, Texas 76209

All notices shall be deemed effective upon receipt by the party to whom such notice is given.

**ARTICLE XV**  
**ENTIRE AGREEMENT**

This Agreement, consisting of 25 pages and two exhibits, constitutes the complete and final expression of the agreement of the parties, and is intended as a complete and exclusive statement of the terms of their agreements, and supersedes all prior contemporaneous offers, promises, representations, negotiations, discussions, communications, and agreement which may have been made in connection with the subject matter hereof

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**ARTICLE XVI**  
**SEVERABILITY**

If any provision of this Agreement is found or deemed by a court of competent jurisdiction to be invalid or unenforceable, it shall be considered severable from the remainder of this Agreement and shall not cause the remainder to be invalid or unenforceable. In such event, the parties shall reform this Agreement to replace such stricken provision with a valid and enforceable provision which comes as close as possible to expressing the intention of the stricken provision.

**ARTICLE XVII**  
**COMPLIANCE WITH LAWS**

The CONSULTANT shall comply with all federal, state, and local laws, rules, regulations, and ordinances applicable to the CONSULTANT in its performance of the Services covered hereunder as they may now read or hereinafter be amended.

**ARTICLE XVIII**  
**DISCRIMINATION PROHIBITED**

In performing the Services required hereunder, the CONSULTANT shall not discriminate against any person on the basis of race, color, religion, sex, national origin or ancestry, age, or physical handicap.

**ARTICLE XIX**  
**PERSONNEL**

- A. The CONSULTANT represents that it has or will secure, at its own expense, all personnel required to perform all the Services required under this Agreement. Such personnel shall not be employees or officers of, or have any contractual relations with the OWNER other than under this Agreement. CONSULTANT shall inform the OWNER of any conflict of interest or potential conflict of interest that may arise during the term of this Agreement that will prevent it from providing the Services hereunder.
- B. All Services required hereunder will be performed by the CONSULTANT or under its supervision. All personnel engaged in performance of Services shall be qualified, and shall be authorized and permitted under state and local laws applicable to CONSULTANT to perform such Services.

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**ARTICLE XX**  
**ASSIGNABILITY AND**  
**SUBCONTRACTING**

Except as provided below, neither party may assign any of its rights or obligations under this Agreement, or transfer any interest in this Agreement (whether by assignment, novation, or otherwise) without the prior written consent of the other party. OWNER hereby consents to CONSULTANT subcontracting any portion of the Services to any affiliate or related entity, whether located within or outside of the United States. Services performed hereunder by CONSULTANT's subcontractors shall be invoiced as professional fees on the same basis as Services performed by CONSULTANT's personnel, unless otherwise agreed in writing.

**ARTICLE XXI**  
**MODIFICATION**

No waiver or modification of this Agreement or of any covenant, condition, or limitation herein contained shall be valid unless in writing and duly executed by both parties, and no evidence of any waiver or modification shall be offered or received in evidence in any proceeding arising between the parties hereto out of or affecting this Agreement, or the rights or obligations of the parties hereunder, and unless such waiver or modification is in writing and duly executed by both parties; and the parties further agree that the provisions of this section will not be waived unless as set forth herein.

**ARTICLE XXII**  
**CONFIDENTIAL INFORMATION**

- A. All Services and work performed by CONSULTANT shall be solely for OWNER's benefit, and are not intended to be relied upon by any person or entity other than OWNER. OWNER shall not disclose the Services or work performed by CONSULTANT, or refer to the Services or work performed by CONSULTANT in any communication, to any person or entity except (i) as specifically set forth in this Agreement, or (ii) to OWNER's contractors solely for the purpose of their providing services to OWNER relating to the subject matter of this Agreement, provided that such contractors comply with the restrictions on disclosure set forth in this sentence. OWNER, however, may create its own materials based on the content of such Services and work performed by CONSULTANT and use and disclose such OWNER-created materials for external purposes, provided that, OWNER does not in any way, expressly or by implication, attribute such materials to CONSULTANT or its subcontractors.
- B. To the extent that, in connection with this Agreement, either party (each, the "receiving party") comes into possession of any confidential information of the other (the "disclosing party"), it will not disclose such information to any third party without the disclosing party's consent, using at least the same degree of care as it employs in maintaining in confidence its own confidential information of a similar nature, but in no

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event less than a reasonable degree of care. The disclosing party hereby consents to the receiving party disclosing such information: (1) as expressly permitted in this Agreement; (2) to subcontractors, whether located within or outside of the United States, that are providing services in connection with this Agreement and that have agreed to be bound by confidentiality obligations similar to those in this Article XXII; (3) as may be required by law, regulation, judicial or administrative process, or in accordance with applicable professional standards or rules, or in connection with litigation or arbitration pertaining hereto; or (4) to the extent such information (i) is or becomes publicly available other than as the result of a disclosure in breach hereof, (ii) becomes available to the receiving party on a non-confidential basis from a source that the receiving party believes is not prohibited from disclosing such information to the receiving party, (iii) is already known by the receiving party without any obligation of confidentiality with respect thereto, or (iv) is developed by the receiving party independently of any disclosures made to the receiving party hereunder. Nothing in this Article XXII (B) shall alter OWNER's obligations under Article XXII (A). CONSULTANT, however, may use and disclose any knowledge and ideas acquired in connection with the Services to the extent they are retained in the unaided memory of its personnel.

### ARTICLE XXIII OWNER'S RESPONSIBILITIES

OWNER shall cooperate with CONSULTANT in the performance of the Services, including providing CONSULTANT with reasonable facilities and timely access to data, information, and personnel of OWNER. If CONSULTANT is provided with access to or use of OWNER's facilities outside of the United States for the purpose of performing the Services, such facilities may not be dedicated solely for CONSULTANT's use and CONSULTANT will not be deemed a tenant of OWNER with respect to such facilities. OWNER shall be solely responsible for, among other things (a) the performance of its personnel and agents, (b) the accuracy and completeness of all data and information provided to CONSULTANT for purposes of the performance of the Services, (c) making all management decisions and performing all management functions, (d) designating a competent management member to oversee the Services, (e) evaluating the adequacy and results of the Services, and (f) accepting responsibility for the results of the Services. CONSULTANT's performance is dependent upon the timely and effective satisfaction of OWNER's responsibilities hereunder and timely decisions and approvals of OWNER in connection with the Services. CONSULTANT shall be entitled to rely on all decisions and approvals of OWNER.

### ARTICLE XXIV MISCELLANEOUS

- A. All COMMUNICATIONS between CONSULTANT and OWNER shall be considered commercially sensitive and confidential to the extent that they contain non-public information of a party. These COMMUNICATIONS include, but are not limited to: emails, conversations, written materials, modeling structure, data and assumptions, spreadsheets, projections, and any final deliverables including presentations. Exemptions

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and exclusions from open meetings, open records, or public information requests shall apply to these commercially sensitive and confidential COMMUNICATIONS. OWNER agrees to take reasonable actions to prevent public release of these COMMUNICATIONS including denying public information requests and seeking applicable legal protections. OWNER also agrees to give reasonable notice to CONSULTANT of any request to disclose or release COMMUNICATIONS, and to cooperate with CONSULTANT in CONSULTANT's pursuit of legal relief from attempts to disclose or release COMMUNICATIONS.

- B. The following exhibits are attached to and made a part of this Agreement:  
Exhibit A – Statement of Work  
Exhibit B - Conflict of Interest Questionnaire
- C. CONSULTANT agrees that OWNER shall, until the expiration of one (1) year after the final payment under this Agreement, have access to and the right to examine any billing and payment records of the CONSULTANT for the fees and expenses incurred in performing the Services relating to this Agreement. CONSULTANT agrees that OWNER shall, at its sole expense, have access during normal working hours to such records of CONSULTANT to the extent reasonably necessary to substantiate payment made. OWNER may exercise such right no more than once per calendar year during the period within which CONSULTANT is obligated to maintain such records hereunder. Any records made available to OWNER under this provision may be redacted by CONSULTANT to the extent necessary to protect its proprietary and confidential information and to avoid any invasion of personal privacy.
- . Venue of any suit or cause of action under this Agreement shall lie exclusively in Denton County, Texas. This Agreement shall be construed in accordance with the laws of the State of Texas, without regard to its conflict of laws rules.
- E. For the purpose of this Agreement, the key persons who will perform most of the work hereunder shall be authorized by CONSULTANT. However, nothing herein shall limit CONSULTANT from using other qualified and competent members of its firm to perform the services required herein.
- F. CONSULTANT shall commence, carry on, and complete any and all Services in accordance with the provisions hereof in all material respects. In accomplishing the Services, CONSULTANT shall take such steps as are reasonable and appropriate to help Owner ensure that the work involved is properly coordinated with related work being carried on by the OWNER.

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## EXHIBIT A

- G. The OWNER shall assist the CONSULTANT by placing at the CONSULTANT's disposal all available information pertinent to the Project, including previous reports, any other data relative to the Project, and arranging for the access thereto, and make all provisions for the CONSULTANT to enter in or upon public and private property as required for the CONSULTANT to perform services under this Agreement.
- H. The captions of this Agreement are for informational purposes only, and shall not in any way affect the substantive terms or conditions of this Agreement.
- I. All provisions which are intended by their nature to survive performance of the Services shall survive such performance, or the expiration or termination of this Agreement. No affiliated or related entity of CONSULTANT, or such entity's personnel, shall have any liability hereunder to OWNER and OWNER will not bring any action against any such affiliated or related entity or such entity's personnel in connection with this Agreement. Without limiting the foregoing, such affiliated and related entities are intended third-party beneficiaries of these terms, and may in their own right enforce such terms. **Each of the provisions of these terms shall apply to the fullest extent of the law, whether in contract, statute, tort (such as *negligence*), or otherwise, notwithstanding the failure of the essential purpose of any remedy.**
- J. CONSULTANT may: (1) provide any services to any person or entity, and (2) develop for itself, or for others, any materials or processes, including those that may be similar to those produced as a result of the Services, provided that, CONSULTANT complies with its obligations of confidentiality set forth herein.
- K. Neither party shall be liable for any delays or nonperformance directly or indirectly resulting from circumstances or causes beyond its reasonable control, including fire, epidemic or other casualty, act of God, strike or labor dispute, war or other violence, or any law, order, or requirement of any governmental agency or authority.
- L. No action, regardless of form, relating to this Agreement, may be brought by either party more than one year after the cause of action has accrued, except that an action for nonpayment may be brought by a party not later than one year following the due date of the last payment owing to the party bringing such action.
- M. **THE PARTIES HEREBY IRREVOCABLY WAIVE, TO THE FULLEST EXTENT PERMITTED BY LAW, ALL RIGHTS TO TRIAL BY JURY IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM RELATING TO THIS AGREEMENT.**

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EXHIBIT A

IN WITNESS HEREOF, the City of Denton, Texas has caused this Agreement to be executed by its duly authorized City Manager, and CONSULTANT has executed this Agreement through its duly authorized undersigned officer on this the 5/25/2017.

CITY OF DENTON, TEXAS

DocuSigned by:  
*Jody Word*  
BY: 296E603A17BB493...  
PURCHASING DEPARTMENT

CONSULTANT

DocuSigned by:  
*Stephen K Engler*  
BY: F69CE30D017C490  
AUTHORIZED SIGNATURE, TITLE

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## CITY OF DENTON INSURANCE REQUIREMENTS FOR CONSULTANTS/CONTRACTORS

*The Offeror's/Bidder's attention is directed to the insurance requirements below. It is highly recommended that offerors/bidders confer with their respective insurance carriers or brokers to determine in advance of its proposal or bid submission the availability of insurance certificates and endorsements as prescribed and provided herein. If an offeror/apparent low bidder fails to comply strictly with the insurance requirements, that offeror/bidder may be disqualified from award of the contract. Upon award, all insurance requirements shall become contractual obligations, which the successful offeror/bidder shall have a duty to maintain throughout the course of this contract.*

### STANDARD PROVISIONS:

*Without limiting any of the other obligations or liabilities of the Consultant/Contractor, the Consultant/Contractor shall provide and maintain until the contracted work has been completed and accepted by the City of Denton, Owner, the minimum insurance coverage as indicated hereinafter.*

*As soon as practicable after notification of award, Consultant/Contractor shall file with the Purchasing Department satisfactory certificates of insurance, containing the proposal/bid number and title of the project. Consultant/Contractor may, upon written request to the Purchasing Department, ask for clarification of any insurance requirements at any time; however, Consultants/Contractors are strongly advised to make such requests prior to proposal/bid opening, since the insurance requirements may not be modified or waived after proposal/bid opening unless a written exception has been submitted with the proposal/bid. Consultant/Contractor shall not commence any work or deliver any material until he or she receives notification that the contract has been accepted, approved, and signed by the City of Denton.*

*All insurance policies proposed or obtained in satisfaction of these requirements shall comply with the following general specifications, and shall be maintained in compliance with these general specifications throughout the duration of the Contract, or longer, if so noted:*

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- Each policy shall be issued by a company authorized to do business in the State of Texas with an A.M. Best Company rating of at least A- **VII or better or the equivalent rating from a nationally recognized rating firm.**
- General Liability and Automobile Liability policies shall be endorsed to provide the following:
  - Name as additional insured the City of Denton, its Officials, Agents, Employees and volunteers with respect to Consultant's acts or omissions in performance of Services under this Agreement.
  - That such insurance is primary to any other insurance available to the additional insured with respect to claims covered under the policy and that this insurance applies separately to each insured against whom claim is made or suit is brought. The inclusion of more than one insured shall not operate to increase the insurer's limit of liability.
  - ***Cancellation: City requires 30 day written notice by Consultant should any of the policies described on the certificate be cancelled or materially adversely changed before the expiration date and replacement insurance coverage meeting all of the requirements and specifications herein cannot be obtained.***
  - Should any of the required insurance be provided under a claims-made form, Consultant/Contractor shall maintain such coverage continuously throughout the term of this contract and, without lapse, for a period of three years beyond the contract expiration, such that occurrences arising during the contract term which give rise to claims made after expiration of the contract shall be covered.
  - Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit providing for claims investigation or legal defense costs to be included in the general annual aggregate limit, the Consultant/Contractor shall either double the occurrence limits or obtain Owners and Contractors Protective Liability Insurance.
  - Should any required insurance lapse during the contract term, requests for payments originating after such lapse shall not be processed until the City receives satisfactory evidence of reinstated coverage as required by this contract, effective as of the lapse date. If insurance is not reinstated, City may, at its sole option, terminate this agreement effective on the date of the lapse.

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Deloitte & Touche LLP  
100 Kimball Drive  
Parsippany, NJ 07054-2176

### **SPECIFIC ADDITIONAL INSURANCE REQUIREMENTS:**

*All insurance policies proposed or obtained in satisfaction of this Contract shall additionally comply with the following marked specifications, and shall be maintained in compliance with these additional specifications throughout the duration of the Contract, or longer, if so noted:*

#### **[X] A. General Liability Insurance:**

General Liability insurance with combined single limits of not less than **\$1,000,000.00** shall be provided and maintained by the Contractor. The policy shall be written on an occurrence basis either in a single policy or in a combination of underlying and umbrella or excess policies.

If the Commercial General Liability form (ISO Form CG 0001 current edition) is used:

- Coverage A shall include premises, operations, products, and completed operations, independent contractors, contractual liability covering this contract and broad form property damage coverage.
- Coverage B shall include personal and advertising injury.
- Coverage C, medical payments, is not required.

If the Comprehensive General Liability form (ISO Form GL 0002 Current Edition and (ISO Form GL 0404) is used, it shall include at least:

- Bodily injury and Property Damage Liability for premises, operations, products and completed operations, independent contractors and property damage resulting from explosion, collapse or underground (XCU) exposures.
- Contractual liability for insured contracts covering this contract as applicable, personal and advertising injury liability and property damage liability.

#### **[X] Automobile Liability Insurance:**

Contractor shall provide Commercial Automobile Liability insurance with Combined Single Limits (CSL) of not less than **\$500,000.00** either in a single policy or in a combination of basic and umbrella or excess policies. The policy will include bodily injury and property damage liability arising out of the operation, maintenance and use of all automobiles and mobile equipment used in conjunction with this contract.

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Satisfaction of the above requirement shall be in the form of a policy endorsement for:

- any auto, or
- all owned, hired and non-owned autos.

**Workers' Compensation Insurance**

Contractor shall purchase and maintain Worker's Compensation insurance which, in addition to meeting the minimum statutory requirements for issuance of such insurance, has Employer's Liability limits of at least \$100,000 for each accident, \$100,000 per each employee, and a \$500,000 policy limit for occupational disease. The City need not be named as an "Additional Insured" but the insurer shall agree to waive all rights of subrogation against the City, its officials, agents, employees and volunteers for any work performed for the City by the Named Insured. For building or construction projects, the Contractor shall comply with the provisions of Attachment 1 in accordance with §406.096 of the Texas Labor Code and rule 28TAC 110.110 of the Texas Worker's Compensation Commission (TWCC).

**Owner's and Contractor's Protective Liability Insurance**

The Contractor shall obtain, pay for and maintain at all times during the prosecution of the work under this contract, an Owner's and Contractor's Protective Liability insurance policy naming the City as insured for property damage and bodily injury which may arise in the prosecution of the work or Contractor's operations 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. Policy limits will be at least combined bodily injury and property damage per occurrence with a \_\_\_\_\_ aggregate.

**Professional Liability Insurance**

Professional liability insurance with limits not less than \$\_\_\_\_\_ per claim with respect to negligent acts, errors or omissions in connection with professional services is required under this Agreement.

**Builders' Risk Insurance**

Builders' Risk Insurance, on an All-Risk form for 100% of the completed value shall be provided. Such policy shall include as "Named Insured" the City of Denton and all subcontractors as their interests may appear.

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**Commercial Crime**

Provides coverage for the theft or disappearance of cash or checks, robbery inside/outside the premises, burglary of the premises, and employee fidelity. The employee fidelity portion of this coverage should be written on a "blanket" basis to cover all employees, including new hires. This type insurance should be required if the contractor has access to City funds. Limits of not less than \_\_\_\_\_ each occurrence are required.

**Additional Insurance**

Other insurance may be required on an individual basis for extra hazardous contracts and specific service agreements. If such additional insurance is required for a specific contract, that requirement will be described in the "Specific Conditions" of the contract specifications.



## ATTACHMENT 1

**[X] Worker's Compensation Coverage for Building or Construction Projects for Governmental Entities**

## 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 §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, Section 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.

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## EXHIBIT A

- 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, Section 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) certificate of coverage, prior to the other person beginning work on the project; and

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- 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 10 days after the person knew or should have known, of 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.

## Exhibit A

### STATEMENT OF WORK, DRAFTED: May 12, 2017

This Statement of Work is to confirm the engagement of Deloitte & Touche LLP “D&T” or “we” or “our”) to provide City of Denton (the “Owner” or “Company” or “Client” or “you”) with model and cost validation<sup>1</sup> services (the “Services”). The engagement is subject to the terms of the Professional Services Agreement for Denton Municipal Electric (“DME”) Energy Management Operations Analysis (“EMO”) (designated by Client as File 6469) to which this Exhibit A is attached and made a part thereof.

### SCOPE, APPROACH, AND ASSUMPTIONS

The nature of the Services that D&T is to perform for the Owner is the development of a scope of work to perform an assessment and validation of the cost saving model used by Denton Municipal Electric (“DME”) to support the operations of the Energy Management Operations (“EMO”) group (the “Model”). In order to provide practical recommendations in Phase 2 for the City of Denton to consider regarding the application of the model, the development of the scope of work will focus not only on the inputs and calculations in the model, but also the process supporting the use of the model. D&T will approach the Services based on the following approach: (1) kick-off, (2) preliminary model assessment, and (3) development of Phase 2 scope.

D&T’s approach for the services is as follows:

1. Kick-off

- Meet with DME to understand the purpose of and function of the model
- Walkthrough of the Model with relevant DME staff
- Inquiry with key personnel who operate or manage the Model and/or its assumptions, inputs, or outputs

2. Preliminary Model assessment

- Analysis of existing model documentation
- Review of model inputs and assumptions via a walkthrough with the DME staff
- Review of the actual 2015 and 2016 model output produced by the DME staff

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<sup>1</sup> For purposes of the model validation and other services described herein, terms such as validate, test, verify, review, and confirm refer to assessment activities performed based on objectives, a framework and assumptions as agreed to with the Company. These activities typically do not include detailed testing of data elements and controls, can be inherently subjective and are based on or Advisor’s current understanding of facts, circumstances and regulatory expectations. Other professionals may perform procedures concerning the same information or data, and reach different findings than Advisor for a variety of reasons, including the possibilities that additional or different information or data might be provided to them that was not provided to Advisor, that they might perform different procedures than did Advisor, or that professional judgments concerning complex, unusual, or poorly documented transactions may differ.

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3. Development of Phase 2 assessment scope
  - Develop a proposed scope of work for a broader assessment and validation of the model
  - Present the proposed scope of work for Phase 2 to the Owner.

Assumptions for this engagement include:

- Substantial and meaningful involvement of key stakeholders in the model walkthrough and assessment process is critical to the success of this engagement. The Owner shall be responsible for ensuring that the identified Owner personnel actively participate in both the planning and execution of this engagement.
- The Services will be performed in accordance with the Statement on Standards for Consulting Services issued by the American Institute of Certified Public Accountants (AICPA). The Services will not constitute an engagement to provide audit, compilation, review, or attestation services as described in the pronouncements on professional standards issued by the AICPA, the Public Company Accounting Oversight Board, or other regulatory body and, therefore, we will not express an opinion or any other form of assurance as a result of performing the Services.
- D&T will not make any management decisions, perform any management functions, or assume any management responsibilities.

#### **DELIVERABLES**

The following deliverable will be produced during the course of this engagement:

- A. A proposed Phase 2 scope of work for your consideration, to include:
  - a. Key tasks to accomplish
  - b. A timeline for the execution of the proposed scope
  - c. A fee estimate to accomplish the proposed scope

#### **TIMETABLE**

Based on our experience delivering similar engagements, we believe that the services described can be provided in approximately one (1) week.

#### **ENGAGEMENT FEES**

The estimated fees for this engagement are estimated not to exceed \$26,000, inclusive of travel, based on the following rates:

<b>Resource Level</b>	<b>Hourly Rate</b>
Partner, Principal, Managing Director	\$445
Senior Manager	\$415
Manager	\$380
Senior Consultant	\$330
Consultant	\$280
US India Senior Consultant	\$91

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Exhibit B

**CONFLICT OF INTEREST QUESTIONNAIRE - FORM CIQ**

**For vendor or other person doing business with local governmental entity**

This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.

This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a).

By law this questionnaire must be filed with the records administrator of the local government entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. See Section 176.006(a-1), Local Government Code.

A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.

1 Name of vendor who has a business relationship with local governmental entity. Deloitte & Touche LLP

2  Check this box if you are filing an update to a previously filed questionnaire.

(The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7<sup>th</sup> business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)

3 Name of local government officer about whom the information in this section is being disclosed.

N/A

\_\_\_\_\_  
Name of Officer

This section, (item 3 including subparts A, B, C & D), must be completed for each officer with whom the vendor has an employment or other business relationship as defined by Section 176.001(1-a), Local Government Code. Attach additional pages to this Form CIQ as necessary.

A. Is the local government officer named in this section receiving or likely to receive taxable income, other than investment income, from the vendor?

Yes  No

B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer named in this section AND the taxable income is not received from the local governmental entity?

Yes  No

C. Is the filer of this questionnaire employed by a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership of one percent or more?

Yes  No

D. Describe each employment or business and family relationship with the local government officer named in this section.

N/A

4  I have no Conflict of Interest to disclose.

5 DocuSigned by:  
Stephen E Engler

5/25/2017

Signature of Vendor doing business with the governmental entity

Date



EXHIBIT A



**Certificate Of Completion**

Envelope Id: CB16C34AC77147DB98DCE77F0B5BD64A  
 Subject: Please DocuSign: PSA 6469 - City of Denton-Deloitte Touche LLP.pdf  
 Source Envelope:  
 Document Pages: 26  
 Supplemental Document Pages: 0  
 Certificate Pages: 5  
 AutoNav: Enabled  
 Envelopeld Stamping: Enabled  
 Time Zone: (UTC-08:00) Pacific Time (US & Canada)

Status: Completed  
 Envelope Originator:  
 Jody Word  
 jody.word@cityofdenton.com  
 IP Address: 129.120.6.150

Signatures: 3  
 Initials: 0  
 Payments: 0

**Record Tracking**

Status: Original  
 5/24/2017 1:19:36 PM  
 Holder: Jody Word  
 jody.word@cityofdenton.com  
 Location: DocuSign

**Signer Events**

Jody Word  
 jody.word@cityofdenton.com  
 Buyer  
 City of Denton  
 Security Level: Email, Account Authentication (Optional)  
 Electronic Record and Signature Disclosure:  
 Not Offered via DocuSign  
 ID:

**Signature**

**Completed**  
 Using IP Address: 129.120.6.150

**Timestamp**

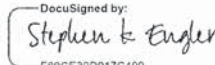
Sent: 5/24/2017 1:43:47 PM  
 Viewed: 5/24/2017 1:43:55 PM  
 Signed: 5/24/2017 1:47:36 PM

Jody Word  
 jody.word@cityofdenton.com  
 Buyer  
 City of Denton  
 Security Level: Email, Account Authentication (Optional)  
 Electronic Record and Signature Disclosure:  
 Not Offered via DocuSign  
 ID:

DocuSigned by:  
  
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Sent: 5/24/2017 1:47:37 PM  
 Viewed: 5/24/2017 1:47:51 PM  
 Signed: 5/24/2017 1:47:59 PM

Stephen K Engler  
 sengler@deloitte.com  
 Security Level: Email, Account Authentication (Optional)

DocuSigned by:  
  
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 Using IP Address: 108.35.90.101

Sent: 5/24/2017 1:48:01 PM  
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 Viewed: 5/25/2017 9:17:55 AM  
 Signed: 5/25/2017 9:21:14 AM

Electronic Record and Signature Disclosure:  
 Accepted: 5/25/2017 9:17:55 AM  
 ID: 0c35523b-c13d-4386-8bcc-fdd76579d69f

**In Person Signer Events**

**Signature**

**Timestamp**

**Editor Delivery Events**

**Status**

**Timestamp**

**Agent Delivery Events**

**Status**

**Timestamp**

**Intermediary Delivery Events**

**Status**

**Timestamp**

**Certified Delivery Events**

**Status**

**Timestamp**

# EXHIBIT A

## Carbon Copy Events

Sarah Kuechler  
 sarah.kuechler@cityofdenton.com  
 Security Level: Email, Account Authentication (Optional)  
 Electronic Record and Signature Disclosure:  
 Not Offered via DocuSign  
 ID:

### Status

**COPIED**

### Timestamp

Sent: 5/25/2017 9:21:16 AM

Timothy Metts  
 tmetts@deloitte.com  
 Security Level: Email, Account Authentication (Optional)  
 Electronic Record and Signature Disclosure:  
 Not Offered via DocuSign  
 ID:

**COPIED**

Sent: 5/25/2017 9:21:17 AM  
Viewed: 5/25/2017 9:22:27 AM

Julia Winkley  
 julia.winkley@cityofdenton.com  
 Contracts Administration Supervisor  
 City of Denton  
 Security Level: Email, Account Authentication (Optional)  
 Electronic Record and Signature Disclosure:  
 Not Offered via DocuSign  
 ID:

**COPIED**

Sent: 5/25/2017 9:21:18 AM

## Notary Events

### Timestamp

## Envelope Summary Events

### Status

### Timestamps

Envelope Sent	Hashed/Encrypted	5/25/2017 9:21:18 AM
Certified Delivered	Security Checked	5/25/2017 9:21:18 AM
Signing Complete	Security Checked	5/25/2017 9:21:18 AM
Completed	Security Checked	5/25/2017 9:21:18 AM

## Payment Events

### Status

### Timestamps

## Electronic Record and Signature Disclosure



**ELECTRONIC RECORD AND SIGNATURE DISCLOSURE**

From time to time, City of Denton (we, us or Company) may be required by law to provide to you certain written notices or disclosures. Described below are the terms and conditions for providing to you such notices and disclosures electronically through your DocuSign, Inc. (DocuSign) Express user account. Please read the information below carefully and thoroughly, and if you can access this information electronically to your satisfaction and agree to these terms and conditions, please confirm your agreement by clicking the 'I agree' button at the bottom of this document.

**Getting paper copies**

At any time, you may request from us a paper copy of any record provided or made available electronically to you by us. For such copies, as long as you are an authorized user of the DocuSign system you will have the ability to download and print any documents we send to you through your DocuSign user account for a limited period of time (usually 30 days) after such documents are first sent to you. After such time, if you wish for us to send you paper copies of any such documents from our office to you, you will be charged a \$0.00 per-page fee. You may request delivery of such paper copies from us by following the procedure described below.

**Withdrawing your consent**

If you decide to receive notices and disclosures from us electronically, you may at any time change your mind and tell us that thereafter you want to receive required notices and disclosures only in paper format. How you must inform us of your decision to receive future notices and disclosure in paper format and withdraw your consent to receive notices and disclosures electronically is described below.

**Consequences of changing your mind**

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. To indicate to us that you are changing your mind, you must withdraw your consent using the DocuSign 'Withdraw Consent' form on the signing page of your DocuSign account. This will indicate to us that you have withdrawn your consent to receive required notices and disclosures electronically from us and you will no longer be able to use your DocuSign Express user account to receive required notices and consents electronically from us or to sign electronically documents from us.

**All notices and disclosures will be sent to you electronically**

Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through your DocuSign user account all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures electronically from us.



## EXHIBIT A

**How to contact City of Denton:**

You may contact us to let us know of your changes as to how we may contact you electronically, to request paper copies of certain information from us, and to withdraw your prior consent to receive notices and disclosures electronically as follows:

To contact us by email send messages to: kevin.gunn@cityofdenton.com

**To advise City of Denton of your new e-mail address**

To let us know of a change in your e-mail address where we should send notices and disclosures electronically to you, you must send an email message to us at kevin.gunn@cityofdenton.com and in the body of such request you must state: your previous e-mail address, your new e-mail address. We do not require any other information from you to change your email address..

In addition, you must notify DocuSign, Inc to arrange for your new email address to be reflected in your DocuSign account by following the process for changing e-mail in DocuSign.

**To request paper copies from City of Denton**

To request delivery from us of paper copies of the notices and disclosures previously provided by us to you electronically, you must send us an e-mail to kevin.gunn@cityofdenton.com and in the body of such request you must state your e-mail address, full name, US Postal address, and telephone number. We will bill you for any fees at that time, if any.

**To withdraw your consent with City of Denton**

To inform us that you no longer want to receive future notices and disclosures in electronic format you may:

- i. decline to sign a document from within your DocuSign account, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may;
- ii. send us an e-mail to kevin.gunn@cityofdenton.com and in the body of such request you must state your e-mail, full name, IS Postal Address, telephone number, and account number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

**Required hardware and software**

Operating Systems:	Windows2000? or WindowsXP?
Browsers (for SENDERS):	Internet Explorer 6.0? or above
Browsers (for SIGNERS):	Internet Explorer 6.0?, Mozilla FireFox 1.0, NetScape 7.2 (or above)
Email:	Access to a valid email account
Screen Resolution:	800 x 600 minimum
Enabled Security Settings:	<ul style="list-style-type: none"> <li>•Allow per session cookies</li> <li>•Users accessing the internet behind a Proxy Server must enable HTTP 1.1 settings via proxy connection</li> </ul>

\*\* These minimum requirements are subject to change. If these requirements change, we will provide you with an email message at the email address we have on file for you at that time providing you with the revised hardware and software requirements, at which time you will have the right to withdraw your consent.



## EXHIBIT A

### **Acknowledging your access and consent to receive materials electronically**

To confirm to us that you can access this information electronically, which will be similar to other electronic notices and disclosures that we will provide to you, please verify that you were able to read this electronic disclosure and that you also were able to print on paper or electronically save this page for your future reference and access or that you were able to e-mail this disclosure and consent to an address where you will be able to print on paper or save it for your future reference and access. Further, if you consent to receiving notices and disclosures exclusively in electronic format on the terms and conditions described above, please let us know by clicking the 'I agree' button below.

By checking the 'I Agree' box, I confirm that:

- I can access and read this Electronic CONSENT TO ELECTRONIC RECEIPT OF ELECTRONIC RECORD AND SIGNATURE DISCLOSURES document; and
- I can print on paper the disclosure or save or send the disclosure to a place where I can print it, for future reference and access; and
- Until or unless I notify City of Denton as described above, I consent to receive from exclusively through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to me by City of Denton during the course of my relationship with you.

## EXHIBIT B

### STATEMENT OF WORK, DRAFTED: June 21, 2017

This Statement of Work is to confirm the engagement of Deloitte & Touche LLP (“Consultant” or “we” or “our”) to provide City of Denton (the “Owner” or “you”) with model and cost validation services<sup>1</sup> (the “Services”). The engagement is subject to the terms of the Professional Services Agreement for Denton Municipal Electric (“DME”) Energy Management Operations Analysis (“EMO”) (designated by Client as File 6469) to which this Exhibit A is attached and made a part thereof.

### SCOPE, APPROACH, AND ASSUMPTIONS

The nature of the Services that the Consultant is to perform for the Owner is to perform an assessment and validation<sup>1</sup> of the cost saving model used by Denton Municipal Electric (“DME”) to support the operations of the Energy Management Operations (“EMO”) group (the “Model”). The scope of work will focus on the inputs and calculations in the model, as well as the process in place at Owner to support its use of the model. Consultant will provide Owner with a retrospective assessment for FY 2015 and FY 2016.

Consultant’s approach for this engagement is as follows:

1. **Retrospective Assessment FY 2015 (10/01/2014 – 09/30/2015) and FY 2016 (10/01/2015 – 09/30/2016):**
  - Assess the model used by Owner in FY 2015 and FY 2016 including the model's inputs, exclusions, and assumptions based on the following as applicable:
    - Inputs may include the following, but are not limited to:
      - Congestion Revenue Rights (“CRR”) costs
      - Day Ahead Market (“DAM”) prices
      - DAM Point-to-Point (“PTP”) purchase
      - Real Time Market (“RTM”) prices
      - RTM PTP purchases
      - RTM Congestion Cost
      - DME ancillary service Costs
      - Bilateral contracts for power
      - Broker fees for exchange traded contracts
      - Financial swap transactions

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<sup>1</sup> For purposes of the model validation and other services described herein, terms such as validate, test, verify, review, and confirm refer to assessment activities performed based on objectives, a framework and assumptions as agreed to with the Owner. These activities will not include detailed testing of data elements and controls, can be inherently subjective and are based on Consultant’s current understanding of facts, circumstances and regulatory expectations. Other professionals may perform procedures concerning the same information or data, and reach different findings than Consultant for a variety of reasons, including the possibilities that additional or different information or data might be provided to them that was not provided to Consultant, that they might perform different procedures than did Consultant, or that professional judgments concerning complex, unusual, or poorly documented transactions may differ.

**This document and any attachments thereto may contain information that is confidential, commercially-sensitive, proprietary, and/or public power utility competitive and financial information in accordance with the provisions of Texas Government Code, Section 552.101, 552.104, 552.110 and/or 552.133, and may be protected from required public disclosure.**



## **EXHIBIT B**

### **STATEMENT OF WORK, DRAFTED: June 21, 2017**

- Exclusions may include, but are not limited to, the following:
  - Electric Reliability Council of Texas (“ERCOT”) CRRs
  - Select counterparties costs
  - Renewable Energy Credits (REC)
  - Landfill
- Assess the appropriateness of inputs and assumptions for the model, including information received from the model based on the Consultant’s understanding and knowledge of the inputs and assumptions associated with ERCOT and establishment of an energy management organization
- Assess the appropriateness of key exclusions based on the Consultant’s understanding and knowledge of the inputs and assumptions associated with ERCOT and establishment of an energy management organization
- For observable inputs (such as market data), a comparison of selected data to an independent source of the market data, where available
- For unobservable inputs (such as assumptions), an assessment of the process by which the assumptions are developed and assessment of consistency with available related information (such as proxy information) as provided by Owner
- Assess the accuracy and completeness of the final FY 2015 and 2016 savings calculations based on the following as applicable:
  - Analyze the NRG quoted heat rate used in the FY 2015 and 2016 cost savings calculations by comparing it to available market data as provided by Owner
  - Recalculate the FY 2015 and FY 2016 year-end summaries using supporting documentation such as counterparties invoices, CRR Auction costs, and ERCOT statements to the extent that statements are available, which will be provided by the Owner
  - Research and analyze resulting differences between the Owner’s FY 2015 and FY 2016 savings calculations and the recalculations performed by Consultant

### **ACKNOWLEDGMENTS AND AGREEMENTS**

- Substantial and meaningful involvement of key stakeholders in the risk assessment and risk identification process of the Company is critical to the success of this engagement. The Company shall be responsible for ensuring that the identified Company personnel actively participate in both the planning and execution of this engagement.

**This document and any attachments thereto may contain information that is confidential, commercially-sensitive, proprietary, and/or public power utility competitive and financial information in accordance with the provisions of Texas Government Code, Section 552.101, 552.104, 552.110 and/or 552.133, and may be protected from required public disclosure.**

## EXHIBIT B

### STATEMENT OF WORK, DRAFTED: June 21, 2017

- The Services will not constitute an engagement to provide audit, compilation, review, or attestation services as described in the pronouncements on professional standards issued by the AICPA, the Public Company Accounting Oversight Board, or other regulatory body and, therefore, we will not express an opinion or any other form of assurance as a result of performing the Services.
- Consultant will not make any management decisions, perform any management functions, or assume any management responsibilities.
- Observable inputs such as market data shall be provided by the by the Owner or agreed with Owner for use in the assessment

The Services will be performed in accordance with the Statement on Standards for Consulting Services issued by the American Institute of Certified Public Accountants (AICPA).

### DELIVERABLES

The following deliverables will be produced during the course of this engagement:

- I. Prepare a report of the results of our assessment of the FY 2015 & FY 2016 cost savings to include the following elements:
  1. Executive summary
  2. Procedures performed
  3. Results of recalculations performed

### TIMETABLE

Based on our experience delivering similar engagements, we believe that the services described can be provided in approximately three (3) weeks.

### ENGAGEMENT FEES

The estimated fees for this engagement are estimated not to exceed \$60,000 inclusive of travel, based on the following rates and approximately 231 hours:

Resource Level	Hourly Rate
Partner, Principal, Managing Director	\$445
Senior Manager	\$415
Manager	\$380
Senior Consultant	\$330
Consultant	\$280
US India Senior Consultant	\$91

**This document and any attachments thereto may contain information that is confidential, commercially-sensitive, proprietary, and/or public power utility competitive and financial information in accordance with the provisions of Texas Government Code, Section 552.101, 552.104, 552.110 and/or 552.133, and may be protected from required public disclosure.**



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Envelope Id: 64AB52197F014FCEA08AF5224B3FF819	Status: Completed
Subject: ****City Manager Approval *****DocuSign Item 6469-Amend #1	
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Supplemental Document Pages: 0	Initials: 0
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AutoNav: Enabled	Envelope Originator:
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Time Zone: (UTC-08:00) Pacific Time (US & Canada)	jody.word@cityofdenton.com
	IP Address: 129.120.6.150

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Buyer  
City of Denton  
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karen.smith@cityofdenton.com  
Interim Purchasing Manager  
City of Denton  
Security Level: Email, Account Authentication (Optional)  
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tmetts@deloitte.com  
Security Level: Email, Account Authentication (Optional)  
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Jennifer DeCurtis  
jennifer.decurtis@cityofdenton.com  
Deputy City Attorney  
City of Denton  
Security Level: Email, Account Authentication (Optional)  
**Electronic Record and Signature Disclosure:**  
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Signer Events	Signature	Timestamp
<p>Todd Hileman todd.hileman@cityofdenton.com City Manager City of Denton Security Level: Email, Account Authentication (Optional)</p> <p><b>Electronic Record and Signature Disclosure:</b> Accepted: 7/25/2017 9:02:14 AM ID: 57619fbf-2aec-4b1f-805d-6bd7d9966f21</p>	<p>DocuSigned by: <i>Todd Hileman</i> B776C711BA0D454...</p> <p>Using IP Address: 129.120.6.150</p>	<p>Sent: 7/25/2017 8:45:53 AM Viewed: 7/25/2017 9:02:14 AM Signed: 7/25/2017 9:02:24 AM</p>
<p>Jennifer Walters jennifer.walters@cityofdenton.com City Secretary City of Denton Security Level: Email, Account Authentication (Optional)</p> <p><b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign</p>	<p>DocuSigned by: <i>Jennifer Walters</i> C5BF4FC1821946D...</p> <p>Using IP Address: 129.120.6.150</p>	<p>Sent: 7/25/2017 9:02:27 AM Resent: 7/26/2017 2:30:57 PM Viewed: 7/26/2017 2:44:45 PM Signed: 7/26/2017 2:45:56 PM</p>

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<b>Editor Delivery Events</b>	<b>Status</b>	<b>Timestamp</b>
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<b>Certified Delivery Events</b>	<b>Status</b>	<b>Timestamp</b>
<b>Carbon Copy Events</b>	<b>Status</b>	<b>Timestamp</b>
<p>Sherrri Thurman sherrri.thurman@cityofdenton.com Security Level: Email, Account Authentication (Optional)</p> <p><b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign</p>	<div style="border: 1px solid blue; padding: 5px; text-align: center; color: blue; font-weight: bold; font-size: 1.2em;">COPIED</div>	<p>Sent: 7/25/2017 8:40:48 AM</p>
<p>Robin Fox Robin.fox@cityofdenton.com Security Level: Email, Account Authentication (Optional)</p> <p><b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign</p>	<div style="border: 1px solid blue; padding: 5px; text-align: center; color: blue; font-weight: bold; font-size: 1.2em;">COPIED</div>	<p>Sent: 7/25/2017 8:45:53 AM</p>
<p>Jane Richardson jane.richardson@cityofdenton.com Assistant City Secretary City of Denton Security Level: Email, Account Authentication (Optional)</p> <p><b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign</p>	<div style="border: 1px solid blue; padding: 5px; text-align: center; color: blue; font-weight: bold; font-size: 1.2em;">COPIED</div>	<p>Sent: 7/26/2017 2:45:59 PM Viewed: 7/27/2017 6:40:46 AM</p>
<p>Jennifer Bridges jennifer.bridges@cityofdenton.com Procurement Assistant City of Denton Security Level: Email, Account Authentication (Optional)</p> <p><b>Electronic Record and Signature Disclosure:</b></p>	<div style="border: 1px solid blue; padding: 5px; text-align: center; color: blue; font-weight: bold; font-size: 1.2em;">COPIED</div>	<p>Sent: 7/26/2017 2:45:59 PM Viewed: 7/28/2017 1:47:40 PM</p>



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Sarah Kuechler sarah.kuechler@cityofdenton.com Security Level: Email, Account Authentication (Optional) <b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign	<b>COPIED</b>	Sent: 7/26/2017 2:45:59 PM
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Notary Events	Signature	Timestamp
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Envelope Summary Events	Status	Timestamps
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Certified Delivered	Security Checked	7/26/2017 2:45:59 PM
Signing Complete	Security Checked	7/26/2017 2:45:59 PM
Completed	Security Checked	7/26/2017 2:45:59 PM

Payment Events	Status	Timestamps
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Electronic Record and Signature Disclosure
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## **ELECTRONIC RECORD AND SIGNATURE DISCLOSURE**

From time to time, City of Denton (we, us or Company) may be required by law to provide to you certain written notices or disclosures. Described below are the terms and conditions for providing to you such notices and disclosures electronically through your DocuSign, Inc. (DocuSign) Express user account. Please read the information below carefully and thoroughly, and if you can access this information electronically to your satisfaction and agree to these terms and conditions, please confirm your agreement by clicking the 'I agree' button at the bottom of this document.

### **Getting paper copies**

At any time, you may request from us a paper copy of any record provided or made available electronically to you by us. For such copies, as long as you are an authorized user of the DocuSign system you will have the ability to download and print any documents we send to you through your DocuSign user account for a limited period of time (usually 30 days) after such documents are first sent to you. After such time, if you wish for us to send you paper copies of any such documents from our office to you, you will be charged a \$0.00 per-page fee. You may request delivery of such paper copies from us by following the procedure described below.

### **Withdrawing your consent**

If you decide to receive notices and disclosures from us electronically, you may at any time change your mind and tell us that thereafter you want to receive required notices and disclosures only in paper format. How you must inform us of your decision to receive future notices and disclosure in paper format and withdraw your consent to receive notices and disclosures electronically is described below.

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### **All notices and disclosures will be sent to you electronically**

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To contact us by email send messages to: [purchasing@cityofdenton.com](mailto:purchasing@cityofdenton.com)

**To advise City of Denton of your new e-mail address**

To let us know of a change in your e-mail address where we should send notices and disclosures electronically to you, you must send an email message to us at [melissa.kraft@cityofdenton.com](mailto:melissa.kraft@cityofdenton.com) and in the body of such request you must state: your previous e-mail address, your new e-mail address. We do not require any other information from you to change your email address..

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- i. decline to sign a document from within your DocuSign account, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may;
- ii. send us an e-mail to [purchasing@cityofdenton.com](mailto:purchasing@cityofdenton.com) and in the body of such request you must state your e-mail, full name, IS Postal Address, telephone number, and account number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

**Required hardware and software**

Operating Systems:	Windows2000? or WindowsXP?
Browsers (for SENDERS):	Internet Explorer 6.0? or above
Browsers (for SIGNERS):	Internet Explorer 6.0?, Mozilla FireFox 1.0, NetScape 7.2 (or above)
Email:	Access to a valid email account
Screen Resolution:	800 x 600 minimum
Enabled Security Settings:	<ul style="list-style-type: none"> <li>•Allow per session cookies</li> <li>•Users accessing the internet behind a Proxy Server must enable HTTP 1.1 settings via proxy connection</li> </ul>

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- Until or unless I notify City of Denton as described above, I consent to receive from exclusively through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to me by City of Denton during the course of my relationship with you.